

IN THE CIRCUIT COURT, OF THE NINTH JUDICIAL CIRCUIT,  
IN AND FOR ORANGE COUNTY, FLORIDA

FONTANA ESTATES HOMEOWNERS  
ASSOCIATION, INC., a Florida not-for-  
profit corporation;

Plaintiff,

CASE NO.:

v.

TOLL FL VIII LIMIED PARTNERSHIP, a  
foreign limited partnership; and TOLL  
BROS., INC., a foreign for-profit corporation;

Defendants.

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**PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, FONTANA ESTATES HOMEOWNERS ASSOCIATION, INC.  
("ASSOCIATION"), by and through its undersigned counsel, hereby sues Defendants, TOLL FL  
VIII LIMITED PARTNERSHIP ("TOLL FL"); and TOLL BROS., INC. ("TOLL BROS")  
(collectively TOLL FL and TOLL BROS are the "Defendants," each a "Defendant"); and alleges  
as follows:

**JURISDICTION AND VENUE**

1. Each cause of action for damages exceeds the sum of thirty thousand dollars (\$30,000.00), exclusive of interest, costs and attorneys' fees.
2. The property involved in each cause of action is located in Orange County, Florida ("Subject Property").
3. Venue is proper in the Court pursuant to Section 47.011, *Florida Statutes* as the claims presented arise from acts or omissions occurring in Orange County, Florida.

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
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4. As a result of the Defendants' conduct, the Association has been required to retain the services of the undersigned counsel to represent its interests in this action and is obligated to pay a reasonable fee for their services.

5. The ASSOCIATION demands a trial by jury on all issues so triable.

6. All conditions precedent have occurred or have been waived.

### **PLAINTIFF**

7. The ASSOCIATION is a not-for-profit Florida corporation organized and existing pursuant to Chapter 617, *Florida Statutes*, Chapter 720, *Florida Statutes* and the Community Declaration for Fontana Estates (hereinafter "Fontana Estates Declaration"), to provide a corporate entity for the operation of Fontana Estates Homeowners Community located in Orange County, Florida (hereinafter the "Community").

8. TOLL FL and/or TOLL BROS controlled the Community and the Association until such time as the control of same was transitioned and turned over to non-developer lot owners on June 25, 2015 (the "Turnover").

9. The ASSOCIATION institutes this action in its own right and name and, pursuant to Florida Rule of Civil Procedure 1.221, on behalf of all the ASSOCIATION members for underfunded reserve accounts and for defects and damages affecting the common areas of the Community including, but not limited to, the retention/detention ponds, drainage system, and other portions of the Community affecting matters of common interest to the ASSOCIATION and its members.

10. This action concerns matters of common interest to the ASSOCIATION members, which matters include the common areas and other matters commonly affecting and of common



interest to the ASSOCIATION members as described more fully herein.

### **DEFENDANTS**

11. TOLL FL VIII LIMITED PARTNERSHIP is a foreign limited partnership authorized to business in the State of Florida with its principal place of business in the State of Pennsylvania.

12. At all times material to this instant action, TOLL FL conducted business pertaining to the Subject Property in Orange County, Florida.

13. TOLL FL was the developer, as defined by the Orange County Code of Ordinances and Section 720.301, *Florida Statutes*, of the Community and created and constructed the same and operated the ASSOCIATION prior to turnover.

14. TOLL FL created the Association by causing the “Declaration of Covenants, Conditions, and Restrictions for Fontana Estates to be recorded at Orange County Official Records Book 10215 Page 4871, et seq., on May 18,2011. A true and correct copy of the Fontana Estates Declaration is attached hereto as **Exhibit “A.”**

15. TOLL BROS., INC is a foreign for-corporation authorized to business in the State of Florida with its principal place of business in Pennsylvania.

16. At all times material to this instant action, TOLL BROS conducted business pertaining to the Subject Property in Orange County, Florida.

17. Upon information and belief, TOLL BROS was the contractor of the Subject Property.

### **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

18. The ASSOCIATION’s members are collectively the fee-simple owners of the

single-family homes in the Community.

19. As established by the Fontana Estates Declaration, the ASSOCIATION has very broad responsibilities as to restoration, repair and replacement of the common areas at the Subject Property, with the owners having very limited exclusive maintenance responsibilities. The ASSOCIATION has the exclusive right to maintain, replace and provide upkeep for maintenance of the roadways, sidewalks, walls, and drainage areas in the Community along with other areas and matters affecting common interests.

20. The ASSOCIATION also has the duty to maintain the Community and common areas by making all proper expenditures, where possible, for the Community and common areas upkeep and management.

21. TOLL FL and/or TOLL BROS, and their subcontractors, agents, and/or assigns, undertook to plan, design, develop, construct, mass produce and market the Community and common areas of the community for sale to, and use of, the general public, including the ASSOCIATION, its members and their predecessors in interest.

22. In so doing, TOLL FL and/or TOLL BROS, and their subcontractors, agents, and/or assigns, failed to reasonably and adequately plan, develop, design and/or construct the Community.

23. As required by Orange County Code of Ordinance §§ 34-290 – 34-291 (“Orange County Gated Communities Ordinance”), TOLL FL and/or TOLL BROS caused the ASSOCIATION to retain the services of Central Florida Engineering Consultants to perform an inspection of the Community prior to turnover. Central Florida Engineering Consultants prepared and submitted an Infrastructure Report dated November 20, 2014 (“Infrastructure Report”)

identifying construction and design defects Community that must be addressed.

24. The construction and design defects identified in the Infrastructure Report were never addressed, corrected, or repaired by TOLL FL or TOLL BROS.

25. As a direct result of the acts and omissions of TOLL FL and/or TOLL BROS, the ASSOCIATION and its members have suffered and continue to suffer damages proximately caused by defects and deficiencies in the development, design, and construction of the common areas of the Subject Property in the Community, including, but not limited to:

- a. Improper grading designs;
- b. Improper grading;
- c. Inadequate designs for irrigation/rainwater drainage;
- d. Inadequate irrigation/rainwater drainage;
- e. Inadequate designs for street drainage;
- f. Inadequate street drainage;
- g. Improper designs of the roadways
- h. Improper construction of the roadways;
- i. Improper designs of the sidewalks;
- j. Improper construction of the sidewalks;
- k. Improper designs for retention ponds;
- l. Improper construction of retention ponds;
- m. Defects in the material and workmanship incident to the installation of the above.

26. The defects and deficiencies are a violation of design, building and construction practices, the approved architectural plans, industry standards, manufacturer requirements, product specifications and various governmental codes and restrictions including, without limitation, the Florida Building Code and the Florida Greenbook, as in effect at the time the Community was constructed, as well as at the time it was inspected and sold to the public for residential use.

27. The foregoing defects and deficiencies have resulted in damage or imminent threatened damage to the homes and common areas, including but not limited to, work performed by other trades, and damages to others' personal property.

28. As a result of the defects and deficiencies associated with the Defendants' work, the ASSOCIATION has suffered and continues to suffer damages including, but not limited to: damage and imminent threatened damage to other property and resultant damage to the lots, roadways, sidewalks, retention/detention ponds, and drainage system. The resulting damages include, but are not limited to, one subcontractor damaging another subcontractor's work.

29. At all times material hereto, all of the defects, deficiencies, and building code violations were or should have been known to Defendants.

30. The defects and deficiencies were not readily discoverable by the ASSOCIATION or its members through reasonable inspection at the time of purchase, and the ASSOCIATION and its members became aware of the defects and deficiencies only after inspections performed by expert consultants.

31. In compliance with §558.004, *Florida Statutes*, the ASSOCIATION has served a notice upon each Defendant that satisfies the requirements of Chapter 558, *Florida Statutes* ("Chapter 558 Notices). A true and correct copy of the Chapter 558 Notices to the Defendants are attached hereto as **Composite Exhibit "B."**

**COUNT I - FAILURE TO FUND RESERVES AS  
REQUIRED BY THE ORANGE COUNTY CODE OF ORDINANCES  
AS TO TOLL FL**

32. The ASSOCIATION re-alleges and incorporates by reference herein Paragraphs 1 through 1 through 31 of this Complaint.

33. The Orange County Gated Communities Ordinance required the development, ownership and operation of the Community to be conducted pursuant the terms and provision of the requirements of the §§ 34-290 – 34-29 of the Orange County Gated Communities Ordinance..

34. Specifically, § 34-291 of the Orange County Gated Communities Ordinance required that TOLL FL establish the following reserve accounts: (A) Routine Infrastructure Maintenance Account; (B) Capital Repair/Streets Account; (C) Capital Repair/Drainage Pond Account; and (D) Capital Repair/Other Infrastructure Account; and (E) Storm Debris Removal Account

35. The reserve accounts required by the Orange County Gated Communities Ordinance are similar to those accounts required under the Declaration, and are further described as follows:

(A) Routine-Infrastructure Maintenance Account. This account is to be used for scheduled maintenance and for unscheduled repair of the roads, drainage system including the storm water detention/retention areas and underdrains, sidewalks, street lights, curbing, bike paths, traffic-control signage, and other infrastructure appurtenant to the private roads and drainage systems. If allowed by the declaration, this account shall also include the repair to the entrance and exit gates and related facilities, but the declaration shall require that the roadways and drainage-system maintenance and repair take priority over the maintenance and repair of the gates and related facilities;

(B) Capital-Repair/Streets Account. This account is to be used for resurfacing and related reconstruction of the roadways, including alleys, every 12 years after the issuance by the city of the certificate of completion for the roads. The amount to be deposited every year is one-twelfth (1/12) the cost to replace the roads;

(C) Capital-Repair/Drainage Pond Account. This account is to be used for major repair, replacement and reconstruction of the drainage systems, including but not limited to,

the stormwater detention/retention area and underdrains, generally every 10 years after the issuance by the county of the certificate of completion for drainage system. The amount to be deposited every year is one-tenth (1/10) the cost to replace the drainage system;

(D) Capital-Repair/Other Infrastructure Account. This account is to be used for major repair, replacement, resurfacing and reconstruction of other parts of the infrastructure related to the private roads and drainage systems, such as the storm water conveyance systems, sidewalks, bike paths, curbing, and bike paths, and the entrance and exit gates and related facilities, if allowed by the declaration. The amount to be deposited every year is one-fiftieth (1/50) the cost to replace the items in the reserve account; and

(E) Storm Debris Removal Account: This account is to be used for costs of storm debris clean-up and removal, such as clearing downed trees, landscape, and other storm-created debris from the streets, sidewalks and drainage facilities and removing such debris to a landfill or other county provided drop-site.

36. Under the above identified provisions of the Orange County Gated Communities Ordinance, TOLL FL was obligated to deposit an amount sufficient to pay for inspections and to perform all scheduled maintenance and unscheduled repair of the Gated Community Subdivision Infrastructure and Related Subdivision Infrastructure during the subsequent year into the Routine Infrastructure Maintenance Account; and on a yearly basis was obligated to deposit one twelfth of the amount necessary for the reconstruction of the streets into the Capital Repair/Streets Account; one tenth of the amount necessary for the reconstruction of the stormwater drainage and retention areas into the Capital Repair/Drainage Pond Account; one fiftieth of the amount necessary for the reconstruction of the sidewalks, curbs, and other Community amenities into the

Capital Repair/Other Infrastructure Account; and an amount equal to \$250 per acre of land in the platted subdivision excluding wetlands, conservation areas, and natural waterbodies into the Storm Debris Removal Account. In addition to these amounts, TOLL FL was obligated to deposit funds to ensure the financial ability of the ASSOCIATION to maintain the infrastructure after Turnover.

37. In addition, TOLL FL was required to fund a storm debris reserve account and “superfund” the reserves by funding a full extra year of reserves prior to turning over the Association to the non-developer owners.

38. Notwithstanding the above requirements from the Orange County Gated Communities Ordinance, TOLL FL failed to deposit sufficient funds into the reserve accounts from 2011 through the date of the Turnover.

39. After Turnover, the ASSOCIATION retained Joseph Michalak, CPA, to conduct a study of the reserve accounts as well as reviewing the financial records of the ASSOCIATION in order to calculate the amounts of reserve funds which were underfunded and to determine the amount of reserves that should have been deposited by TOLL FL. A review of the financial records, reserve funds and the reserve requirements for the replacement and deferred maintenance of the infrastructure of the Community revealed that TOLL FL underfunded the reserves in the amount of **\$90,860**. A copy of the Joseph Michalak Report is attached hereto as **Exhibit “C.”**

40. The ASSOCIATION has demanded payment of the missing funds TOLL FL but TOLL FL has refused. A copy of the ASSOCIATION’s demand letter is attached hereto as **Exhibit “D.”**

41. The ASSOCIATION is entitled to recover its prevailing party attorney's fees pursuant to § 34.290(18) of the Orange County Gated Communities Ordinance.

WHEREFORE, the ASSOCIATION demands judgment against TOLL FL, for damages including but not limited to, the total amount of the underfunded reserves; costs incurred in the prosecution of this lawsuit; pre-judgment interest; trial by jury, and prays for any other relief the Court deems just and proper.

**COUNT II-NEGLIGENCE**  
**AS TO DEFENDANT, TOLL FL**

36. Paragraphs 1 through 31 are hereby re-alleged as though fully set forth herein.

37. At all times material hereto, TOLL FL by themselves and through their agents, servants and employees, constructed, supervised, inspected and approved the Subject Property and Community's improvements and were under a duty to the ASSOCIATION members to use reasonable care in so doing.

38. At all times material hereto TOLL FL, by themselves, and through their agents, servants and employees, undertook and were under a duty to the members of the ASSOCIATION to construct the improvements in accordance with the requirements of the Florida Building Code, Florida Greenbook, and other local and national codes, proper and approved construction plans and specifications, and proper design, engineering, and construction practices.

39. TOLL FL was careless and negligent in constructing, supervising, inspecting and approving the improvements because of their failure to comply with the requirements of the Florida Building Code, the Florida Greenbook, and other local and national codes, their failure to construct in accordance with proper and approved construction plans and specifications, and their failure to employ good design, engineering and construction practices; as a direct and proximate result of



TOLL FL's careless and negligent acts and/or omissions, parcels of the Community were sold to the homeowners with defects and deficiencies.

40. The defects and deficiencies are latent defects.

41. As a direct and proximate result of TOLL FL's above-mentioned negligence, the ASSOCIATION, through assessment of its members, has been and will be required to expend large sums of money to remedy the defects and deficiencies and damages caused thereby, including damages caused to property other than Fontana Estates property.

WHEREFORE, the ASSOCIATION demands judgment against TOLL FL, for damages including but not limited to, the cost of repairing the construction deficiencies; the resulting damage from the construction deficiencies; the incidental and consequential damages caused thereby; costs incurred in the prosecution of this lawsuit; pre-judgment interest; trial by jury, and prays for any other relief the Court deems just and proper.

**COUNT III-FAILURE TO MAKE REPAIRS AS REQUIRED BY THE ORANGE  
COUNTY CODE OF ORDINANCES AS TO DEFENDANT, TOLL FL**

42. Paragraphs 1 through 31 are hereby re-alleged as though fully set forth herein.

43. At all times material hereto, TOLL FL was under a duty to the ASSOCIATION and the members of the ASSOCIATION to comply with §§ 34-290 – 34-291 of the Orange County Gated Communities Ordinance.

44. The Orange County Gated Communities Ordinance § 34-290(h)(8) requires that TOLL FL, as the developer of the Community, to be responsible for infrastructure, all maintenance and repair of streets, sidewalks and the drainage system, including stormwater detention/retention areas until Turnover:

a. Until Turnover of the HOA and/or transfer of control of subdivision

infrastructure, all maintenance and repair of streets, sidewalks and the drainage system, including stormwater detention/retention areas, is the responsibility of the developer;

- b. Prior to Turnover of the HOA and/or transfer of control of subdivision infrastructure, the developer may expend monies in the routine-infrastructure-maintenance account for such maintenance and repair, but only with the written consent of the board of directors of the HOA; and
- c. Insufficiency of monies in the routine-infrastructure-maintenance account shall not act to relieve the developer of any responsibility to maintain and repair the streets, sidewalks, and drainage system (including stormwater detention/retention areas) properly prior to turnover of the HOA and/or transfer of control of subdivision infrastructure. (emphasis added)

45. In compliance with Orange County Gated Community Ordinance § 34-290(h)(9)(a), TOLL caused the ASSOCIATION to retain “a Florida registered engineer experienced in subdivision construction...to inspect the streets, sidewalks and drainage system, including stormwater detention/retention areas in accordance with the existing approved plans, and prepare a report . . . determining what repairs, if any, are needed prior to turnover of the HOA.” The Infrastructure Reported detailed the design and construction defects and deficiencies discovered to exist in and to the stormwater drainage system, inlets, structures, ponds, roadways, curbs, sidewalks, and buffer walls in the Community.

46. TOLL FL failed comply with the Orange County Gated Community Ordinance § 34-290(h)(9)(e) by ignoring the recommendations of the Infrastructure Inspection Report and

proceeding forward with repairs at the expense of TOLL FL:

Any needed repairs or replacements identified by the report be completed by the developer, at the developer's sole expense, prior to either the developer's turnover of the HOA to the property owners of the subdivision or transfer of control of subdivision infrastructure to the HOA, whichever occurs first (emphasis added)

47. TOLL FL was careless and negligent in constructing, supervising, inspecting, maintaining, and approving the improvements, which was exacerbated by its failure to comply with the requirements of §§ 34-290 – 34-291 of the Orange County Gated Community Ordinance and make the repairs as required.

48. As a direct and proximate result of TOLL FL's above-mentioned negligence, the ASSOCIATION, through assessment of its members, has been and will be required to expend large sums of money to remedy the defects and deficiencies and damages caused thereby, including damages caused to property other than the Subject Property.

49. In compliance with §558.004, *Florida Statutes*, the ASSOCIATION served a notice upon TOLL FL that satisfies the requirements of Chapter 558, *Florida Statutes* ("Chapter 558 Notices). *See Composite Exhibit "B."*

42. The ASSOCIATION is entitled to recover its prevailing party attorney's fees pursuant to § 34-290((h)(9)(f) of the Orange County Gated Communities Ordinance.

WHEREFORE, the ASSOCIATION demands judgment against TOLL FL, for damages including but not limited to, the cost of repairing the construction deficiencies; the resulting damage from the construction deficiencies; the incidental and consequential damages caused thereby; reasonable attorneys' fees and costs incurred in the prosecution of this lawsuit; pre-judgment interest; trial by jury, and prays for any other relief the Court deems just and proper.

**COUNT IV - BREACH OF WARRANTIES,**  
**AS TO DEFENDANT, TOLL FL**

50. Paragraphs 1 through 31 are hereby re-alleged as though fully set forth herein.

51. As the developer of the Community and common areas, TOLL FL warranted to the ASSOCIATION and the unit owners that common areas of the Community was designed and constructed free from defects or deficiencies in materials or workmanship in accordance with the plans and specifications filed as a matter of public record, the applicable building codes, and all applicable local and national codes, ordinances and industry standards, and good design, engineering, and construction practices. These warranties are those generally described as warranties of fitness, merchantability, habitability, and/or workmanlike construction.

52. The ASSOCIATION and its members relied upon the warranties, skill and judgment from TOLL FL, to ensure the condition of roads, sidewalks, irrigation, drainage structures, and stormwater ponds at the Community were free from defects or deficiencies in materials or workmanship in accordance with the plans and specifications filed as a matter of public record, the applicable building codes, ordinances and industry standards, and good design, engineering, and construction practices and free from damages.

53. TOLL FL breached the warranties by negligently planning and constructing the roads, sidewalks, irrigation, drainage structures, and stormwater ponds at the Fontana Estates Community and common areas as set forth above and for failing to remedy same.

54. The effect of the defects and deficiencies set forth above has led to damages.

55. As a proximate cause of TOLL FL's conduct and omissions, the ASSOCIATION and its members have and continue to suffer damages which include, without limitation, the cost to repair the defects and deficiencies in the Community and common areas, which are now and

will continue to pose a threat to the health, safety, and welfare of the ASSOCIATION and its members, their guests, and the general public until such repairs are completed, as well as damages incident to, and consequences of TOLL FL's breach.

56. As a direct and proximate result of TOLL FL's breach of the above mentioned warranties, the ASSOCIATION through assessment of its members has expended and will be required to expend additional large sums of money to remedy the defects and deficiencies, and to pay consequential damages to or on behalf of its members.

57. As a result of TOLL FL's breaches of the warranties described herein, the ASSOCIATION has been compelled to retain the services of attorneys to comply with statutory requirements prior to litigation, to institute and prosecute these proceedings, and to retain expert consultants and witnesses as reasonably necessary to identify the defects and prove its case.

WHEREFORE, the ASSOCIATION demands judgment against TOLL FL for damages including, but not limited to, the cost of repairing the construction deficiencies, the resulting damages from the construction deficiencies, the incidental and consequential damages caused thereby, costs incurred in the prosecution of this lawsuit, pre-judgment interest, trial by jury, and prays for any other relief the Court deems just and proper.

**COUNT V – BREACH OF FIDUCIARY DUTY**  
**AS TO TOLL FL**

58. Paragraphs 1 through 31 are hereby re-alleged as though fully set forth herein.

59. By virtue of its right to appoint a majority of the Board of Directors, TOLL FL controlled the ASSOCIATION from approximately April 21, 2011, until June 25, 2015.

60. Pursuant to §720.303, *Florida Statutes*, TOLL FL owed a statutory duty to the members of the ASSOCIATION to properly maintain the common areas of the ASSOCIATION

and to comply with all local ordinances and state laws.

61. Pursuant to §720.303, *Florida Statutes*, and the Orange County Gated Community Ordinance, TOLL FL owed a statutory duty to the members of the ASSOCIATION to properly fund the ASSOCIATION reserve accounts.

62. Pursuant to §720.305, *Florida Statutes*, and the Orange County Gated Community Ordinance, TOLL FL owed a statutory duty to the members of the ASSOCIATION to govern the ASSOCIATION as provided in and required by Chapter 720, *Florida Statutes*, the governing documents of the ASSOCIATION, and the Orange County Gated Community Ordinance.

63. TOLL FL had a duty to set and collect assessments that were sufficient to fully fund reserves as required by Chapter 720, *Florida Statutes*, the governing documents of the ASSOCIATION, and the Orange County Gated Community Ordinance.

64. TOLL FL, by virtue of its control of the Board of Directors, owed a duty to the members of the ASSOCIATION to ensure that the officer and director appointees of TOLL FL caused the Plaintiff corporation to perform the contractual and statutory duties required of the ASSOCIATION regarding oversight of the repair, maintenance, and care of the ASSOCIATION's property, including, but not limited to, the common areas and reserve accounts.

65. TOLL FL, by virtue of its control of the Board of Directors, owed a duty to investigate and obtain the proper means of correcting such construction and maintenance problems and defects and to fully fund the reserve accounts.

66. TOLL FL, by virtue of its control of the Board of Directors, owed a duty to the members of the ASSOCIATION to ensure that the construction, maintenance, repairs, additions and alterations to the common areas were properly performed, maintained, altered and/or repaired

in such a manner as to be free from defect or deficiency in materials or workmanship in accordance with the plans and specifications filed as a matter of public record, industry standards, and good design, engineering, construction and maintenance practices. TOLL FL further owed a duty to the members of the ASSOCIATION to ensure that the ASSOCIATION's reserve accounts were fully and properly funded.

67. TOLL FL, through its control of the Board of Directors, was responsible for the duties of the Plaintiff Corporation from the date of the establishment of the ASSOCIATION until, at least, the date of the Turnover.

68. TOLL FL breached its fiduciary duty by failing to properly budget, and set and collect assessments that were sufficient to fund reserves; maintain, repair and/or replace ASSOCIATION common areas, and by failing to fully and properly fund the reserve accounts.

69. TOLL FL willfully failed and/or refused to take action to correct these problems because it believed such repairs would have slowed sales or otherwise reduced TOLL FL's profit margin.

70. As a result of TOLL FL's breach of fiduciary duty, the ASSOCIATION has suffered substantial damages.

71. In addition to the costs and expenses involved in correction the problems caused by or allowed to continue because of TOLL FL's refusal and failure to correct the problems, the members of the ASSOCIATION have suffered substantial loss to the value of their homes as well as other damages, including permanent diminution in value. Furthermore, TOLL FL's refusal and/or failure to properly fund the reserve accounts has left the ASSOCIATION without the necessary capital to make the necessary repairs which TOLL FL has also refused and/or failed to



make.

72. As a result of the foregoing, the ASSOCIATION has been compelled to retain the services of Attorneys in order to comply with statutory requirements and to institute and prosecute these proceedings, and to retain expert consultants and witnesses as reasonably necessary to prove their case, thus entitling the ASSOCIATION to an award of attorneys' fees and costs pursuant to the Declaration and the Orange County Gated Community Ordinance.

WHEREFORE, the ASSOCIATION demands judgment against TOLL BROS for damages including, but not limited to, the cost of repairing the construction deficiencies, the resulting damages from the construction deficiencies, the incidental and consequential damages caused thereby, attorneys' fees and costs incurred in the prosecution of this lawsuit, pre-judgment interest, trial by jury, and prays for any other relief the Court deems just and proper.

**COUNT VI – BREACH OF DECLARATION AND FLORIDA LAW**  
**AS TO TOLL FL**

73. The ASSOCIATION re-alleges and incorporates by reference herein Paragraphs 1 through 31 of this Complaint.

74. Pursuant to § 720.303(6)(d), *Florida Statutes*, “an association is deemed to have provided for reserve accounts if reserve accounts have been initially established by the developer or if the membership of the association affirmatively elects to provide for reserves.” Once established, the reserve accounts must be funded or maintained or have their funding waived by a vote of the non-developer members, if prior to turnover.

75. Section 720.303(6)(e), *Florida Statutes*, further provides that once a developer has provided for reserve accounts, the amount to be reserved in any account so established “shall be



computed by means of a formula that is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item.”

76. The financial records of the ASSOCIATION show that TOLL FL established reserves for the repair and replacement of certain components of the infrastructure of the Community. However, it has been determined that these reserve accounts were not fully funded as required by the Declaration and Florida law.

77. Furthermore, pursuant to the Declaration, TOLL FL was also responsible for repairing such streets; drainage systems, sidewalks, curbing and amenities up until the Turnover.

78. In accordance with Article XX, Section 1 of the Declaration, the ASSOCIATION must create, deposit monies into, retain in perpetuity, and replenish from time to time the following accounts, which are referred to as Required Association Accounts: (a) Routine Infrastructure Maintenance Account; (b) Capital Repair/Streets Account; (c) Capital Repair/drainage pond Account; and (d) Capital Repair/other infrastructure Account. Each of these accounts must be asset accounts kept separate and apart from all other funds and accounts of the ASSOCIATION, and for accounting purposes the ASSOCIATION may not commingle these accounts, either with each other or with other funds and accounts of the ASSOCIATION. However, notwithstanding the foregoing, the monies in the above accounts may be commingled with monies in other ASSOCIATION accounts for banking and investment purposes, and may be pooled with other ASSOCIATION monies in a common investment program, so long as the financial books and records of the ASSOCIATION account for these monies separately and apart from all other ASSOCIATION monies and keep such monies in the required ASSOCIATION accounts shall remain in their perspective accounts and shall follow their respective principal. The reserve

accounts further identified in, and required by, the Declaration are: (a) Routine Infrastructure Maintenance Account; (b) Capital Repair/Streets Account; (c) Capital Repair/drainage pond Account; (d) Capital Repair/other infrastructure Account and (e) Storm Debris Removal.

79. Article XX, Section 2 sets out the use of funds in the required accounts as follows:

a) Routine-infrastructure-maintenance account. Monies on deposit in the routine-infrastructure-maintenance account, including any investment earnings, may be used by the Association, or by the developer with the written consent of the Board of Directors of the Association, only for scheduled maintenance and for unscheduled repair of the streets, drainage system, including the stormwater detention/retention areas, sidewalks, curbing, traffic-control signage and other Association infrastructure appurtenant to the private roads and drainage systems. If allowed by the declaration, the monies on deposit in the account may also be used for scheduled maintenance and unscheduled maintenance and repair of the entrance and exit gates and their related facilities, but the declaration shall require that the streets and drainage-system maintenance and repair take priority over the maintenance and repair of the gates and related facilities.

b) Capital-repair/streets account. Monies on deposit in the capital-repair/streets account, including any investment earnings, may be used by the Association only for resurfacing and related reconstruction of the streets in the subdivision, generally every twelve (12) years after the recording of the Plat of Fontana Estates (hereinafter 12th Anniversary). The monies on deposit in the account may not be expended earlier than the 12th anniversary without the consent of no less than a simple majority of the owners of platted lots (excluding the developer) in the subdivision, which consent may consist of

written consent and/or voting consent at a meeting called in accordance with the bylaws of the Association, and the consents will be valid only if obtained after turnover of the subdivision infrastructure to the Association. Under no circumstances may the monies in the account be expended before the developer turns over control of the subdivision infrastructure to the Association.

c) Capital-repair/drainage pond account. Monies on deposit in the capital-repair/drainage pond account, including any investment earnings, may be used by the Association only for major repair and reconstruction of the stormwater detention/retention areas of the drainage system, generally every ten (10) years after the recording of the Plat of Fontana Estates (hereinafter 10<sup>th</sup> Anniversary). The reconstruction and repair of the detention/retention areas will include, but not be limited to, dredging and sediment removal. The monies on deposit in the account may not be expended earlier than the 10th anniversary without the written consent of no less than a simple majority of the owners of platted lots (excluding the developer) in the subdivision, which consent may consist of written consent and/or voting consent at a meeting called in accordance with the bylaws of the Association, and the consents will be valid only if obtained after turnover of the subdivision infrastructure to the Association. Under no circumstances may monies in the account be expended before the developer turns over control of the subdivision infrastructure to the Association.

d) Capital-repair/other infrastructure account. Monies on deposit in the capital-repair/other infrastructure account, including any investment earnings, may be used by the Association only for major repair, reconstruction, resurfacing, and replacement of

the other parts of the infrastructure related to the private streets and drainage systems, such as the stormwater conveyance systems, sidewalks and curbing. If allowed by the declaration, the monies on deposit in the account may also be used for the major repair, reconstruction, and replacement of the entrance and exit gates and related facilities, but the declaration must require that the repair, reconstruction, and replacement of the former items of infrastructure take priority over the repair, construction, and replacement of the entrance and exit gates and their related facilities.

80. Article XX, Section 3 of the Declaration further sets out and establishes the required funding of required Association accounts in the following manner:

(A) Routine Infrastructure Maintenance Account: The Association must deposit each year into the routine-infrastructure-maintenance account an amount of money sufficient to perform all scheduled maintenance and unscheduled repair of the streets, drainage system, and other infrastructure during the subsequent year. The amount deposited, when added to investment earnings, must be no less than the amounts recommended by the engineer's report required in paragraphs (8)a and (9)b of subsection 34-290(h) of the Orange County Gated Community Ordinance. If the declaration allows maintenance and repair of the entrance and exit gates and their related facilities to be paid from the routine- infrastructure-maintenance account, then the deposits each year must be increased by amounts sufficient to cover those costs;

(B) Capital Repair/Streets Account: The Association must deposit each year into the capital-repair/streets account an amount sufficient for the streets to be resurfaced and, as related to the resurfacing, reconstructed no less frequently than every twelve (12) years,

and the amount must be estimated by the developer and approved by the County prior to the recording of the Plat of Fontana Estates. Deposits to the account must begin in the year in which the County issues its certificate of completion and must be completed no later than the year of the 12th anniversary of the recording of the Plat of Fontana Estates. The amount deposited by the Association must be no less than one-twelfth of the estimate approved by the County. However, after turnover of the Association the schedule of deposits may be altered such that one or more annual deposits is less than one-twelfth of the estimate, but only if a simple majority or more of all owners of platted lots in the subdivision consent in writing and/or by voting at a meeting called in accordance with the bylaws of the Association to approve the altered schedule. If the property owners in the subdivision consent in writing to a different schedule of deposits, the revised scheduled must result in the aggregate amount of deposits during the 12-year period being equal to or in excess of the estimate approved by the County. At the end of each 12-year period, the Association shall revise and update the estimated cost of resurfacing and, as related to the resurfacing, reconstructing the streets at the end of the next 12-year period, taking into consideration actual costs incurred and expected increases in road construction costs, and shall adjust the amount of its annual deposits to the account accordingly. If for any reason expenditures are made from the account prior to the end of the 12-year period, the amount of deposits to the account in the remaining years shall be adjusted so as to ensure that the account contains an amount sufficient at the end of the 12-year period to pay the costs of all expected repair and/or reconstruction and resurfacing requirements;

(C) Capital Repair/Drainage Pond Account: The Association must deposit each year into the capital-repair/drainage pond account an amount sufficient for the stormwater detention/retention areas in the drainage system to be restored and repaired no less frequently than once every ten (10) years, and the amount must be estimated by the developer and approved by the County prior to recording of the plat of Fontana Estates. Deposits to the account must begin in the year of which the County issues its certificate of completion for the drainage system and must be completed no later than the year of the 10th anniversary of the recording of the plat of Fontana Estates. The amount deposited each year by the Association must be no less than one-tenth of the estimate approved by the County. However, after turnover of the Association, the schedule of deposits may be altered such that one or more annual deposits is less than one-tenth of the estimate, but only if a simple majority or more of all owners of platted lots in the subdivision consent in writing and/or by voting at a meeting called in accordance with the bylaws of the Association to approve the altered schedule. If the property owners consent to a different schedule of deposits, the revised schedule must result in the aggregate amount of deposits during the ten-year period being equal to or in excess of the estimate approved by the County. At the end of each 10-year period, the Association shall revise and update the estimate of the cost of restoring and repairing the stormwater detention/retention areas at the end of the next 10-year period, taking into consideration actual costs incurred and expected increases in drainage-system construction costs and shall adjust the amount of its annual deposits to the account accordingly. If for any reason expenditures are made from the account prior to the end of the 10-year period, the amount of deposits to the account in

the remaining years will be adjusted so as to ensure that the account contains an amount sufficient at the end of the 10-year period to pay the costs of all expected restoration and repair requirements; and,

(D) Capital Repair/Other Infrastructure Account: The Association must deposit each year into the capital-repair/other infrastructure account an amount sufficient for other subdivision infrastructure related to the streets and drainage system, such as stormwater conveyance systems, sidewalks, curbing, and bike paths, to be reconstructed and/or repaired no less frequently than once every fifty (50) years, and the amount must be approved by the County prior to issuance of a certificate of completion for those improvements. Deposits to the account must begin in the year in which the plat of Fontana Estates is recorded and must be completed no later than the 50th anniversary. The amount deposited each year by the Association must be no less than one-fiftieth of the estimate approved by the County. However, after turnover of the Association, the schedule of deposits may be altered such that one or more annual deposits is less than one-fiftieth (1/50) of the estimate, but only if a simple majority or more of all owners of platted lots in the subdivision consent in writing and/or by voting at a meeting called in accordance with the bylaws of the Association to approve the altered schedule. If the property owners consent to a different schedule of deposits, the revised schedule must result in the aggregate amount of deposits during the 50-year period being equal to or in excess of the estimate approved by the County. At the end of each 50-year period, the Association shall revise and update the estimate of the cost of reconstructing and/or repairing the improvements, taking into consideration actual costs incurred and expected increases in reconstruction and repair



costs, and shall adjust the amount of its annual deposits to the account accordingly. If for any reason expenditures are made from the account prior to the end of the 50-year period, the amount of deposits to the account in the remaining years will be adjusted in a manner to ensure that the account contains an amount sufficient at the end of the 50-year period to pay the cost of all expected reconstruction and/or repair requirements.

81. Under the above identified provisions of the Declaration and the *Florida Statutes*, TOLL FL was obligated to cause the ASSOCIATION to collect and deposit into the Routine Infrastructure Maintenance Account an amount sufficient to pay for inspections and to perform all scheduled maintenance and unscheduled repair of the Community infrastructure during the subsequent year. In addition, TOLL FL, on a yearly basis, was obligated to cause the ASSOCIATION to collect and deposit one twelfth of the amount necessary for the reconstruction of the streets into the Capital Repair/Streets Account; one tenth of the amount necessary for the reconstruction of the stormwater drainage and detention areas into the Capital Repair/Drainage Pond Account; and one fiftieth of the amount necessary for the construction of the sidewalks, curbs, and other Community amenities into the Capital Repair/Other Infrastructure Account.

82. Notwithstanding the above, TOLL FL failed to cause the ASSOCIATION to collect and deposit sufficient funds into the required reserve accounts from 2011 through the date of the Turnover.

83. After Turnover, the ASSOCIATION retained the services of Joseph R. Michalak, CPA to review the financial records of the ASSOCIATION and determine the amount of reserves that TOLL FL should have collected and deposited into the ASSOCIATION reserve accounts as well as to calculate the amounts of reserve funds which were underfunded because of the action or



inaction of TOLL FL. A review of the financial records, reserve funds and the reserve requirements for the replacement and deferred maintenance of the infrastructure of the Community revealed that TOLL FL allowed the ASSOCIATION's reserves to be underfunded in the amount of **\$90,860**. *See Exhibit "C."*

84. The ASSOCIATION has demanded payment from TOLL FL but TOLL FL has refused. A copy of the ASSOCIATION's demand letter is attached as **Exhibit "D."**

85. Pursuant to Article XX, Section 5 of the Declaration, the TOLL FL caused the ASSOCIATION to commission and obtain the Infrastructure Report, which identified the design and construction defects and deficiencies discovered to exist in and to the stormwater drainage system, inlets, structures, ponds, roadways, curbs, sidewalks, and buffer walls in the Community.

86. TOLL FL failed to comply with Article XX, Section 5(c) which requires "[a]ny needed repairs or replacements identified by the [Infrastructure Report] shall be completed by [TOLL FL], at [TOLL FL's] sole expense, prior to either [TOLL FL's] turnover of the Association to the property Owners of the Community or transfer of control of Community infrastructure to the Association, whichever occurs first."

73. As a direct and proximate result of TOLL FL's above-mentioned breaches, the ASSOCIATION, through assessment of its members, has been and will be required to expend large sums of money to remedy the defects and deficiencies and damages caused thereby, including damages caused to property other than Fontana Estates property.

87. The ASSOCIATION is entitled to recover its reasonable attorney's fees from TOLL FL pursuant to Article XX, Section 6(i) of the Declaration.

WHEREFORE, the ASSOCIATION demands judgment against TOLL FL for damages

including, but not limited to, the cost of repairing the construction deficiencies, the resulting damages from the construction deficiencies, the incidental and consequential damages caused thereby, attorneys' fees and costs incurred in the prosecution of this lawsuit, pre-judgment interest, trial by jury, and prays for any other relief the Court deems just and proper.

**COUNT VII-NEGLIGENCE**  
**AS TO DEFENDANT, TOLL BROS**

74. Paragraphs 1 through 31 are hereby re-alleged as though fully set forth herein.

75. At all times material hereto, TOLL BROS by themselves and through their agents, servants and employees, constructed, supervised, inspected, and approved the Subject Property and improvement of the Community and were under a duty to the ASSOCIATION members to use reasonable care in so doing.

76. At all times material hereto TOLL BROS, by themselves and through their agents, servants and employees, undertook and were under a duty to the members of the ASSOCIATION to construct Fontana Estates' improvements in accordance with the requirements of the Florida Building Code, the Florida Greenbook, and other local and national codes, proper and approved construction plans and specifications and proper design, engineering and construction practices.

77. TOLL BROS was careless and negligent in constructing, supervising, inspecting and approving the improvements because of their failure to comply with the requirements of the Florida Building Code and other local and national codes, failure to construct in accordance with proper and approved construction plans and specifications and failure to employ good design, engineering and construction practices, as a direct and proximate result of which parcels of the Community were sold to the homeowners with defects and deficiencies.

78. The defects and deficiencies are latent defects.

79. As a direct and proximate result of TOLL BROS' above-mentioned negligence, the ASSOCIATION, through assessment of its members, has been and will be required to expend large sums of money to remedy the defects and deficiencies and damages caused thereby, including damages caused to property other than the ASSOCIATION's property.

WHEREFORE, the ASSOCIATION demands judgment against TOLL BROS, for damages including but not limited to, the cost of repairing the construction deficiencies; the resulting damage from the construction deficiencies; the incidental and consequential damages caused thereby; costs incurred in the prosecution of this lawsuit; pre-judgment interest; trial by jury, and prays for any other relief the Court deems just and proper.

**COUNT VIII - BREACH OF WARRANTIES,**  
**AS TO DEFENDANT, TOLL BROS**

80. Paragraphs 1 through 31 are hereby re-alleged as though fully set forth herein.

81. As the contractor for the construction of the Community and common areas, TOLL BROS warranted to the ASSOCIATION and the unit owners that the Community was designed and constructed free from defect or deficiency in materials or workmanship in accordance with the plans and specifications filed as a matter of public record, the applicable building codes, and all applicable local and national codes, ordinances and industry standards, and good design, engineering, and construction practices. These warranties are those generally described as warranties of fitness, merchantability, habitability, and/or workmanlike construction.

82. The ASSOCIATION and its members relied upon the warranties, skill and judgment from TOLL BROS, to ensure the condition of roads, sidewalks, irrigation, drainage structures, and stormwater ponds at the Community were free from defect or deficiency in materials or workmanship in accordance with the plans and specifications filed as a matter of

public record, the applicable building codes, ordinances and industry standards, and good design, engineering, and construction practices and free from damages.

83. TOLL BROS breached the warranties by negligently constructing the roads, sidewalks, irrigation, drainage structures, and stormwater ponds at the Fontana Estates Community and common areas as set forth above and for failing to remedy same.

84. The effect of the defects and deficiencies set forth above has led to damages.

85. As a proximate cause of TOLL BROS' conduct and omissions, the ASSOCIATION and its members have and continue to suffer damages which include, without limitation, the cost to repair the defects and deficiencies in the Community and common areas, which are now and will continue to pose a threat to the health, safety, and welfare of the ASSOCIATION and its members, their guests, and the general public until such repairs are effected, as well as damages incident to, and consequences of TOLL BROS' breach.

86. As a direct and proximate result of TOLL BROS' breach of the above mentioned warranties, the ASSOCIATION through assessment of its members has expended and will be required to expend additional large sums of money to remedy the defects and deficiencies, and to pay consequential damages to or on behalf of its members.

87. As a result of TOLL BROS' breaches of warranties, the ASSOCIATION has been compelled to retain the services of attorneys to comply with statutory requirements prior to litigation, to institute and prosecute these proceedings, and to retain expert consultants and witnesses as reasonably necessary to prove its case.

WHEREFORE, the ASSOCIATION demands judgment against TOLL BROS for damages including, but not limited to, the cost of repairing the construction deficiencies, the resulting

damages from the construction deficiencies, the incidental and consequential damages caused thereby, costs incurred in the prosecution of this lawsuit, pre-judgment interest, trial by jury, and prays for any other relief the Court deems just and proper.

Dated this 24<sup>th</sup> day of June, 2019.

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**FONTANA ESTATES COMMUNITY**

**Orange County, Florida**

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
FONTANA ESTATES COMMUNITY**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF FONTANA ESTATES COMMUNITY** (the "**Declaration**") is made and executed this 5<sup>th</sup> day of May, 2011, by TOLL FL VIII LIMITED PARTNERSHIP, a Florida limited partnership, its successors and assigns, hereinafter called "**Declarant**," and joined by Fontana Estates Community Homeowners Association, Inc., a Florida not-for-profit corporation (the "**Association**").

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of the real property within **FONTANA ESTATES COMMUNITY**, a master planned community, which property is described on Exhibit "A" attached hereto and is also described in Article II of this Declaration, and desires to create thereon mutually beneficial restrictions under a general plan of improvement for the benefit of the real property and all of its future owners.

**WHEREAS**, the Association is joining this Declaration in order to acknowledge its obligations hereunder.

**NOW, THEREFORE**, Declarant hereby declares that all of the real property described in Article II of this Declaration, together with any improvements constructed or to be constructed thereon, is and shall be owned, held, transferred, sold, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, easements, assessments and liens all of which are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property described in Article II and every part thereof and all of which shall run with the land and the title to the real property subject to this Declaration and shall be binding upon all parties having or acquiring any right, title or interest therein.

**ARTICLE I  
DEFINITIONS**

The following words, when used in this Declaration or any Supplemental Declaration, shall have the following meanings:

1. "Architectural Review Requirements" means the design criteria and building guidelines promulgated by the Architectural Review Committee as more particularly described in Article IX of this Declaration.

2. "Area(s) of Common Responsibility" means the Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration (as hereinafter defined), other applicable covenants, or by contract become the responsibility of the Association.

3. "Articles" means the Articles of Incorporation of Fontana Estates Community Homeowners Association, Inc., attached hereto as Exhibit "B".

4. "Association" means Fontana Estates Community Homeowners Association, Inc., a Florida not-for-profit corporation, its successors and assigns. The Association is NOT a condominium association and is not intended to be governed by Chapter 718, the Condominium Act, Florida Statutes.

5. "Base Assessment" means assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as more particularly described in Article VIII.

6. "Board of Directors" or "Board" mean the members of the Board of Directors of the Association as from time to time elected or appointed.

7. "Builder" means any Person which purchases one or more Units for the purpose of constructing improvements for later sale to consumers or parcels of land within the Community for further subdivision, development, and/or resale in the ordinary course of such Person's business.

8. "Bylaws" means the Bylaws of the Association, attached hereto as Exhibit "C".

9. "Common Areas" means all real and personal property within the Community, which are declared herein or in any Supplemental Declaration to be the "Common Areas" or on any recorded subdivision plat of the Community, and all improvements thereto, which are designated for the use and enjoyment of all Owners, or which are otherwise dedicated, conveyed, leased or for which a license or use right is granted to the Association and which are intended to be devoted to the common use and enjoyment of some or all of the Owners, as more specifically provided herein. Each Common Area shall be designated, dedicated, conveyed, leased, licensed or have a use right granted to the Association at such time as is provided in the instrument that designates, dedicates, conveys, leases, licenses or grants a use right for such area of land to the Association. As used herein, "Common Areas" shall include, among other things, (i) all improvements and equipment located in or on the Common Areas, including, without limitation, private roadways, signage, gate houses, entry features, swales and berms, pedestrian paths and irrigation systems, (ii) any pools, recreational facilities, clubhouses and parking facilities designated as Common Areas in this Declaration, any Supplemental Declarations or on the Plat, (iii) the Surface Water Management System, as permitted by SJRWMD, including, but not limited to, all lakes, retention areas, Conservation Areas, water management areas, ditches, culverts, structures and related appurtenances, but shall exclude (x) any public utility installation located in or on the Common Areas thereon, including but not limited to water and sewer infrastructure (to the extent not conveyed to the County) (y) all portions of any Community Systems (as defined below), unless specifically designated as part of the Common Areas pursuant to a Supplemental Declaration by the Declarant, and (vi) any other property of Declarant not intended to be made Common Areas.

10. "Common Expenses" means the actual and estimated expenses of operating the Association, including, but not limited to, maintenance of the Common Areas, and Area(s) of Common Responsibility, services and any reasonable reserve, all as may be found necessary and appropriate by the Board pursuant to this Declaration, the Articles and the Bylaws.

11. "Community" and/or "Property" means the real property and all other property described in Exhibit "A" attached hereto and incorporated herein by reference and interests therein, which is subject to this Declaration, together with such additional property now or hereafter made subject to this Declaration in accordance with Article II.



**12.** "Community Systems" means and refers to any and all television (cable, satellite or otherwise), telecommunication, alarm/monitoring, electronic surveillance and/or monitoring systems intended to control access, internet, telephone, utility or other lines, conduits, wires, amplifiers, towers, antennae, satellite dishes, equipment, materials, installations and fixtures (including those based on, containing and serving future technological advances not now known), installed by Declarant, the Association or a third party provider, or pursuant to any grant of easement or authority by Declarant and/or the Association within the Community.

**13.** "Community-Wide Standard" means the standard of conduct, maintenance or other activity specifically determined by the Board of Directors or its committees.

**14.** "Conservation Areas" means those protected areas required by SJRWMD for the Community, including, but not limited to wetland preservation areas, mitigation areas and upland buffers which are protected under conservation easements created pursuant to Section 704.06, Florida Statutes.

**15.** "County" means Orange County, Florida.

**16.** "Declarant" means TOLL FL VIII LIMITED PARTNERSHIP, a Florida limited partnership, its successors and assigns; provided, however, that any successor or assign shall acquire for the purpose of development or sale any or all portion of the remaining undeveloped or unsold portions of the Property and, provided further, in the instrument of conveyance to any such successor or assign, such successor or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood as to all of the Property, which is now subject to this Declaration, there shall be no more than one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any time.

**17.** "Fontana Estates Community" is the name of the Community.

**18.** "Home" shall mean a residential dwelling unit constructed within the Community which is designed and intended for use and occupancy as a single-family residence and includes but is not limited to a detached single-family home, a zero lot line single family home, a residential unit contained in a townhouse or high-rise building, whether such residential unit is subject to condominium form of ownership, owned in fee simple or another form of ownership or possession, and includes any interest in land, Improvements, or other property appurtenant to the Home; provided, however, that no portion of any Community System, even if installed in a Home, shall be deemed to be a part of a Home unless and until the Association provides otherwise, if at all. The term "Home" may not reflect the same division of property as reflected on a Plat

**19.** "Improvement(s)" shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind, whether existing or hereafter constructed, located within the Community, including, but not limited to, buildings, walkways, recreation areas and facilities, parking areas, berms, fountains, sprinkler pipes, gatehouses, roads, driveways, fences, retaining walls, underground footers and other foundation supports, stairs, landscaping, hedges, plantings, water bodies, water features, poles, swings, tennis courts, swimming pools, covered patios, screen enclosures, jogging, bicycling and walking paths, basketball backboards and hoops, signs, site walls, benches, mailboxes, decorative street lights and signs.

**20.** "Limited Common Area" means any and all real and personal property, easements, improvements, facilities and other interest, as more particularly described in Article III, Section 2 of this Declaration, which are reserved for the use of Owner(s) of certain Units to the exclusion of other Owner(s) and/or other Units.

**21.** "Master Plan" means the land use plan for the development of the Community dated August, 2008, prepared by Consultech Enterprises, Inc., as it may be amended, which plan includes the property described on Exhibit "A". Inclusion of property and improvements on the Master Plan shall not, under any circumstances, obligate Declarant to add said property and/or construct the improvements reflected on the Master Plan.

**22.** "Member" means all those Owners who are members of the Association as provided in Article IV, Section 1, hereof.

**23.** "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Unit or other property located within the Community, excluding, however, the Association and any person holding such interest merely as security for the performance or satisfaction of an obligation.

**24.** "Permit" or "Permits" shall mean all permits and licenses pertaining to the Property.

**25.** "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust or other legal entity.

**26.** "Plat" means any Plat or Replat of the Community or any portion thereof now or hereafter recorded, including, without limitation, that certain Plat of Fontana Estates Community recorded in Plat Book 75, Pages 85 through 87, inclusive, of the Public Records of Orange County, Florida.

**27.** "Rules and Regulations" means the procedures for administering the Association, the Community, and the use of the Common Areas, as adopted by resolution of the Board of Directors.

**28.** "SJRWMD" shall mean the St. Johns River Water Management District.

**29.** "Special Assessment" means assessments levied in accordance with Article VIII, Section 3 of this Declaration.

**30.** "Specific Assessment" means assessments levied in accordance with Article VIII, Section 4 of this Declaration.

**31.** "Supplemental Declaration" means an amendment or supplement to this Declaration filed pursuant to Article II which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

**32.** "Turnover Date" shall mean the date upon which Declarant relinquishes control of the Association to the Members, which shall be the earliest of the following to occur: (1) after certificates of occupancy have been issued for ninety percent (90%) of the platted Units; (2) on that date which shall be twenty (20) years from the date upon which this Declaration shall be recorded in the public records; or (3) when Declarant elects, in its sole discretion, to relinquish



control of the Association to the Members, provided, however, that Declarant shall not be permitted to voluntarily relinquish control sooner than the point in time that certificates of occupancy have been issued for at least seventy percent (70%) of the platted Units, and provided that the Turnover Date must occur no later than the point in time at which certificates of occupancy have been issued for ninety percent (90%) of the platted Units.

33. "Unit" means a portion of the Community, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include, by way of illustration but not limitation, townhouse units, villas, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas or property dedicated to the public. In the case of a building within a townhome or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the site plan approved by Declarant, whichever is more recent, until such time as a subdivision plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

34. "Water Management System" shall mean and refer to the surface water management system and storm water management system for the Community including, but not limited to, all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, flood plain compensation areas, wetlands, and any associated buffer areas, and wetland mitigation areas, which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges.

## **ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION; WITHDRAWALS**

Section 1. General Development Plan. ANY SITE PLAN OF THE COMMUNITY IS CONCEPTUAL ONLY AND FOR THE CONVENIENCE OF REFERENCE. IT SHOULD NOT BE RELIED UPON AS REPRESENTATION, EXPRESS OR IMPLIED, OF THE FINAL SIZE, LOCATION OR DIMENSIONS OF ANY LOT OR BUILDING AREA. THE DECLARANT EXPRESSLY RESERVES THE RIGHT TO MAKE ANY MODIFICATIONS, REVISIONS, AND CHANGES IT DEEMS DESIRABLE IN ITS SOLE AND ABSOLUTE DISCRETION OR AS MAY BE REQUIRED BY LAW OR GOVERNMENTAL BODIES.

The Association is not a condominium association and therefore shall not be governed by the provisions of Chapter 718, Florida Statutes, but rather shall be governed by Chapter 720, Florida Statutes, as enacted on the date this Declaration is recorded in the public records of the

County, and shall in all respects permissible not be subject to subsequent amendments made to said Chapter 720, Florida Statutes. This Declaration is not a declaration of condominium.

Section 2. The Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is described on Exhibit" A" attached hereto and made a part hereof (the "**Property**").

Section 3. Additions to the Property Additional lands may become subject to this Declaration as follows:

(a) Declarant, together with the owner of fee simple title to the property involved if other than Declarant, shall have the right to bring additional properties within the operation of this Declaration to become part of the Community without the consent or joinder of any other Person being required, except the Orange County Board of County Commissioners, from which consent shall be required, by filing a Supplemental Declaration in the Public Records of the County.

(b) Additionally, Declarant shall have the right to bring additional properties within the operation of this Declaration to become part of the Community without the consent or joinder of any other Person being required to accomplish the following purposes:

(i) to include within the Community any portions of any rights-of-way which become abandoned and which abut the Community, or to otherwise move the boundary lines of the Community such that at locations where possible, the boundary lines abut public ways; and

(ii) to include within the Community the situs of lands containing easement ways for ingress and egress and the swale areas of such easement ways which connect any private road system within the Community to the public way.

(c) Upon approval in writing of the Association pursuant to a majority vote of its members, an Owner of any land who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file of public record a Supplemental Declaration declaring its intention and containing the legal description of the lands to be added; provided, so long as Declarant owns a Unit in the Community for the sale in the ordinary course of business, then there shall be no additions to the Community (other than as permitted under paragraphs (a) and (b) above and paragraph (d) below), unless the Declarant joins the majority of Owners in approving such addition.

(d) Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to merger. The surviving or consolidated association may administer the covenants, restrictions and conditions established by this Declaration within the Community, together with the covenants, conditions and restrictions established upon any other property as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Community.

(e) At the time any additional lands are made subject to this Declaration, in conjunction with approval by Orange County, Declarant may also record an instrument which:

- (i) modifies any of the provisions of this Declaration insofar as they may apply to such additional lands only; or
- (ii) creates new provisions applicable only to such additional lands; or
- (iii) omits the applicability of any of the provisions of this Declaration as to any such additional lands; or
- (iv) does any, all or none of the above.

(f) The execution and recordation of this Declaration shall not be construed to require Declarant to subject any additional lands to the covenants, conditions and restrictions or other provisions of this Declaration or any other recorded instrument.

Section 4. Withdrawal. Declarant reserves the right to amend this Declaration at any time, without prior notice and without the consent of any Person, except the Orange County Board of County Commissioners, from which consent shall be required, for the purpose of removing certain portions of the Community then owned by the Declarant or its affiliates or the Association from provisions of this Declaration to the extent included originally in error or as a result of any changes whatsoever in the plans for the Community desired to be effected by Declarant; provided, however, such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community. Any withdrawal of land not owned by Declarant shall require the written consent or joinder of the then-owner(s) and mortgagee(s) of such land, but not of any others. Notwithstanding the foregoing, no withdrawal which effects the operation and maintenance of the surface water management system shall be made without the consent of the SJRWMD.

### ARTICLE III COMMON AREA; COMMUNITY SYSTEMS

Section 1. Common Areas. The Common Areas are as designated on the Plat, in this Declaration, or in any other documents recorded from time to time by the Declarant. Declarant shall have the right to add property to the Common Areas at Declarant's sole option and in its sole discretion. Declarant hereby initially designates the following tracts on the Plat as the Common Areas for the use and benefit of all Owners within the Community:

- (i) Tracts A, B, C, D, F, G, H, I, J on the Plat of Fontana Estates Community, recorded in Plat Book 75, Pages 85 through 87, inclusive, of the Public Records of Orange County, Florida.
- (ii) The clubhouse, depicted in the site plan attached hereto as Exhibit "F".

The Declarant may, but is not obligated, in its sole discretion, to construct a gatehouse and/or gated entry at the entrance of the Community and convey such gatehouse and/or gated entry to the Association. If the gatehouse and/or gated entry is constructed and conveyed to the Association, the Association shall thereafter maintain the gatehouse and/or gated entry, including, but not limited to,

paying the cost of any such personnel stationed at such gatehouse. The Declarant shall have the right in its sole discretion to convey additional real estate improved or unimproved and/or personal property as additional Common Area which conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of the Members. The boundaries of the Common Area may from time to time be modified by Declarant as deemed necessary or appropriate by Declarant for development and sale of the Community. The Association shall, without approval of a Person, execute any such instrument deemed necessary to accomplish any boundary modification.

Section 2. Limited Common Area. Certain portions of the Community may be designated by Declarant in its sole and absolute discretion as Limited Common Area and reserved for the exclusive use or primary benefit of the Owners, occupants and invitees of certain Units. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, and lakes. Except as otherwise provided herein, all costs associated with the maintenance, repair, replacement, and insurance of Limited Common Areas shall be assessed as a Special Assessment against the Owners of those Units to which the Limited Common Area is assigned. Declarant initially designates the areas listed on Exhibit "D" attached as Limited Common Areas, although the Declarant reserves the right in its sole discretion to subsequently designate any additional Limited Common Areas and assign the exclusive use thereof in Supplemental Declaration(s), the deed conveying the Common Area to the Association, or on the Plat relating to such Common Area; provided, any such assignment shall not preclude the Declarant from later assigning use of the same Limited Common Area to additional Units, so long as the Turnover Date has not occurred. Thereafter, a portion of the Common Area may be assigned as Limited Common Area of a particular Unit or Units and Limited Common Area may be reassigned upon the vote of a majority of the total Class "A" votes in the Association. As long as the Declarant owns any property in the Community for development and/or sale, any such assignment or reassignment shall also require the Declarant's consent.

The Limited Common Area may be designated on the Plat, or in other documents recorded from time to time by the Declarant, including in a Supplemental Declaration. The Association may adopt Rules and Regulations which govern among other things the use of the Limited Common Area. The Declarant shall have the right in its sole discretion to convey additional real estate, improved or unimproved and/or personal property as additional Limited Common Area which conveyance or dedication to the Association shall be accepted by the Association and thereafter shall (except as may otherwise be set forth herein) be maintained by the Association at its expense for the benefit of the Members, or by the Unit Owners to which the Limited Common Area(s) are assigned.

Section 3. Easements for Use and Enjoyment of Common Areas. Every Owner of a Unit shall have a right to and easement of ingress and egress, use and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to the Unit, subject to the following provisions:

(i) the right of the Association to borrow money for the purpose of improving the Common Areas, or any portion thereof or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a mortgage encumbering all or any portion of the Common Areas; provided, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant



or any Owner, or a holder of any mortgage, irrespective of when executed or given by Declarant or any Owner, encumbering any Unit or other property located within the Community;

(ii) the right of the Association to grant easements across the Common Areas to Persons who are not Owners;

(iii) the right of the Association to dedicate or transfer all or any portion of the Common Areas subject to such conditions as may be agreed to by a majority of the Members of the Association and subject to the approval requirements of Declarant;

(iv) this Declaration, the Bylaws and any other applicable covenants;

(v) any restrictions or limitations contained in any deed conveying such property to the Association;

(vi) the right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Units and their guests and rules limiting the number of guests who may use the Common Area;

(vii) the right of the Board to levy reasonable fines, as further provided in Section 4 of Article XIV of this Declaration, of up to \$100 per violation against an Owner and/or any tenant, guest or invitee; provided that that a fine may not be imposed without an opportunity for notice and hearing pursuant to paragraphs (a) and (b) of Section 4.23 of the Bylaws and Section 4 of Article XIV of this Declaration;

(viii) the right of the Board to suspend the right of an Owner and/or any tenant, guest or invitee to use Common Areas and recreational facilities within the Common Areas for the failure to pay any monetary obligation imposed against such Owner or such Owner's Unit that remains delinquent for more than ninety (90) days, said suspension to be in force until such time as the obligation is paid in full; provided that that a suspension may not be imposed without an opportunity for notice and hearing pursuant to paragraphs (a) and (b) of Section 4.23 of the Bylaws and Section 4 of Article XIV of this Declaration; and

(ix) the right of the Board to permit use of any recreational facilities situated on the Common Area by a person other than Owners, their families, lessees and guests upon payment of use fees established by the Board.

Any Owner may delegate his or her right of use and enjoyment in and to the Common Areas and facilities located thereon to the members of his/her family, tenants, guest and invitees.

Section 4. Assumption of Risk. Without limiting any other provision herein, each person within any portion of the Community, including but not limited to the Common Areas, Limited Common Areas or Areas of Common Responsibility ("User") accepts and assumes all risk and responsibility for noise, liability, injury, or damage connected with use or occupation of any portion of the Community, including, without limitation, (a) noise from maintenance equipment, (b) use of pesticides, herbicides and fertilizers as permitted by applicable law, (c) view restrictions caused by maturation of trees or shrubs, (d) reduction in privacy caused by the removal or pruning of shrubbery or trees, and (e) design of any portion of the Common Areas or Areas of Common Responsibility.

Each Owner and User also expressly indemnifies and agrees to hold harmless Declarant, the Association, and all employees, directors, representatives, officers, agents, affiliates, attorneys and partners of the foregoing (the “**Indemnified Parties**”) from any and all actions, injury, claims, loss, liability, damages, costs and expenses of any kind or nature whatsoever (“**Losses**”) incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect or consequential, including without limitation, attorneys’ fees, paraprofessional fees, and costs at trial and upon appeal, arising from or related to use of the Community, including, but not limited to the Common Areas, Limited Common Areas or Areas of Common Responsibility, by Owners, Users and/or their guests, family, members, invitees or agents, or the interpretation of this Declaration and/or exhibits attached hereto and/or from any act or omission of any of the Indemnified Parties. Should any Owner bring suit against any of the Indemnified Parties for any claim or matter and fail to obtain judgment therein against such Indemnified Parties, such Owner shall be liable to such parties for all Losses, costs and expenses incurred by the Indemnified Parties in the defense of such suit, including but not limited to, attorneys’ fees and paraprofessional fees at trial and upon appeal. Without limiting the foregoing, all Users using any portion of the Community, including but not limited to the Common Areas, Limited Common Areas and Areas of Common Responsibility, including without limitation, any pool, do so at their own risk. BY ACCEPTANCE OF A DEED, EACH OWNER ACKNOWLEDGES THAT THE COMMUNITY MAY CONTAIN WILDLIFE SUCH AS, AMONG OTHER THINGS, ALLIGATORS, FISH, INSECTS, SNAKES, RACCOONS, DEER, FOWL AND FOXES. DECLARANT AND THE ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH OWNER AND HIS OR HER GUESTS AND INVITEES ARE RESPONSIBLE FOR THEIR OWN SAFETY.

Section 5. Redesignation of Common Areas. Notwithstanding anything contained herein to the contrary and provided that the Master Plan of the Community is not substantially modified, Declarant shall have the right, in its reasonable discretion, provided that approval is obtained from the Orange County Board of County Commissioners, to alter or modify the Common Areas and any improvements, easements and use rights thereon or appurtenant thereto, including, but not limited to, the right to redesignate, modify, alter, increase or decrease (collectively, “Redesignate”) the specified uses(s) of any Common Areas in any manner deemed reasonably appropriate by Declarant without the consent of the Association, Owners, or any lenders for so long as Declarant shall own any portions of the Property. In the event Declarant exercises its right to Redesignate the specified use(s) of the Common Areas, Declarant shall record an amendment to this Declaration in the public records, setting forth the portion of the Common Area subject to redesignation and the redesignated use thereof.

Section 6. Conveyance of Common Areas and Limited Common Areas.

At any time as determined by Declarant in its sole discretion, all or portions of the Common Areas and Limited Common Areas may be dedicated by plat, created in the form of easements or conveyed by Quitclaim Deed from Declarant to the Association. The dedication, creation by easement or conveyance shall be subject to the terms and provisions of this Declaration and all other Community documents; easements, restrictions, reservations, conditions, limitations and/or declarations of record or common to the Community; real estate taxes for the year of recordation of this Declaration and subsequent years; and zoning, land use regulations, and survey matters. The Association shall be deemed to have assumed and agreed to pay all continuing obligations and any and all service and similar contracts relating to the ownership, operation, maintenance and administration of the conveyed portions of the Common Areas and any and all other

obligations relating thereto, and the Association shall and does indemnify and hold Declarant harmless from and against same. The Association by its joinder in this Declaration, hereby accepts such dedication(s) or conveyance(s) without setoff, condition or qualification of any nature. The Common Areas, Limited Common Areas and the personal property and equipment thereon and appurtenances thereto shall be dedicated or conveyed in "as is, where is" condition WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON AREA OR LIMITED COMMON AREA BEING CONVEYED.

Section 7. Community Systems. The Declarant shall have the right, but not the obligation, to install and provide Community Systems and to provide the services available through the Community Systems to any and all Units within the Community. If the Declarant installs and provides the Community Systems, neither the Association nor any Owner shall have any interest in the Community Systems. Any or all of such services may be provided either indirectly, through the Association and paid for as a Common Expense, or directly, by the Declarant, an affiliated entity or a third party and paid for by the recipient of the services. The Community Systems shall be the property of the Declarant (or an affiliated entity) unless transferred by the Declarant (or such affiliated entity), whereupon any proceeds of such transfer shall belong to the Declarant (or such affiliated entity). The Declarant shall have the right, but not the obligation, to convey, transfer, sell or assign all or any portion of the Community Systems, or all or any portion of the rights, duties or obligations with respect thereto to the Association or any other Person (including an Owner, as to any portion of the Community System located on such Owner's Unit).

**ALL PERSONS ARE HEREBY NOTIFIED THAT THE ASSOCIATION MAY BE A PARTY TO A CONTRACT FOR THE COMMUNITY SYSTEMS SERVING THE COMMUNITY FOR A TERM WHICH EXTENDS BEYOND THE TURNOVER DATE AND THAT, IF SO PROVIDED IN SUCH CONTRACT, THE ASSESSMENTS PAYABLE AS TO EACH UNIT WILL INCLUDE CHARGES PAYABLE BY THE ASSOCIATION UNDER SUCH CONTRACT, REGARDLESS OF WHETHER OR NOT THE OWNER OR MEMBERS OF SUCH UNIT ELECT TO RECEIVE THE COMMUNITY SYSTEMS.**

#### **ARTICLE IV MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 1. Membership. Every Person, including Declarant, who is a record owner of a fee or undivided fee interest in any Unit in the Community shall be a Member of the Association, provided that any Person who holds such interest merely as a security for the performance of an obligation shall not be a Member. Change of membership shall be established by recording in the Public Records of the County a deed or other instrument which conveys fee title to a Unit within the Community, and by the delivery to the Association of a copy of such recorded instrument. If a copy of said instrument is not delivered to the Association, the new Owner shall become a Member, but shall not be entitled to voting privileges. Membership in the Association by all Owners is mandatory and automatic with the ownership of any Unit and is appurtenant to, runs with, and shall not be separated from, the Unit upon which membership is based.



Section 2. Voting Rights. The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" Members shall be all Owners, with the exception of the Declarant. Class "A" Members shall be entitled to one (1) equal vote for each Unit owned in the Community. When more than one (1) person holds an ownership interest in any Unit, all such persons shall be Members, provided that only one vote may be cast on behalf of all such Members holding an ownership interest in any one Unit. The vote for such Unit shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended in the event more than one (1) person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve or withhold approval of actions proposed under this Declaration and the Bylaws, are specified elsewhere in the Declaration and the Bylaws. The Class "B" Member may appoint a majority of the members of the Board prior to the Turnover Date. Following the Turnover Date, the Declarant shall have a right to disapprove actions of the Board and committees as provided in Section 4.18 of the Bylaws. Additionally, prior to the Turnover Date, the Class "B" Member shall be entitled to ten (10) votes for each Unit owned. After the Turnover Date, the Declarant shall be entitled to one (1) vote for each Unit owned.

## **ARTICLE V EASEMENTS**

In addition to the easements which appear on the Plat, the respective rights and obligations of the Unit owners, the Association, Declarant and others concerning easements affecting the Community shall include the following, which may not be removed except as authorized herein:

Section 1. Easements for Utilities and Community Systems. Declarant hereby reserves for the benefit of itself, its successors and assigns and the Association, perpetual blanket easements upon, across, above and under the Community, which easements shall be for access, ingress, egress, installation, construction, repair, operation, maintenance, expansion and replacement of utility services and Community Systems for the Community or any portion thereof, including, but not limited to water, sewer, gas, drainage, irrigation, fire protection, electricity, any Community Systems, and other services, such as trash disposal roads and walkways. This easement shall not entitle the holders to construct or install any drainage systems, facilities or utilities over, under or through any existing Unit, except as may be temporarily necessary for utility installation, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by and at the expense of the Person exercising this easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or to the occupant of the Unit. Use of the Community for utilities, as well as use of the other utility easements as shown on relevant plats, shall be in accordance with the applicable provisions of this Declaration and said plats.

Section 2. Easement for Entry. The Association shall have an easement to enter into any Unit for emergency, security, safety and for other purposes reasonably necessary for the proper maintenance and operation of the Community, which right may be exercised by the Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after 24 hours' notice to the

Owner. This right of entry shall include the right of the Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon the request by the Board.

Section 3. Easement for Maintenance. The Association shall have a non-exclusive and perpetual easement to enter upon, across, above and under each Unit within the Community, including the Common Areas and Limited Common Areas, at reasonable hours to perform its responsibilities of maintenance, inspection and repair, including, without limitation, the right but not the obligation to enter upon each Unit for the purpose of maintaining and landscaping the yards of Units and for the purposes of exterior pest control (provided that the burden of such obligations of landscaping and pest control lie with the Unit Owner, and nothing herein shall be construed to obligate the Association to bear such responsibility). Notwithstanding the foregoing, the parties acknowledge and agree that the Association shall not have the right to enter into the courtyard of any Unit, except in the case of an emergency, and the Owners shall be responsible for the maintenance of all landscaping in said courtyards.

Each Owner of a Unit shall have a non-exclusive and perpetual easement to enter upon and across the Units adjacent to such Owner's Unit, at reasonable hours, to perform its responsibilities of maintenance, landscaping, inspection and repair of said Owner's Unit.

Section 4. Damages. The use of any easement granted under the provisions of this Article shall not include the right to disturb any building or structure in the Community, and any damage caused to same shall be repaired at the expense of the party causing such damage.

Section 5. Easement for Collection for Stormwater Runoff and Flood Water. The Declarant reserves for itself, its successors and assigns, and the Association and SJRWMD, the non-exclusive right and easement, but not the obligation, to enter upon any part of Community to (a) install, keep, maintain and replace pumps in order to provide water for the irrigation of any of the Association property and Common Areas; (b) construct, maintain and repair any structure designed to divert, collect or retain water; and (c) remove trash and other debris. This easement shall not entitle the holders to construct or install any drainage systems or facilities over, under or through any existing Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by and at the expense of the Person exercising this easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or the Owner's occupant. Further, every Unit and the Common Area shall be burdened with easements for natural drainage or stormwater runoff from other portions of the Community; provided, no Persons shall alter the natural drainage on any Unit so as to materially increase the drainage of stormwater onto adjacent portions of the Community without the consent of the Owner of the affected Property.

Section 6. Encroachments. Any portion of any Unit encroaching upon any other Unit or on any of another Unit, Common Area or Limited Common Area, or any encroachment that shall hereafter occur as a result of (i) construction or reconstruction of any improvement; (ii) settling or shifting of an improvement; (iii) any addition, alteration or repair to the Common Area made by or with the consent of the Association, or (iv) any repair or restoration of any improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit, Common Area or Limited Common Area, then in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand. Such easement shall exist to a

distance of not more than three (3) feet as measured from any common boundary between contiguous Units and between each Unit and any adjacent Common Area along a line perpendicular to such boundaries at such points. Any such easement or encroachment shall include an easement for the maintenance and use of the encroaching improvements in favor of each of the Unit Owners and their respective designees.

Section 7. Easements to Service Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access and development of the Community. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

Section 8. Easements for Cross-Drainage. Every Unit and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Community; provided, no Person shall alter the natural drainage on any Unit after the development of the Community pursuant to approved permits, so as to materially increase the drainage of storm water onto adjacent portions of the Community without the consent of the Owner of the affected property.

Section 9. Lake Maintenance Easement. The Declarant hereby reserves for the benefit of itself, its successors and assigns, the Association, upon, across, above and under the Community, a non-exclusive right and easement to enter upon any part of the Community to maintain, inspect and repair, any lakes constructed on the Community, if any. This Easement shall be along the shoreline of each lake and extending back at least twenty (20) feet from the actual water's edge of such lakes for the purpose of maintaining the lakes.

## ARTICLE VI THE ASSOCIATION

Section 1. Functions and Services. Except as may otherwise be provided herein, the Association shall be the entity responsible for management, maintenance, operation and control of the Common Areas. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Community as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Architectural Review Requirements. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles of Incorporation and Florida law. Among other things, the Association shall be empowered to do the following, all of the expenses for which shall be deemed Common Expenses:

- (a) Adopt Community-Wide Standards of conduct, maintenance or other activity.
- (b) Adopt and amend bylaws, rules and regulations;

- (c) Adopt and amend budgets for revenues, expenditures and reserves;
- (d) Collect Base Assessments, Special Assessments and Specific Assessments for Common Expenses;
- (e) Maintain in perpetuity all lakes, Conservation Easements and preserved areas located within the Community in accordance with all applicable permits pertaining to said areas and pursuant to the lake management techniques.
- (f) Hire and discharge employees, agents, independent contractors, managers and administrators;
- (g) Institute, defend or intervene in litigation or administrative proceedings in its own name on its behalf or on behalf of two or more Owners, but only as to matters affecting the Community;
- (h) Make contracts and incur liabilities;
- (i) Regulate the use, maintenance, repair, replacement and modification of the Common Area;
- (j) Make additional improvements to the Common Area;
- (k) Acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property;
- (l) Grant easements, leases, licenses and concessions through or over the Common Area, provided it has obtained the express written consent of the Declarant;
- (m) Take all actions necessary to enforce the covenants, conditions and restrictions of this Declaration, the Articles, the Bylaws and the Rules and Regulations;
- (n) Impose and receive payments, fees or charges for the use, rental or operation of the Common Area and for services provided to Owners;
- (o) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declarations, Bylaws and Rules and Regulations of the Association;
- (p) Impose reasonable charges to prepare and record Amendments to the Declaration and Notices of Lien for unpaid assessments;
- (q) Purchase at its option general liability and hazard insurance for improvements and activities on the Common Area, provided that any insurance required to be maintained by the Association pursuant to Article XX and any applicable County ordinances regarding gated communities, to the extent applicable to this Community, will be maintained;
- (r) Provide for the indemnification of its officers and maintain directors and officers liability insurance;



(s) Assign its right to future income, including the right to receive annual assessments;

(t) Exercise any other powers conferred by this Declaration, the Articles of Incorporation or the Bylaws;

(u) Exercise all powers that may be exercised in the State of Florida by similar legal entities;

(v) Exercise any other powers necessary and proper for the governance and operation of the Association, including the delegation of its functions and services to any governmental or private entity;

(w) To operate and maintain the Surface Water Management System as permitted by SJRWMD, including, but not limited to, all lakes, retention areas, Conservation Areas, water management areas, ditches, culverts, structures and related appurtenances;

(x) To perpetually maintain any and all permanent markers and signs required by SJRWMD, and to inform all Owners of the conservation status of the Conservation Areas required by SJRWMD;

(y) To perpetually maintain all appurtenances and landscaping above the watermain serving the Property as required by the County and additionally, to the extent required by the County, to perpetually maintain the watermain serving the Property.

(z) To enforce all use restrictions created herein and the conditions contained in any subsequent conservation easement with respect to the Conservation Areas, including, but not limited to bringing an action in equity to obtain an injunction against a Unit Owner, enjoining the Unit Owner from violating any restrictions and conditions pertaining to the Conservation Areas.

(aa) Assumption of all obligations (including all monetary and reporting requirements) of Declarant under all permits for the Community.

(bb) The Association shall be responsible for satisfying and complying with all obligations and terms under all Permits, authorizations, and approvals pertaining to the Community, as well as maintaining copies of all further permitting actions for the benefit of the Association, including but not limited to the following:

(i) St. Johns River Water Management District – Permit #40-095-106299-1, a true and correct copy of which is attached hereto as Exhibit “G”.

(ii) Florida Department of Environmental Protection Potable Water – Permit #WD48-0080780-782.

(iii) Orange County Capacity Reservation Certificate #07-169.

(iv) Orange County Construction Plans #06-S-021

Section 2. Obligation of the Association. The Association shall carry out the functions and services specified herein first with the proceeds from Base Assessments and then, if necessary, with

the proceeds from Special Assessments, the Board of Directors shall consider the proceeds of assessments and the needs of Members in exercising its functions and services outlined in Section 1 of this Article.

Section 3. Association Actions Requiring Approval. Unless the Association receives the affirmative vote of at least two-thirds (2/3) of the platted lots, the Association shall not be entitled to:

(a) abandon, partition, subdivide, encumber, sell or transfer the Common Area or any portion thereof, except that boundaries of the Common Area may be adjusted pursuant to Article III, Section 1 hereof. Any such transfer or conveyance of the Common Area by the Association shall not be made without adequate provision for the continued maintenance and operation of infrastructure improvements for which the Association is responsible. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this paragraph;

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) change, waive or abandon any scheme of regulation or enforcement of Community-Wide Standards; nor

(d) use hazard insurance proceeds for losses to any Common Area other than for the repair or replacement of the Common Area.

Section 4. Recycling Programs. The Board may establish a recycling program and recycling center within the Community and in such event, all occupants of Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is set up to accommodate. The Association may, but shall have no obligation to purchase recyclable materials in order to encourage participation and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

Section 5. Public Gardens and Environmental Programs. The Board may establish gardens within the Common Area or designate spaces within the Common Area for the establishment of gardens to promote public awareness of and participation in conservation, management and enhancement of native vegetation, soils and geology and may establish programs to promote an understanding of the natural landscape and environment.

Section 6. Lake Maintenance. Declarant and the Association hereby grant to the County all of the Association's rights, but not obligations, to maintain the lakes, the drainage easements and the lake maintenance easements granted by the Declarant to the Association.

## **ARTICLE VII COVENANT FOR MAINTENANCE**

Section 1. Association's Responsibility. Except as otherwise provided herein, the Association shall maintain and keep in good repair the Common Areas and Area(s) of Common Responsibility, which shall include, but need not be limited to:

(a) all landscaping and other flora, parks, signage, structures, walls and improvements, including all roads and streets located in the Community, all sewer and potable water in infrastructure facilities, bike and pedestrian pathways/trails, situated upon the Common Area;

(b) unless otherwise maintained by the local government authority having jurisdiction over the Community, landscaping, sidewalks, street lights and signage within public rights-of-way within or abutting the Community, and landscaping and other flora within any public utility easements and conservation easements within the Community (subject to the terms of any easement agreement relating thereto), provided that the proper permits will be obtained in advance of any work within any public rights-of-way;

(c) the clubhouse located within the Community as depicted in the site plan attached hereto as Exhibit "F", the maintenance and repair of which shall be borne by the Association and assessed against all Owners within the Community as a Common Expense;

(d) such portions of any additional property included within any Area(s) of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association; and

(e) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association; provided this section is not intended to limit or alter the maintenance obligations and terms enumerated in Article XX herein related to the limited infrastructure described in said article.

Except as provided in Article VII, Section 2, the Owner shall maintain the yard and landscaping of each Unit and shall be responsible for exterior pest control and irrigation, and the Unit Owners shall be obligated to pay any and all service and maintenance costs associated with same. The Association shall bear responsibility for any maintenance obligations under the Permits or any other permits applicable to the Community.

There are hereby reserved to the Association easements over the Community as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and equipment within the Area(s) of Common Responsibility in continuous operation, except for reasonable periods as necessary to perform required, maintenance or repairs, unless Members representing 75% of the Class "A" votes and the Declarant, so long as Declarant owns a Unit, agree in writing to discontinue such operation.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units in the manner of and as a part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants or agreements with the owner(s) thereof.



Section 2. Owner's Responsibility. Notwithstanding anything herein to the contrary, each Owner shall maintain his or her Unit, including the yard, lot, landscaping, shrubbery and flora associated therewith, and shall be responsible for the replacement of any portion or portions of such Unit Owner's yard, lot, landscaping, shrubbery and any flora associated therewith which may be damaged, whether due to disease, storms, hurricane, natural disaster, cold freeze or other Act of God, provided that such replacement must be in accordance with the Community-Wide Standard and be approved by the Architectural Review Committee. Additionally, each Owner shall maintain all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities, in its sole and absolute discretion, and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment in accordance with Article VIII. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

Each Owner shall also maintain, repair and replace, at its sole cost and expense, any individual on-site sewage disposal system (OSDS) and all improvements related thereto (collectively, the "Septic System") located on such Owner's lot in accordance with the terms and provisions enumerated in Chapter 37, Article XVII, Orange County Code of Ordinances; Section 381.0065, Florida Statutes; Chapter 64E-6, Florida Administrative Code and any other laws, regulations, codes, ordinances, permits, rules or the like governing Septic Systems issued by any federal, state or local government, or any administrative agency including but not limited to the Florida Department of Health. Each Owner shall, in addition to the above, maintain the Septic System in a manner which insures that no noxious, unsightly or offensive condition or nuisance shall exist. The Association shall have the right, but not the obligation, to maintain, repair and replace any portion or portions of the Septic System for which the Owner bears responsibility in the event the Owner fails to adhere to the terms herein, as determined in the Association's sole and absolute discretion, and a perpetual easement in favor of the Association shall exist to enter over, upon and under any Home, Unit or lot associated therewith for such purposes. The cost of any maintenance, repair and/or replacement incurred by the Association shall be assessed against the Owner as a Specific Assessment in accordance with Article VIII.

Section 3. Standard of Performance. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. (Notwithstanding anything to the contrary contained herein, the Association and/or an Owner shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.)

Section 4. Maintenance of Limited Common Areas. Each Owner shall maintain, repair and replace, as necessary, such Owner's Limited Common Areas in a neat, clean, orderly and functioning manner in accordance with the Community-Wide Standard and this Declaration.

Section 5. Lake Maintenance. With respect to any lakes within the Community, to the extent not performed by any applicable governmental authority pursuant to the Permits, the Association shall be responsible for maintaining said lakes, the littoral areas and up to the water's edge. The cost of maintaining the lakes shall be a Common Expense of the Association.

## **ARTICLE VIII ASSESSMENTS**

Section 1. Creation of Assessments. The Association is hereby authorized to levy assessments against each Unit for Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments for Association expenses and other obligations: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Special Assessments as described in Section 3 below; and (c) Specific Assessments as described in Section 4 below. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Community is deemed to covenant and agree to pay these assessments.

All assessments, together with interest from the due date of such assessment at a rate determined by the Board (not to exceed the highest rate allowed by Florida law), late charges at a rate determined by the Board (in an amount not to exceed the greater of \$25.00 or 5 percent of the amount of each installment that is paid past the due date, provided that only as to this subsection, if Chapter 720, Florida Statutes, is ever amended to provide that the Association shall have the right to impose greater late charges than those enumerated in this subsection, then such right shall automatically be bestowed upon the Association without need for amending this Declaration or providing any notice), costs and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 6 below. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first mortgagee who obtains title to a Unit by exercising the remedies provided in its mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title, except to the extent provided herein.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

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

No Owner may exempt himself from liability for assessments, by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some

action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

**Section 2. Reserve Budget and Capital Contribution.** The Board shall annually prepare reserve budgets for general purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments over the budget period. Notwithstanding anything herein to the contrary, the Board will seek approval from the County, in accordance with any applicable County ordinances governing gated communities, for those portions of the budget pertaining to the Community's infrastructure which are described in Article XX herein.

**Section 3. Special Assessments.** In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the specific Units within the Community benefiting from said expenses. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Before the Turnover Date, the Board controlled by Declarant may not levy a Special Assessment unless a majority of the Owners other than Declarant approve the Special Assessment by a majority vote at a duly called special meeting of the Owners at which a quorum is present.

**Section 4. Specific Assessments.** The Board shall have the power to levy Specific Assessments against a particular Unit or Units constituting less than all of the Units within the Community, as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items or services to the Unit or occupants thereof upon request of the Owner, pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, handyman service, pool cleaning, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the Bylaws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their licensees, invitees or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing before levying in Specific Assessment under this subsection (b).

**Section 5. Date of Commencement of Assessments; Due Dates.** All annual assessments shall be payable quarterly, in advance. Except as provided in Article XX, Section 4(g), the obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which a Certificate of Occupancy is issued by the applicable governmental authority for the

residence on the Unit, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit. At the option of the Board, the payment of assessments may be changed to a more frequent basis. The due date of any Special Assessment or Specific Assessment provided for herein shall be set in the resolution authorizing such assessment.

Section 6. Liens for Assessments. Upon recording of a Notice of Lien, there shall exist a perfected lien for unpaid assessments on the respective Unit prior and superior to all other liens, except all taxes, bonds, assessments and other levies which by law would be superior thereto, a lien or charge of any first mortgage of record (meaning any recorded mortgage with first priority over other mortgages) made in good faith and for value, but subject to the limitations of Section 7 hereof. Such lien, when delinquent, may be enforced by suit, judgment and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period in which a Unit is owned by the Association following foreclosure: no right to vote shall be exercised on its behalf; no assessment shall be levied on it; and each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged against such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid common expenses and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. After notice and hearing, the Board may temporarily suspend the voting rights and right to use the Common Area of a Member while such Member is in default in payment of any assessment.

Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of such charges as a debt and also to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners.

All payments shall be applied first to costs and attorneys' fees, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment, special assessments and individual assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment, special assessments or individual assessments which are the subject matter of suit in the order of their coming due.

Section 7. Subordination of the Lien to First Mortgages; Mortgagees' Rights. A first mortgagee, upon written request, shall be entitled to written notification from the Association of any default of an Owner of any obligation hereunder which is not cured within sixty (60) days. Notwithstanding anything to the contrary contained herein, the liability of a first mortgagee, or its successor or assignee as a subsequent holder of the first mortgage who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of title, shall be the lesser of:

1. The Unit's unpaid common expenses and regular periodic or special assessments that accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or



2. One percent of the original mortgage debt.

The limitations on first mortgagee liability provided by this paragraph apply only if the first mortgagee filed suit against the parcel owner and initially joined the Association as a defendant in the mortgagee foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location that was known to or reasonably discoverable by the mortgagee. Additionally, a first mortgagee shall become liable for all assessments which become due and payable subsequent to the sale or transfer of the Unit pursuant to a decree of foreclosure, or pursuant to a deed given in lieu of foreclosure, or any other proceeding in lieu of foreclosure.

Section 8. Declarant's Assessments. Declarant guarantees to each buyer of a Unit that from the recording of this Declaration until twenty-four (24) months from the date of recording of this Declaration or turnover of control of the Association, whichever occurs earlier, the total monthly assessment imposed on the Owner of a Unit pursuant to the Declaration will not exceed the amounts set forth in Exhibit "E" attached hereto and incorporated herein for the respective Unit and period set forth on said Exhibit "E."

In consideration for this guarantee, Declarant is excused from the payment of its share of the monthly assessments which otherwise would have been assessed against Declarant's unsold Units during the term of the guarantee. If at any time during the guarantee period the funds collected from Unit owners at the guaranteed level and other revenues collected by the Association are not sufficient to provide payment, on a timely basis, of all assessments, including the full funding of the reserves unless properly waived, Declarant must advance sufficient cash to the Association at the time such payments are due. Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment revenues, may not be included in the assessments. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the Declarant. Interest earned on the investment of Association funds may be used to pay the income tax expense incurred as a result of the investment; such expense shall not be charged to Declarant; and the net investment income will be retained by the Association. Each such nonassessment-revenue-generating activity shall be considered separately. Any portion of the assessment which is budgeted for designated capital contributions of the Association shall not be used to pay operating expenses.

Declarant's total financial obligation to the Association at the end of the guarantee period shall be determined on the accrual basis using the following formula: Declarant shall pay any deficits that exceed the guaranteed amount, less the total regular periodic assessments earned by the Association from the members other than the Declarant during the guarantee period regardless of whether the actual level charged was less than the maximum guaranteed amount. Declarant reserves the right, but not the obligation, to unilaterally extend this guaranty for one or more additional stated periods after the expiration of the initial guaranty period on the date that is twenty-four (24) months from the date of recording of this Declaration or turnover of control of the Association, whichever occurs earlier, although the monthly guarantee amount shall be the same as the last level set forth above.

In computing the monthly amount to be funded by the Declarant as aforesaid, revenues and expenses shall not be segregated or earmarked by type of Assessment or type of Common Area, but, instead, shall be taken as a whole. Also, depreciation and capital asset acquisition shall not be

deemed a cost or expense for purposes of this Section and Declarant shall not be deemed to have in any manner guaranteed or obligated itself as to the types or levels of any inventory of goods or equipment existing at any time. Notwithstanding the above, to the extent permitted by law, in the event of an Extraordinary Financial Event (as hereinafter defined) the costs necessary to effect restoration shall be assessed against all Unit Owners owning units on the date of such Extraordinary Financial Event, and their successors and assigns, including Declarant (with respect to Units owned by Declarant). As used in this subsection, an "Extraordinary Financial Event" shall mean Common Expenses incurred prior to the expiration of the guarantee period (as same may be extended) resulting from a natural disaster or Act of God, which is not covered by insurance proceeds from insurance which may be maintained by the Association.

When all Units within the Community are sold and conveyed to purchasers, neither Declarant nor its affiliates shall have further liability of any kind to the Association for the payment of Assessments, deficits or contributions. Declarant's rights under this entire Section may be assigned by it in whole or in part and on an exclusive or non-exclusive basis.

Notwithstanding anything herein to the contrary, this section is not intended to limit or alter the express rights, obligations and terms which are expressly enumerated in Article XX herein as well as any County ordinance related to gated communities, but only to the limited extent provided in such Article XX or ordinance, and only to the extent same are applicable to this Community.

Section 9. Exempt Property. The following property shall be exempt from payment of Base Assessments, Specific Assessments, and Special Assessments:

- (a) all Common Areas;
- (b) any property dedicated to and accepted by any governmental authority or public utility; and
- (c) any property held by a conservation trust or similar nonprofit entity as a conservation easement, except to the extent that any such easement lies within the boundaries of a Unit which is subject to assessment (in which case the Unit shall not be exempted from assessment).

Section 10. Initial Recreation Capitalization Fee. The first purchaser of each Unit at the time of closing of the conveyance from the Declarant to the purchaser shall pay the Declarant a one-time recreation capitalization fee to reimburse Declarant for costs associated with construction of the amenities. The Declarant may waive this requirement for some Units, including, but not limited to, if the first purchaser is a Builder and the Builder becomes unconditionally obligated to collect and pay the recreation capitalization fee upon the subsequent sale of each Unit to an end purchaser. The recreation capitalization fee shall remain the property of the Declarant, and each Unit Owner by acceptance of a deed to a Unit acknowledges and agrees that the recreation capitalization fee **shall not** be delivered to the Association upon turnover of the Association.

Section 11. Resale Contribution.

- (a) Authority. In addition to the assessment obligations set forth in this Article, the Association is hereby authorized to establish and collect a transfer fee upon each transfer of title

to a Unit, unless such transfer is exempt as provided in Section 11(d) (the "Resale Contribution"). The fee shall be payable to the Association, at the closing of the transfer, by the Person taking title to the Unit being transferred. Such Resale Contribution shall constitute an assessment against the Unit and shall be secured by a lien in favor of the Association.

(b) Resale Contribution Limit. The Board shall have the sole discretion to determine the amount and method of determining any Resale Contribution. The Resale Contribution shall be initially set by the Board at \$500.00.

(c) Purpose. All Resale Contributions which the Association collects shall be deposited into the operations account of the Association to be used for any purpose as the Board deems beneficial to the general good and welfare of the Community and surrounding areas, including, but not limited to, paying for operating, maintenance or reserve obligations of the Association. Notwithstanding the foregoing, the Declarant may unilaterally amend this Declaration to designate that some or all of the Resale Contributions collected under this section shall be earmarked to go only to certain purposes or organizations such as a tax-exempt entity or other charitable organization. By way of example and not limitation, such Resale Contributions may be used to assist the Association or one or more tax-exempt entities in funding:

(i) preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas, and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation and preservation of the natural environment at the Community and the County;

(ii) programs and activities which serve to promote a sense of community within the County, such as recreational leagues, cultural programs, educational programs, festivals and holiday celebrations and activities, a community computer network, and recycling programs; and

(iii) social services, community outreach programs, and other charitable causes.

(d) Exempt Transfers. Notwithstanding the above, no Resale Contribution shall be levied upon transfer of title to a Unit:

(i) by or to Declarant, Builder or any party who becomes a successor Declarant;

(ii) by a Builder who held title solely for purposes of development and resale;

(iii) by an Owner to a trust, partnership, corporation, or other entity so long as such entity is and remains wholly-owned by the Owner or by such Owner and the Owner's spouse and/or children; provided, however, if the immediately preceding transfer of the Unit was exempted from payment of the Resale Contribution pursuant to this subsection, then this subsection shall not apply and the Unit shall be subject to the Resale Contribution;

(iv) by an Owner or such Owner's estate to the Owner's spouse and/or children; provided, however, if the immediately preceding conveyance of the Unit was exempted



from payment of the Resale Contribution pursuant to this subsection, then this subsection shall not apply and the Unit shall be subject to the Resale Contribution;

(v) of an undivided interest in a Unit by the Owner thereof to any then existing co-Owner(s) of such Unit; or

(vi) to an institutional lender pursuant to a mortgage or upon foreclosure of a mortgage.

Section 12. Payment of Unit Real Estate Taxes. Each Owner shall pay all taxes and obligations relating to his or her Unit which, if not paid, could become a lien against the Unit superior to the liens for Assessments created by this Declaration.

## ARTICLE IX ARCHITECTURAL REVIEW REQUIREMENTS

The Board of Directors shall have the authority and standing on the behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Architectural Review Committee (the "Committee"), established by this Article. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any lands subject to this Declaration.

Section 1. The Architectural Review Committee. The Committee shall be a permanent committee of the Association and shall administer and perform the architectural and landscape review and control functions relating to the Community. The Committee shall consist of a minimum of three (3) members who shall initially be named by Declarant and who shall hold office at the pleasure of Declarant. One of the members of the Committee may be a paid consultant, e.g. an architect, at Declarant's option. Until the Turnover Date, Declarant shall have the right to change the number of members of the Committee and to appoint, remove, and/or replace any or all of the members of the Committee. Declarant shall determine which members of the Committee shall serve as its chairman and co-chairman. In the event that any of the members appointed by Declarant shall fail, refuse, or be unable to act, Declarant shall have the right to replace any such member(s) within thirty (30) days of such occurrence. If Declarant fails to replace that member, the remaining members of the Committee shall fill the vacancy by appointment. From and after the Turnover Date, the Board shall have the same rights as Declarant with respect hereto.

Section 2. Membership. There is no requirement that any member of the Committee be an Owner or a Member of the Association.

Section 3. General Plan. It is the intent of this Declaration to create a general plan and scheme of development of the Community. Accordingly, the Committee shall have the right to approve or disapprove all architectural, landscaping, and Improvements within the Community to be made by Owners other than Declarant. All proposed Improvements, including, but not limited to, any and all construction, modifications, additions and alterations, by Owners, builders and developers who seek to engage in development of or construction upon all or any portion of the Community shall be in strict compliance with the Architectural Review Requirements and this Article. Moreover, no painting of the exterior of a Unit by an Owner, no construction, which term shall include within its definition staking, clearing, excavation, grading and other site work, and no fencing, screening, plantings or addition/removal of plants, trees or shrubs shall take place except in strict compliance with the Architectural Review Requirements and this Article, and with the approval

of the Committee. Although the Committee shall have the right to amend the following standards, initially, all pool screen enclosures must be brown and the only permitted fencing shall be brown aluminum fencing. The Committee shall have the right to evaluate all plans and specifications as to harmony of exterior design, landscaping, location of any proposed Improvements, relationship to surrounding structures, topography, and conformity with such other reasonable requirements as shall be adopted by Committee. The Committee may impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning, or other local governmental codes. Prior to the Turnover Date, any additional standards or modification of existing standards shall require the consent of Declarant, which consent may be granted or denied in its sole discretion.

Section 4. Architectural Review Requirements. Each Owner and his or her or its contractors and employees shall observe and comply with the Architectural Review Requirements (the "Architectural Review Requirements") which have been or may hereafter be promulgated by the Committee and approved by the Board from time to time. The Architectural Review Requirements shall be effective from the date of adoption; shall be specifically enforceable by injunction or otherwise; and shall have the effect of covenants as set forth herein. The Architectural Review Requirements shall not require any Owner to alter any Improvements previously constructed. Until the Turnover Date, Declarant shall have the right to approve the Architectural Review Requirements, which approval may be granted in its sole discretion.

Section 5. Quorum. A majority of the Committee shall constitute a quorum to transact business at any meeting. The action of a majority present at a meeting at which a quorum is present shall constitute the action of the Committee. In lieu of a meeting, the Committee may act in writing.

Section 6. Power and Duties of the Committee. No Improvements shall be constructed on a Unit or Home; no exterior of a Home or Improvement shall be repainted; no landscaping, sign, or Improvements shall be erected, removed, planted, or maintained on a Unit; nor shall any material addition to or any change, replacement, or alteration of the Improvements as originally constructed by Declarant (visible from the exterior of the Home) be made until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and the location of same shall have been submitted to and approved in writing by the Committee. The Committee shall also have the right to retain and pay outside consultants in relation to the exercise of any of the Committee's powers or duties hereunder.

Section 7. Procedure. In order to obtain the approval of the Committee, each Owner shall observe the following:

(a) Each applicant shall submit an application to the Committee with respect to any proposed Improvement or material change in an existing Improvement, together with the required application(s) and/or other fees established by the Committee. The applications shall include such information as may be required by the application form adopted by the Committee. The Committee may also require submission of samples of building materials and colors proposed to be used. At the time of such submissions, the applicant shall, if requested, submit to the Committee such site plans, plans, and specifications for the proposed Improvement, prepared and stamped by a registered Florida architect or residential designer, landscaping and irrigation plans prepared by a registered landscape architect or designer showing all existing trees and

major vegetation stands, and surface water drainage plans showing existing and proposed design grades, contours relating to the predetermined ground floor finish elevation, pool plans and specifications, and the times scheduled for completion, all as reasonably specified by the Committee.

(b) In the event the information submitted to the Committee is, in the Committee's opinion, incomplete or insufficient in any manner, the Committee may request and require the submission of additional or supplemental information. The Owner shall, within fifteen (15) days thereafter, comply with the request.

(c) No later than thirty (30) days after receipt of all information required by the Committee for final review, the Committee shall approve or deny the application in writing. The Committee shall have the right to disapprove any plans and specifications which are not suitable or desirable, in the Committee's sole discretion, for aesthetic or any other reasons or to impose qualifications and conditions thereon. In approving or disapproving such plans and specifications, the Committee shall consider the suitability of the proposed Improvements, the materials of which the Improvements are to be constructed, the site upon which the Improvements are proposed to be erected, the harmony thereof with the surrounding area, and the effect thereof on adjacent or neighboring property. In the event the Committee fails to respond within said thirty (30)-day period, the plans and specifications shall be deemed disapproved by the Committee.

(d) In the event that the Committee disapproves any plans and specifications, the applicant may request a rehearing by the Committee for additional review of the disapproved plans and specifications. The meeting shall take place no later than thirty (30) days after written request for such meeting is received by the Committee, unless applicant waives this time requirement in writing. The Committee shall make a final written decision no later than thirty (30) days after such meeting. In the event the Committee fails to provide such written decision within said thirty (30) days, the plans and specifications shall be deemed disapproved.

(e) Upon final disapproval, the applicant may appeal the decision of the Committee to the Board within thirty (30) days of the Committee's written review and disapproval (even if the members of the Board and Committee are the same). Review by the Board shall take place no later than thirty (30) days subsequent to the receipt by the Board of the applicant's request therefor. If the Board fails to hold such a meeting within thirty (30) days after receipt of request for such meeting, then the plans and specifications shall be deemed disapproved. The Board shall make a final decision no later than sixty (60) days after such meeting. In the event the Board fails to provide such written decision within such sixty (60) days after such meeting, such plans and specifications shall be deemed disapproved. The decision of the Committee or, if appealed, the Board shall be final and binding upon the applicant, his, her or its heirs, legal representatives, successors, and assigns.

(f) Construction of all Improvements shall be completed within the time period set forth in the application and approved by the Committee.

Section 8. Alterations. Any and all alterations, deletions, additions, and changes of any type or nature whatsoever to then-existing Improvements or the plans or specifications

previously approved by the Committee shall be subject to the approval of the Committee in the same manner as required for approval of original plans and specifications.

Section 9. Variances. The Association or Committee shall have the power to grant variances from any requirements set forth in this Declaration or in the Architectural Review Requirements, on a case by case basis, provided that the variance sought is reasonable and results from a hardship upon the applicant. The granting of a variance shall not nullify or otherwise affect the right to require strict compliance with the requirements set forth herein or in the Architectural Review Requirements on any other occasion.

Section 10. Permits. The Owner is solely responsible to obtain all required building and other permits from all governmental authorities having jurisdiction.

Section 11. Construction by Owners. In addition to the requirements set forth in Article X, Section 7, the following provisions govern construction activities by an Owner ("Approved Party") after consent of the Committee has been obtained:

(a) Each Approved Party shall deliver to the Committee copies of all construction and building permits as and when received by the Approved Party. Each construction site in the Community shall be maintained in a neat and orderly condition throughout construction. Construction activities shall be performed in a diligent, workmanlike, and continuous manner. Roadways, canals, drainage inlets, preservation or conservation areas, easements, swales, Association Property, and other such areas in the Community shall be kept clear of construction vehicles, construction materials, and debris at all times. Except as otherwise specifically provided herein, no construction office or trailer shall be kept in the Community and no construction materials shall be stored in the Community subject, however, to such conditions and requirements as may be promulgated by the Committee. All refuse and debris shall be removed or deposited in a dumpster on a daily basis. No materials shall be deposited or permitted to be deposited in any canal, lake or waterway or Association Property or other property in the Community or be placed anywhere outside of the Unit upon which the construction is taking place. No hazardous waste or toxic materials shall be stored, handled, or used, including, without limitation, gasoline and petroleum products, except in compliance with all applicable federal, state, and local statutes, regulations, and ordinances and shall not be deposited in any manner on, in, or within the construction or adjacent property or waterways. All construction activities shall comply with the Architectural Review Requirements. If a "Contractor" (as hereinafter defined) or Approved Party shall fail in any regard to comply with the requirements of this Section, the Committee may require that such Approved Party or Contractor post security with the Association in such form and amount deemed appropriate by the Committee in its sole discretion.

(b) There shall be provided to the Committee a list (name, address, telephone number, and identity of contact person) of all contractors, subcontractors, materialmen, and suppliers (collectively, "Contractor" or "Contractors") and changes to the list as they occur relating to construction. Each Contractor and its employees shall utilize those roadways and entrances into the Community as are designated by the Committee for construction activities. The Committee shall have the right to require that each Contractor's employees check-in at the designated construction entrances and to refuse entrance to persons and parties whose names are not registered with the Committee.



(c) Each Approved Party is responsible for insuring compliance with all terms and conditions of these provisions and of the Architectural Review Requirements by all of its employees and Contractors. In the event of any violation of any of the terms or conditions set forth herein by any employee or Contractor and/or the continued refusal of any employee or Contractor to comply with such terms and conditions after five (5) days notice and right to cure, the Committee shall have, in addition to the other rights hereunder, the right to prohibit the violating employee or Contractor from performing any further services in the Community.

(d) When the physical construction of any Home or other Improvement is started, such construction shall be performed diligently and completed within a reasonable time. If for any reason a Home is not completed within six (6) months from the commencement of construction, as determined by Declarant or the Committee, then Declarant or the Committee may, in its sole and absolute discretion, after ten (10) days notice to the Owner of the Home, enter the Home and take such steps as necessary to correct any undesirable condition. The Owner of the Home will be charged for the costs thereof as a Specific Assessment.

(e) If, during any construction activity on a Home or other Improvement or at any other time, any of the Association Property is damaged or destroyed, including, without limitation, any street lights, sidewalks, landscaping, street signs, or other Improvements located thereon, the Approved Party shall be liable for all costs incurred in repairing or replacing such Association Property, and the total costs thereof shall be assessed against the Owner as a Specific Assessment. The Association reserves the right to collect from Approved Parties or Contractors a security deposit that may be applied to reduce damages to the Association Property which might occur during the construction of a Home or other Improvement.

(f) The Committee may, from time to time, adopt standards governing the performance or conduct of Approved Parties, Contractors, and their respective employees within the Community. Each Approved Party and Contractor shall comply with such standards and cause its respective employees to comply with same. The Committee may also promulgate requirements to be inserted in all contracts relating to construction within the Community and each Owner shall include the same therein.

(g) Notwithstanding anything herein to the contrary, the construction of a Home or Unit which is intended for use a single-family residential dwelling must contain at least 2,500 square feet of living area.

Section 12. Inspection. There is specifically reserved to the Association and the Committee, and to any agent or member of either of them, the right of entry and inspection upon any portion of the Community for the purpose of determining whether there exists any violation of the terms of any approval given by the Association or the Committee or of the terms of this Declaration or the Architectural Review Requirements.

Section 13. Violation. If any Improvement shall be constructed or altered without prior written approval, or in a manner which fails to conform with the approval granted, the Approved Party shall, upon demand of the Association or the Committee, cause such Improvement to be removed or restored until approval is obtained or in order to comply with the plans and specifications originally approved. The Approved Party shall be liable for the payment of all costs of and associated with effecting such removal or restoration, including, without limitation, all legal fees,

incurred by the Association or Committee. The costs shall be deemed a Specific Assessment and be enforceable pursuant to the provisions of this Declaration. The Committee and/or the Association are specifically empowered to enforce, at law or in equity, the architectural and landscaping provisions of this Declaration and the Architectural Review Requirements.

Section 14.Court Costs. In the event it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement or to cause the removal of any unapproved Improvement, the Association and/or Committee shall be entitled to recover all legal fees incurred in connection therewith.

Section 15.Certificate. In the event that any Owner fails to comply with the provisions contained in this Declaration, the Architectural Review Requirements or other rules and regulations promulgated by the Committee or the Association, the Association and/or the Committee may, in addition to all other remedies contained herein, record a Certificate of Non-Compliance against the Home or Homes stating that the Improvements on the Home or Unit fail to meet the requirements of this Declaration and that the Home or Unit is subject to further enforcement remedies.

Section 16.Certificate of Compliance. Prior to the occupancy of any Improvement constructed or erected on any Unit by a person or entity other than Declarant or its designees, the Owner thereof shall obtain a Certificate of Compliance from the Committee certifying that the Owner has complied with the requirements set forth herein. The Committee may, from time to time, delegate to a member or members of the Committee the responsibility for issuing the Certificate of Compliance.

Section 17.Exemption. Notwithstanding anything contained herein or in the Architectural Review Requirements to the contrary, any Improvements of any nature made or to be made by Declarant or its nominees, including, without limitation, Improvements made or to be made to the Association Property or any Home or Unit, shall not be subject to the review of the Committee, the Association, or the provisions of the Architectural Review Requirements.

Section 18.Exculpation. Declarant, the Association, the directors or officers of the Association, the Committee, the members of the Committee, or any person acting on behalf of any of them, shall not be liable for any costs or damages incurred by any Owner or any other party whatsoever due to any mistakes in judgment, negligence, or any action or omission of Declarant, the Association, the Committee, or their members, officers, or directors, in connection with the approval or disapproval of plans and specifications or the exercise of any other rights or powers set forth in this Article IX. Each Owner, by acceptance of a deed to a Home and/or Unit, agrees, individually and on behalf of its heirs, successors, and assigns, that he, she or it shall not bring any action or suit against Declarant, the Association, or their respective directors or officers, the Committee or the members of the Committee, or their respective agents to recover any damages caused by or related to the actions of Declarant, the Association, or the Committee, or their respective members, officers, or directors in connection with the provisions of this Article IX. The Association does hereby indemnify, defend, and hold Declarant, the Committee, and each of their members, officers, and directors harmless from and against all costs, expenses, and liabilities, including, without limitation, legal fees, of all nature resulting from the acts of the Owners, the Association, the Committee, or their members, officers and directors. Declarant, the Association, its directors or officers, the Committee or its members, or any person acting on behalf of any of them, shall not be responsible for any defects in any plans or specifications or the failure of same to comply with applicable laws or



code nor for any defects in any Improvements constructed pursuant thereto. Each party submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto. By way of example, and not of limitation, the approval of hurricane shutters shall not be deemed an endorsement or guarantee of the effectiveness of such hurricane shutters.

Notwithstanding anything herein to the contrary, this section is not intended to limit or alter the express rights, obligations and terms which are expressly enumerated in Article XX herein as well as any County ordinance related to gated communities, but only to the limited extent provided in such Article XX or ordinance, and only to the extent same are applicable to this Community.

## **ARTICLE X INSURANCE AND CASUALTY LOSSES**

Section 1. Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a loss. The Association shall have the authority to and interest in insuring any privately or publicly owned property for which the Association has maintenance or repair responsibility. Such property shall include, by way of illustration and not limitation, any insurable improvements on or related to parks, rights-of-way, medians, easements and walkways which the Association is obligated to maintain. If blanket "all-risk" coverage is not generally available at reasonable cost, then the Association shall obtain fire and extended coverage, including coverage for vandalism and malicious mischief. The face amount of the policy shall be sufficient to cover the full replacement cost of the insured property. The cost of such any insurance shall be a Common Expense to be allocated among all Units subject to assessment as part of the annual Base Assessment. Such coverage may be in such form as the Board of Directors deems appropriate. Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the required coverage. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 4.23 of the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners or occupants, then the Board may specifically assess the full amount of such deductible against the Unit of such Owner or occupant, pursuant to Article VIII, Section 4.

All insurance coverage obtained by the Association shall:

(a) be written with a company authorized to do business in Florida which holds a Best's rating of A or better and is assigned a financial size category of IX or larger as established by A.M. Best Company, Inc., if reasonably available or, if not available, the most nearly equivalent rating which is available;

(b) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Area shall be for the benefit of the Association and its Members;

(c) vest in the Board exclusive authority to adjust losses; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss;

(d) not be brought into contribution with insurance purchased by individual Owners, occupants or their mortgagees; and

(e) have an inflation guard endorsement, if reasonably available. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the County area.

The Board shall use reasonable efforts to secure insurance policies containing endorsements that:

(a) waive subrogation as to any claims against the Association's Board, officers, employees and its manager, the Owners and their tenants, servants, agents and guests;

(b) waive the insurer's rights to repair and reconstruct instead of paying cash;

(c) preclude cancellation, invalidation, suspension or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(d) exclude individual Owners' policies from consideration under any "other insurance" clause; and

(e) require at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification or non-renewal.

The Association shall also obtain, as a Common Expense, worker's compensation insurance and employer's liability insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, and flood insurance, if advisable.

The Association also shall obtain, as a Common Expense, a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds. The Board shall determine the amount of fidelity coverage in its best business judgment but, if reasonably available, shall secure coverage equal to not less than one-sixth (1/6) of the annual Base Assessments on all Units plus reserves on hand. Bonds shall contain a waiver of all defenses, based upon the exclusion of persons serving without compensation, and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification or non-renewal.

Notwithstanding anything herein to the contrary, this section is not intended to limit or alter the express rights, obligations and terms which are expressly enumerated in Article XX herein as

well as any County ordinance related to gated communities, but only to the limited extent provided in such Article XX or ordinance, and only to the extent same are applicable to this Community.

Section 2. Owners Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry blanket "all-risk" property insurance on its Unit(s) and structures thereon, providing full replacement cost coverage less a reasonable deductible, unless the Association carries such insurance (which it is not obligated to do hereunder).

Section 3. Requirement to Reconstruct or Demolish Unit. In the event that any Unit is destroyed by fire or other casualty, the Owner of such Unit shall do one of the following: commence reconstruction and/or repair of the Unit ("Required Repair"), or tear the Unit down, remove all the debris, and resod and landscape as required by the Architectural Review Committee ("Required Demolition"). If an Owner elects to perform the Required Repair, such work must be completed within six (6) months from the date of the casualty or such longer period of time established by the Board in its sole discretion. If an Owner elects to perform the Required Repair, such reconstruction and/or repair must be performed in a continuous, diligent and timely manner. The Association and/or the Architectural Review Committee shall have the right to inspect the progress of all reconstruction and/or repair work. Without limiting any other provision of this Declaration or the powers of the Association, the Association shall have the right to bring an action against any Owner who fails to comply with the foregoing requirements. Each Owner acknowledges that the issuance of a building permit or demolition permit shall in no way be deemed to satisfy the requirements set forth herein, which are independent of, and in addition to, any requirements for completion of work or progress requirements set forth in applicable statutes, zoning codes, and/or building codes.

The standard for any Required Repair, Required Demolition or other work performed pursuant to this Section shall be in accordance with Architectural Review Requirements and any other standards established by the Association.

#### Section 4. Damage and Destruction in the Community.

(a) Immediately after damage or destruction to all or any part of the Community covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(b) To the extent permitted by law, any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least seventy five percent (75%) of the total Class "A" votes in the Association, and the Declarant, so long as Declarant owns a Unit, decide within sixty (60) days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

(c) If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained by the Association, in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

(d) Notwithstanding anything herein to the contrary, this section is not intended to limit or alter the express rights, obligations and terms related to the infrastructure which are expressly enumerated in Article XX herein as well as any County ordinance related to gated communities, but only to the limited extent provided in such Article XX or ordinance, and only to the extent same are applicable to this Community.

Section 5. Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of mortgagees and may be enforced by the mortgagee of any affected Unit.

Section 6. Repair and Reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors shall, without a vote of the Members, levy Special Assessments against those Unit Owners responsible for the premiums for the applicable insurance coverage under Article VIII, Section 3 above.

Section 7. Owner's Insurance Requirements for any Construction or Renovation. Prior to the commencement of and during the performance of any construction, remodeling, repairs or improvements, including the installation of a swimming pool or spa ("Work") on a Unit, the Owner upon which the Work is being undertaken shall keep and maintain, or cause its general contractor to keep and maintain, and provide the Association with evidence that Owner or the general contractor of Owner has obtained, the following insurance with the Association, the Declarant and the other Owners to the extent any of the foregoing has an insurable interest, as the primary insured parties:

(a) worker's compensation insurance in minimum statutory amounts, as required by applicable law, as it may exist from time to time, and employer's liability insurance in the amount of not less than Five Hundred Thousand Dollars (\$500,000) for each accident/disease;

(b) comprehensive commercial general liability insurance covering all operations by or on behalf of the general contractor, which shall contain the following coverages:

- (i) premises and operations;
- (ii) products and completed operations;
- (iii) contractual liability;
- (iv) broad form property damage (including completed operations);
- (v) explosion, collapse, and underground hazards; and
- (vi) personal injury liability.



The policy for general liability insurance shall be endorsed to provide that each of the aforementioned coverages shall apply in total to this jobsite only and by specific endorsement (per project limit). The policy must list both the Association and the Declarant as an additional insured.

(c) each of the above coverages shall have the following minimum limits of liability:

(i) Two Million Dollars (\$2,000,000) for each occurrence for bodily injury and property damage; and

(ii) Two Million Dollars (\$2,000,000) in the aggregate for products and completed operations (which coverage shall continue to be provided and maintained for a period following final completion of the Work up to the termination of the statute of limitations provided in Section 95.11, Florida Statutes).

(d) "all risk" builder's risk insurance in an amount equal to one hundred percent (100%) of the full replacement cost of the Work to be completed, including materials delivered, and improvements. The policy shall include coverage on an "all risk" basis, including, but not limited to, coverage against fire, collapse, lightening, wind damage, hail, explosion, theft, riot, civil commotion and vehicles. Coverage must include all materials, supplies, and equipment owned by the Owner that are intended for specific installation in the applicable Unit, while such materials, supplies, and equipment are located on the Condominium Property, in transit, or while temporarily located away from the Condominium Property for the purpose of repair, adjustment, or storage at the risk of the insured party.

(e) Any automobile liability insurance in statutory amounts for bodily injury and property damage combined.

(f) Each contractor must be licensed, bonded and insured, and provide evidence of same to the Association prior to the commencement of any Work. Further more, each Owner, by acceptance of a deed to his or her Unit, hereby indemnifies the Declarant, the Association and any management agent harmless from and against any damages, losses, and liability resulting from any Work initiated by the Owner.

## **ARTICLE XI CONDEMNATION**

Section 1. General. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least sixty seven percent (67%) of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any Property) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land

included in the Common Area to the extent available, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property in the Community, and Members representing at least seventy five percent (75%) of the total Class "A" votes in the Association, shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Article X, Sections 3 and 4, regarding funds for the repair of damage or destruction shall apply.

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

Notwithstanding anything herein to the contrary, this section is not intended to limit or alter the express rights, obligations and terms related to the infrastructure which are expressly enumerated in Article XX herein as well as any County ordinance related to gated communities, but only to the limited extent provided in such Article XX or ordinance, and only to the extent same are applicable to this Community.

## **ARTICLE XII USE RESTRICTIONS**

Section 1. Residential Use. Subject to the Declarant's rights set forth herein, no commercial use of a Unit which shall be inconsistent with applicable zoning laws and regulations shall be permitted unless approved by the Board of Directors in writing.

Section 2. Nuisances. No activity shall be permitted to exist or operate in a Unit which constitutes a nuisance or is detrimental to the Community or to any other Unit within the Community. No Owner or resident of a Unit may make or permit any disturbing noises, as determined by the Board of Directors, whether made by himself, his or her family, friends, guests, pets or employees, nor may he do or permit to be done anything by such persons that would interfere with the rights, comforts or other conveniences of other residents. No person may play or suffer to be played any musical instrument, stereo, phonograph, radio or television set in his or her Unit or in or about the Community if the same shall in any manner disturb or annoy the other residents or Owners in the Community.

Section 3. Unlawful Use. The Association and the Owners shall comply with all applicable laws, zoning ordinances, orders, rules, regulations or requirements of any governmental agency relating to the Community.

Section 4. Insurance. No Owner shall permit anything to be done or kept in or on his Unit or the Common Area which increases the rate of insurance, or results in the cancellation of insurance, on the Common Area.

Section 5. Pets. No household pets shall be permitted by Owners in a Unit except in accordance with the pet behavior criteria established in the Rules and Regulations for the Association. Furthermore, all permitted pets must be contained in the Owner's Unit and shall not be permitted to roam free. Further, all permitted pets must be leashed at all times when not located in the Unit and may be walked only in designated areas. No goats, chickens, pigeons or any other obnoxious animals, fowl or reptiles shall be kept or permitted to be kept. Commercial activities



involving pets shall not be allowed. Pets of Owners or occupants shall be limited to a reasonable number as determined by the Association in its sole and absolute discretion. The ability to keep a pet is a privilege, not a right. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the owner, upon written notice, may be required to remove the pet from the Community.

Section 6. Signs. No sign, advertisement or notice of any type or nature whatsoever may be erected or displayed upon any Unit (including in any window), and/or Common Area unless expressed prior written approval of the size, shape, content and location has been obtained from the Board of Directors, which approval may be withheld in its discretion. Notwithstanding the foregoing, the Declarant shall be permitted to post and display advertising signs on the Property and the Board of Directors may erect reasonable and appropriate signs on any portion of the Common Area. Additionally, no Unit Owner may hold an "open house" without first obtaining the approval of the Board of Directors.

Section 7. Exterior Lighting. Except as may be installed initially by Declarant, no spotlights, seasonal and special effect lighting, floodlights or similar high intensity lighting shall be placed or utilized upon any Unit which in any way will allow light to be reflected on any other Unit or the improvements thereon or upon the Common Area, or any part thereof without the prior written approval of the Committee and in accordance with the Architectural Review Requirements. Low intensity lighting which does not disturb the Owners or other occupants shall be permitted.

Section 8. Traffic Hazards. Nothing shall be erected, constructed, planted or otherwise placed in the Community subsequent to the initial construction of improvements in the Community by Declarant which creates a traffic hazard or blocks the vision of motorists upon any of the streets, roads or intersections of the Community.

Section 9. Service Yards. All garbage receptacles, gas meters, air conditioning, heating, pool equipment, materials and supplies, and other equipment placed or stored outside must be concealed from view from roads and adjacent Community in accordance with the Architectural Review Requirements. No Unit Owner may erect any structure or improvement that will deny or impede the Association's access to the Unit Owner's yard.

Section 10. Antennas, Other Devices. Except as permitted by law, and except as may be installed initially by Declarant, no exterior radio or television antenna, satellite dish or other receiver transmitting device or any similar exterior structure or apparatus may be erected or maintained unless approved by the Committee, pursuant to the Architectural Review Requirements; provided, however, each Owner may maintain a satellite dish provided the satellite dish complies with location guidelines adopted by the Committee.

Section 11. Temporary Structures. No temporary structure, such as a trailer, tent, shack, barn, shed or other outbuilding shall be permitted at any time, other than:

- (a) Temporary structures during the period of actual construction; and
- (b) Tents or other temporary structures for use during social functions.

Section 12. Water Supply and Sewerage. No septic tanks shall be permitted (except for the initial temporary sales and construction trailers) within the Community. No wells shall be installed,

unless permitted by the Committee pursuant to the Architectural Review Requirements and provided the Unit Owner obtains all governmental approvals.

Section 13. Fuel Storage Tanks. No fuel or gas storage tanks shall be permitted; however, an Owner may keep and maintain a small gas tank (not in excess of 20 gallons) for gas barbecues, fireplaces and hot tubs, provided they are maintained in accordance with the Architectural Review Requirements.

Section 14. Parking and Garages. Owners shall park only in their garages, in the driveways servicing their Unit, or in appropriate parking spaces designated by the Board. Garage doors shall be kept closed except when automobiles are entering or leaving the garage. Only the number of cars exceeding occupied garage spaces shall be parked on the driveway. Cars parked in the driveway shall be parked such that they are not blocking the sidewalk.

Section 15. Soliciting. Soliciting is strictly forbidden within the Community. Owners should notify the Association if a solicitor appears, and appropriate action will be taken.

Section 16. Trees and Plantings. Pursuant to the Architectural Review Requirements, but excepting any landscaping as may be put in place initially by Declarant, no trees or other plantings shall be cut, removed or added without approval of the Committee, nor shall any Unit Owner alter the landscaping, plant beddings (including mulch or any substitute therefore) or modify the swales without the approval of the Committee. Upon violation of this provision, the Association maintains the right to enter into and upon the Unit and its appurtenant lot and remove and/or replace the unapproved article(s), which cost shall be assessed against the Owner as a Specific Assessment.

Section 17. Fences, Enclosures and Walls; Clotheslines. Except as may be installed initially by Declarant, no fences, screens (including pool screens) and/or enclosures (including front or rear screening/enclosures of any kind), pergolas, invisible pet fences or walls shall be erected unless in accordance with the Architectural Review Requirements and only upon consent by the Committee. Furthermore, Unit Owners shall not erect or maintain any clotheslines, without the written consent of the Board of Directors. Upon violation of this provision, the Association maintains the right to enter into and upon the Unit and its appurtenant lot and remove and/or replace the unapproved article(s), which cost shall be assessed against the Owner as a Specific Assessment.

Section 18. Motor Vehicles, Trailers, Etc. Recreational vehicles, including but not limited to boats, watercrafts, motorcycles, boat trailers, golf carts, mobile homes, trailers (either with or without wheels), motor homes, vans over fourteen (14) feet in length, tractors, trucks in excess of three-fourths (3/4) ton, all-terrain vehicles, commercial vehicles of any type, campers, motorized campers, motorized go-carts, motorized skateboards, scooters or any other related transportation device may only be stored outside or on any Unit a maximum of 8 hours but not over night, unless fully garaged. Moreover, no recreational vehicle shall be parked on any portion of the Common Area unless such areas are specifically designated for recreational parking. The Association may make reasonable rules regarding the use of motorized skateboards, mopeds, scooters and motorcycles in the Community. No Owner or other occupant of the Community shall repair or restore any vehicle of any kind upon or within the Community, except for emergency repairs and then only to the extent necessary to enable the movement thereof to a proper repair facility. Vehicles shall be parked only within Units on paved surfaces and shall not block sidewalks or bike paths and the Unit Owners must park their motorcycles, motorized skateboards, scooters and car(s) in the garage when not in use. Parking by Owners within street rights-of-way is prohibited and the Association is authorized to tow

vehicles parked in violation hereof. Overnight parking in street rights-of-way by non-Owners shall be prohibited.

Section 19. Recreation Equipment. All basketball courts, backboards, volleyball nets, swing sets, sandboxes and other outdoor recreational equipment shall be installed, maintained or used only in accordance with the Architectural Review Requirements, and approved by the Committee and no portable basketball hoop may be left outside overnight.

Section 20. Lawns and Landscaping. Any changes to a Unit's yard, landscaping, shrubbery and any flora (including the replacement, removal or addition of flora, plantings or modification of swales) to be performed by an Owner with respect to the Owner's Unit or lot appurtenant thereto must be approved by the Architectural Review Committee. Further, except as may be installed initially by Declarant, no gravel, blacktop or paved parking strips shall be installed or maintained by any Owner adjacent to and along the street. No trash, debris or refuse pile shall be placed or remain on a Unit.

Section 21. Subdivision. No Unit shall be further subdivided except upon express written consent of the Board of Directors of the Association, and in accordance with applicable subdivision regulations.

Section 22. Conservation Areas. No person may alter the Conservation Areas, including but not limited to all wetlands and upland buffer areas, from their natural and/or permitted condition; provided, however, the Association and Declarant may remove all exotic or nuisance vegetation as permitted under SJRWMD permit pertaining to the Community, or restore any Conservation Area as set forth in any restoration plan contained in a conservation easement created for the Conservation Areas. Exotic vegetation may include, but is not limited to, mealeuca, Brazilian pepper, Australian pine, Japanese climbing fern or any other species currently listed by the Florida Exotic Pest Plant Council. Nuisance vegetation may include cattails, primrose willow and grapevine.

Section 23. Leases. In order to maintain a community of congenial Owners who are financially responsible and thus protect the value of the Units, the leasing and rental of Units by any Owner shall be subject to the following provision, which provision each Unit Owner covenants to observe: (i) no Owner may lease his or her residence for a period less than ninety (90) days without the prior written approval of the Board, which approval is subject to the Board's sole and absolute discretion; (ii) the Unit Owner must first submit to the Board a copy of the fully executed lease for its approval, to determine whether the term is correct; (iii) the lease must specifically state that the tenant lets the Unit subject to the terms and conditions of this Declaration and that if the Unit Owner becomes delinquent in paying any monetary obligation due to the Association, the Association may demand that the tenant pay to the Association the future monetary obligations related to the Unit. The demand is continuing in nature, and upon demand, the tenant must continue to pay the monetary obligations until the Association releases the tenant or the tenant discontinues tenancy in the Unit.

Notwithstanding the above, the Association is entitled to exercise any and all other remedies at law or in equity as against the Unit Owner or the tenant. The tenant does not, by virtue of payment of monetary obligations, have any of the rights of a Unit Owner to vote in any election or to examine the books and records of the Association.

Section 24. Window Treatments. All window coverings shall be lined with white or off-white lining on the side exposed to the public, unless otherwise approved by the Board of Directors.

Section 25. Hurricane Shutters. Any hurricane shutters or other protective devices visible from the outside of a Unit shall be of a type approved in writing by the Architectural Review Committee. Hurricane shutters may not be left closed for any extended period beyond the time needed for hurricane protection. Any approved hurricane shutters may be installed or closed up five (5) days prior to the expected arrival of a hurricane and must be removed or opened within five (5) days after the end of a hurricane watch or warning or as the Board may determine otherwise. Except as the Board may otherwise decide, shutters may not be closed at any time other than a storm event. Any approval by the Committee shall not be deemed as an endorsement of the effectiveness of hurricane shutters.

The following specific restrictions apply to each of the hurricane shutters listed below:

1. Clear hurricane shutters are approved for all windows, entry doors, sliding glass and French doors. These are the only shutters approved to be on the Unit throughout hurricane season (typically June 1st through November 30th).
2. Roll down hurricane shutters are approved for all windows, entry doors, sliding glass and French doors.
3. Galvanized steel shutters are approved for all windows, entry doors, sliding glass and French doors. All shutters must be fully installed, including all slats in place and all such openings covered during a storm event referenced above.
4. Accordion type shutters may be installed but are only approved for windows and doors on the lanai area in the rear, the sides of a Unit, or courtyard area of the Unit. Accordion type shutters are not permitted in the front of the Unit.
5. No other hurricane shutters are permitted without Committee approval.
6. A Unit Owner or occupant who plans to be absent during all or any portion of a hurricane season as defined above must prepare their Unit prior to their departure by designating a responsible firm or individual to care for their Unit should a hurricane threaten the Unit or should the Unit suffer hurricane damage. A Unit Owner must furnish the Association with the names of such firm or individual prior to any storm event.

Section 26. Garage. All garage doors must be closed when not in use. No Unit Owner may convert his or her garage to living space, an office or workshop.

Section 27. Declarant Exemption. The provisions of this Article are intended to restrict certain uses that may be harmful or affect the ambience or aesthetic appeal of the Community to be constructed by Declarant. The restrictions are not intended to prohibit Declarant from performing such work as may be necessary in the completion of the work in the Community. The restrictions of this Article shall therefore not be binding upon Declarant in the performance of any of the work required in order to complete construction of the Community.



### ARTICLE XIII DECLARANT'S RIGHTS

Section 1. Declarant's Rights. The Declarant and its successors or assigns will undertake the work of constructing Units and related amenities on the Units and improvements on the Common Areas. The completion of that work and the sale, rental and other disposal of Units is essential to the establishment and welfare of the Community as a community. As used in this Section and its subparagraphs, the words "its successors or assigns" specifically do not include purchasers of completed Units. In order that said work may be completed and the Community established as a fully occupied Community as rapidly as possible, no Owner or the Association shall do anything to interfere with the Declarant's activities. Without limiting the generality of the foregoing, nothing in this Declaration or the Articles or Bylaws shall be understood or construed to:

(a) Prevent the Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing on any property owned by them or on any Common Areas whatever they determine to be necessary or advisable in connection with the completion of said work, including without limitation, the alteration of its construction plans and designs as the Declarant deems advisable in the course of development (all models or sketches showing plans for future development of the Community may be modified by the Declarant at any time and from time to time, without notice); or

(b) Prevent the Declarant, its successors or assigns, or its or their contractors, subcontractors or representatives, from erecting, constructing and maintaining on any property owned or controlled by the Declarant or on any Common Areas, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing the Community as a Community and disposing of the same by sale, lease or otherwise; or

(c) Prevent the Declarant, its successors or assigns, or its or their contractors or subcontractors or representatives, from conducting on any property owned or controlled by the Declarant or its successors or assigns, its or their business of developing, subdividing, grading and constructing improvements within the Community and of disposing of Units therein by sale, lease or otherwise; or

(d) Prevent the Declarant, its successors or assigns, from determining in its sole discretion the nature of any type of improvements to be constructed as part of the Community.

Notwithstanding any provisions to the contrary herein, the Declarant expressly reserves the right to retain one or more Units in the Community as a guest house, to be used and enjoyed by the Declarant, its affiliates, employees, invitees, and licensees for any lawful purpose together with access to and use of all Common Areas. Any or all of the special rights and obligations of the Declarant may be transferred to other parties, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records of the County. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any property in any manner whatsoever.

Each Owner on his, her or its own behalf and on behalf of such Owner's heirs, personal representatives, successors, mortgagees, lienors and assigns acknowledges and agrees that the

completion of the development of the Community may occur over an extended period of time and that incident to such development and the construction associated therewith the quiet use and enjoyment of the Community and each Unit therein may be temporarily interfered with by the development and construction work occurring on those Units owned by the Declarant or its successors and assigns and each Owner, on such Owner's own behalf and on behalf of such Owner's heirs, assigns, personal representatives, successors, mortgagees, lienors and assigns does hereby waive all claims for interference with such quiet enjoyment and use as a result of the development and construction of the balance of the Community. Each Owner, on such Owner's own behalf and on behalf of such Owner's heirs, personal representatives, successors, mortgagees, lienors and assigns agrees that the development, construction and completion of the balance of the Community may interfere with such Owner's original and existing views, light and air and diminish the same and each such Owner on such Owner's behalf and on behalf of such Owner's heirs, assigns, personal representatives, successors, mortgagees, lienors and assigns does hereby release the Declarant and its successors in interest and others involved from all claims that they may have in connection therewith.

## Section 2. Common Areas.

(a) So long as the Declarant owns land in the Community for development or for sale in the ordinary course of business:

(i) Declarant expressly reserves the right to grant easements and rights-of-way over, under and through the Common Areas; provided, no such easement shall structurally weaken or otherwise interfere with the use of the Common Area by Owners.

(ii) Declarant may in its sole discretion, set aside, convey, lease, grant an easement, license or other use right to real property to the Association within or without the Community for such purposes as may be expressed in the instrument of conveyance, lease or grant of easement, license or other use right. The Association must accept from Declarant any such conveyance, designation, dedication, lease, grant of easement or license, or grant of other use right. No such real property shall be considered to be Common Areas until actually so conveyed, designated, dedicated by platting, leased or a grant of easement, license or other use right is created by a written instrument. The written instrument shall also provide when the area(s) of land are designated, dedicated, conveyed, leased, licensed or a use right is granted to the Association.

(iii) The Association shall not accept from any Person other than Declarant a conveyance, dedication, lease, grant of license or grant of use right except upon the prior written consent of the Declarant or of the Board of Directors after the Declarant is no longer selling Units in the ordinary course of business or developing said Units.

(iv) Declarant shall have the right and the power to regulate and control the external design and appearance of the Common Areas in such a manner as Declarant deems appropriate as to promote a quality environment which will preserve the value of the Units and to foster the attractiveness and functional utility of the Community as a place to live.

(v) Any use of the Common Areas shall be subject to the prior written approval of Declarant or the Board of Directors after the Declarant is no longer selling Units in the ordinary course of business or developing said Units.



(vi) Declarant shall have the right in its sole discretion to grant easements, licenses or use rights for the Common Areas to Persons that are not Members. The Board of Directors shall have the right to grant easements, licenses and use rights for the Common Areas to Persons that are not Members after the Declarant is no longer selling Units in the ordinary course of business or developing said Units.

(b) Prior to any conveyance, designation, dedication, lease or grant of easement, license or other use right by Declarant to the Association of any property, Declarant shall have the right to charge reasonable fees for the use of such property; thereafter, the right to use such property may be subject to reasonable rents, fees and other charges in favor of the Association; in any event, rents, fees and other charges required to be paid to Declarant under the leases, grants, license or contracts creating the use right shall continue to be paid.

(c) Any real property conveyed, leased or the use of which has been granted by Declarant or any third party to the Association as Common Areas is not and shall not be deemed dedicated for use by the general public but is, and shall be, deemed restricted for the common use and enjoyment of Members, their guests and tenants unless otherwise provided by the Declarant.

(d) No nuisance or obnoxious or offensive activity shall be conducted or permitted on any Common Areas. So long as Declarant owns any Unit located in the Community for development or for sale in the ordinary course of business, the Declarant shall have the right and the power in the exercise of its reasonable discretion to determine what activities or uses constitute nuisances or obnoxious or offensive activity and thereafter the Board of Directors of the Association shall make such determination. Nothing shall be done within the Common Areas which may be or become a nuisance to Residents or Members.

(e) Neither the execution and recordation of this Declaration, nor the creation of the Association or other entity, nor the recordation of any other instrument subjecting any land in the Community to protective covenants and restrictions shall obligate or require Declarant or any other Person to grant any right, power, duty or privilege of any nature or kind to the Association or other entity; or obligate or require Declarant to perform any act permitted under this Declaration or to enforce any covenants, condition, restriction or other provision thereof.

Notwithstanding anything herein to the contrary, this subsection (e) is not intended to limit or alter the express rights, obligations and terms which are expressly enumerated in Article XX herein as well as any County ordinance related to gated communities, but only to the limited extent provided in such Article XX or ordinance, and only to the extent same are applicable to this Community.

(f) The Declarant and its affiliates shall have the right from time to time to enter upon the Common Areas and other portions of the Community for the purpose of the installation, construction, reconstruction, repair, replacement, operation, expansion and/or alteration of any improvements or facilities on the Common Areas or elsewhere in the Community as the Declarant and its affiliates, employees and agents, as appropriate, elect to effect. Further, the Declarant and its affiliates, guests and invitees shall have right to use the Common Areas for sales, leasing, customer parking, displays and signs during the period of construction and sale of any of the land owned by the Declarant and its affiliates within the Community, including the operation of a sales office. All of the foregoing shall apply notwithstanding the fact that the Association holds title to the applicable Common Areas as of any relevant time.

### Section 3. Development, Sales and Construction Easement.

In addition to the rights reserved elsewhere herein, Declarant reserves an easement for itself or its nominees over, upon, across and under the Property, as may be required in Declarant's sole opinion, in connection with the development, construction and sale of the Community and other lands designed by Declarant. This right shall include, without limitation, the right to: locate and maintain business offices, construction trailers, models, sales offices, and parking associated therewith; post and maintain signs; and maintain employees in the models and offices. The sales offices and signs and all items pertaining to development and sales shall remain the property of Declarant. Without limiting the foregoing, Declarant specifically reserves the right to use all paved roads and rights of way within the Community for vehicular and pedestrian ingress and egress to and from construction sites and for the construction and maintenance of any Community System provided by Declarant. Specifically, each Owner acknowledges that construction vehicles and trucks may use portions of the Units, and the Common Areas, and Declarant may use portions of the Units and the Common Areas, for storage of construction materials. Except to the limited extent provided in Article XX and any County ordinance affecting gated communities which is applicable to this Community, Declarant shall have no liability or obligations to repave, restore or repair any portion of the Common Area as a result of the use of the same for construction traffic, and all maintenance and repair of such Common Area shall be deemed ordinary maintenance of the Common Areas payable by all owners as part of the assessments. Without limiting the foregoing, and except to the limited extent provided in Article XX and any County ordinance affecting gated communities which is applicable to this Community, at no time shall Declarant be obligated to pay any amount to the Association on account of Declarant's use of the Common Areas for construction purpose(s). Declarant intends to use the Common Areas for sales and re-sales of Units. Further, Declarant may market other residences and commercial properties located outside the Community from Declarant's sales facilities located within the Community. Declarant has the right to use all portions of the Common Areas in connection with its marketing activities, including, without limitation, allowing members of the general public to inspect model homes, installing signs and displays, holding promotional parties and picnics, and any other activities employed in the marketing of homes. The easements created by this Section, and the rights reserved herein in favor of Declarant, shall be construed as broadly as possible and supplement the other rights of Declarant set forth herein. Except to the limited extent provided in Article XX and any County ordinance affecting gated communities which is applicable to this Community, at no time shall Declarant incur any expense whatsoever in connection with its use and enjoyment of such rights and easements.

ALL OWNERS, OCCUPANTS AND USERS OF THE COMMUNITY ARE HEREBY PLACED ON NOTICE THAT DECLARANT AND ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES WILL BE, FROM TIME TO TIME, CONDUCTING BLASTING, EXCAVATION, CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO THE COMMUNITY. BY THE ACCEPTANCE OF HIS OR HER DEED OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE, OR OTHER INTEREST, AND BY USING ANY PORTION OF THE COMMUNITY, EACH OWNER, OCCUPANT AND USER ULTIMATELY ACKNOWLEDGES, STIPULATES AND AGREES (i) THAT NONE OF THE AFORESAID ACTIVITIES WILL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY, (ii) NOT TO ENTER UPON OR ALLOW CHILDREN, GUESTS OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) PROPERTY WITHIN OR IN PROXIMITY TO THE AREA WHERE SUCH ACTIVITY IS BEING CONDUCTED (EVEN IF

NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS); (iii) DECLARANT, THE ASSOCIATION, AND THE OTHER LISTED PARTIES SHALL NOT BE LIABLE BUT, RATHER, SHALL BE HELD HARMLESS FROM ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES, EXCEPT RESULTING DIRECTLY FROM DECLARANT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (iv) ANY PURCHASE OR USE OF ANY PORTION OF THE PROPERTY HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING.

#### Section 4. Modification.

The development and marketing of the Community will continue as deemed appropriate in Declarant's sole discretion, and nothing in this Declaration or the Architectural Review Requirements, or otherwise, shall be construed to limit or restrict such development and marketing. It may be necessary or convenient for the development of the Community, as an example and not a limitation, to amend a Plat and/or the Master Plan; modify the boundary lines of the Common Areas; grant easements, dedications, agreements, licenses, restrictions, reservations, covenants and/or rights-of-way; and/or take such other action(s) which Declarant or its agents, affiliates or assignees may deem necessary or appropriate. The Association and Owners shall, at the request of Declarant, execute and deliver any and all documents and instruments which Declarant deems necessary or convenient, in its sole and absolute discretion, to accomplish the same.

#### Section 5. Promotional Events.

Declarant shall have the right, at any time, to hold marketing, special, and/or promotional events within the Community, without any charge for use of the Property. Declarant, its agents, affiliates and/or assignees shall have the right to market the Community in advertisements and other media by making reference to any portion(s) of the Community, including, but not limited to, pictures or drawings of the Community and Units. All logos, trademarks and designs used in connection with the Community are property of the Declarant, and the Association shall have no right to use same except with the express written permission of the Declarant.

#### Section 6. Use by Prospective Purchasers.

Declarant shall have the right to use, without charge, the Common Areas for the purpose of entertaining prospective purchasers of Units or other properties owned by Declarant outside of the Community.

#### Section 7. Enforcement and Inaction.

(a) So long as the Declarant owns land in the Community for development or for sale in the ordinary course of business, Declarant shall have the right and power, but not the obligation, to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration by any proceeding at law or in equity against any Person violating or attempting to violate such provision, to restrain any violation or attempted violation of such provisions, to require performance of such provisions, to recover damages for violations of such provisions, to levy against the land to enforce any lien created by this Declaration, and to delegate or assign either exclusively or non-exclusively any or all of its rights, powers, duties or privileges hereunder to the Association,

or to an Owner, or to any other Person. In the event Declarant expends any sum of money to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration, the Association shall immediately reimburse the Declarant for such expenditure. Failure by Declarant, or by the Association or any other Owner or any other Person to enforce any of such provisions shall in no event be deemed a waiver of their right to do so thereafter. After Declarant no longer owns any land in the Community for development or sale in the ordinary course of business, the Association shall have the right and power to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration.

(b) The costs and reasonable attorneys' fees, including those resulting from any appellate proceedings, incurred by Declarant or the Association in any action against an Owner to enforce any provisions of this Declaration shall be a personal obligation of such Owner which shall be paid by such Owner and any amount which remains due and unpaid shall be a continuing lien upon the Owner's Unit collectible in the manner provided in Article VIII.

(c) Notwithstanding anything to the contrary in this Declaration, the terms and provisions of this Article shall not be amended, modified or terminated without the prior written consent of the Declarant so long as Declarant owns any Unit(s) in the Community.

#### **ARTICLE XIV ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS**

Section 1. Compliance by Owners. Every Owner, Owner's family, guests, invitees, tenants and employees shall at all times comply with all Bylaws, Rules and Regulations, Community-Wide Standards, Architectural Review Requirements, Use Restrictions, and with the covenants, conditions and restrictions set forth herein and in the deed to his Unit (as hereinafter referred to in this Article, the "Rules"). All violations shall be reported immediately to a member of the Board. Disagreements concerning violations, including interpretation of the Rules, shall be presented to and determined by the Board of Directors, whose interpretation and whose remedial action shall control. In the event that an Owner fails to abide by the Rules, then he or she may be subject to any action, right of entry, fine, or other remedy contained in this Declaration. Each remedy shall be non-exclusive and in addition to all other rights and remedies to which the Declarant or the Association may be entitled. Failure by the Association to enforce any Rules or exercise any right or remedy contained herein shall not be deemed a waiver of the right to do so thereafter.

Section 2. Actions. The Board of Directors may bring an action at law and/or in equity (including an action for injunctive relief), or both, in the name of the Association to enforce the Rules. In such an event, the Association additionally shall be entitled to recover costs and attorneys' fees.

Section 3. Right of Entry. Violation of the Rules shall give the Association or its duly authorized agent the right to enter a Unit or any portion of the Common Area to summarily abate or remove, at the expense of the Owner, any structure, thing or condition which violates the Rules. The Association shall not be liable in any manner for trespass, abatement or removal, and all costs and fees incurred by the Association may be specifically assessed against the violating Owner and shall be treated as a Specific Assessment otherwise due the Association.



Section 4. Fines. The Board, in its sole discretion, may impose a fine or fines upon an Owner for failure to comply with any obligation, requirement or rule, provided the following procedures are adhered to:

(a) Notice: The Association shall notify the Owner in writing of the non-compliance. Included in the notice shall be the date and time of the next meeting at which the non-compliance will be heard and considered. The notice of the non-compliance to the Owner shall provide, at a minimum, at least fourteen (14) days notice prior to the meeting.

(b) Hearing: The noncompliance shall be presented at a meeting before a committee of at least three (3) members appointed by the Board, who are not officers, directors or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director or employee, where the Owners may protest any allegation of non-compliance and any imposition of fines. A written decision of the committee shall be submitted to the Owner not later than twenty-one (21) days after the meeting. The committee must approve, by a majority vote, the proposed fine or suspension, prior to it being imposed.

(c) Fines: The Board of Directors may impose reasonable fines, not to exceed \$100 per violation per day, against any Owner, tenant, guest or invitee. A fine may be levied for each day of a continuing violation, with a single notice and opportunity for hearing as provided pursuant to paragraphs (a) and (b) of Section 4.23 of the Bylaws and as provided in this Declaration, and there shall be no aggregate ceiling on the total fine which may be imposed for a recurring violation.

(d) Payment of Fines: Fines shall be paid not later than thirty (30) days after notice of the imposition.

(e) Assessments: Fines shall be treated as a Specific Assessment otherwise due to the Association. All fines in the aggregate amount of \$1,000 or more shall be a charge and continuing lien upon each Unit against which the fine(s) is made until paid. Upon recording of a Notice of Lien, there shall exist a perfected lien for unpaid fines in the aggregate amount of \$1,000 or more on the respective Unit prior and superior to all other liens, except all taxes, bonds, assessments and other levies which by law would be superior thereto, a lien or charge of any first mortgage of record (meaning any recorded mortgage with first priority over other mortgages) made in good faith and for value, but subject to the limitations provided in Section 7 of Article VIII hereof. Such lien may be enforced by suit, judgment and foreclosure.

(f) Application: All monies received from fines shall be allocated as directed by the Board of Directors.

(g) Non-Exclusive Remedy: Any fine paid by the offending Owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such Owner.

Section 5. Suspension of Use & Voting. If an Owner is delinquent for more than ninety (90) days in paying a monetary obligation due to the Association, the Association may suspend, until such monetary obligation is paid in full, the rights of any Owner, tenant, guest or invitee to use any Common Area and/or facilities, provided that the Association must provide notice and an opportunity for a hearing as provided under Section 4(a) and (b) of this Article and under Section 4.23 of the

Bylaws. The Association may also suspend the voting rights of a Member for nonpayment of regular annual assessments that are delinquent in excess of ninety (90) days. Notwithstanding any other provision to the contrary, but only as to this subsection, if Chapter 720, Florida Statutes, is ever amended to provide that the Association shall have the right to exercise the suspension rights enumerated in this subsection for a monetary delinquency of less than ninety (90) days, or in the event that Chapter 720, Florida Statutes, is ever amended to provide that the Association shall have the right to exercise the suspension rights enumerated in this subsection for other types of violations, then such rights shall automatically be bestowed upon the Association without need for amending this Declaration or providing any notice.

Section 6. Enforcement. Failure to comply herewith or with such rules and regulations shall be grounds for immediate action. The enforcement of this Declaration may be by proceeding at law for damages or in equity to compel compliance with its terms, or to prevent violation or breach of any of the covenants or terms herein. The Declarant, the Association, or any Owner may, but shall not be required to, seek enforcement of this Declaration. Any Owner who seeks enforcement of this Declaration shall, by his actions, be deemed to have indemnified the Declarant and the Association from all liabilities resulting from his actions. In an action to enforce this Declaration, the non-prevailing party shall pay to the prevailing party all costs and reasonable attorneys' fees at all trial and appellate levels.

Notwithstanding anything herein to the contrary, this section is not intended to limit or alter the express rights, obligations and terms which are expressly enumerated in Article XX herein as well as any County ordinance related to gated communities, but only to the limited extent provided in such Article XX or ordinance, and only to the extent same are applicable to this Community.

## **ARTICLE XV ASSIGNMENT**

Any or all of the rights, powers, obligations, easements and estates reserved or given to the Declarant or the Association may be assigned by the Declarant or by the Association, as the case may be, in whole or in part, to the Association or any other assignee. Any assignment shall be made by appropriate instrument in writing, and any assignee shall expressly agree to assume the rights, powers, duties and obligations contained herein, and the assignor shall be relieved and released of all responsibility and obligations associated with the assigned items.

## **ARTICLE XVI CONSERVATION AREAS**

Portions of the Community may contain Conservation Areas, as required by SJRWMD, and as more particularly identified on the Plat or pursuant to any conservation easements created pursuant to Section 704.06, Florida Statutes. All Owners are notified that portions of the Units may contain or lie adjacent to Conservation Areas and each Owner shall comply with all use restrictions created herein or pursuant to any conservation easements created for the Conservation Areas. The Association is charged with the duty of perpetually maintaining all Conservation Areas in accordance with the requirements contained in SJRWMD permit pertaining to the Community and any subsequent conservation easements created. All expenses incurred in maintaining the Conservation Areas shall be deemed Common Expenses and the Unit Owners shall be responsible for paying same.



The Association is further charged with the duty to perpetually maintain all markers and signage required by SJRWMD permit governing the Community and the Association shall have a perpetual right and easement over the entire Community to maintain the Conservation Areas, and all markers and signs pertaining thereto.

THE CONSERVATION AREAS MAY IN NO WAY BE ALTERED FROM THEIR NATURAL OR PERMITTED STATE. ACTIVITIES PROHIBITED WITHIN THE CONSERVATION AREAS INCLUDE, BUT ARE NOT LIMITED TO, CONSTRUCTION OR PLACING OF BUILDINGS ON OR ABOVE THE GROUND, DUMPING OR PLACING SOIL OR OTHER SUBSTANCES SUCH AS TRASH, REMOVAL OR DESTRUCTION OF TREES, SHRUBS OR OTHER VEGETATION, WITH THE EXCEPTION OF EXOTIC/NUISANCE VEGETATION REMOVAL, EXCAVATION, DREDGING OR REMOVAL OF SOIL MATERIAL, DIKING OR FENCING, AND ANY OTHER ACTIVITIES DETRIMENTAL TO DRAINAGE, FLOOD CONTROL, WATER CONSERVATION, EROSION CONTROL OR FISH AND WILDLIFE HABITAT CONSERVATION OR PRESERVATION.

## **ARTICLE XVII WATER MANAGEMENT SYSTEM**

Section 1. Dedication. The Water Management System is hereby dedicated as part of the Common Areas. The Water Management System shall be the perpetual responsibility of the Association and may in no way be altered from its natural or permitted state.

Section 2. Maintenance and Monitoring. The Association shall be responsible for the maintenance, operation and repair of the Water Management System. Maintenance of the Water Management System shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the SJRWMD and the County. Any repair or reconstruction of the Water Management System shall be as permitted or if modified, as approved by the SJRWMD.

Section 3. Use Restrictions. The Association shall enforce the use restrictions for the Water Management System. Activities prohibited within the Water Management System shall include, but not be limited to:

- (a) Digging or excavation;
- (b) Depositing fill, debris, or any other material or item;
- (c) Constructing or altering any water control structure; or
- (d) Any other construction that would modify the Water Management System.

Section 4. Enforcement by District and the County. The SJRWMD and the County shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration and take enforcement measures, including a civil action for injunction and/or penalties, against the Association to compel the Association to correct any outstanding problems with the Water Management System.

Section 5. Dissolution of Association. If the Association ceases to exist, then all Owners shall be jointly and severally responsible for operation and maintenance of the Water Management System in accordance with the requirements of the Environmental Resource Permit, unless and until an alternate entity assumes responsibility for such system.

Section 6. Covenant for Maintenance Assessments for Association. Assessments shall also be used for the maintenance and repair of the Water Management System including but not limited to work within retention areas, drainage structures and drainage easements.

Section 7. Easement for Access and Drainage. The Association shall have a perpetual non-exclusive easement over all areas of the Water Management System for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any Unit which is a part of the Water Management System at a reasonable time and in a reasonable manner to operate, maintain or repair the Water Management System as required by the SJRWMD permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire Water Management System. No person shall alter the drainage flow of the Water Management System, including buffer areas or swails, without the prior written approval of the SJRWMD and the County.

Section 8. Amendment. Any amendment to this Declaration which alters any provisions relating to the Water Management System, beyond maintenance in its original condition, including the water management portions of the Common Areas, must have the prior approval of the SJRWMD and the County.

## **ARTICLE XVIII DISCLOSURES**

Section 1. Mildew. Given the climate and humid conditions in Florida, molds, mildew, toxins and fungi may exist and/or develop within the Unit, and/or the Property. Each Owner is hereby advised that certain molds, mildew, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose a health risk. By acquiring title to a Unit, each Owner shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi and to have released the Declarant from any and all liability resulting from same.

Section 2. Mitigation of Dampness and Humidity. No Unit Owner, excluding Declarant, shall install, within his or her Unit, or upon the Common Areas, non-breathable wall-coverings or low-permeance paints. Additionally, any and all built-in casework, furniture, and or shelving in a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board wall. Additionally, all Unit Owners, whether or not occupying the Unit, shall periodically run the air conditioning system to maintain the Unit temperature, whether or not occupied, at 78°F, to minimize humidity in the Unit. While the foregoing are intended to minimize the potential development of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of molds or mycotoxins. The Declarant does not make any representations or warranties regarding the existence or development of molds or mycotoxins and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of same. In furtherance of the rights of the Association as set forth in this Declaration, in the event that the Association reasonably believes that the provisions of this Section are not being complied with, then, the Association shall have the right (but not the

obligation) to enter the Unit (without requiring the consent of the Owner or any other party) to turn on the air conditioning in an effort to cause the temperature of the Unit to be maintained as required hereby (with all utility consumption costs to be paid and assumed by the Unit Owner). To the extent that electric service is not then available to the Unit, the Association shall have the further right, but not the obligation (without requiring the consent of the Owner or any other party) to connect electric service to the Unit (with the costs thereof to be borne by the Unit Owner, or if advanced by the Association, to be promptly reimbursed by the Owner to the Association, with all such costs to be deemed charges hereunder).

Section 3. Warranty Disclosure. To the maximum extent lawful, Declarant hereby disclaims any and all and each and every express or implied warranties, whether established by statutory, common, case law or otherwise, as to the design, construction, sound and/or odor transmission, existence and/or development of molds, mildew, toxins or fungi, furnishing and equipping of the Property, including, without limitation, any implied warranties of habitability, fitness for a particular purpose or merchantability, compliance with plans, all warranties imposed by statute and all other express and implied warranties of any kind or character. Declarant has not given and the Unit Owner has not relied on or bargained for any such warranties. Each Unit Owner, by accepting deed to a Unit, or other conveyance thereof, shall be deemed to represent and warrant to Declarant that in deciding to acquire the Unit, the Unit Owner relied solely on such Unit Owner's independent inspection of the Unit. The Unit Owner has neither received nor relied on any warranties and/or representations from Declarant of any kind, other than as expressly provided herein. All Unit Owners, by virtue of their acceptance of title to their respective Units (whether from the Declarant or another party) shall be deemed to have automatically waived all of the aforesaid disclaimed warranties and incidental and consequential damages. The foregoing shall also apply to any party claiming by, through or under a Unit Owner, including a tenant thereof. Buyer acknowledges and agrees that Declarant does not guarantee, warrant or otherwise assure, and expressly disclaims, any right to view and/or natural light.

Section 4. Unit Measurements. Each Owner, by acceptance of a deed or other conveyance of a Unit, understands and agrees that there are various methods for calculating the square footage of a Unit, and that depending on the method of calculation, the quoted square footage of the Unit may vary by more than a nominal amount. Additionally, as a result of in the field construction, other permitted changes to the Unit, and settling and shifting of improvements, actual square footage of a Unit may also be affected. By accepting title to a Unit, the applicable Owner(s) shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit, regardless of any variances in the square footage from that which may have been disclosed at any time prior to closing, whether included as part of Declarant's promotional materials or otherwise. Without limiting the generality of this Section, Declarant does not make any representation or warranty as to the actual size, dimensions or square footage of any Unit, and each Owner shall be deemed to have fully waived and released any such warranty and claims for losses or damages resulting from any variances between any represented or otherwise disclosed square footage and the actual square footage of the Unit.

Section 5. Building Area. Units adjacent to water bodies within the Community may actually contain less building area than reflected on the Plat, and no Owner shall have any claim(s), cause(s) of action or basis for any demand(s) against Declarant and/or the Association as a result thereof or in relation thereto.

Section 6. Security. The Association will strive to maintain the Community as a safe, secure residential environment. HOWEVER, NEITHER THE ASSOCIATION NOR THE DECLARANT

SHALL IN ANY WAY BE CONSIDERED GUARANTORS OF SECURITY WITHIN THE COMMUNITY, NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL HAVE ANY OBLIGATION TO AFFIRMATIVELY TAKE ANY ACTION IN ORDER TO MAINTAIN THE COMMUNITY AS A SAFE, SECURE RESIDENTIAL ENVIRONMENT, AND NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD, THE DECLARANT AND COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES, ARE NOT GUARANTORS AND THAT EACH OWNER, TENANT, GUEST AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, LOTS, UNITS AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGE THE ASSOCIATION, ITS BOARD, THE DECLARANT AND COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

Section 7. Notices and Disclaimers as to Community Systems. Declarant, its affiliated entity, the Association, their successors or assigns may enter into contracts for the provision of security services through any Community Systems. DECLARANT, ITS AFFILIATED ENTITY, THE ASSOCIATION, THEIR SUCCESSORS OR ASSIGNS DO NOT GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH SECURITY SYSTEM OR SERVICES, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, NOTIFY AUTHORITIES OF FIRES OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME; AND EVERY OWNER OR OCCUPANT OF PROPERTY RECEIVING SECURITY SERVICES THROUGH THE COMMUNITY SYSTEMS ACKNOWLEDGES THAT DECLARANT, ITS AFFILIATED ENTITY, THE ASSOCIATION, ANY SUCCESSOR OR ASSIGN ARE NOT INSURERS OF THE OWNER OR OCCUPANT'S PROPERTY OR OF THE PROPERTY OF OTHERS LOCATED ON THE UNIT, DO NOT HAVE ANY OBLIGATION TO AFFIRMATIVELY TAKE ANY ACTION TO PREVENT SUCH OCCURRENCES, AND WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES OR DEATHS RESULTING FROM SUCH OCCURRENCES. It is extremely difficult and impractical to determine the actual damages, if any, which may proximately result from a failure on the part of a security service provider to perform any of its obligations with respect to security services and, therefore, every owner or occupant of property receiving security services through the Community Systems agrees that Declarant, its affiliated entity, the Association, any successor or assign assumes no liability for loss or damage to property or for personal injury or death to persons due to any reason, including, without limitation, failure in transmission of an alarm, interruption of security service or failure to respond to an alarm because of (a) any failure of the Owner's security system, (b) any defective or damaged equipment, device, line or circuit, (c) negligence, active or otherwise, of the security service provider or its officers, agents or employees, or (d) fire, flood, riot, war, act of God or other similar causes which are beyond the control of the security service provider. Every owner or occupant of a Unit obtaining security services through the Community Systems further agrees for himself, his grantees, tenants, guests, invitees, licensees and family members that if any loss or damage should result from a failure of performance or operation,



or from defective performance or operation, or from improper installation, monitoring or servicing of the system, or from negligence, active or otherwise, of the security service provider or its officers, agents, or employees, the liability, if any, of the Declarant, its affiliated entity, the Association, their successors or assigns for loss, damage, injury or death shall be limited to a sum not exceeding Two Hundred Fifty U.S. Dollars (\$250.00), which limitation shall apply irrespective of the cause or origin of the loss or damage and notwithstanding that the loss or damage results directly or indirectly from negligent performance, active or otherwise, or non-performance by an officer, agent or employee of Declarant, its affiliated entity, the Association, their successor or assign of any of same. Further, in no event will Declarant, its affiliated entity, the Association, their successors or assigns be liable for consequential damages, wrongful death, personal injury or commercial loss.

In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services.

Section 8. Notices and Disclaimers as to Water Bodies. NEITHER DECLARANT, THE ASSOCIATION, NOR ANY OF THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY OR WATER LEVEL OF/IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY WITHIN THE COMMUNITY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. THERE IS NO GUARANTY BY THE LISTED PARTIES THAT WATER LEVELS WILL BE CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES SHALL, FROM TIME TO TIME, EXCAVATE, CONSTRUCT AND MAINTAIN WATER BODIES WITHIN PROXIMITY TO THE PROPERTY. NOTWITHSTANDING THE FOREGOING, EXCAVATION OR CONSTRUCTION OF WATER BODIES SHALL BE PROHIBITED UNLESS OTHERWISE AUTHORIZED BY THE PERMITS. IN THE EVENT THAT THE EXCAVATION OR CONSTRUCTION OF WATER BODIES IS NOT AUTHORIZED BY SAID PERMITS, SUCH EXCAVATION OR CONSTRUCTION MAY ONLY TAKE PLACE IF A PERMIT MODIFICATION IS OBTAINED. BY THE ACCEPTANCE OF HIS OR HER DEED OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF THE PROPERTY, EACH SUCH OWNER, OCCUPANT OR USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES: (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES HEREUNDER OR AT LAW GENERALLY; (ii) NOT TO ENTER UPON, OR ALLOW CHILDREN, GUESTS OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY WATER BODY WITHIN THE PROPERTY EXCEPT AS SPECIFICALLY PERMITTED BY



THIS DECLARATION OR THE RULES AND REGULATIONS ADOPTED BY THE ASSOCIATION; (iii) DECLARANT, THE ASSOCIATION, AND THE OTHER LISTED PARTIES SHALL NOT BE LIABLE BUT, RATHER, SHALL BE HELD HARMLESS FROM ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES; (iv) ANY PURCHASE OR USE OF ANY PORTION OF THE PROPERTY HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING; AND (v) THIS ACKNOWLEDGEMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT TO SELL, CONVEY AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF THE PROPERTY.

FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY WATER BODY, ALL PERSONS USING SAME DOING SO AT THEIR OWN RISK.

ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS AND OTHER WILDLIFE MAY HABITAT OR ENTER INTO WATER BODIES WITHIN OR NEARBY THE COMMUNITY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE OBLIGATED TO ERECT FENCES, GATES OR WALLS AROUND OR ADJACENT TO ANY WATER BODY WITHIN THE COMMUNITY.

Section 9. Notices and Disclaimers as to Septic Systems. NEITHER DECLARANT, THE ASSOCIATION, NOR ANY OF THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING, REPAIRING OR REPLACING ANY INDIVIDUAL ON-SITE SEWAGE DISPOSAL SYSTEM (OSDS) OR ANY AND ALL IMPROVEMENTS RELATED THERETO (COLLECTIVELY, THE "SEPTIC SYSTEM"), SUCH OBLIGATIONS BEING THE SOLE RESPONSIBILITY OF THE UNIT OWNER, AS FURTHER DESCRIBED IN ARTICLE VII HEREIN, IN ACCORDANCE WITH THE TERMS AND PROVISIONS ENUMERATED IN CHAPTER 37, ARTICLE XVII, ORANGE COUNTY CODE OF ORDINANCES; SECTION 381.0065, FLORIDA STATUTES; CHAPTER 64E-6, FLORIDA ADMINISTRATIVE CODE AND ANY OTHER LAWS, REGULATIONS, CODES, ORDINANCES, PERMITS, RULES OR THE LIKE GOVERNING SEPTIC SYSTEMS ISSUED BY ANY FEDERAL, STATE OR LOCAL GOVERNMENT, OR ANY ADMINISTRATIVE AGENCY INCLUDING BUT NOT LIMITED TO THE FLORIDA DEPARTMENT OF HEALTH.

## ARTICLE XIX GENERAL PROVISIONS

Section 1. Duration. The covenants, conditions and restrictions contained in this Declaration or any amendment thereto shall run with and bind the land and any Owner or lessee thereof, and shall inure to the benefit of and be enforceable by the Declarant, the Association, or the Owner of any land

subject to this Declaration or any Supplemental Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded. The covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of two-thirds (2/3) of the Units is recorded which changes or terminates the covenants, conditions and restrictions in whole or in part. However, no instrument which changes or terminates the covenants, conditions or restrictions shall be effective unless executed and recorded at least ninety (90) days in advance of the end of the initial or any extension period hereof, and unless written notice of the proposed instrument is sent to every Owner at least ninety (90) days in advance of any action taken. Furthermore, any changes to this Declaration which affect requirements imposed by the Gated Community Provisions enumerated in Article XX herein must be approved by the County.

## Section 2. Amendment.

(a) Prior to Turnover Date. Prior to the Turnover Date, Declarant may unilaterally amend this Declaration for any purpose; provided, however, any such amendment shall not adversely affect title to any Unit unless the Owner shall consent thereto in writing and so long as said amendment is not unequivocally contrary to the overall, uniform scheme of development for the Community. The Association shall, forthwith upon the request of Declarant, join in any such amendments or modifications and execute such instruments to evidence such joinder and consent as Declarant shall, from time to time, request. Declarant's right to amend under this provision is to be construed as broadly as possible.

(b) After the Turnover Date. After the Turnover Date, the Declarant with the consent of the majority of the Board of Directors, may amend this Declaration, if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) required by an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make, purchase, insure or guarantee mortgage loans on the Units; or (iv) otherwise necessary to satisfy the requirements of any governmental agency; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

(c) By Owners. Subject to the other terms and conditions of this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five percent (75%) of the total Class "A" votes in the Association, and the consent of the Declarant, so long as the Declarant owns a Unit in the Community. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the land records of the County, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to so consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege, which consent may be withheld for any reason whatsoever.

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the property within the Community, which rules and regulations shall be consistent with the rights and duties established by this Declaration and the Architectural Review Requirements. Such rules and regulations shall be binding on all Owners and occupants.

Section 4. Termination. Should the Members vote not to renew and extend this Declaration, the Common Area owned by the Association shall be transferred to a trustee appointed by the Circuit Court of Orange County, Florida, which trustee shall sell the Common Area free and clear of the limitations imposed hereby upon terms established by a Circuit Court of Orange County, Florida. In such event, however, adequate provisions shall be made for the maintenance of any private water, sewer, streets or drainage facilities located within the Common Area, and such maintenance responsibility shall not become the responsibility of the County without its consent. The proceeds of a sale of the Common Area first shall be used for the payment of any debts or obligations constituting a lien on the Common Area, then for payment of any obligation incurred by the trustee in the operation, maintenance, repair or upkeep of the Common Area. The excess proceeds, if any, shall be distributed among the Owners in proportion to each Owner's Common Expenses.

Section 5. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the Person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 6. Controlling Agreement.

To the extent any provisions contained herein conflict with the Articles or the Bylaws, the provisions contained herein shall supersede such conflicting provisions contained in the Articles or Bylaws.

Section 7. Severability. Invalidation of any of the provisions of this Declaration by judgment or court order shall in no way affect any other provision, and the remainder of this Declaration shall remain in full force and effect. Further, it is the intent of Declarant that this Declaration be drafted in accordance with the provisions set forth in Chapter 720, Florida Statutes, as in effect on the date this Declaration is recorded and not being subject to subsequent amendments to Chapter 720, Florida Statutes; therefore, in the event that it is determined at any time and by any person that any provision or Section hereof is invalid under, in conflict with or in violation of any provision or section of Chapter 720, Florida Statutes, as enacted on the date this Declaration is recorded, then such provision or Section of this Declaration shall be deemed and interpreted to comply with such statute as if such provision or Section hereof had originally been drafted in such manner.

Section 8. Partition. The Common Area shall remain undivided, and no Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners within the Community and without the written consent of all holders of all mortgages encumbering any portion of the property within the Community.

Section 9. Gender and Grammar. The singular, wherever used herein shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 10. Captions. The captions of each Article and Section hereof are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 11. Conveyances of Common Area. The Association shall accept conveyances of Common Area as are made from time to time to the Association by Declarant.

Section 12. Mortgagee Provisions. The following provisions are for the benefit of holders, insurers and guarantors of first mortgages on Units in the Community. The provisions of this Section apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein:

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

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

(ii) Any delinquency in the payment of assessments or charges owed by a Unit subject to the mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Unit or the Owner or Occupant which is not cured within sixty (60) days. Notwithstanding this provision, any holder of a first mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or Bylaws which is not cured within sixty (60) days;

(iii) Any lapse, cancellation or material modification of any insurance policy maintained by the Association; or

(iv) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

(b) Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least seventy five percent (75%) of the first mortgagees or Members representing at least seventy five percent (75%) of the total Association vote entitled to cast consent, the Association shall not:



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

(ii) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner of a Unit (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration);

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

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

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

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

(c) Other Provisions for First Lien Holder. To the extent possible under Florida law:

(i) Any restoration or repair of the Community after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first mortgages on Units to which at least fifty one percent (51%) of the votes of Units subject to mortgages held by such Eligible Holders are allocated.

(ii) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first mortgages on Units to which at least fifty one percent (51%) of the votes of Units subject to mortgages held by such Eligible Holders are allocated.

(d) Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage or condemnation pursuant to Article X and Article XI, or to the addition of land in accordance with Article II.

(i) The consent of Members representing at least seventy five percent (75%) of the Class "A" votes and of the Declarant, so long as it owns any land subject to this



Declaration, and the approval of the Eligible Holders of first mortgages on Units to which at least seventy five percent (75%) of the votes of Units subject to a mortgage appertain, shall be required to terminate the Association.

(ii) The consent of Members representing at least seventy five percent (75%) of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of Eligible Holders of first mortgages on Units to which at least fifty one percent (51%) of the votes of Units subject to a mortgage appertain, shall be required materially, to amend any provisions of the Declaration, Bylaws or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern or regulate any of the following:

- (a) voting;
- (b) assessments, assessment liens or subordination of such liens;
- (c) reserves for maintenance, repair and replacement of the Common Area;
- (d) insurance or fidelity bonds; and
- (e) any provisions included in the Declaration, Bylaws or Articles of Incorporation, which are for the express benefit of holders, guarantors or insurers of first mortgages on Units;

provided that any changes related to the Community's infrastructure, as described in Article XX herein (including roads, drainage systems, etc.), must be approved by the County.

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

(f) Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Unit.

(g) Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

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

(i) Failure of Mortgagee to Respond. Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the mortgagee within sixty (60)

days of the date of the Association's request, provided such request is delivered to the mortgagee by certified or registered mail, return receipt requested.

Section 13. Rights Reserved for Declarant with Respect to Community Systems. Without limiting the generality of any other applicable provisions of this Declaration, and without such provisions limiting the generality hereof, Declarant hereby reserves and retains to itself:

(a) the title to any Community Systems and a perpetual easement for the placement and location thereof;

(b) the right to connect, from time to time, the Community Systems to such receiving or intermediary transmission source(s) as Declarant may in its sole discretion deem appropriate including, without limitation, companies licensed to provide CATV service in the County, for which service Declarant shall have the right to charge any users a reasonable fee (which shall not exceed any maximum allowable charge provided for in the Ordinances of the County);

(c) the right to offer monitoring/alarm services through the Community Systems;  
and

(d) the right to offer internet, telephone and other telecommunications services.

Neither the Association nor any officer, directors, employee, committee member or agent (including any management company) thereof shall be liable for any damage to property, personal injury or death arising from or connected with any act or omission of any of the foregoing during the course of performing any duty or exercising any right, privilege (including, without limitation, performing maintenance work which is the duty of the Association or exercising any remedial maintenance or alteration rights under this Declaration) required or authorized to be done by the Association, or any of the other aforesaid parties, under this Declaration or otherwise as required or permitted by law.

Section 14. Legal Actions By Associations. No judicial or administrative proceedings shall be commenced or prosecuted by the Association involving amounts in controversy in excess of \$100,000.00 unless approved by a majority of the voting interests at a meeting of the membership at which a quorum has been obtained. Any action brought by the Association against one of its Unit Owners or against the Declarant shall be resolved by binding arbitration in accordance with the rules and procedures of Construction Arbitration Services, Inc or its successor or an equivalent organization selected by the Board of Directors. Notwithstanding anything herein to the contrary, this section is not meant to limit the rights of the Association, any member of the Association, and any owner of land in the Community to bring action against the Association or the Developer to the limited extent provided in Section 34-290(18), Orange County Code, but only as to the limited matters provided in said ordinance.

Section 15. Legal Actions By Unit Owners. To the extent permitted by any applicable laws, no Unit Owner shall have the right to object, to challenge, and/or to commence any legal proceeding under any act, power, or authority now in force or hereafter to be enacted except after following such procedures as may be established by the Board of Directors by rule or regulation consistent with the provisions of this Declaration. The Executive Board, or a committee as may be appointed by the Board, shall hear claims from Unit Owners regarding alleged violations of the Declaration, Bylaws, and any rules and regulations (except for violations with respect to assessment obligations) of the

Association. The Board of Directors or such committee shall hold a hearing on any such claim within forty-five (45) days after receipt by the Executive Board of a written notice of claim and request for a hearing from a Unit Owner. A decision shall be issued in writing by the Executive Board or such committee (which decision may at the Executive Board or committee's discretion, but shall not be required, to include the rationale supporting the decision) within fifteen (15) days after the conclusion of the hearing, unless the parties involved agree to extend the timeframe for the decision.

Unless the internal remedies provided by this section and any rules and regulations as may be promulgated by the Executive Board, shall be expressly waived by the Association, or the Association fails or refuses to act, no legal proceeding shall be commenced by any Unit Owner until such internal remedy is pursued to exhaustion. Once all Association procedures are exhausted, any and all disputes arising out of the Declaration, Bylaws, and any rules and regulations (except for violations with respect to assessment obligations) of the Association and all other torts and statutory causes of action ("Claims") shall be resolved by binding arbitration in accordance with the rules and procedures of Construction Arbitration Services, Inc or its successor or an equivalent organization selected by Board of Directors.

Notwithstanding anything herein to the contrary, this section is not meant to limit the rights of the Association, any member of the Association, and any owner of land in the Community to bring action against the Association or the Developer to the limited extent provided in Section 34-290(18), Orange County Code, but only as to the limited matters provided in said ordinance.

Section 16. Indemnification. The Association and Owners, each, jointly and severally, covenant and agree to indemnify, defend and hold harmless Declarant, its officers, directors, shareholders, employees and any related persons or corporations and its successors and assigns, from and against any and all claims, suits, actions, causes of action or damages arising from any personal injury, loss of life or damages to property sustained on or about the Property, including, without limitation, breaches or defaults under the Permits or resulting from or arising out of activities or operations of the Association or Owners; from and against all costs, expenses and liabilities incurred in relation to or arising from any such claim, the investigation thereof, or the defense of any action or proceedings brought thereon, including without limitation, legal fees; and from and against any orders, judgments or decrees which may be entered relating to the foregoing. The costs and expense of fulfilling this covenant of indemnification shall be an association expense to the extent such matters are not covered by insurance maintained by the Association.

Section 17. Reliance. Before accepting a deed to a Unit, each Owner has an obligation to retain an attorney in order to confirm the validity of this Declaration. By acceptance of a deed to a Unit, each Owner acknowledges that he or she sought and received such an opinion or has made an affirmative decision not to seek such an opinion. Declarant is relying upon each Owner to confirm in advance of acquiring a Unit that this Declaration is valid, fair, and enforceable. Because such reliance is detrimental to Declarant, an estoppel and waiver shall, by and upon acceptance of a deed to a Unit, exist prohibiting each Owner from taking the position that any provision in this Declaration is invalid in any respect. As a further inducement for Declarant to subject the Community to this Declaration, each Owner does hereby release, waive, discharge, covenant not to sue, acquit, satisfy and forever discharge Declarant, its officers, directors, employees, agents and affiliates and assigns from any and all liability, claims, counterclaims, defenses, actions, causes of action, suits, controversies, agreements, promises and demands whatsoever, in law or in equity, which an Owner has or may have in the future, or which any personal representative, successor, heir

or assign of such Owner can, shall or may now or hereafter have against Declarant, its officers, directors, employees and/or agents, and/or its affiliates and assigns for, upon or by reason of any matter, cause or thing whatsoever with respect to or in relation to this Declaration or the exhibits attached hereto. This release and waiver is intended, and shall be interpreted and construed to be as broad and inclusive as permitted by the laws of the State of Florida.

Notwithstanding anything herein to the contrary, this section is not intended to limit or alter the express rights, obligations and terms which are expressly enumerated in Article XX herein as well as any County ordinance related to gated communities, but only to the limited extent provided in such Article XX or ordinance, and only to the extent same are applicable to this Community.

## **ARTICLE XX GATED COMMUNITY PROVISIONS**

Section 1. ESTABLISHMENT OF ACCOUNTS. The Association shall:

(a) Establish and maintain an Association account for annual routine maintenance and repair of the streets, sidewalks, and drainage system, including any stormwater detention/retention areas and/or the Surface Water or Stormwater Management System (referred to in this article as the “routine-infrastructure-maintenance account”), and impose the restrictions and requirements set forth in section Orange County Code §34-291 regarding that account;

(b) Establish and maintain an Association account for major capital repair and replacement of the Community’s streets (referred to in this article as the “capital-repair/streets account”), and impose the restrictions and requirements set forth in §34-291 regarding that account;

(c) Establish and maintain an Association account for major capital repair and replacement of the Community’s stormwater retention/detention facilities and/or the Surface Water or Stormwater Management system (referred to in this article as the “capital-repair/drainage pond account”) and impose the requirements and restrictions set forth in §34-291 regarding that account;

(d) Establish and maintain an Association account for major capital repair and replacement of other Community infrastructure such as sidewalks, stormwater conveyance systems, curbing, bike paths, etc. (referred to in this article as the “capital-repair/other infrastructure account”) and impose the requirements and restrictions set forth in §34-291 regarding that account;

(e) Establish and maintain an Association account for storm debris clean-up and removal, such as clearing downed trees, landscape, and other storm-created debris from the Community’s streets, sidewalks and drainage facilities (referred to in this article as the “storm debris removal account”) and impose the requirements and restrictions set forth in §34-291 regarding that account;



Section 2. REQUIRED ASSOCIATION ASSET ACCOUNTS. The association shall create, deposit monies into, retain in perpetuity, and replenish from time to time the following accounts, which are referred to in this article collectively as the “required Association accounts”:

- (a) A routine-infrastructure-maintenance account;
- (b) A capital-repair/streets account;
- (c) A capital-repair/drainage pond account;
- (d) A capital-repair/other infrastructure account; and
- (e) A storm debris removal account.

Each of these accounts must be asset accounts kept separate and apart from all other funds and accounts of the Association, and for accounting purposes the Association may not commingle these accounts, either with each other or with other funds and accounts of the Association. However, notwithstanding the foregoing, the monies in the above accounts may be commingled with monies in other Association accounts for banking and investment purposes, and may be pooled with other Association monies in a common investment program, so long as the financial books and records of the Association account for these monies separately and apart from all other Association monies and keep such monies earmarked for the purposes set forth below. All earnings from the investment of monies in the required Association accounts shall remain in their respective accounts and shall follow their respective principal.

### Section 3. USE OF ACCOUNTS.

(a) *Routine-infrastructure-maintenance account.* Monies on deposit in the routine-infrastructure-maintenance account, including any investment earnings, may be used by the Association, or by the Declarant with the written consent of the board of directors of the Association, only for scheduled maintenance and for unscheduled repair of the streets, drainage system, including the stormwater detention/retention areas and/or the Surface Water or Stormwater Management System, sidewalks, curbing, bike paths, traffic-control signage and other Association infrastructure appurtenant to the private roads and drainage systems. The monies on deposit in the account may also be used for scheduled maintenance and unscheduled maintenance and repair of the entrance and exit gates and their related facilities, but the streets and drainage-system maintenance and repair take priority over the maintenance and repair of the gates and related facilities.

(b) *Capital-repair/streets account.* Monies on deposit in the capital-repair/streets account, including any investment earnings, may be used by the Association only for resurfacing and related reconstruction of the streets in the Community, generally every twelve (12) years after issuance by the county of the certificate of completion for the streets. The monies on deposit in the account may not be expended earlier than the 12<sup>th</sup> anniversary of the issuance of the certificate of completion without the consent of no less than a simple majority of the Owners of platted lots (excluding the developer) in the Community, which consent may consist of written consent and/or voting consent at a meeting called in accordance with the bylaws of the Association, and the consents will be valid only if obtained after turnover of the



Community infrastructure to the Association. Under no circumstances may the monies in the account be expended before the Declarant turns over control of the Community infrastructure to the Association.

(c) *Capital-repair/drainage pond account.* Monies on deposit in the capital-repair/drainage pond account, including any investment earnings, may be used by the Association only for major repair and reconstruction of the stormwater detention/retention areas and/or the Surface Water or Stormwater Management System of the drainage system, generally every ten (10) years after issuance by the county of the certificate of completion for the stormwater detention/retention areas and/or the Surface Water or Stormwater Management System. The reconstruction and repair of the detention/retention areas will include, but not be limited to, dredging and sediment removal. The monies on deposit in the account may not be expended earlier than the 10<sup>th</sup> anniversary of the issuance of the certificate of completion without the written consent of no less than a simple majority of the Owners of platted lots (excluding the Declarant) in the Community, which consent may consist of written consent and/or voting consent at a meeting called in accordance with the bylaws of the Association, and the consents will be valid only if obtained after turnover of the Community infrastructure to the Association. Under no circumstances may monies in the account be expended before the Declarant turns over control of the Community infrastructure to the Association.

(d) *Capital-repair/other infrastructure account.* Monies on deposit in the capital-repair/other infrastructure account, including any investment earnings, may be used by the Association only for major repair, reconstruction, resurfacing, and replacement of the other parts of the infrastructure related to the private streets and drainage systems, such as the stormwater conveyance systems, sidewalks, curbing, and bike paths. The monies on deposit in the account may also be used for the major repair, reconstruction, and replacement of the entrance and exit gates and related facilities, but the repair, reconstruction, and replacement of the former items of infrastructure take priority over the repair, construction, and replacement of the entrance and exit gates and their related facilities.

(e) *Storm debris removal account.* Monies on deposit in the storm debris removal account, including any investment earnings, may be used by the Association only for the costs of storm debris clean-up and removal, such as clearing downed trees, landscape, and other storm-created debris from Association-owned streets, sidewalks, and drainage facilities (including stormwater detention/retention areas), and removing such debris to a landfill or other county-provided drop-off site.

#### Section 4. REQUIRED FUNDING; REQUIRED ASSESSMENTS.

(a) *Routine-infrastructure-maintenance account.* The Association must deposit each year into the routine-infrastructure-maintenance account an amount of money sufficient to perform all scheduled maintenance and unscheduled repair of the streets, drainage system, and other infrastructure during the subsequent year. The amount deposited, when added to investment earnings, must be no less than the amounts recommended by the engineer's report required in paragraphs (8)a and (9)b of subsection 34-290(h), plus an amount sufficient to cover scheduled and unscheduled maintenance and repair of the entrance and exit gates and their related facilities.

(b) *Capital-repair/streets account.* The Association must deposit each year into the capital-repair/streets account an amount sufficient for the streets to be resurfaced and, as related to the resurfacing, reconstructed no less frequently than every twelve (12) years, and the amount must be estimated by the Declarant and approved by the county prior to issuance of a certificate of completion for the streets. Deposits to the account must begin in the year in which the county issues its certificate of completion and must be completed no later than the year of the 12<sup>th</sup> anniversary of the issuance of the certificate. The amount deposited by the Association must be no less than one-twelfth of the estimate approved by the county. However, after turnover of the Association the schedule of deposit may be altered such that one or more annual deposits is less than one-twelfth of the estimate, but only if a simple majority or more of all Owners of platted lots in the Community consent in writing and/or by voting at a meeting called in accordance with the bylaws of the Association to approve the altered schedule. If the property Owners in the Community consent in writing to a different schedule of deposits, the revised schedule must result in the aggregate amount of deposits during the 12-year period being equal to or in excess of the estimate approved by the county. At the end of each 12-year period, the Association shall revise and update the estimated cost of resurfacing and, as related to the resurfacing, reconstructing the streets at the end of the next 12-year period, taking into consideration actual costs incurred and expected increases in road construction costs, and shall adjust the amount of its annual deposits to the account accordingly. If for any reason expenditures are made from the account prior to the end of the 12-year period, the amount of deposits to the account in the remaining years shall be adjusted so as to ensure that the account contains an amount sufficient at the end of the 12-year period to pay the costs of all expected repair and/or reconstruction and resurfacing requirements.

(c) *Capital-repair/drainage pond account.* The Association must deposit each year into the capital-repair/drainage pond account an amount sufficient for the stormwater detention/retention areas and/or the Surface Water or Stormwater Management System in the drainage system to be restored and repaired no less frequently than once every ten (10) years, and the amount must be estimated by the Declarant and approved by the county prior to the issuance of a certificate of completion for the drainage system. Deposits to the account must begin in the year of which the county issues its certificate of completion for the drainage system and must be completed no later than the year of the 10<sup>th</sup> anniversary of the issuance of the certificate. The amount deposited each year by the Association must be no less than one-tenth of the estimate approved by the county. However, after turnover of the Association, the schedule of deposits may be altered such that one or more annual deposits is less than one-tenth of the estimate, but only if a simple majority or more of all Owners of platted lots in the Community consent in writing and/or by voting at a meeting called in accordance with the bylaws of the Association to approve the altered schedule. If the property Owners consent to a different schedule of deposits, the revised schedule must result in the aggregate amount of deposits during the ten-year period being equal to or in excess of the estimate approved by the county. At the end of each 10-year period, the Association shall revise and update the estimate of the cost of restoring and repairing the stormwater detention/retention areas and/or the Surface Water or Stormwater Management System at the end of the next 10-year period, taking into consideration actual costs incurred and expected increases in drainage-system construction costs and shall adjust the amount of its annual deposits to the account accordingly. If for any reason expenditures are made from the account prior to the end of the 10-year period, the amount of deposits to the account in the remaining years will be adjusted so as to ensure that the account

contains an amount sufficient at the end of the 10-year period to pay the costs of all expected restoration and repair requirements.

(d) *Capital-repair/other infrastructure account.* The Association must deposit each year into the capital-repair/other infrastructure account an amount sufficient for other Community infrastructure related to the streets and drainage system, such as stormwater conveyance systems, sidewalks, curbing, and bike paths, to be reconstructed and/or repaired no less frequently than once every fifty (50) years, and the amount must be approved by the county prior to issuance of a certificate of completion for those improvements. Deposits to the account must begin in the year in which the county issues its certificate of completion for the improvements and must be completed no later than the 50<sup>th</sup> anniversary of the issuance of the certificate. The amount deposited each year by the Association must be no less than one-fiftieth of the estimate approved by the county. However, after turnover of the Association, the schedule of deposits may be altered such that one or more annual deposits is less than one-fiftieth (1/50) of the estimate, but only if a simple majority or more of all Owners of platted lots in the Community consent in writing and/or by voting at a meeting called in accordance with the bylaws of the Association to approve the altered schedule. If the property Owners consent to a different schedule of deposits, the revised schedule must result in the aggregate amount of deposits during the 50-year period being equal to or in excess of the estimate approved by the county. At the end of each 50-year period, the Association shall revise and update the estimate of the cost of reconstructing and/or repairing the improvements, taking into consideration actual costs incurred and expected increases in reconstruction and repair costs, and shall adjust the amount of its annual deposits to the account accordingly. If for any reason expenditures are made from the account prior to the end of the 50-year period, the amount of deposits to the account in the remaining years will be adjusted in a manner to ensure that the account contains an amount sufficient at the end of the 50-year period to pay the cost of all expected reconstruction and/or repair requirements.

(e) *Storm debris removal account.* The Declarant must deposit an initial amount into the storm debris removal account equal to two hundred fifty dollars (\$250.00) per acre of land in the platted Community (excluding wetlands, conservation areas, and natural waterbodies). The Association must deposit each year into the account, an amount equal to one-fifth the initial amount, until the storm debris account is equal to double the initial amount plus the annual Engineering News Record construction cost index. Subsequently, the Association must make deposits at least annually into the storm debris removal sufficient to maintain the balance at double the initial amount plus the annual Engineering News Record construction cost index. Any time the Association must expend funds in the storm debris removal account after a storm event, the Association shall replace such funds (by special assessment, of necessary) within three (3) years of such expenditure sufficient to bring/restore the balance of the storm debris removal account to the balance prior to the expenditures, plus the annual Engineering News Record construction cost index.

(f) To help ensure the financial ability of the Association to maintain the infrastructure after turnover of the infrastructure, the five (5) required accounts must be created and funded by the Declarant, in the initial amount required for the storm debris removal account in section 34-291(c)(5), and for the other four (4) required accounts, in an amount equal to one (1) year of assessments prior to plat recording or issuance of certificate of completion for the

streets, drainage, or other related improvements for the subdivision. Such initial assessments are in addition to any other assessments required to be paid by the developer under section 34-291(c)(7).

(g) The obligation to collect and pay assessments under Section 4 of this Article, shall commence as of the date on which the County issues its certificate of completion for the streets, drainage system, and other related improvements for the Community. However, if no plat has been recorded as of that date, the obligation to collect and pay assessments shall commence as of the date the plat is recorded in the public records of Orange County, Florida. The Association shall impose and collect assessments against each platted lot in the Community, including lots owned or controlled by the Declarant and by any Builder, without exception. The assessments shall be uniform and equitable and shall be imposed and collected in amounts sufficient, when added to investment earnings and other available revenues of the Association, if any, to make all required deposits to each of the required Association accounts.

(h) Notwithstanding the foregoing, if in the opinion of the County Engineer the subdivision infrastructure has substantially deteriorated at the time a plat is approved, the County may require an additional payment of assessments by the Declarant to address the loss of useful life of the deteriorated subdivision infrastructure.

Section 5. TURNOVER OF CONTROL. Declarant shall turn over control of the Community infrastructure on or before the Turnover Date,

(a) Prior to turnover of the Association and/or transfer of control of Community infrastructure:

(i) all maintenance and repair of streets, sidewalks and the drainage system, including the stormwater detention/retention areas and/or the Surface Water or Stormwater Management System, is the responsibility of the Declarant;

(ii) the Declarant may expend monies in the routine-infrastructure-maintenance account for such maintenance and repair, but only with the written consent of the Board of Directors of the Association; and

(iii) insufficiency of monies in the routine-infrastructure-maintenance account shall not act to relieve the Declarant of any responsibility to properly maintain and repair the streets, sidewalks, and drainage system (including the stormwater detention/retention areas and/or the Surface Water or Stormwater Management System).

(b) No earlier than one hundred eighty (180) days before turnover of the Association and/or transfer of control of Community infrastructure, the Association must:

(i) retain the services of a Florida-registered engineer experienced in Community construction (other than the engineer of record for the Community as of the date of the county's approval of the Community infrastructure construction plans, and engineers who are principals of, employed by, or contractor of the same firm as the engineer of record) to inspect the streets, sidewalks and drainage system, including the stormwater detention/retention areas and/or the Surface Water or Stormwater Management System, in accordance with the existing



approved plans, and prepare a report recommending the amount of scheduled maintenance and unscheduled repair that likely will be needed each year for the streets, sidewalks and drainage system (including the stormwater detention/retention areas and/or the Surface Water or Stormwater Management System), in accordance with standards that may be established and revised from time to time by the County Engineer or his or her designee, which recommends the amounts of money that should be deposited each year in the routine-infrastructure-maintenance account, and determining what repairs if any, are needed prior to turnover of the Association;

(ii) require that the report be signed and sealed by the engineer;

(iii) pay the cost of this initial engineer's report, and the Association may pay such cost from the routine-infrastructure-maintenance account; and

(iv) provide a copy of the report to all Owners of lots, blocks, and tracts in the Community and to the County Engineer within fifteen (15) days after it is completed.

(c) Any needed repairs or replacements identified by the report shall be completed by the Declarant, at the Declarant's sole expense, prior to either the Declarant's turnover of the Association to the property Owners of the Community or transfer of control of Community infrastructure to the Association, whichever occurs first.

(d) If turnover of the Association and/or transfer of control of Community infrastructure occurs and the foregoing requirements have not been fulfilled, the right of the Association, any of its members, and any and all Owners of land in the Community to enforce these requirements against the Declarant shall survive the turnover of the Association, with the prevailing party to be entitled to attorneys' fees and costs.

(e) After turnover of control of the Association, or turnover of control of the Community infrastructure:

(i) the Association shall obtain an inspection of the streets, sidewalks and drainage systems, including the stormwater detention/retention areas and/or the Surface Water or Stormwater Management System, by a Florida-registered engineer experienced in subdivision construction no less frequently than once every three years after the initial engineer's inspection; and

(ii) using good engineering practice, and in accordance with standards that may be established and revised from time to time by the County Engineer or his or her designee, or in accordance with such other standards as may be adopted from time to time by the Association, or in accordance with such standards as the Association's engineer may determine to be appropriate, the Association shall ensure that:

(a) the inspection determine the level of maintenance and repair (both scheduled and unscheduled) needed, the amounts of funding needed each year for the next three years in the routine-infrastructure-maintenance account to



- pay for such maintenance and repair, and any repairs then needed;
- (b) the inspection be written in a report format;
- (c) a copy of each engineering report be provided to each Owner of property in the Community within fifteen (15) days of completion of the report; and
- (d) within one hundred eighty (180) days of receipt of each tri-annual engineering report, the Association complete all remedial work identified and recommended by the engineer.

#### Section 6. GENERAL PROVISIONS.

(a) The Declarant (so long as the Declarant retains control of the board of directors of the Association) and the Association expressly indemnify and hold Orange County and its officers and employees harmless from any cost of maintenance, repair, and reconstruction of, or tort liability or award of damages related to or arising in connection with, the streets, sidewalks, drainage system (including stormwater retention/detention area), and/or any other Community infrastructure.

(b) Owners receive no discount in property or other taxes because of private streets or drainage system.

(c) Each initial purchase of a lot in the Community for the personal or family use of the purchaser shall receive a copy of this Declaration at or prior to the time the sales contract is executed, together with the current budget for the Association, including a schedule disclosing the then-existing amounts of the periodic assessments for each of the Association accounts required by §34-291, of the Orange County code, and a copy of the most recent year-end financial statement for the Association, and if none are then existing, a good faith estimate of the Association operating budget, along with a form to be signed by such initial purchaser acknowledging receipt of a copy of the Declaration, budget, financial statement or good faith estimate, and that the original of the form acknowledging receipt of a copy of the Declaration shall be attached to the sales contract as an exhibit or appendix. The schedule shall also state that the periodic assessments for the Association accounts required by §34-291 do not include assessments for either the routine maintenance of or the capital repair and replacement of Association facilities not related to Community infrastructure (such as common area landscaping, entrance and exit gates, walls, swimming pools, clubhouses, parks, other recreation areas, etc.).

(d) No contract for the sale and purchase of a residential lot or home in the Community shall be effective until a Gated Community Cost Disclosure Statement in substantially the following form has been provided to and executed by such purchaser, provided that in the case of a sale and purchase of multiple lots to a single purchaser, execution of single disclosure statement is sufficient provided that all lots are listed on the disclosure statement either by legal description or by street address.

## GATED COMMUNITY COST DISCLOSURE STATEMENT

IF YOU ARE BUYING A LOT OR HOME IN A PRIVATE GATED COMMUNITY IN ORANGE COUNTY YOU SHOULD KNOW THESE BASIC FACTS:

1. ORANGE COUNTY IS PROHIBITED FROM PAYING TO MAINTAIN THE ROADS, SIDEWALKS AND DRAINAGE AND MAY NOT BE PERMITTED TO REMOVE STORM DEBRIS IN THIS COMMUNITY BECAUSE THE ROADS, SIDEWALKS, AND DRAINAGE ARE PRIVATE PROPERTY AND THE GENERAL PUBLIC CANNOT ACCESS THE COMMUNITY.

2. ALTHOUGH THE COST OF PROPERLY MAINTAINING AND REPAIRING ROADS, SIDEWALKS AND DRAINAGE SYSTEMS CAN BE VERY HIGH, ONLY THE OWNERS OF HOMES AND LOTS IN THIS COMMUNITY WILL SHARE THESE EXPENSES. TAX DOLLARS WILL NOT BE USED. THE MEMBERS MUST ALSO PAY FOR THE COST OF LIABILITY INSURANCE AND TRAFFIC ENFORCEMENT ON THE COMMUNITY'S ROADS.

3. UNDER FLORIDA LAW, NO REDUCTION IN YOUR TAX BURDEN WILL RESULT FROM LIVING IN THIS COMMUNITY.

4. MEMBERS OF THIS COMMUNITY, THROUGH THEIR MANDATORY HOMEOWNERS' ASSOCIATION, MUST SET ASIDE ADEQUATE RESERVES TO PAY FOR STORM DEBRIS REMOVAL IN THE EVENT OF TORNADO, HURRICANE, OR OTHER MAJOR STORM EVENT, TO PROPERLY MAINTAIN, REPAIR AND REPLACE THE ROADS, SIDEWALKS, AND DRAINAGE SYSTEM, AND MUST HAVE A PROFESSIONAL ENGINEER REGULARLY INSPECT THE ROADS, SIDEWALKS AND DRAINAGE SYSTEM AND REPORT WHAT WORK IS NECESSARY TO MAINTAIN AND/OR REPAIR THEM. THE MANDATORY HOMEOWNERS' ASSOCIATION IS OBLIGATED TO DO THE NECESSARY WORK REPORTED AND THE MEMBERS OF THE HOMEOWNERS' ASSOCIATION PAY FOR THE WORK THROUGH THEIR ASSESSMENTS.

5. THE EXTRA EXPENSES YOU INCUR TO MAINTAIN THE ROADS, SIDEWALKS AND DRAINAGE IN YOUR COMMUNITY ARE IN ADDITION TO OTHER

EXPENSES CHARGED BY YOUR HOMEOWNERS ASSOCIATION TO PAY FOR PRIVATE RECREATIONAL, SECURITY AND OTHER AMENITIES AND SERVICES THE COMMUNITY MAY OFFER, INCLUDING THE COMMUNITY'S GATES.

6. AS WITH ANY ASSESSMENT, THE FAILURE OR INABILITY TO PAY MAY LEAD TO A LIEN BEING PLACED ON YOUR HOME. IF A LIEN IS PLACED AND FORECLOSED, YOU COULD LOSE YOUR HOME.

7. THE HOMEOWNERS ASSOCIATION IS ALSO REQUIRED TO MAINTAIN LIABILITY INSURANCE ADEQUATE TO PAY CLAIMS FOR INJURIES AND PROPERTY DAMAGE ARISING ON THE PRIVATE ROADWAY, SIDEWALKS, DRAINAGE PONDS, AND OTHER COMMON AREAS IN THE NEIGHBORHOOD.

8. IF ORANGE COUNTY DETERMINES THAT THE COMMUNITY IS NOT MEETING ITS OBLIGATIONS, IT MAY REVOKE THE COMMUNITY'S PRIVILEGE TO CLOSE IT GATES SO THAT THE ROADS IN THE COMMUNITY BECOME AVAILABLE FOR PUBLIC USE.

9. IF THE COMMUNITY FAILS TO MAINTAIN ITS ROADS, SIDEWALKS AND DRAINAGE SYSTEM, THE COUNTY MAY REQUIRE THAT THE GATES BE REMOVED. IN THE EVENT THE GATES ARE REMOVED, AND THE HOA DEDICATES THE ROADS AND OTHER INFRASTRUCTURE TO THE COUNTY, ALL COSTS AND EXPENSES WHICH ORANGE COUNTY INCURS FOR SUCH MAINTENANCE ARE RECOVERABLE FROM THE COMMUNITY. FUNDS WHICH HAVE BEEN SET ASIDE BY THE COMMUNITY MAY BECOME THE PROPERTY OF ORANGE COUNTY, AND THE ROADS IN YOUR COMMUNITY SHALL PERMANENTLY BECOME OPEN TO THE PUBLIC. ORANGE COUNTY WILL MAINTAIN YOUR RECREATIONAL, SECURITY AND OTHER AMENITIES UNDER ANY CIRCUMSTANCES.

10. BEFORE YOU SIGN A CONTRACT BE SURE THAT YOU RECEIVE WRITTEN INFORMATION ABOUT THE COSTS OF LIVING IN THIS COMMUNITY.

"I HAVE READ AND UNDERSTAND THE DISCLOSURES PROVIDED IN THIS DISCLOSURE STATEMENT PRIOR TO EXECUTION OF A CONTRACT TO

PURCHASE ANY LOT IN THE FONTANA ESTATES  
COMMUNITY SUBDIVISION.”

(e) Upon any default by the Association or the Declarant in any requirements of either this article or the Declaration, the County, at its option and after due notice of its declaration of a default and a reasonable time to cure, may prohibit closure of the gates and, upon dedication or conveyance of the rights-of-way to the County, assume responsibility for maintenance, using all Association monies on deposit in the routine-infrastructure-maintenance account and the several capital-repair accounts or, if no monies exist or if an insufficient amount exists, using such other revenues or financing methods as the County may elect, including (but not limited to) special assessments against the property lots, blocks, and tracts.

(f) The Association shall carry an insurance policy insuring itself from liability for damages related to or arising in connection with the streets, sidewalks, drainage system (including detention/retention areas). The minimum amount of insurance required shall be established by resolution of the board of County commissioners.

(g) Enforcement of traffic laws within the Community, as requested by the Association, shall be by the sheriff and all costs of enforcement incurred by the sheriff shall be paid by the Association.

(h) In the event of a dispute between any owner and the Declarant, or between the Association and the Declarant, with respect to the repair and maintenance of the streets, sidewalks, and drainage system and/or funding for such maintenance and repair, such dispute may be resolved by non-binding mediation in accordance with the rule promulgated by the American Arbitration Association.

(i) The Association, any Member of the Association, and any and all Owners of land in the Community shall have the right jointly and severally to enforce against the Declarant the requirements of this article and the provisions of this Declaration, and the prevailing party shall be entitled to attorneys' fees and costs.

(j) Any Member of the Association and any and all Owners of land in the Community shall have the right to enforce against the Association the requirements of this article and the provisions of this Declaration, and the prevailing party shall be entitled to attorneys' fees and costs.

(k) Venue for any such enforcement action shall be in the Ninth Judicial Circuit of Florida, in Orange County.

(l) If and when the property is annexed to a municipality, the rights and privileges inuring to the County's benefit under this article shall be deemed assigned to the municipality and shall inure automatically to the municipality's benefit.

(m) Any transfer of Community infrastructure (including the property on which the Community infrastructure is located) to Orange County or other governmental entity is prohibited without the concurrence of the Owners of two-thirds (or such higher percentage as the declaration may provide) of the platted lots.

(n) Each year the Association shall cause a financial report of the required Association accounts to be performed and prepared, and a copy of the report shall be submitted to each owner of property in the Community within the time frame required under the "Financial Reporting" requirements of chapter 720, *Florida Statutes*. At a minimum, the report shall confirm the existence of each of the required Association accounts and report the amounts of deposits into and expenditures from the account during the period year, along with an itemization of the expenditures from the required Association accounts. Finally, the financial report shall disclose whether any of the required Association accounts has on deposit less than the amount required under the Declaration.



IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written.

WITNESSES:

"Declarant"

**TOLL FL VIII LIMITED PARTNERSHIP,**  
a Florida limited partnership

Name: Janet Rusk  
Name: Terese Hamm

By: [Signature]  
Print Name: Jim Reinert  
Print Title: Division Vice President

STATE OF FLORIDA )  
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 5 day of May, 2011, by Jim Reinert, as Division VP of **TOLL FL VIII LIMITED PARTNERSHIP**, a Florida limited partnership, on behalf of the partnership. He She is personally known to me or has produced \_\_\_\_\_ as identification.



[Signature]  
Notary Public  
Print Name: Janet Rusk  
Commission No. DD 967682  
My Commission Expires: 3/4/14

- Exhibit "A" – Legal Description of property in the Community
- Exhibit "B" – Articles of Incorporation
- Exhibit "C" – Bylaws
- Exhibit "D" – [Intentionally Omitted]
- Exhibit "E" – Declarant Guarantee
- Exhibit "F" – Site Plan
- Exhibit "G" – St. Johns River Water Management District – Permit #40-095-106299-1

**CONSENT AND JOINDER**

**FONTANA ESTATES COMMUNITY HOMEOWNERS ASSOCIATION, INC.**, does hereby join in the document to which this joinder is attached, and the terms are and shall be binding upon the undersigned and its successors in title. This Joinder is for convenience only, and not a requirement of any document, or a condition precedent to the effectiveness of the document to which it is attached.

IN WITNESS WHEREOF, this Consent is executed this 5 day of May, 2011.

WITNESSES:

**FONTANA ESTATES COMMUNITY HOMEOWNERS ASSOCIATION, INC.**, a Florida corporation

Angela Moody  
Print Name: Angela Moody

By: Chris Felle  
Print Name: CHRIS FELLE  
Its: Secretary/Treasurer

Teresa Homan  
Print Name: Teresa Homan

Eris Thrushman  
Print Name: ERIS THRUSHMAN

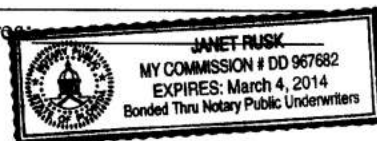
By: Brock Fanning  
Print Name: BROCK FANNING  
Its: VICE President

Matt Bailey  
Print Name: MATT BAILEY

STATE OF FLORIDA  
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 5 day of May, 2011, by Chris Fedele as Secretary/Treasurer and Brock Fanning as Vice President, of **FONTANA ESTATES COMMUNITY HOMEOWNERS ASSOCIATION, INC.**, a Florida corporation, on behalf of the corporation. They are personally known to me or have produced \_\_\_\_\_ and \_\_\_\_\_, respectively, as identification.

Janet Rusk  
Notary Public  
Print Name: Janet RUSK  
Serial #: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE COMMUNITY**

The North 1/2 of the Southwest 1/4 of Section 10, Township 22 South, Range 32 East, Orange County, Florida, Less and Except the North 30 feet thereof for a Road Right-of-Way.

**EXHIBIT "B"**  
**ARTICLES OF INCORPORATION**

850-617-6381

4/22/2011 11:44:36 AM PAGE 2/003 Fax Server

**Department of State**

I certify the attached is a true and correct copy of the Articles of Incorporation of FONTANA ESTATES COMMUNITY HOMEOWNERS ASSOCIATION, INC., a Florida corporation, filed on April 21, 2011, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H11000108690. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N11000004059.

Authentication Code: 611A00009813-042211-N11000004059-1/1

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Twenty-second day of April, 2011



Kurt S. Browning  
Secretary of State



**ARTICLES OF INCORPORATION  
OF  
FONTANA ESTATES COMMUNITY HOMEOWNERS ASSOCIATION, INC.**

THE UNDERSIGNED, in accordance with the provisions of Chapter 617, *Florida Statutes*, hereby make, subscribe and acknowledge these Articles of Incorporation for the purpose of forming a nonprofit Florida corporation.

**ARTICLE I**

The name of the corporation is FONTANA ESTATES COMMUNITY HOMEOWNERS ASSOCIATION, INC., and its mailing address and principal office address is c/o Toll Bros., Inc., 2966 Commerce Park Dr., Suite 100, Orlando, FL 32819.

**ARTICLE II**

All undefined terms appearing in initial capital letters herein shall have the meaning ascribed to them in that certain Declaration of Covenants, Conditions and Restrictions of FONTANA ESTATES COMMUNITY (the "Declaration"), as it may be amended from time to time.

**ARTICLE III**

This corporation does not contemplate pecuniary gain or profit, direct or indirect to its members, and its primary purposes are:

Section 1. To promote the health, safety and, social welfare of the owners of all lots located within Fontana Estates Community, a planned community within Orange County, Florida (the "Community");

Section 2. To maintain all portions of the Community and improvements thereon for which the obligation to maintain and repair has been delegated to the corporation by the Declaration which is to be recorded in the public records of Orange County, Florida;

Section 3. To contract for the operation and maintenance of the Common Areas or Surface Water Management System and Stormwater Management System and to delegate any powers and duties of the Association in connection therewith, except such as specifically required by the Declaration to be exercised by the Board of Directors or the membership of the Association;

Section 4. To operate and maintain the Surface Water Management System and Stormwater Management Systems, including all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, flood plain compensation areas, wetlands and any associated buffer areas, and wetland mitigation areas. Moreover, the Association shall operate, maintain, and manage the Surface Water Management System and Stormwater Management System in a manner consistent with the District's permit requirements and applicable District rules and regulations, and the terms and conditions of the Declaration (including enforcement provisions) which relate to the Surface Water Management System and Stormwater Management System. Additionally, the Association shall levy and collect adequate

## ARTICLE VII

The affairs of the corporation are to be managed by a President, a Vice President, a Secretary, a Treasurer and such other Officers as the Bylaws of the corporation may provide for from time to time. All Officers shall be elected by the Board at the first meeting of the Board of Directors following the annual meeting of the corporation and shall hold office until the next succeeding annual election of Officers or until their successors are elected and qualify.

The names of the Officers who are to serve until the first meeting of the Board following the annual meeting of the corporation are:

JIM REINERT	President
BROCK FANNING	Vice President
CHRIS FEDELE	Secretary/Treasurer

In the event of a vacancy in any office, the vacancy shall be filled by a majority vote of the Board of Directors.

## ARTICLE VIII

Each Owner of a Unit within the Community shall be entitled to one (1) vote for each owned Unit or as otherwise more fully set forth in the Declaration.

## ARTICLE IX

**Voting Rights.** The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" Members shall be all Owners, with the exception of the Declarant. Class "A" Members shall be entitled to one (1) equal vote for each Unit owned in the Community. When more than one (1) person holds an ownership interest in any Unit, all such persons shall be Members, provided that only one vote may be cast on behalf of all such Members holding an ownership interest in any one Unit. The vote for such Unit shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended in the event more than one (1) person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve or withhold approval of actions proposed under this Declaration and the Bylaws, are specified elsewhere in the Declaration and the Bylaws. The Class "B" Member may appoint a majority of the members of the Board prior to the Turnover Date. Following the Turnover Date, the Declarant shall have a right to disapprove actions of the Board and committees as provided in the Bylaws. Additionally, prior to the Turnover Date, the Class "B" Member shall be entitled to ten (10) votes for each Unit owned. After the Turnover Date, the Declarant shall be entitled to one (1) vote for each Unit owned, and shall be entitled to all rights and privileges associated with Class "A" membership in addition to all rights reserved to the Declarant as enumerated in the Declaration, these Articles of Incorporation, and the Bylaws.

The Class "B" Member shall terminate upon the earlier of:

- (i) After certificates of occupancy have been issued for ninety percent (90%) of the platted Units.
- (ii) 20 years after the date on which the Declaration is recorded in the public records of Orange County, Florida; or
- (iii) When, in its discretion, the Declarant so determines and declares in a recorded instrument, provided, however, that Declarant shall not be permitted to voluntarily relinquish control sooner than the point in time that certificates of occupancy have been issued for at least seventy percent (70%) of the platted Units.

#### ARTICLE X

Thirty percent (30%) of the total vote that could be cast at any annual or special meeting, represented in person or by proxy, shall constitute a quorum at any meeting of the Members. If a quorum cannot be reached at any meeting of the membership, the meeting may be adjourned and reconvened without notice other than announcement at the meeting. Adjourned and reconvened meetings shall be at least three (3) days apart and, if a quorum is reached, any business may be transacted which might have been transacted at the adjourned meeting.

#### ARTICLE XI

This corporation shall never have nor issue any shares of stock, nor shall this corporation distribute any part of the income of this corporation, if any, to its Members, Directors or Officers. However, the corporation shall not be prohibited from reasonably compensating its Members, Directors, or Officers for services rendered, nor shall the corporation be prohibited from making any payments or distributions to members of benefits, monies or properties permitted by Chapter 617, *Florida Statutes*.

#### ARTICLE XII

The corporation shall have all the powers set forth and described in Chapter 617, *Florida Statutes*, as presently existing or as may be amended from time to time, together with those powers conferred by the Declaration, these Articles of Incorporation and the Bylaws of the corporation, including, but not limited to, assess members for all expenses incurred in connection with maintaining and operating the Surface Water Management System and Stormwater Management System and the right to enforce that assessment pursuant to the imposition of liens.

#### ARTICLE XIII

The corporation shall indemnify all persons who may serve or who have served at any time as Director or Officers, and their respective heirs, administrators, successors and assigns against any and all expenses, including amounts paid upon judgments, counsel fees, and amounts paid in settlement (before or after suit is commenced), actually and necessarily incurred in connection with the defense or settlement of any claim, action, suit or proceeding in which they or any of them are made a party, or which may be asserted against any of them, by reason of having been a Director or Officer of the corporation, except in such cases where the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties.

Such indemnification shall be in addition to any rights to which such Director or Officer may otherwise be entitled.

#### ARTICLE XIV

In the absence of fraud, no contract or other transaction between this corporation or any other person, firm, association, corporation or partnership shall be affected or invalidated by the fact that any Director or Officer of this corporation is pecuniarily or otherwise interested in, or is a director, member or officer of any such firm, association, corporation or partnership. Any director may vote and be counted in determining the existence of a quorum at any meeting of the Board of Directors for the purpose of authorizing contract or transaction with like force and effect as if he were not so interested, or not a director, member or officer of such other firm, association, corporation or partnership.

#### ARTICLE XV

The Bylaws of this corporation are to be made and adopted by a majority vote of the Directors and said Bylaws may not be altered, amended, rescinded or added to except as provided in the Bylaws.

#### ARTICLE XVI

These Articles of Incorporation may be amended, altered, rescinded, or added to by appropriate resolution approved by a two-thirds (2/3) vote of the voting interest of the Members present at any duly convened membership meeting or, alternatively, by appropriate resolution adopted by a two-thirds (2/3) vote of the Board of Directors at any duly convened meeting of the Board and accepted by a two-thirds (2/3) vote of the voting interest of the Members present at any duly convened membership meeting. Any Member of this corporation may propose an amendment to the Articles of Incorporation to the Board or the membership, as the case may be. Notwithstanding the foregoing, until termination of the Class B Membership, any changes in the Articles of Incorporation may be made by a majority vote of the Board of Directors. Any proposed amendment to these Articles, which would affect the Surface Water Management System and Storm Water Management System (including environmental conservation areas and the water management portions of the Common Elements), must be submitted to the District or its successors for a determination of whether the amendment necessitates a modification of the applicable permit.

#### ARTICLE XVII

To the extent any provisions contained herein conflict with the Declaration, the provisions contained in the Declaration shall supersede such conflicting provisions contained herein.

IN WITNESS WHEREOF, the undersigned subscriber has executed these Articles of Incorporation, this 19 day of APRIL, 2011.

  
JIM REINERT

**DESIGNATION OF REGISTERED AGENT  
AND REGISTERED OFFICE**

The initial registered agent of this corporation shall be CT Corporation System. The initial registered office of this corporation shall be 1200 South Pine Island Road, Plantation, Florida 33324.

**ACCEPTANCE**

Having been named registered agent to accept service of process for the above-named corporation, I hereby accept to act in this capacity and agree to comply with the provisions of Section 48.091, *Florida Statutes*.

CT CORPORATION SYSTEM

By: Madonna Cuddihy

Print Name: \_\_\_\_\_

Title: Madonna Cuddihy  
Special Assistant Secretary



**EXHIBIT "C"**

**BYLAWS**

**BYLAWS  
OF  
FONTANA ESTATES COMMUNITY HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I  
IDENTITY**

Section 1. Name. The name of this corporation is Fontana Estates Community Homeowners Association, Inc. ("**Association**").

Section 2. Address. The address of the initial principal office of the Association is c/o Toll Bros., Inc., 2966 Commerce Park Dr., Suite 100, Orlando, FL 32819.

**ARTICLE II**

**DEFINITIONS**

All terms used herein which are defined in that certain Declaration of Covenants, Conditions and Restrictions of Fontana Estates Community (hereinafter "**Declaration**"), as it may be amended from time to time, shall have the same meaning herein as therein.

**ARTICLE III**

**MEMBER MEETINGS**

Section 1. Annual Meeting. The annual meeting of the Members for the election of Directors and the transaction of whatever other business may properly come before the Members shall be held as outlined below.

Section 2. Notice. Notice of the annual meeting shall be mailed, postage prepaid, not less than fourteen (14) days and not more than sixty (60) days prior to the date of the annual meeting and shall state the purpose, time and location of the meeting. Such notice shall be addressed to the Member at the address of the Member as set forth in the Association's books and records.

Section 3. Special Meetings. Special meetings of the Members may be called for any purpose at any time by a majority of the Board, or by the written petition of fifty percent (50%) or more of the total voting interests of the Members, setting forth the purpose of the special meeting. Notice of such special meeting shall be in the same form and mailed in the same manner as for the annual meeting. Written notice of special membership meetings stating the time, place and date of such meeting shall be served upon or mailed to each Member entitled to notice at least fourteen (14) days but not more than sixty (60) days prior to such meeting, except in the case of an emergency, in which case notice shall be given that is reasonable under the circumstances. Members may waive notice of special membership meetings prior to, at or subsequent to any meetings of Members except where prohibited by law. Nothing in these Bylaws shall be construed to prevent Members from acting by written agreement without meetings, as more particularly set forth in Section 3.12 hereof.

Section 4. Quorum. Thirty percent (30%) of the total vote that could be cast at any annual or special meeting, represented in person or by proxy, shall constitute a quorum at any meeting

of the Members. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough to leave less than a quorum, provided that Members representing at least 25% of the total Class "A" votes in the Association remain in attendance, and provided that any action taken is approved by at least a majority of the votes required to constitute a quorum. A majority of the votes cast shall decide each matter submitted to the Members at a meeting, except in cases where a larger vote is specifically required.

Section 5. Order of Business. The order of business at Members' meetings shall be substantially as follows:

- A. Call of the roll and certification of quorum;
- B. Proof of notice of meeting or waiver of notice;
- C. Reading of minutes and disposal of any unapproved minutes;
- D. Reports of Officers;
- E. Reports of Committees;
- F. Election of Directors;
- G. Old Business;
- H. New Business; and
- I. Adjournment.

Section 6. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

Section 7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

Section 8. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated by reference.

Section 9. Proxies. No proxy shall be valid unless signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to any meeting for which it is to be effective. No proxy shall be valid after two (2) months from its date of execution unless otherwise specified in the proxy.

Section 10. Majority. As used in these Bylaws, the term "majority" shall mean those votes, Members, or other group as the context may indicate totaling more than 50% of the total eligible number.

Section 11. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

Section 12. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business in the State of Florida. Such consents shall be filed with the minutes of the Association, and shall have the same force and effect as a unanimous vote of the Members.

#### **ARTICLE IV BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS COMPOSITION AND SELECTION**

Section 1. Governing Body; Composition. The affairs of the Association shall be overseen by a Board of Directors, each of whom shall have one (1) equal vote. Except with respect to directors appointed by the Class "B" Member or the Declarant, the directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time. In the case of a Member which is not a natural person, any officer, director, partner or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member.

Section 2. Number of Directors. The number of directors in the Association shall be not less than three (3) nor more than seven (7), as provided in Section 4.5 below. The initial Board shall consist of three directors as identified in the Articles of Incorporation.

Section 3. Directors prior to the Turnover Date. Subject to the provisions of Section 4.5 below, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

- (a) after certificates of occupancy have been issued for ninety percent (90%) of the lots;
- (b) 20 years after the date on which the Declaration is recorded in the public records of Orange County, Florida; or
- (c) when, in its discretion, the Class "B" Member so determines, provided, however, that the Class "B" Member shall not be permitted to voluntarily relinquish control sooner than the point in time that certificates of occupancy have been issued for at least seventy percent (70%) of the platted Units.

Section 4. Nomination of Directors. Except with respect to directors selected by the Class "B" Member or the Declarant, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a

member of the Board of Directors, and three or more Members or representatives of Members. The Nominating Committee shall be appointed by the Board of Directors not less than 30 days prior to each annual meeting of the Members to serve a term of one year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of positions to be filled from each slate as provided in Section 4.5 below. Nominations shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Section 5. Election and Term of Office. Notwithstanding any other provision of these Bylaws:

(a) Within 30 days after the time that Class "A" Members other than Builders own 25% of the Units proposed by the Master Plan for the Property, or whenever the Class "B" Member earlier determines, the President shall call a special meeting at which Members representing the Class "A" Members shall be entitled to elect one of the three directors, who shall be an at-large director. The remaining two directors shall be appointees of the Class "B" Member. The director elected by the Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (b) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b) below, a successor shall be elected for a like term.

(b) Within 30 days after the time that Class "A" Members other than Builders own 50% of the Units proposed by the Master Plan for the Property, or whenever the Class "B" Member earlier determines, the Board shall be increased to five directors. The President shall call a special meeting at which Members representing the Class "A" Members shall be entitled to elect two of the five directors, who shall serve as at-large directors. The remaining three directors shall be appointees of the Class "B" Member. The directors elected by the Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within 90 days after the Turnover Date (as set forth in Section 4.3), the President shall call a special meeting at which Members representing the Class "A" Members shall be entitled to elect three of the five directors, who shall serve as at-large directors. The remaining two directors shall be appointees of the Declarant. The directors elected by the Members shall not be subject to removal by the Declarant and shall serve until the first annual meeting following the Turnover Date. If such annual meeting is scheduled to occur within 90 days after the Turnover Date, this subsection shall not apply and directors shall be elected in accordance with subsection (d) below.

(d) At the first annual meeting of the membership after the Turnover Date, the Board shall be increased to seven directors. Three directors shall serve a term of two years and three directors shall serve a term of one year, as such directors determine among themselves. Upon the expiration of each director's term of office, the Members shall elect a successor to serve a term of two years.

There shall be no cumulative voting. The candidate(s) receiving the most votes shall be elected. The directors elected by the Members shall hold office until their respective successors have been elected. Directors may be elected to serve any number of consecutive terms.



Section 6. Removal of Directors and Vacancies. The director elected by the Members may be removed, with or without cause, by a majority vote of the Members. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Members who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members shall elect a successor for the remainder of the term.

Section 7. Organizational Meetings. The first meeting of the Board of Directors following each annual meeting of the membership shall be held within 10 days thereafter at such time and place the Board shall fix.

Section 8. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as a majority of the directors shall determine, and such meetings shall be held during each fiscal year as often as are reasonable and necessary. Notice of the time and place of the meeting shall be communicated to directors and members not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 9. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director and member by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four business days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least 72 hours before the time set for the meeting.

Section 10. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 11. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors, unless otherwise specifically provided in these Bylaws or the Declaration. A

meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 12. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

Section 13. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

Section 14. Open Meetings. Subject to the provisions of Section 4.15, all meetings of the Board shall be open to all Members, but a Member other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak, provided, however, such time may not be limited to less than three (3) minutes. Notwithstanding the above, the President may adjourn any meeting of the Board of Directors and reconvene in executive session, excluding Members, to discuss matters of a sensitive nature with the Association attorneys which would be subject to the attorney client privilege.

Section 15. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

Section 16. Powers. The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these Bylaws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things as are not by the Declaration, Articles, these Bylaws, or Florida law directed to be done and exercised exclusively by the Members or the membership generally.

Section 17. Duties. The duties of the Board shall include, without limitation:

- (a) preparation and adoption of annual budgets and establishing each Member's share of the Common Expenses;
- (b) levying and collecting assessments from the Members to fund the Common Expenses;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;

(d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these Bylaws;

(i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules adopted by it and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Association;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Members;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any prospective purchaser of a Unit, any Member, and the holders, insurers, and guarantors of any mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the Bylaws, rules and all other books, records, and financial statements of the Association;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Community;

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association in accordance with Florida law, and in accordance with the Articles of Incorporation and the Declaration; and

(p) assisting in the resolution of disputes between Members and others without litigation, as set forth in the Declaration.

Section 18. Right of Declarant to Disapprove Actions. So long as the Declarant owns at least one Unit in the community, the Declarant shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the judgment of the Declarant,

would tend to impair rights of the Declarant or Builders under the Declaration or these Bylaws, or interfere with development, construction of any portion of the Community or diminish the level of services being provided by the Association.

No such action, policy or program shall become effective or be implemented until and unless:

(a) The Declarant shall have been given written notice of all meetings and proposed actions approved at meetings of the Association, the Board or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meetings with Sections 4.8, 4.9 and 4.10 of these Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Declarant shall have and is hereby granted a right to disapprove any such action, policy, or program authorized by the Association, the Board of Directors or any committee thereof, if Board, committee, or Association approval is necessary for such action. This right may be exercised by the Declarant, its successors, assigns, representatives or agents at any time within 10 days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

Section 19. Management. The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in Sections 4.17(a) and 4.17(i). The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

The Board of Directors may delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

The Association shall not be bound, either directly or indirectly by any management contract executed prior to the Turnover Date unless such contract contains a right of termination exercisable by the Association, with or without cause and without penalty, at any time after the Turnover Date upon not more than 90 days' written notice.

Section 20. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Members who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the fifteenth day following the due date unless otherwise specified by resolution of the Board of Directors); and

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited or reviewed basis, as determined by the Board, by an independent public accountant. Prior to the Turnover Date, the annual report shall include certified financial statements.

Section 21. Borrowing. The Association shall have the power to borrow money for any legal purpose. Prior to the Turnover Date, no mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Members representing at least 51% of the total Class "A" votes in the Association.

Section 22. Rights of the Association. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, and/or other Members or resident associations, both within and outside



the Community. Such agreements shall require the consent of a majority of the total number of directors of the Association.

Section 23. Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable fines not to exceed the amount allowed by law, which shall constitute a lien upon the Unit of the violator, and to suspend a Member's right to vote or any person's right to use the Common Area for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Board to limit ingress and egress to or from a Unit. Notwithstanding the foregoing, the Member's right to vote may only be suspended due to the nonpayment of regular annual assessments that are delinquent in excess of 90 days. In addition, the Board may suspend any services provided by the Association to a Member or the Member's Unit if the Member is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, guest or invitee of a Unit violates the Declaration, Bylaws, or a rule and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Member shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to the imposition of any sanction hereunder or under the Declaration, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 14 days within which the alleged violator may present a written request for a hearing to the Covenants Committee appointed pursuant to Article VI; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 14 days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided the Board of Directors, or the Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 14 day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted 14 day period, the hearing shall be held before the Covenants Committee, as defined in Section 6.2. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within 14 days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Declaration, these Bylaws or the rules of the Association, by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or, following compliance with the

procedures set forth in Article XIV of the Declaration, by suit, at law or in equity, to enjoin any violation or to recover monetary damages, or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Member or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred.

Section 24. Budget. The Board shall adopt a detailed budget for each calendar year that shall include the estimated funds required to defray the Common Expenses and to provide and maintain funds for the foregoing accounts according to good accounting practices. On or before fourteen (14) days prior to the meeting of the Board at which a budget for the Association is to be considered for adoption by the Board, a copy thereof shall be posted at the office of the Association together with a notice of the meeting at which the budget will be considered which notice shall state the time and place of the meeting. The budget shall be determined by the Board no later than sixty (60) days prior to the commencement of the budget year.

## **ARTICLE V OFFICERS**

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President, Vice President, Secretary, and Treasurer shall be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed by the Board of Directors. Such other officers may, but need not be members of the Board. Any two or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election and Term of Office. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Removal and Vacancies. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby. A vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by resolution of the Board of Directors.

Section 7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 4.12 hereof.

## **ARTICLE VI COMMITTEES**

Section 1. General. The Board may appoint such committees at it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

Section 2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to Section 6.1, the Board of Directors may appoint a Covenants Committee consisting of at least three and no more than seven Members, which must be appointed by the Board and are not officers, directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director, or employee. Acting in accordance with the provisions of the Declaration, these Bylaws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 4.23 of these Bylaws.

## **ARTICLE VII MISCELLANEOUS**

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors. In the absence of a resolution, the fiscal year shall be the calendar year.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Florida law, the Articles of Incorporation, the Declaration, or these Bylaws.

Section 3. Conflicts. If there are conflicts between the provisions of Florida law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of Florida law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit, the Declaration, Bylaws, Articles of Incorporation and any Association rules which may be adopted, any amendments to the foregoing, the rules of the Association, the membership register, books of account, copies of any plans, specifications, permits and warranties for any improvements located on the Common Areas, a current roster of all Members and their addresses and parcel identification numbers, a copy of all Association insurance policies, a copy of all contracts to which the Association is a party, a copy of all bids received for work in the preceding year, and the minutes of meetings for the preceding seven (7) years of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Community as the Board shall designate.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection By Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member or Members, at the address which the Member or Members has/have designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6. Amendment.

(a) By Class "B" Member. Prior to the conveyance of the first Unit by Declarant to a Person other than a Builder, the Class "B" Member may unilaterally amend these Bylaws. After such conveyance, and before the Turnover Date, the Class "B" Member may unilaterally amend these Bylaws at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units; or (d) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Member shall consent thereto in writing.

(b) By Members Generally. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 75% of the total Class "A" votes in the Association, and the consent of the Class "B" Member prior to the Turnover Date. In addition, the approval requirements set forth in the Declaration shall be met if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon recordation in the land records of Orange County, Florida, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

If a Member consents to any amendment to the Declaration or these Bylaws, it will be conclusively presumed that such Member has the authority so to consent and no contrary provision in any 11.5

Section 7. Severability.

Invalidation of any of the provisions of these Bylaws, or the related Articles of Incorporation or Declaration, by judgment or court order shall in no way affect any other provision, and the remainder of these Bylaws, Articles of Incorporation and/or Declaration shall remain in full force and effect. Further, it is the intent that these Bylaws, and their related Articles of Incorporation and Declaration, be drafted in accordance with the provisions set forth in Chapter 720, Florida Statutes, as in effect on the date the Declaration is recorded and not being subject to subsequent amendments to Chapter 720, Florida Statutes; therefore, in the event that it is determined at any time and by any person that any provision or Section hereof is invalid under, in conflict with or in violation of any provision or section of Chapter 720, Florida Statutes, as enacted on the date the Declaration is recorded, then such provision or Section of these Bylaws, or their related Articles of Incorporation and/or Declaration, shall be deemed and interpreted to comply with such statute as if such provision or Section thereof had originally been drafted in such manner.



**EXHIBIT "D"**

**[INTENTIONALLY OMITTED]**

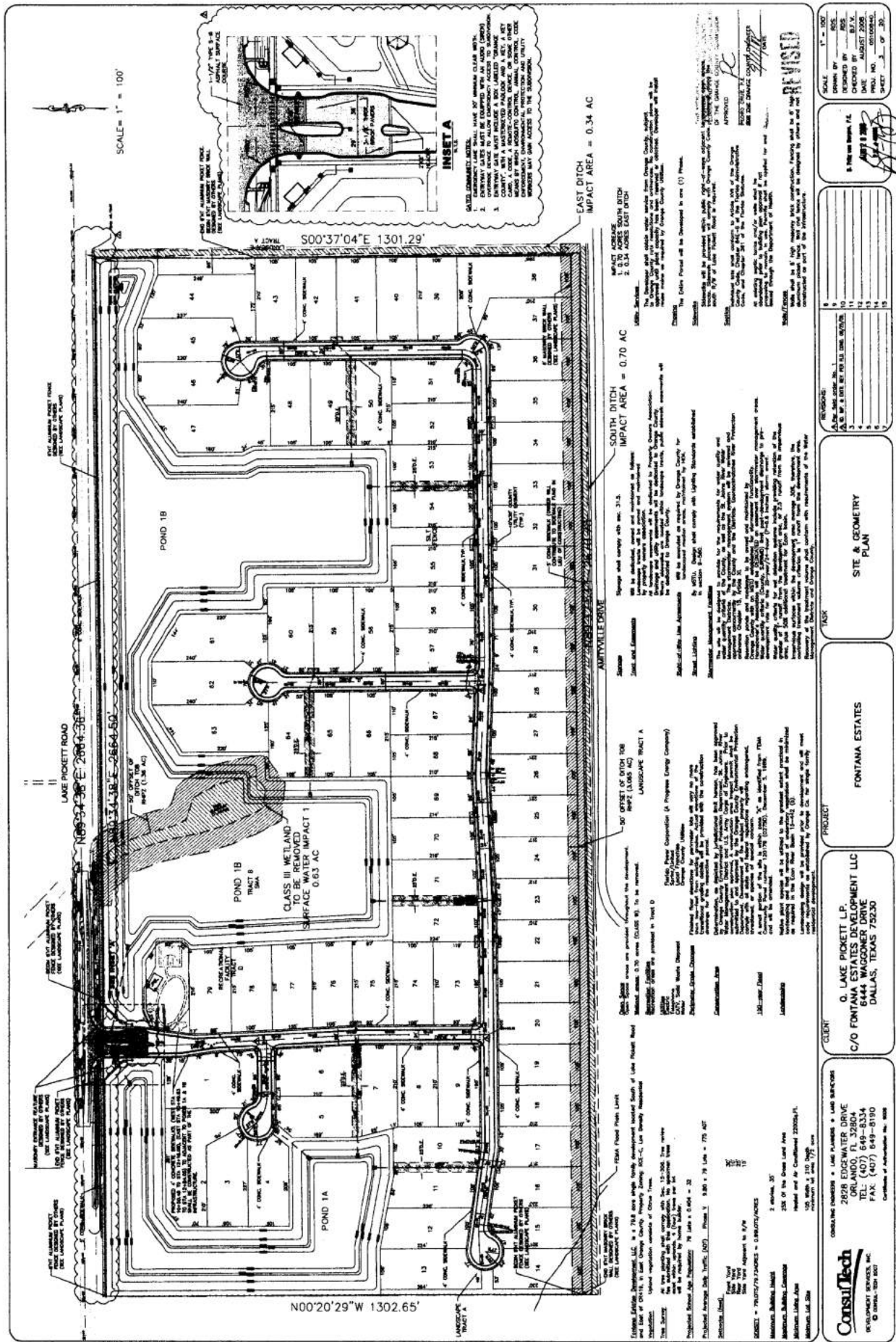
**EXHIBIT “E”**

**DECLARANT GUARANTEE**

Monthly Amount (Period beginning upon recording the Declaration through remainder of the first fiscal year)	Monthly Amount (the period for the 2nd fiscal year)	Monthly Amount (for the period from the 1st day of the 3rd fiscal year, through end of guarantee period)
<hr/>	<hr/>	<hr/>
\$164.66	\$164.66	\$164.66

**EXHIBIT "F"**

**SITE PLAN**



**EXHIBIT "G"**

**ST. JOHNS RIVER WATER MANAGEMENT DISTRICT PERMIT**





# St. Johns River Water Management District

Kirby B. Green III, Executive Director • David W. Fisk, Assistant Executive Director

4049 Reid Street • P.O. Box 1429 • Palatka, FL 32178-1429 • (386) 329-4500  
On the Internet at [www.sjrwmd.com](http://www.sjrwmd.com).

November 21, 2006

Fontana Estates Development LLC  
6444 Waggoner Dr  
Dallas, TX 75230

SUBJECT: Permit Number 40-095-106299-1  
Fontana Estates

Dear Sir/Madam:

Enclosed is your general permit as authorized by the staff of the St. Johns River Water Management District on November 21, 2006.

This permit is a legal document and should be kept with your other important documents. The attached MSSW/Stormwater As-Built Certification Form should be filled in and returned to the Palatka office within thirty days after the work is completed. By so doing, you will enable us to schedule a prompt inspection of the permitted activity.

In addition to the MSSW/Stormwater As-Built Certification Form, your permit also contains conditions which require submittal of additional information. All information submitted as compliance to permit conditions must be submitted to the Palatka office address.

Permit issuance does not relieve you from the responsibility of obtaining permits from any federal, state and/or local agencies asserting concurrent jurisdiction for this work.

Please be advised that the District has not published a notice in the newspaper advising the public that it is issuing a permit for this proposed project. Publication, using the District form, notifies members of the public (third parties) of their rights to challenge the issuance of the general permit. If proper notice is given by publication, third parties have a 21-day time limit on the time they have to file a petition opposing the issuance of the permit. If you do not publish, a party's right to challenge the issuance of the general permit extends for an indefinite period of time. If you wish to have certainty that the period for filing such a challenge is closed, then you may publish, at your own expense, such a notice in a newspaper of general circulation. A copy of the form of the notice and a list of newspapers of general circulation is attached for your use.

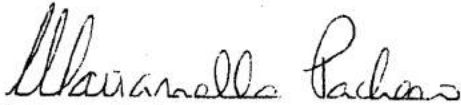
In the event you sell your property, the permit will be transferred to the new owner, if we are notified by you within thirty days of the sale and if you provide the information required by 40C-1.612, F.A.C. Please assist us in this matter so as to maintain a valid permit for the new property owner.

#### GOVERNING BOARD

David G. Graham, CHAIRMAN JACKSONVILLE	John G. Sowinski, VICE CHAIRMAN ORLANDO	Ann T. Moore, SECRETARY BUNNELL	Duane L. Ottenstroer, TREASURER JACKSONVILLE
R. Clay Albright OCALA	Susan N. Hughes PONTE VEDRA	William W. Kerr MELBOURNE BEACH	Ometrias D. Long APOPKA
			W. Leonard Wood FERNANDINA BEACH

Thank you for your cooperation, and if this office can be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Marianella Pacheco". The signature is fluid and cursive, with the first name being more prominent.

Marianella Pacheco  
Data Management Specialist II  
Division of Permit Data Services

Enclosures: Permit with As-built Certification Form  
Notice of Rights  
List of Newspapers for Publication

cc: District Permit File

**Consultant:** Bio-Tech Consulting Inc  
315 N Ferncreek Ave  
Orlando, FL 32803

**Consultant:** Consul-Tech Development Services Inc  
2828 Edgewater Dr Ste 200  
Orlando, FL 32804

**ST. JOHNS RIVER WATER MANAGEMENT DISTRICT**  
**Post Office Box 1429**  
**Palatka, Florida 32178-1429**

**PERMIT NO.** 40-095-106299-1

**DATE ISSUED:** November 21, 2006

**PROJECT NAME:** Fontana Estates

**A PERMIT AUTHORIZING:**

Construction and operation of a Surface Water Management System for a 79.80-acre, 79-lot single family residential subdivision known as Fontana Estates. This permit authorizes 1.67 acres of surface water impacts and 4.42 acres of impacts to upland portions of the Riparian Habitat Protection Zone (RHPZ). Mitigation is being provided for 0.63-acres of surface water impacts.

**LOCATION:**

Section(s): 10                      Township(s): 22S                      Range(s): 32E

Orange County

Fontana Estates Development LLC  
6444 Waggoner Dr  
Dallas, TX 75230

Permittee agrees to hold and save the St. Johns River Water Management District and its successors harmless from any and all damages, claims, or liabilities which may arise from permit issuance. Said application, including all plans and specifications attached thereto, is by reference made a part hereof.

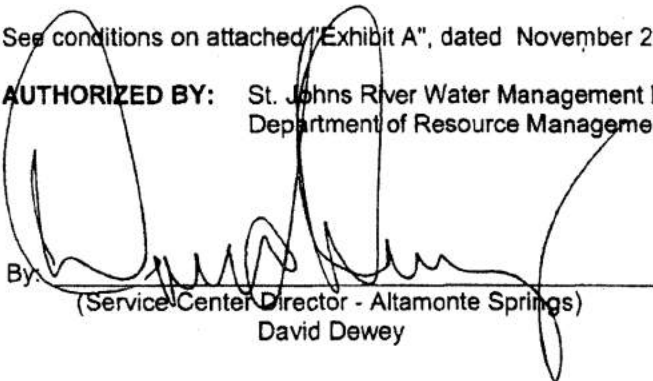
This permit does not convey to permittee any property rights nor any rights of privileges other than those specified herein, nor relieve the permittee from complying with any law, regulation or requirement affecting the rights of other bodies or agencies. All structures and works installed by permittee hereunder shall remain the property of the permittee.

This permit may be revoked, modified or transferred at any time pursuant to the appropriate provisions of Chapter 373, Florida Statutes:

**PERMIT IS CONDITIONED UPON:**

See conditions on attached "Exhibit A", dated November 21, 2006

**AUTHORIZED BY:** St. Johns River Water Management District  
Department of Resource Management

By:   
(Service Center Director - Altamonte Springs)  
David Dewey

**"EXHIBIT A"**  
**CONDITIONS FOR ISSUANCE OF PERMIT NUMBER 40-095-106299-1**  
**FONTANA ESTATES DEVELOPMENT LLC**  
**DATED NOVEMBER 21, 2006**

1. All activities 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.
2. This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications, shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by District staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
3. Activities approved by this permit shall be conducted in a manner which do not cause violations of state water quality standards.
4. Prior to and during construction, the permittee shall implement and maintain all erosion and sediment control measures (best management practices) required to retain sediment on-site and to prevent violations of state water quality standards. All practices must be in accordance with the guidelines and specifications in chapter 6 of the Florida Land Development Manual: A Guide to Sound Land and Water Management (Florida Department of Environmental Regulation 1988), which are incorporated by reference, unless a project specific erosion and sediment control plan is approved as part of the permit, in which case the practices must be in accordance with the plan. If site specific conditions require additional measures during any phase of construction or operation to prevent erosion or control sediment, beyond those specified in the erosion and sediment control plan, the permittee shall implement additional best management practices as necessary, in accordance with the specifications in chapter 6 of the Florida Land Development Manual: A Guide to Sound Land and Water Management (Florida Department of Environmental Regulation 1988). The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.
5. Stabilization measures shall be initiated for erosion and sediment control on disturbed areas as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 7 days after the construction activity in that portion of the site has temporarily or permanently ceased.
6. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District a Construction Commencement Notice Form No. 40C-4.900(3) indicating the actual start date and the expected completion date.
7. 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 No. 40C-4.900(4). These forms shall be submitted during June of each year.
8. For those systems which will be operated or maintained by an entity which will require an easement or deed restriction in order to provide that entity with the authority necessary to operate or maintain the system, such easement or deed restriction, together with any other final operation or maintenance documents as are required by subsections 7.1.1 through 7.1.4 of the Applicant's Handbook: Management and Storage of Surface Waters, must be submitted to the District for approval. Documents meeting the requirements set forth in these subsections of the Applicant's Handbook will be approved. Deed restrictions, easements and other operation and maintenance documents which require recordation either with the Secretary of State or the Clerk of the Circuit Court must be so recorded prior

to lot or unit sales within the project served by the system, or upon completion of construction of the system, whichever occurs first. For those systems which are proposed to be maintained by 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 governmental entity. Failure to submit the appropriate final documents referenced in this paragraph will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system.

9. 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 the 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 that phase or portion of the system to local government or other responsible entity.
10. Within 30 days after completion of construction of the permitted system, or independent portion of the system, 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 As Built Certification Form 40C-1.181(13) or 40C-1.181(14) supplied with this permit. When the completed system differs substantially from the permitted plans, any substantial deviations shall be noted and explained and two copies of as-built drawings submitted to the District. Submittal of the completed form shall serve to notify the District that the system is ready for inspection. The statement of completion and certification shall be based on on-site observation of construction (conducted by the registered professional engineer, or other appropriate individual as authorized by law, or under his or her direct supervision) or review of as-built drawings for the purpose of determining if the work was completed in compliance with approved plans and specifications. As-built drawings shall be the permitted drawings revised to reflect any changes made during construction. Both the original and any revised specifications must be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawing. All surveyed dimensions and elevations shall be certified by a registered surveyor. The following information, at a minimum, shall be verified on the as-built drawings:
  1. Dimensions and elevations of all discharge structures including all weirs, slots, gates, pumps, pipes, and oil and grease skimmers;
  2. Locations, dimensions, and elevations of all filter, exfiltration, or underdrain systems including cleanouts, pipes, connections to control structures, and points of discharge to the receiving waters;
  3. Dimensions, elevations, contours, or cross-sections of all treatment storage areas sufficient to determine state-storage relationships of the storage area and the permanent pool depth and volume below the control elevation for normally wet systems, when appropriate;
  4. Dimensions, elevations, contours, final grades, or cross-sections of the system to determine flow directions and conveyance of runoff to the treatment system;
  5. Dimensions, elevations, contours, final grades, or cross-sections of all conveyance systems utilized to convey off-site runoff around the system;
  6. Existing water elevation(s) and the date determined; and Elevation and location of benchmark(s) for the survey.



11. The operation phase of this permit shall not become effective until the permittee has complied with the requirements of general condition 9 above, the District determines the system to be in compliance with the permitted plans, and the entity approved by the District in accordance with subsections 7.1.1 through 7.1.4 of the Applicant's Handbook: Management and Storage of Surface Waters, accepts responsibility for operation and maintenance of the system. The permit may not be transferred to such an 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 request transfer of the permit to the responsible approved operation and maintenance entity, if different from the permittee. Until the permit is transferred pursuant to section 7.1 of the Applicant's Handbook: Management and Storage of Surface Waters, the permittee shall be liable for compliance with the terms of the permit.
12. Should any other regulatory agency require changes to the permitted system, the permittee shall provide written notification to the District of the changes prior implementation so that a determination can be made whether a permit modification is required.
13. 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 40C-4 or chapter 40C-40, F.A.C.
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 activities authorized by the permit or any use of the permitted system.
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 specifically approved unless a specific condition of this permit or a formal determination under rule 40C-1.1006, F.A.C., 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 the permitted system or the real property at which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of rule 40C-1.612, F.A.C. The permittee transferring the permit shall remain liable for any corrective actions that may be required as a result of any permit violations prior to such sale, conveyance or other transfer.
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 District.
19. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.
20. This permit for construction will expire five years from the date of issuance.

21. At a minimum, all retention and detention storage areas must be excavated to rough grade prior to building construction or placement of impervious surface within the area to be served by those facilities. To prevent reduction in storage volume and percolation rates, all accumulated sediment must be removed from the storage area prior to final grading and stabilization.
22. All wetland areas or water bodies that are outside the specific limits of construction authorized by this permit must be protected from erosion, siltation, scouring or excess turbidity, and dewatering.
23. Prior to construction, the permittee must clearly designate the limits of construction on-site. The permittee must advise the contractor that any work outside the limits of construction, including clearing, may be a violation of this permit.
23. The surface water management system shall be constructed in accordance with the plans received by the District November 8, 2006.
24. The operation and maintenance entity shall inspect the stormwater or surface water management system once within two years after the completion of construction and every two years thereafter to determine if the system is functioning as designed and permitted. The operation and maintenance entity must maintain a record of each required inspection, including the date of the inspection, the name, address, and telephone number of the inspector, and whether the system was functioning as designed and permitted, and make such record available for inspection upon request by the District during normal business hours.  
  
If at any time the system is not functioning as designed and permitted, then within 14 days the entity shall submit an Exceptions Report to the District, on form number 40C-42.900(6), Exceptions Report for Stormwater Management Systems Out of Compliance.
25. This permit authorizes impacts to 1.67 acres of surface water impacts and 4.42 acres of impacts to upland portions of the Riparian Habitat Protection Zone (RHPZ). Mitigation is being provided for 0.63-acre of surface water impacts.

### Notice Of Rights

1. A person whose substantial interests are or may be affected has the right to request an administrative hearing by filing a written petition with the St. Johns River Water Management District (District). Pursuant to Chapter 28-106 and Rule 40C-1.1007, Florida Administrative Code, the petition must be filed (received) either by delivery at the office of the District Clerk at District Headquarters, P. O. Box 1429, Palatka Florida 32178-1429 (4049 Reid St., Palatka, FL 32177) or by e-mail with the District Clerk at [Clerk@sjrwmd.com](mailto:Clerk@sjrwmd.com), within twenty-six (26) days of the District depositing notice of District decision in the mail (for those persons to whom the District mails actual notice), within twenty-one (21) days of the District emailing notice of District decision (for those persons to whom the District emails actual notice), or within twenty-one (21) days of newspaper publication of the notice of District decision (for those persons to whom the District does not mail or email actual notice). A petition must comply with Sections 120.54(5)(b)4. and 120.569(2)(c), Florida Statutes, and Chapter 28-106, Florida Administrative Code. The District will not accept a petition sent by facsimile (fax), as explained in paragraph no. 5 below. Mediation pursuant to Section 120.573, Florida Statutes, is not available.
  
2. If the Governing Board takes action that substantially differs from the notice of District decision, a person whose substantial interests are or may be affected has the right to request an administrative hearing by filing a written petition with the District, but this request for administrative hearing shall only address the substantial deviation. Pursuant to Chapter 28-106 and Rule 40C-1.1007, Florida Administrative Code, the petition must be filed (received) at the office of the District Clerk at the mail/street address or email address described in paragraph no. 1 above, within twenty-six (26) days of the District depositing notice of final District decision in the mail (for those persons to whom the District mails actual notice), within twenty-one (21) days of the District emailing the notice of final District decision (for those persons to whom the District emails actual notice), or within twenty-one (21) days of newspaper publication of the notice of final District decision (for those persons to whom the District does not mail or email actual notice). A petition must comply with Sections 120.54(5)(b)4. and 120.569(2)(c), Florida Statutes, and Chapter 28-106, Florida Administrative Code. Mediation pursuant to Section 120.573, Florida Statutes, is not available.
  
3. A person whose substantial interests are or may be affected has the right to a formal administrative hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, where there is a dispute between the District and the party regarding an issue of material fact. A petition for formal hearing must also comply with the requirements set forth in Rule 28-106.201, Florida Administrative Code.
  
4. A person whose substantial interests are or may be affected has the right to an informal administrative hearing pursuant to Sections 120.569 and 120.57(2), Florida Statutes, where no material facts are in dispute. A petition for an informal hearing must also comply with the requirements set forth in Rule 28-106.301, Florida Administrative Code.

### Notice Of Rights

5. A petition for an administrative hearing is deemed filed upon receipt of the complete petition by the District Clerk at the District Headquarters in Palatka, Florida. Petitions received by the District Clerk after 5:00 p.m., or on a Saturday, Sunday, or legal holiday, shall be deemed filed as of 8:00 a.m. on the next regular District business day. The District's acceptance of petitions filed by e-mail is subject to certain conditions set forth in the District's Statement of Agency Organization and Operation (issued pursuant to Rule 28-101.001, Florida Administrative Code), which is available for viewing at [www.sjrwmd.com](http://www.sjrwmd.com). These conditions include, but are not limited to, the petition being in the form of a PDF file and being capable of being stored and printed by the District. Further, pursuant to the District's Statement of Agency Organization and Operation, attempting to file a petition by facsimile is prohibited and shall not constitute filing.
6. Failure to file a petition for an administrative hearing within the requisite time frame shall constitute a waiver of the right to an administrative hearing. (Rule 28-106.111, Florida Administrative Code).
7. The right to an administrative hearing and the relevant procedures to be followed are governed by Chapter 120, Florida Statutes, Chapter 28-106, Florida Administrative Code, and Rule 40C-1.1007, Florida Administrative Code. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means the District's final action may be different from the position taken by it in this notice. A person whose substantial interests are or may be affected by the District's final action has the right to become a party to the proceeding, in accordance with the requirements set forth above.
8. A person with a legal or equitable interest in real property who believes that a District permitting action is unreasonable or will unfairly burden the use of their property, has the right to, within 30 days of receipt of the notice of District decision regarding a permit application, apply for a special magistrate proceeding under Section 70.51, Florida Statutes, by filing a written request for relief at the Office of the District Clerk located at District Headquarters, P. O. Box 1429, Palatka, FL 32178-1429 (4049 Reid St., Palatka, FL 32177). A request for relief must contain the information listed in Subsection 70.51(6), Florida Statutes. Requests for relief received by the District Clerk after 5:00 p.m., or on a Saturday, Sunday, or legal holiday, shall be deemed filed as of 8:00 a.m. on the next regular District business day.
9. A timely filed request for relief under Section 70.51, Florida Statutes, tolls the time to request an administrative hearing under paragraph nos. 1 or 2 above. (Paragraph 70.51(10)(b), Florida Statutes). However, the filing of a request for an administrative hearing under paragraph nos. 1 or 2 above waives the right to a special magistrate proceeding. (Subsection 70.51(10)(b), Florida Statutes).
10. Failure to file a request for relief within the requisite time frame shall constitute a waiver of the right to a special magistrate proceeding. (Subsection 70.51(3), Florida Statutes).

### **Notice Of Rights**

11. Any person whose substantial interests are or may be affected who claims that final action of the District constitutes an unconstitutional taking of property without just compensation may seek review of the action in circuit court pursuant to Section 373.617, Florida Statutes, and the Florida Rules of Civil Procedures, by filing an action in circuit court within 90 days of rendering of the final District action, (Section 373.617, Florida Statutes).
12. Pursuant to Section 120.68, Florida Statutes, a party to the proceeding before the District who is adversely affected by final District action may seek review of the action in the District Court of Appeal by filing a notice of appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, within 30 days of the rendering of the final District action.
13. A party to the proceeding before the District who claims that a District order is inconsistent with the provisions and purposes of Chapter 373, Florida Statutes, may seek review of the order pursuant to Section 373.114, Florida Statutes, by the Florida Land and Water Adjudicatory Commission, by filing a request for review with the Commission and serving a copy on the Florida Department of Environmental Protection and any person named in the order within 20 days of the rendering of the District order.
14. A District action is considered rendered, as referred to in paragraph nos. 11, 12, and 13 above, after it is signed on behalf of the District, and is filed by the District Clerk.
15. Failure to observe the relevant time frames for filing a petition for judicial review as described in paragraph nos. 11 and 12 above, or for Commission review as described in paragraph no. 13 above, will result in waiver of that right to review.



**Notice Of Rights**  
**Certificate of Service**

I HEREBY CERTIFY that a copy of the foregoing Notice of Rights has been sent by U.S.  
Mail to:

Fontana Estates Development LLC  
6444 Waggoner Dr  
Dallas, TX 75230

At 4:00 p.m. this 21st day of November, 2006.



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Division of Permit Data Services  
Gloria Lewis, Director

St. Johns River Water Management District  
Post Office Box 1429  
Palatka, FL 32178-1429  
(386) 329-4152  
Permit Number: 40-095-106299-1

Patrick C. Howell  
Office Managing Shareholder  
Board Certified Construction Law & Litigation  
Attorney  
Phone: 407.215.9660 Fax: 407.999.2209  
phowell@beckerlawyers.com



Becker & Poliakoff  
111 N. Orange Avenue  
Suite 1400  
Orlando, FL 32801

April 24, 2020

**NOTICE OF CLAIM**  
**PURSUANT TO CHAPTER 558,**  
**FLORIDA STATUTES**

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**  
**AND VIA FIRST CLASS MAIL**

Toll FL VIII Limited Partnership  
250 Gibraltar Road  
Horsham, PA

United Agent Group Inc., Registered Agent  
Toll FL VIII Limited Partnership  
801 US Highway 1  
North Palm Beach, FL 33408

***Re: Fontana Estates Community Homeowners' Association, Inc.***

Dear Sir or Madam:

Fontana Estates Community Homeowners' Association, Inc. (hereinafter referred to as the ("Association")), hereby provides its written Notice of Claim pursuant to §558, *et seq.*, *Florida Statutes*, to Toll FL VIII Limited Partnership. ("Toll FL"). The instant Notice of Claim pertains to various construction and design defects existing within the Fontana Estates, located in Orlando, in Orange County, Florida (the "Community"). Enclosed is the Infrastructure Inspection Report by Central Florida Engineering Consultants dated November 20, 2014 ("Infrastructure Report"), requested by Toll FL to comply with the requirements of the Orange County Code §§ 34-290 – 34-291 for gated communities ("Code") and the Declaration of Covenants, Conditions and Restrictions of Fontana Estates Community ("Declaration").

The Infrastructure Report identifies certain construction and design defects in reasonable detail that have been discovered to exist in and to the stormwater drainage system, inlets, structures, ponds, roadways, curbs, sidewalks, and buffer walls in the Community. However, despite the requirements of the Code and the Declaration requiring that all identified construction defects and maintenance issues be corrected by Toll FL, the defects were never addressed by Toll FL. To confirm this, and to review other construction defects in the Community, the Association retained expert engineers with Kimley-Horn, who issued reports dated February 13, 2019, and June 5, 2019,

Toll FL VIII Limited Partnership

April 24, 2020

Page 2

along with plans dated April 24, 2019, detailing the defects and how they must be addressed. All of this is enclosed for your review. Additionally, we have included invoices, proposals, and contracts supporting the damages incurred by the Association as a direct result of the defects identified in the Infrastructure Report and Toll FL's failure to address the defects. These documents include the following:

**Contracts, Invoices, and Documents for Damages Incurred by Association**

- Agreement between Lake & Wetland Management to the Association regarding planting agreement for Community - **\$14,450**
- Agreement between Lake & Wetland Management and the Association regarding dredgesox agreement - **\$19,320**
- Special Service Agreement between Lake & Wetland Management and the Association regarding the Overflow Structure Corrections - **\$2,450**
- Invoice dated December 7, 2018 from Ireland Surveying to the Association re Boundary Survey for pond issue - **\$1,500**

**Work by Kimley-Horn for Remediation of Stormwater/Pond Issues**

- Letter dated February 13, 2019, from Kimley-Horn to the Association regarding pond remediation
- Letter dated June 5, 2019, from Kimley-Horn to St. Johns River Water Management District regarding Stormwater Pond Maintenance Required
- Invoice #149980000-0119 from Kimley-Horn for Engineering Services regarding review of pond as-built, survey overlay with original pond design, and identification of areas of conflict - **\$1,786.05**
- Invoice #149980000-0219 Invoice from Kimley-Horn for Engineering Services regarding continued survey analysis of existing pond for further development of remediation plans, cross section and earthwork analysis, and for preparation of bid documents for contractor for determination of scope of work - **\$4,531.80**
- Comparative Cross Sections Map by Kimley Horn dated April 24, 2019 regarding stormwater issue

**Proposals and Issues Still Remaining to be Remediated**

- Proposal dated May 10, 2018 from C&M Dredging to the Association re Dredge and Fill Stormwater Restoration - **\$239,140**
- Proposal dated May 15, 2019 from Gator Dredging to the Association re dredging services - **\$219,250**
- Proposal from Pure Lake Specialist to the Association regarding silt sediment removal and relocation - **\$158,500**
- Proposal dated October 28, 2019 from KLR Well Drilling to the Association regarding irrigation services - **\$5,895**

- Letter dated August 15, 2019 from John DeSantis, SMS Committeeman, to Association regarding issues with Fontana Estates

The defects discovered at the Community were relayed to Brock Fanning with Toll FL on August 14, 2019, as confirmed by the enclosed letter from John DeSantis from the Association. Despite notifying your company of these defects, nothing has been done by Toll FL to address or rectify the defects. Further investigation is ongoing and additional reports on defects and deficiencies will be provided accordingly.

Pursuant to Chapter 558, *Florida Statutes*, the Association expects Toll FL to contact the undersigned to schedule a mutually convenient time for inspections which are to occur **within fifty (50) days** after receipt of this Notice of Claim. Additionally, the Association expects Toll FL, **within thirty (30) days** after receipt of this Notice of Claim to forward a copy of this Notice of Claim to each person or entity whom it reasonably believes is responsible for each defect specified in the enclosed Report, noting the specific defect for which it believes the particular person or entity is responsible. Further, the Association expects Toll FL to serve a written response to the undersigned, providing:

- (a) A written offer to remedy the alleged defects at no cost to the Association, a detailed description of the proposed repairs necessary to remedy the defects, and a timetable for the completion of such repairs;
- (b) A written offer to compromise and settle the claim by monetary payment, that will not obligate the person's insurer, and a timetable for making payments;
- (c) A written offer to compromise and settle the claim by combination of repairs and monetary payment, that will not obligate the person's insurer, that includes a detailed description of the proposed repairs and a timetable for completion of such repairs and making payment;
- (d) A written statement that the person disputes the claim and will not remedy the alleged defects or compromise and settle the claim; or
- (e) A written statement that a monetary payment, including insurance proceeds, if any, will be determined by the person's insurer within thirty (30) days after notification to the insurer by means of forwarding the claim, which notification shall occur at the same time the Association is notified of this settlement option, which the Association can accept or reject. A written statement under this paragraph may also include an offer under Paragraph (c) above, but such offer shall be contingent upon the Association also accepting the determination of the insurer whether to make any monetary payment, in addition thereto. If the insurer of the person receiving the claim makes no response within the 30 days following notification, then the Association shall be deemed to have met all conditions precedent to commencing an action.

**Association's Request to Toll FL to Provide to the Association  
All Available Discoverable Evidence Relating to Defects**

In accordance with §558.004(15), *Florida Statutes*, the Association hereby requests Toll FL provide to the Association, **within thirty (30) days** of receipt of this Notice of Claim, all available discoverable evidence relating to the construction and design defects at the Community referenced in the attached Report, including but not limited to, producing all of the following:

1. All design plans, specifications, and as-built plans concerning all of the defects specified in this Notice of Claim and the Report attached hereto;
2. All photographs and videos of the construction defect identified in this Notice of Claim and the Report attached hereto;
3. All expert reports that describe any defect alleged herein;
4. All subcontracts as to all defects alleged herein;
5. All purchase orders for any work that the Association has claimed defective per this Notice of Claim and the Report attached hereto, or any part of such materials used in such work; and
6. All information received by the Toll FL as a result of its forwarding of a copy of this Notice of Claim to any person or entity, whom it reasonably believes is responsible for each defect specified in this Notice of Claim and the enclosed Report pursuant to Florida Statute §558.004(3) and (4).

**Please provide the Association with an estimate for the reasonable costs of reproduction of the foregoing documents.**

Kindly accept this letter also as the Association's communication of the requirements and restrictions set forth in the Uniform Fraudulent Transfer Act (Florida Statute 726.101, et seq.), and other related acts which restrict Toll FL, and any related or apparent companies of Toll FL, any subsidiaries of Toll FL, partnerships, partners, associates, etc. from rendering any such entity and/or Toll FL themselves without sufficient funds to satisfy the debt which may be owed to the Association as a "present and future creditor" under the Statute, or otherwise. These restrictions include, but are not limited to, the transference, liquidation, sale, acquisition, merger or any other means of asset depletion or secreting which serves to leave any such entity or person without sufficient funds to satisfy the debt which will be owed to the Association. Note, that under these circumstances, the statute entirely restricts any attempt to liquidate a Florida corporation in order to transfer any balance to a foreign or domestic corporation or other person or entity. In accordance with the statute, demand is hereby made upon you to ensure that sufficient funds exist and remain to satisfy the debt which may be owed to the Association as a "present and future creditor" under the statute, or otherwise.



Toll FL VIII Limited Partnership

April 24, 2020

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Nothing contained herein or attached hereto should be construed as a waiver of any of the Association's rights under Chapter 558, *Florida Statutes* or any other applicable law. The Association expressly reserves its right to supplement or amend its claims to Toll FL. This demand is being made without waiver of and under full reservation of all rights, relief, and damages previously, presently and hereafter available to the Association.

In addition, pursuant to §627.4137, *Florida Statutes* (and/or §626.9372, *Florida Statutes*, as applicable), the Association requests that Toll FL provide the undersigned, within thirty (30) days from the date of this request, a statement, under oath, of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance which does or may provide coverage for the Association's claim, including excess or umbrella insurance:

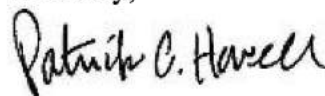
1. The name of the insurer;
2. The name of each insured;
3. The limits of the liability coverage;
4. A statement of any policy or coverage defense which each insurer reasonably believes is available to such insurer at the time of filing such statement; and
5. A complete copy of each such insurance policy.

Pursuant to §627.4137(1) and §626.9372(1), *Florida Statutes*, the Association requests that Toll FL forward the foregoing request to all affected insurers and any and all other insurance companies that might have issued policies which do or may provide coverage for the Association's claims. In addition, the Association requests that any statement provided in response to the foregoing be amended immediately upon discovery of facts calling for an amendment to such statement. §627.4137(2) and §626.9372(2), *Florida Statutes*.

In the event you have any questions or comments, please contact the Association's legal counsel, Patrick C. Howell, Esq., at your earliest opportunity.

The Association maintains the right to supplement the enclosed Report and the requests contained within this Notice of Claim. Please forward all responses to this Notice of Claim to the undersigned counsel at Becker & Poliakoff, P.A., 111 N. Orange Avenue, Suite 1400, Orlando, Florida 32801.

Sincerely,



Patrick C. Howell  
For the Firm

Toll FL VIII Limited Partnership

April 24, 2020

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PCH/ns

Enclosure

cc: Fontana Estates Community Homeowners' Association, Inc. (w/o encl.; via email)

ACTIVE 13616614v.1

# FONTANA ESTATES

ORANGE COUNTY, FLORIDA

## INFRASTRUCTURE INSPECTION REPORT

Submitted to:

**Fontana Estates Homeowners Association, Inc.**

**November 20, 2014**

Prepared By:

**CENTRAL FLORIDA**  
**ENGINEERING CONSULTANTS**  
Civil Engineering and Infrastructure Consultants

500 N. Maitland Avenue STE 102  
Maitland, Florida 32751  
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407-599-7010

FONTANA  
ESTATES

by "The Windward"



**Montje S. Plank, P.E**  
FL License Registration No. 36149

**CENTRAL FLORIDA ENGINEERING CONSULTANTS, LLC**

INFRASTRUCTURE CONSULTANTS

November 20, 2014

**Fontana Estates Community Homeowners Association, Inc.**  
**c/o Ms. Zaimelyn Rodriguez, LCAM**  
**Leland Management**  
6972 Lake Gloria Blvd  
Orlando, FL 32809-3200

Re: **Fontana Estates Community**  
Infrastructure Inspection and Report of Findings  
Orange County (unincorporated), FL

Dear Ms. Rodriguez:

Pursuant to your request and in accordance within the scope of service agreed upon, we have performed a visual inspection of the above referenced community.

The following report of our findings from our investigation, presents the current level of maintenance for the project as it relates to the storm drainage system, roadways and other commonly owned infrastructure.

We thank you for our engagement; should you have any questions or want further qualifications upon our report please contact Montje Plank.

Sincere regards,  
**CENTRAL FLORIDA ENGINEERING CONSULTANTS, LLC**



Montje S. Plank, P.E.  
Managing Member



Russell C. Maynard  
Managing Member



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## **PROJECT OVERVIEW**

The **Fontana Estates** community is comprised of 79 single-family lots, and is located within eastern unincorporated Orange County, Florida. This privately owned and maintained community is accessed off of Lake Pickett Road, within portions of **Section 10, Township 22 South, and Range 32 East**.

The community is platted as **FONTANA ESTATES**. The underlying plat is recorded in the Public Records of Orange County, Florida, within the following Plat Book and Pages:

**FONTANA ESTATES**

**PB 75 PGS 85-87**

A copy of this plat is attached in the appendix.

Maintenance of the Fontana Estates community infrastructure (not including the central water and sanitary sewer systems) is the responsibility of the community association (“Fontana Estates Community Homeowners Association, Inc.”; “Association”). Included within this Association responsibility is the on-going maintenance on all of the Association-owned common-areas and improvements thereon (streets, pond, sidewalks and curbs, stormwater collection and conveyance system, buffer walls, gates, common-area fencing, landscaping and street trees).

We understand that the control of the Association Board is to soon pass from the developer’s control, to the resident’s control. Therefore, this Report has been prepared by **Central Florida Engineering Consultants, L.L.C.** (“CFEC”; “Engineer”), as authorized by and for the **Fontana Estates Community Homeowners Association, Inc.** (“Association”); this is so that the developer and the member residents (as well as the non-board member residents -see Code Requirements) upon the Association Board would be sufficiently apprised of remediations as necessary to abet turnover a sound and sufficient private infrastructure.

Accordingly, this report presents the engineer-recognized current defects or shortcomings, due to failures, omissions, and/or *neglected* maintenance of the subdivision infrastructure components and community appurtenances, as related to the roadways, curbs, sidewalks, storm drainage conveyance system, the retention/detention pond and tract, and common-area tract, due to:

- **Accelerated wear, beyond that which is commonly expected from residential community infrastructure usage;**
- **Patent construction defects, as evident and observed by Engineer;**
- ***Neglected maintenance.***

Also, it is not the intention nor within the scope of this report to determine the soundness of the drainage and roadway (or other) designs, *nor to present alternative or remediation designs*, but rather to identify and report current insufficiencies upon these flawed components of the infrastructure.

This report additionally manifests Central Florida Engineering Consultant’s philosophy of using pragmatism in identifying infrastructure deficiencies, in that we seek to call for remediation upon consequential issues, or issues that could become consequential; rather than calling for excessive

and functionally unnecessary restoration. That being said, we heartily endorse preventative maintenance and vigilance as an ongoing priority.

## **JURISDICTIONAL ENTITIES, CRITERIA AND COMPLETIONS**

### **St. Johns River Water Management District**

The Fontana Estates Community Homeowners Association, Inc. is listed upon the operational and maintenance permit, as was issued by the St. Johns River Water Management District upon community stormwater system completion permitting closeout. Further, the criteria associated with the completion certification and transfer of this permit has been correctly performed. A copy of this referenced St. Johns River Water Management District (SJRWMD) Operation and Maintenance (O&M) Permit is included within the Appendix.

### **Unincorporated Orange County, Florida Government**

This private community, being a Gated Subdivision within unincorporated Orange County, Florida – is subject to the Orange County gated community ordinance, ARTICLE VIII Chapter 34 of the Orange County Code.

Orange County, Florida, Code of Ordinances >> PART II - ORANGE COUNTY CODE >> Chapter 34 - SUBDIVISION REGULATIONS >> ARTICLE VIII. - GATED COMMUNITIES >> DIVISION 2. - REQUIREMENTS >>

### **DIVISION 2. - REQUIREMENTS**

Sec. 34-290. - Requirements.

Sec. 34-291. - HOA accounts for maintenance and repair.

Sec. 34-290. - Requirements (9); Require that:

a. No earlier than one hundred eighty (180) days before turnover of the HOA and/or transfer of control of subdivision infrastructure, the HOA must retain the services of a Florida registered engineer experienced in subdivision construction (other than the engineer of record for the subdivision as of the date of the county's approval of the subdivision infrastructure construction plans, and engineers who are principals of, employed by, or contractors of the same firm as the engineer of record) to inspect the streets, sidewalks and drainage system, including stormwater detention/retention areas in accordance with the existing approved plans, and prepare a report recommending the amount of scheduled maintenance and unscheduled repair that likely will be needed each year for the streets, sidewalks and drainage system (including stormwater detention/retention areas), in accordance with standards that may be established and revised from time to time by the County Engineer or his or her designee, which recommends the amounts of money that should be deposited each year in the routine-infrastructure-maintenance account, and determining what repairs, if any, are needed prior to turnover of the HOA;

b. The report be signed and sealed by the engineer;

c. The HOA pay the cost of this initial engineer's report, and the HOA may pay such cost from the routine-infrastructure-maintenance account;

d. A copy of the initial engineer's report be provided to all owners of lots, blocks, and tracts in the subdivision and to the County Engineer within fifteen (15) days after it is completed;

e. Any needed repairs or replacements identified by the report be completed by the developer, at the developer's sole expense, prior to either the developer's turnover of the HOA to the property owners of the subdivision or transfer of control of subdivision infrastructure to the HOA, whichever occurs first; and

f. If turnover of the HOA and/or transfer of control of subdivision infrastructure occurs and the foregoing requirements have not been fulfilled, the rights of the HOA, any of its members, and any and all owners of land in the subdivision to enforce these requirements against the developer shall survive the turnover of the HOA, with the prevailing party to be entitled to attorneys' fees and costs. ....”

The Orange County code goes on to require other maintenance as well, we recommend Association Board familiarity with the code.

[https://www.municode.com/library/fl/orange\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances)

## **INSPECTION PROCEDURE**

The **Fontana Estates** community has streets and stormwater collection/conveyance systems and other common-area Tracts that are owned and are to be maintained by the **Fontana Estates Community Homeowners Association, Inc.** The following items have been reviewed and evaluated by our inspector, **Montje Plank, P.E.** of **Central Florida Engineering Consultants, L.L.C.**, based upon a *visual* inspection of the various components and limited testing consisting of:

- probing of the submerged, *accessible* stormwater inlet and manhole structures;
- limited soils probing as determined important in qualifying the looseness of earthen backfill, or for locating below-grade structures;
- roadway soundings via a tamped dowel, if/as relevant.

The objective was to determine deficiencies and of any functional concerns upon the relevant infrastructure components. Observations were made upon the streets, curbing, sidewalks and stormwater drainage systems, and upon certain identified amenities and appurtenances. Included within the inspection were:

### **Roadways, Curbs, Sidewalks and Drive Aprons within the Access Tracts**

- Inspection upon all roadways for failures and damage;
- Inspection of all sidewalks and driveway aprons for excessive deterioration, or trip hazards;
- Inspection of traffic control signage for maintenance insufficiencies
- Observations upon community landscaping.

### **Stormwater Collection and Drainage System; Retention/Detention Ponds and Inflow/Outfall Control Structures**

- Inspection of the storm inlets for structural integrity, excess sedimentation, debris or blockage;
- Inspection of the pond outfall control structure for functional performance as designed;
- Inspection of pond banks and berms for stability and adequate maintenance.

### **Association Common-Area Tracts and Appurtenances**

- Inspection of the subdivision entry features and buffer walls, and gates (not the gate operators, however);
- Observations upon the park tracts, open spaces and community landscaping

Our on-site Inspections of the community were performed upon October 23<sup>rd</sup>, 2014. The following Report identifies the observed conditions and noted concerns observed by the inspectors, commensurate with the authorized Scope of Services.



## **I. ROADWAYS, CURBS, SIDEWALKS AND RIGHT-OF-WAYS**

### **Pavement:**

The streets, the sidewalks along them, and the majority of the stormwater collection system, are located within the platted 'Right-of-Way' Tract 'J' of the Fontana Estates subdivision. This Tract was dedicated to the Association, by way of the recorded plat; we reference Note #6, upon Sheet 1 of 3 of the Fontana Estates community plat. This tract including the streets was walked by the inspectors, for determination of defects.

**The sealcoat and crack-sealing completion of the community roads (work already begun in 2012 upon the Fontana Estates Drive) should be completed upon the remainder of the community roads, along with the ancillary work preceding placement of the sealcoat, and pavement markings repainting following.**

Our recommended specifications upon the upfront work to sealcoating are:

#### ***PRE-SEALCOAT PLACEMENT WORK:***

*Previous to sealcoat placement, the pavement patching, sealing of the larger pavement cracks, and treatment of the oil-damaged pavement areas are all needed.*

*Crack-sealing: the crack sealing, with a standard bituminous sealing material, is to be upon the wider cracks, those that approximate 3/4 inch wide, and wider. The crack-sealing application is to follow sufficient compressed-air cleaning out of the loose material and any vegetation presently within the cracks.*

*Oil-stained and Damaged Pavement: The larger or more significant of the excessive present oil spill stains need applicable treatment, which includes spot cleaning, scraping and use of a degreasing solution; together with the correct application of a sufficient oil-seal product.*

#### ***Full-Depth Asphalt Replacement:***

*Asphaltic repair areas are to be saw-cut with straight edges, and in approximation to a rectangle, where practicable. The faces of the excavation are to be straight and vertical. Contractor to provide sufficient base compaction below all removed asphalt, from proof rolling, and from other compactive efforts by contractor, as needed to provide sufficient compaction. Contractor to tack coat the revealing sides of existing remaining asphalt on perimeters of patch areas prior to asphalt placement by broom application.*

*Asphalt Replacement shall be 1 Inch Type S-III. All new asphalt shall be rolled by steel drum roller sufficient for the task.*

*Contractor to maintain pavement surface grading to assure positive drainage, where such was existing prior to Work by Contractor. Pavement patches are NOT to pond water.*

The original asphalt had debris within the mix, and this has led to numerous small voids within the pavement, most of which can be 'plugged'. However, some localized excessively impacted areas are dense enough to mandate localized pavement removal and replacement (patching). These areas are identified in the following tabulation; the observed locations of pavement issues meriting attention or repair are as follows:

1. The pavement throughout the community, except upon the previously seal-coated Fontana Estates Drive, is raveling, the asphalt surface is open-graded from the loss of fines; we recommend application of a sealcoat (two coatings) including sand.
2. Numerous small pieces of wood and rubber are embedded in the surface of the asphalt. This recycled product was the result of poor quality control in the asphalt mix; the evident and unstable of the embedded debris locations should be repaired with removal of the debris or rubber, and the hole patched with either an appropriate asphaltic filler or cold mix.
3. Appropriate spot treatments should be placed upon oil stain areas prior to any seal coating, such as at 18014 Bellezza Drive.
4. In proximity to 18000 Galileo Court – at the access to the retention pond: the Miami curb has subsided next to an existing pavement patch; approximately 15 feet of curb replacement is likely needed, to provide for positive gradient for runoff. **Limited localized pavement will likely be required to be removed and replaced at the new grades as well (Fig. 1.01).**
5. The Galileo court cul-de-sac has excessive pavement voids and localized areas where the pavement does not appear to have a full 1 inch asphaltic thickness; an approximate 600 square foot (SF) pavement patch will be needed to remedy this (Fig. 1.02).
6. Within Fontana estates drive, along 18018 Galileo Court, a pavement hole needs plugging.
7. 3112 Fontana Estates Dr.-an approximate 8 inch square pavement patch is needed in front of the inlet.



8. 18312 Bellezza Drive - an approximate 40' x 5' pavement area is excessively raveled and needs removal and replacement (Fig. 1.03).



9. 18252 Bellezza Drive - several pavement voids needs plugging or patching (Fig. 1.04).

10. 18240 Bellezza Dr. - an area of pavement that approximates 100 square yards (SY) is excessively distressed and needs replacement (Fig. 1.05).



11. 18133 Bellezza Dr.- the remediation following removal of four bollards within the pavement has left rebar is exposed within the pavement; this presents a possible trip hazard, therefore we *recommend* removal of the concrete and steel to allow for a one-inch thick pavement patch across the pavement in this location (Fig. 1.06). Also, numerous distresses and voids within the pavement necessitates an approximate 4 foot x 22 foot pavement patch on the 18133 side of the crown (Fig. 1.07).





**12. 18132 Bellezza Drive - several small holes in the pavement need filling (Fig. 1.08).**

**13. 18114 Bellezza Drive - excessive pavement edge crumbling necessitates an approximate 50 foot x 1 foot pavement patch along the curb; also, a hole in the pavement needs plugging.**

**14. At Bellezza Drive and San Rocco Drive - a 4 inch pavement plug or patch is needed, due to the needed removal and patching of organic debris within the pavement (Fig. 1.09).**

**15. The San Rocco Drive cul-de-sac is excessively raveled over an irregular area, necessitating pavement replacement; to do this pavement replacement in a rectangular patch would necessitate replacement of about one third of the cul-de-sac pavement surface. Either pavement patching, or milling and overlay of the entire cul-de-sac is our recommendation (Fig. 1.10).**

**16. 3109 San Rocco Dr. - an approximate 4' x 1' pavement patch is needed along the curb (Fig. 1.11).**



(Fig. 1.08)



(Fig. 1.09)



(Fig. 1.10)



(Fig. 1.11)

**17. 3121 San Rocco Dr. - excessively fractured reflective cracks necessitates a pavement patch of about 14' x 2' with crack filling of the remainder (Fig. 1.12). All of the reflective cracking within the cul-de-sac necessitates crack filling, as do the larger reflective cracks throughout the community.**





## **Curbs and Gutters:**

**The curbs and gutters throughout the community were generally in good and sufficient condition. The localized items needing current remediation however, are:**

- **18001 Galileo Court - patching is needed in four locations.**
- **In proximity to 18000 Galileo Court - at the access to the retention pond: the Miami curb has subsided next to an existing pavement patch; approximately 15 feet of curb replacement is likely needed, to provide for positive gradient for runoff. Limited localized pavement will likely be required to be removed and replaced at the new grades as well (See Fig 1.01).**
- **3120 San Rocco Dr. - numerous cracks in the curb would be stabilized with the application of a concrete adhesive, which is to be used in curb patching where merited (Fig. 2.01).**



## **Sidewalks:**

**The sidewalks were found to be in good and sufficient condition, throughout the community. The items needing current remediation, however, are:**

- **Along the Lake Pickett road frontage sidewalk in front of the community on either side of the Fontana estates drive entrance, a handrail is needed along the retaining wall, as was obviously planned for (Fig. 3.01).**
- **Along Lake Pickett Road frontage, the most eastern extents of the sidewalk, and the landscaping/irrigation do not continue the last 30 feet to the end of the buffer wall; this should be completed, unless there is good reason not to do so (Fig. 3.02).**



### **Street/Traffic Control Signage:**

The traffic control signage and pavement markings - speed limit, stop signs, stop bars, crosswalks, directional signage, and pavement stripping, and the fire department blue pavement markers are very important to be maintained, in protection of Public Safety. Also, the detectable warning mats that each of the sidewalk ramps additionally are important for the same reason. Maintenance upon all of this signage and markings upon and along these private streets is the responsibility of Fontana Estates Community Homeowners Association, Inc. Thusly, it should be a remaining priority for the Association to keep it in sufficient condition, in address of both safety concerns and any Association liability.

**The street signs and the sidewalk detectable warning mats are generally sufficient, except for the following:**

**Pavement markings, such as stop bars, are generally aged, and many are in need of refreshing; pavement markings replacement or augmentation will be needed after sealcoating, that we are recommending.(962-Galileo Ct.)(San Rocco Drive too)**

**We believe that a thermoplastic stop bar is needed at the Late Pickett Road entrance, connecting the two detectable warning mats in either side of Fontana Estates Drive (Fig. 4.01).**



- **At Bellezza Drive and San Rocco Drive; and at 3109 San Rocco Dr. - the blue reflective pavement marker (RPM) for the fire hydrant needs placement (See Fig. 1.09); the RPMs throughout the community would be replaced following a sealcoat treatment as well. In addition, the fire hydrants need final color-coded painting.**



## **II. COMMON AREAS, AMENITIES, AND APPURTENANCES**

### **Landscaping/ Open Spaces and Common-Area Tracts/Miscellaneous:**

The common-area landscaping and amenities are generally sufficiently and well maintained.

**Noteworthy items needing current attention, however, are:**

- **The irrigation system in the Tract ‘H’ landscape tract along the north side of the pond Tract ‘B’ needs a checkup by a qualified irrigation contractor, with removal of piping that is not functional.**
- **We observed a boot around the bottom of a tree in the landscape area within Tract ‘H’ landscape tract along the north side of the pond Tract ‘B’; should this boot be removed? A string-line in this area should be removed and the exposed irrigation piping confirmed as functional; there are also some flagpoles lying upon the ground behind the wall that should be removed (Fig. 5.01).**
- **Upon the Tract ‘D’ recreation track, upon the gazebo – there are two downspouts on the northern side of the gazebo that are discharging to unprotected ground adjacent to the columns and are undermining the columns. Minor remediation and appropriate accommodation to curtail the erosion is needed. Installation of two splash pads is also warranted (Fig. 5.02). A maintenance measure of pressure-washing of the gazebo is merited, which would also remove the current wasp nests that we observed (Fig. 5.03).**
- **Within the plastic curbing upon the perimeter of the playground a couple of connection-pins should be re-secured (Fig. 5.04).**



## **Gates, Walls and Fences:**

The entrance gates and community walls and fences throughout the community are in generally satisfactory shape. However, **the following items should be currently addressed:**

- **The gate operator system including the battery backup, surge suppression, and siren operated sensors - should all be given a checkout by the gate maintenance company.**
- **The extruded aluminum fence on the west perimeter of the property approximately 50 yards south of the Lake Pickett buffer wall needs straightening (Fig. 6.01).**



- **Along Lake Pickett Road frontage, the most eastern extents of the sidewalk, and the landscaping do not continue the last 30 feet to the end of the buffer wall; this should be completed, unless there is good reason not to do so (See Fig. 3.02). Also, minor sodding around the most easterly column along with localized stabilizing is needed.**
- **Some wall caulking and painting maintenance is needed behind the westerly entrance features, and in the normal course of wall preservation (Fig. 6.02).**





### **III. STORMWATER COLLECTION AND CONVEYANCE SYSTEM; RETENTION/DETENTION PONDS AND INFLOW / OUTFLOW STRUCTURES**

#### **Stormwater Collection and Conveyance System:**

The stormwater collection and drainage system is designed to collect the stormwater runoff from the lots and streets and convey it to the stormwater retention/detention ponds. The stormwater runoff from the subdivision is by-and-large collected in the curb and gutter alongside the roads, thence flows into the curb inlets that are built integrally into the roadside curbing; thence, it is conveyed through drainage pipes - discharging into the on-site ponds. The ponds 'treat' the stormwater, by retaining the first flush of runoff, and then the outfalling excess stormwater which passes through a specially-designed "control structure", which blocks the passage off the initial flush of stormwater, and additionally provides the moderating of the outfall rate of discharge.

The street drainage inlets and manholes were inspected, to a practical but somewhat limited extent, as they were not pumped down. We believe that the scope of our inspection is sufficient, however.

The community still has on-going construction upon the residential units, and we observed sufficient current inlet protection, from sedimentation and debris being allowed into the system.

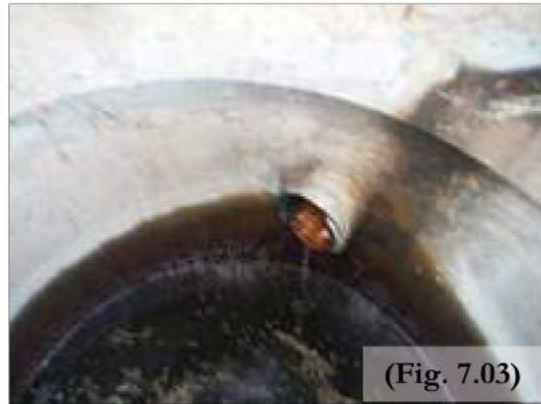
**NOTE: Siltation protection upon inlets should be removed –from both the curb inlets as well as the grated inlets - in all areas where construction is completed and the nearby ground surface has been stabilized by sodding or other method. Removal of any adjacent siltation within the curb or the inlet throat should be made at that time (Fig. 7.01).**

**The following list identifies those structures/locations that we have determined as specifically needing sediment removal, floating debris removal and/or remedial work:**

- **The curb inlet on the east side of Fontana estates drive at Lake Pickett road has excessive floating debris, which needs removal (Fig. 7.02).**
- **A small patch can be made to the curb adjacent to the curb inlet at the entrance.**



- **18234 Bellezza Drive- inlet needs silt removal.**
- **Rust colored sedimentation in the invert of the underdrain intercepting the curb inlet indicates that the underdrain should be washed – we recommend with a low pressure approach – on a periodic basis (Fig. 7.03).(7368)**
- **18133 Bellezza Dr.-the curb inlet as excessive floating debris, which needs removal.**



## **Retention/Detention Ponds and Inflow / Outfall Control Structures:**

The existing wet retention/detention ponds provide for water quality and peak-discharge attenuation treatment. To accomplish this, the ponds are designed to retain stormwater runoff; and also to moderate 'overflowing' stormwater discharge through the use of control structures, allowing for the downstream discharging of the treated runoff as per approved design.

The inspector reviewed the control structures and any other visible structures located within the ponds to determine if the required components were intact, that the structures were properly functioning, and to ascertain the general maintenance in and around the structures.

The pond berms appeared stable, with sufficient grass ground cover. The lakes were not impacted by detrimental weed growth; however, lakeshore algae blooms are likely due in large in part to the fertilization of the grass. *The HOA should assure that the fertilization is with phosphorus-free fertilizer; also, the fertilizer should not be placed on the sloped shoreline.*

**Current noteworthy items are:**

- **Upon the Tract 'B' retention pond, the control structure needs to have the soils removed from below the baffle to provide for a lease six inches of clearance to allow sufficient water flow (Fig. 8.01).(7082)**



(Fig. 8.01)

**Engineer's Cost Estimate for  
FONTANA ESTATES  
Routine Infrastructure Maintenance  
Funding for the Next Three Years  
November 2014**

**NOTE:** *The costs tabulated below do NOT include remediation as is currently needed, and addressed within this report.*

<b>Items</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
Pavement Repairs	\$2000	\$2000	\$2000
Storm and Piping System - Clean, Repairs	\$1000	\$1000	\$1000
Sidewalk and Curb Repairs	\$500	\$500	\$1000
Pavement Striping and Signage Repairs	-	\$500	\$500
Pond Tract-areas Erosion Control	\$2000	\$2000	\$2000
Gate Maintenance	Not Incl.	Not Incl.	Not Incl.
Gates and Walls Maintenance	\$2000	\$2000	\$2000
Pond and Tract Mowing	Not Incl.	Not Incl.	Not Incl.
Landscape and Irrigation – Maint.	Not Incl.	Not Incl.	Not Incl.
<b>Total</b>	<b>\$7500</b>	<b>\$8000</b>	<b>\$8500</b>

Notes:

Items noted as “Not Incl.” are so noted, because the items of reference should be maintained through enlistment of qualified contractors, wherein the cost would be determined

## **SUMMARY OF NEEDED REMEDIAL WORK AT PRESENT**

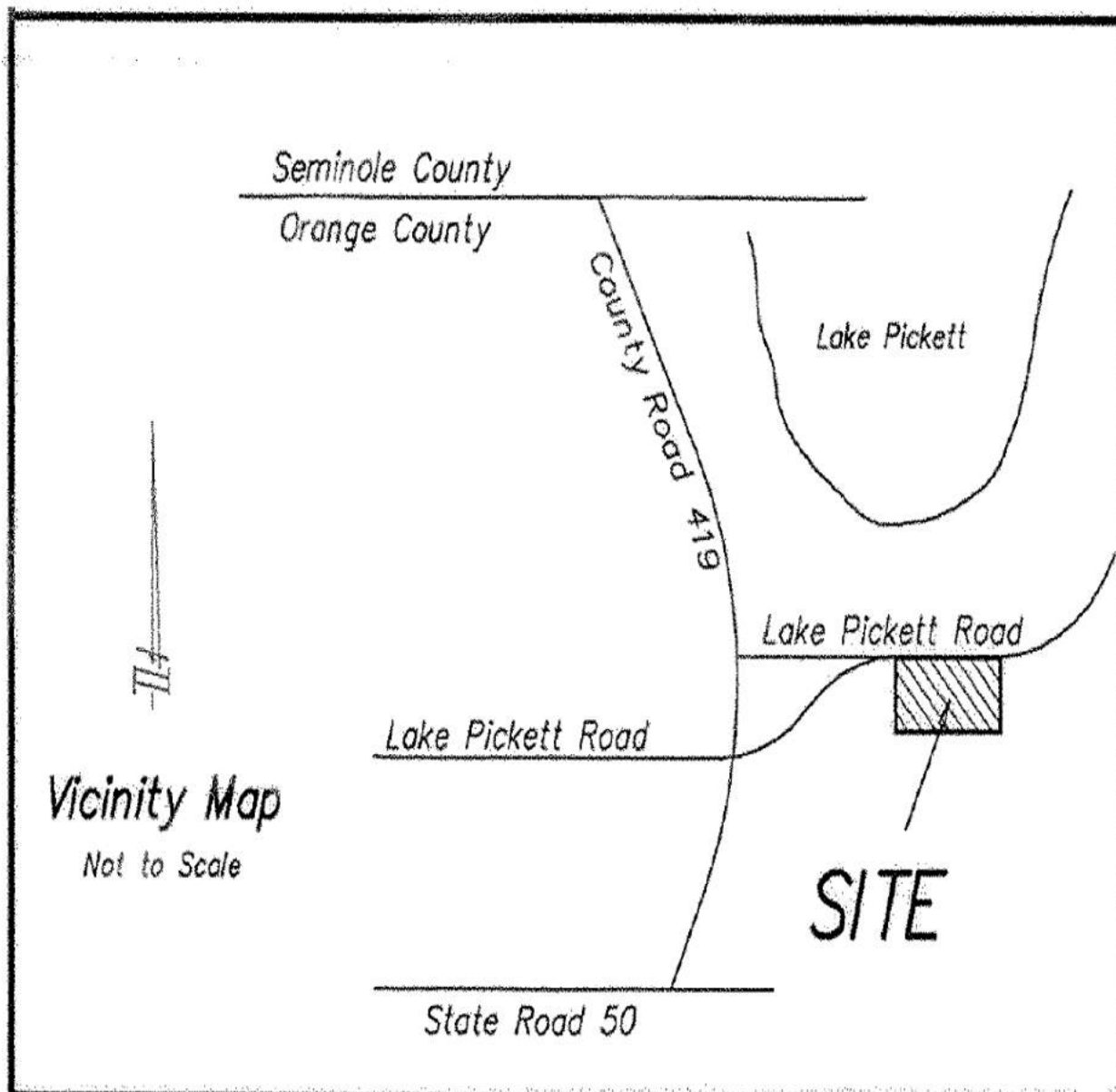
- 1. The roadways are distressed and merit sealcoating (2 coats are standard); sealcoat to include at least 3 pounds of sand per gallon, due to the raveling and oxidation. Also, crack filling is needed, we recommend this upon cracks larger than  $\frac{3}{4}$  inch.**
- 2. Most of the pavement markings need refreshing; this would nonetheless follow a sealcoat treatment.**
- 3. The curbs in the sidewalks are in generally sufficient condition with needed remediation as itemized.**
- 4. The stormwater collection system needs limited minor restoration upon limited and qualified components.**
- 5. The ponds and adjacent areas minimal additional maintenance, as detailed within the Report.**
- 6. Miscellaneous minor maintenance is needed upon some of the common-area components, as detailed.**
- 7. The landscaping and irrigation is generally healthy throughout the community; minor maintenance –type work has been identified as warranted.**
- 8. It appears that additional work along the Late Pickett Road frontage needs to be completed, including handrails, sidewalk extension, landscape hedge extension, and crosswalk painting at the entrance.**



# **Appendix**

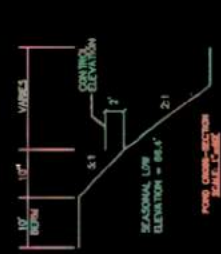
## **Appendix A**

### **Project Location Map**



## **Appendix B**

### **Master Paving & Drainage Plan**



LOT GRADING TABLE

LOT NO.	TYPE OF GRADE
1	EXISTING
2	EXISTING
3	EXISTING
4	EXISTING
5	EXISTING
6	EXISTING
7	EXISTING
8	EXISTING
9	EXISTING
10	EXISTING
11	EXISTING
12	EXISTING
13	EXISTING
14	EXISTING
15	EXISTING
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58	EXISTING
59	EXISTING
60	EXISTING



RECEIVED  
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 PDS  
 ALIAMONTE SVC. CENTER  
 108200 1.



Fontana Estates  
Orange County, Florida

Fontana Estates  
Orange County, Florida

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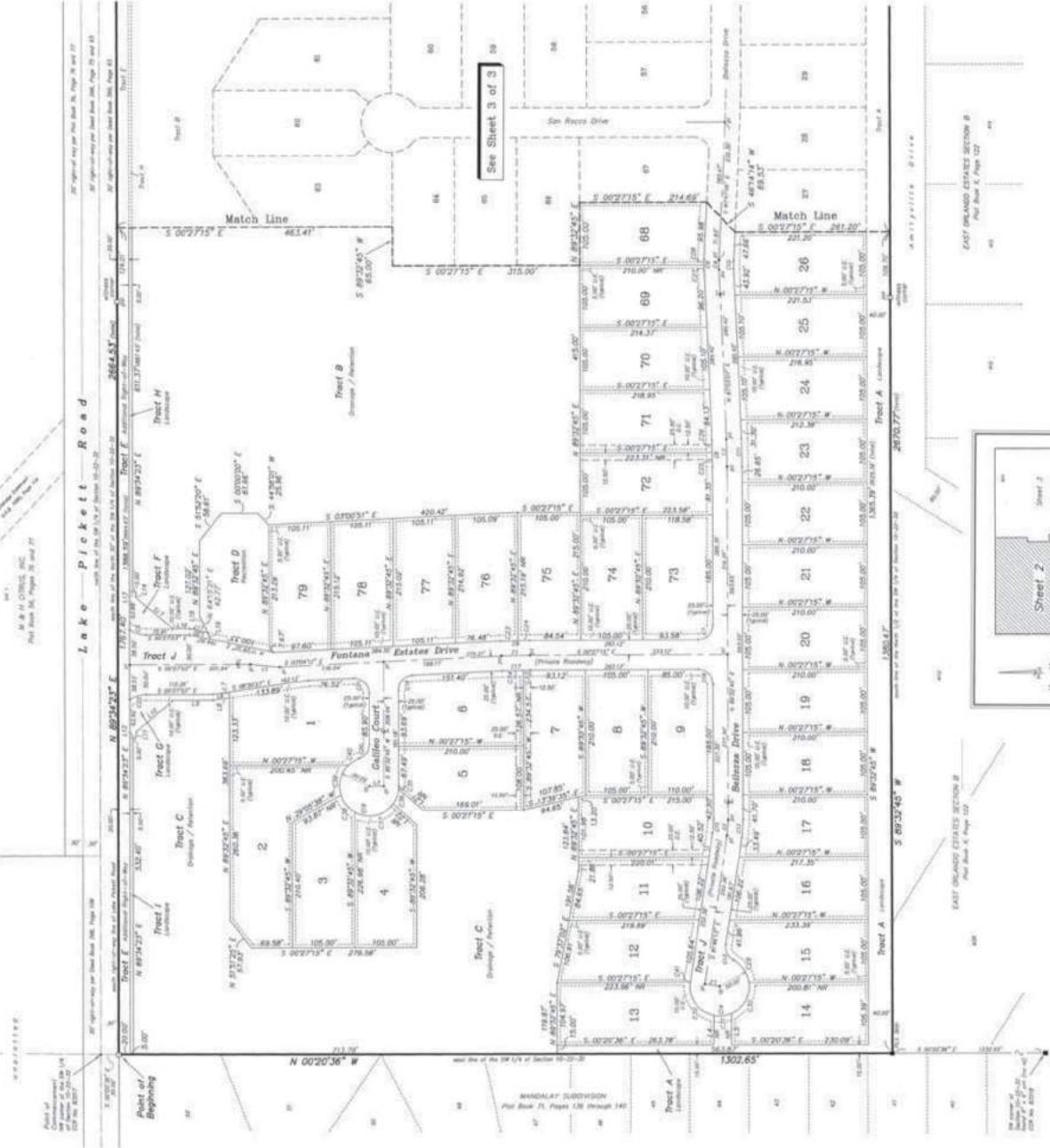
Fontana Estates  
Orange County, Florida

Fontana Estates  
Orange County, Florida

Fontana Estates  
Orange County, Florida

# FONTANA ESTATES

A portion of Section 10, Township 22 South, Range 32 East  
Orange County, Florida



LINE TABLE

LINE	BEARING	DISTANCE
1	N 89°42'15\"	48.75'
2	N 89°42'15\"	48.75'
3	N 89°42'15\"	48.75'
4	N 89°42'15\"	48.75'
5	N 89°42'15\"	48.75'
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73	N 89°42'15\"	48.75'
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79	N 89°42'15\"	48.75'
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85	N 89°42'15\"	48.75'
86	N 89°42'15\"	48.75'

DEED TABLE

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86	1/1/1975	100	100	1.00	Original

LEGEND

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- 83 - Survey
- 84 - Survey
- 85 - Survey
- 86 - Survey

# FONTANA ESTATES

A portion of Section 10, Township 22 South, Range 32 East  
Orange County, Florida



W.B. & DUBOIS, INC.  
PLAT BOOK 75, PAGE 87

ONE TABLE

LINE	BEARING	DISTANCE
1	S 89°34'23" E	200.00'
2	S 00°27'15" E	127.50'
3	N 89°34'23" E	200.00'
4	N 00°27'15" E	127.50'
5	S 89°34'23" E	200.00'
6	S 00°27'15" E	127.50'
7	N 89°34'23" E	200.00'
8	N 00°27'15" E	127.50'
9	S 89°34'23" E	200.00'
10	S 00°27'15" E	127.50'

ONE TABLE

LINE	BEARING	DISTANCE
1	S 89°34'23" E	200.00'
2	S 00°27'15" E	127.50'
3	N 89°34'23" E	200.00'
4	N 00°27'15" E	127.50'
5	S 89°34'23" E	200.00'
6	S 00°27'15" E	127.50'
7	N 89°34'23" E	200.00'
8	N 00°27'15" E	127.50'
9	S 89°34'23" E	200.00'
10	S 00°27'15" E	127.50'

- 1 - 1/2" = 100'
- 2 - 1/4" = 50'
- 3 - 1/8" = 25'
- 4 - 1/16" = 12.5'
- 5 - 1/32" = 6.25'
- 6 - 1/64" = 3.125'
- 7 - 1/128" = 1.5625'
- 8 - 1/256" = 0.78125'
- 9 - 1/512" = 0.390625'
- 10 - 1/1024" = 0.1953125'
- 11 - 1/2048" = 0.09765625'
- 12 - 1/4096" = 0.048828125'
- 13 - 1/8192" = 0.0244140625'
- 14 - 1/16384" = 0.01220703125'
- 15 - 1/32768" = 0.006103515625'
- 16 - 1/65536" = 0.0030517578125'
- 17 - 1/131072" = 0.00152587890625'
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- 26 - 1/67108864" = 0.00000298023223876953125'
- 27 - 1/134217728" = 0.000001490116119384765625'
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- 67 - 1/147573952589676412928" = 0.0000000000000000013552527156069260410806851024861101171875'
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See Sheet 2 of 3

## **Appendix C**

### **Recorded Plat**

## **Appendix D**

### **SJRWMD Documents**





# St. Johns River Water Management District

Hans G. Tanzler III, Executive Director

4049 Reid Street • P.O. Box 1429 • Palatka, FL 32178-1429 • (386) 329-4500  
On the Internet at [floridaswater.com](http://floridaswater.com).

October 3, 2012

Fontana Estates Community Homeowners Association Inc  
2966 Commerce Park Dr Ste 100  
Orlando FL 32819

SUBJECT: Transfer of an Environmental Resource Permit  
Permit Number 40-095-106299-2  
Project Name: Fontana Estates (Transfer)

Dear Sir/Madam:

The surface water management system serving the above-referenced project has been constructed and is functioning in conformance with the requirements of the St. Johns River Water Management District.

The Fontana Estates Community Homeowners Association Inc is identified as the operation and maintenance entity in the permit. The permit has now been transferred to Fontana Estates Community Homeowners Association Inc, who is authorized to operate the system and responsible for its routine maintenance.

### **Maintenance of Your Stormwater System:**

Enclosed you will find an operation permit plan, maintenance guidelines, and a pamphlet entitled "Neighborhood Guide to Stormwater Systems." The permit, plan and maintenance guidelines provide information to assist you in assuring the system is properly maintained and will continue to function as designed. Please review this material carefully to assure that your association meets all of the requirements contained in your permit and keep it with other important documents. The pamphlet contains general information about the stormwater systems that will be useful to the homeowners in your development.

### **Transferring Your Permit:**

If you wish to transfer your permitted facility, you must notify the District in writing within 30 days of any sale, conveyance or other transfer of a permitted system or facility, or within 30 days of any transfer of ownership or control of the real property where the permitted system or facility is located. You will need to provide the District with the information specified in District rule 40C-1.612, Florida Administrative Code (name and address of the transferee and a copy of the instrument effectuating the transfer). Please note that a permittee remains liable for any corrective actions that may be required as a result of any permit violations that occur before the sale, conveyance, or other transfer of the system or facility, so it is recommended that you request a permit transfer in advance.

---

#### GOVERNING BOARD

Lad Daniels, CHAIRMAN JACKSONVILLE	John A. Miklos, VICE CHAIRMAN ORLANDO	Douglas C. Bournique, SECRETARY VERO BEACH	Maryam H. Ghyabi, TREASURER ORMOND BEACH
Chuck Drake ORLANDO	Richard G. Hamann GAINESVILLE	George W. Robbins JACKSONVILLE	Fred N. Roberts, Jr. OCALA
			W. Leonard Wood FERNANDINA BEACH

Thank you and please let us know if you have additional questions. For general questions contact [e-permit@sjrwmd.com](mailto:e-permit@sjrwmd.com) or (386) 329-4570.

Sincerely,



Victor Castro, Director  
Bureau of Regulatory Support  
St. Johns River Water Management District  
4049 Reid St  
Palatka FL 32177

cc: District Permit File

Fontana Estates Development LLC  
C/O Scott Masey  
6444 Waggoner Dr  
Dallas TX 75230

**ST. JOHNS RIVER WATER MANAGEMENT DISTRICT**  
**Post Office Box 1429**  
**Palatka, Florida 32178-1429**

**PERMIT NO.** 40-095-106299-2

**TRANSFER PERMIT ISSUED:** October 3, 2012

**PROJECT NAME:** Fontana Estates (Transfer)

**A PERMIT AUTHORIZING:**

This permit authorizes the operation and maintenance of the surface water management system, with stormwater treatment by wet detention, serving Fontana Estates, a single family residential project consisting of 79.8 acres constructed in accordance with plans received by the District on November 8, 2006.

**LOCATION:**

Section(s): 10  
Orange County

Township(s): 22S

Range(s): 32E

**ISSUED TO:**

Fontana Estates Community Homeowners Association Inc  
2966 Commerce Park Dr Ste 100  
Orlando FL 32819

Permittee agrees to hold and save the St. Johns River Water Management District and its successors harmless from any and all damages, claims, or liabilities which may arise from permit issuance. Said application, including all plans and specifications attached thereto, is by reference made a part hereof.

This permit does not convey to permittee any property rights nor any rights or privileges other than those specified herein, nor relieve the permittee from complying with any law, regulation or requirement affecting the rights of other bodies or agencies. All structures and works installed by permittee hereunder shall remain the property of the permittee.

This permit may be revoked, modified or transferred at any time pursuant to the appropriate provisions of Chapter 373, Florida Statutes:

**PERMIT IS CONDITIONED UPON:**

See conditions on attached "Exhibit A", dated October 3, 2012

**AUTHORIZED BY:** St. Johns River Water Management District

By: 

\_\_\_\_\_  
Janice Unger  
Environmental Resource Program Manager

**"EXHIBIT A"**  
**CONDITIONS FOR ISSUANCE OF PERMIT NUMBER 40-095-106299-2**  
**Fontana Estates Community Homeowners Association Inc**  
**TRANSFER PERMIT DATED OCTOBER 3, 2012**

1. All activities 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.
2. Activities approved by this permit shall be conducted in a manner which do not cause violations of state water quality standards.
3. Should any other regulatory agency require changes to the permitted system, the permittee shall provide written notification to the District of the changes prior implementation so that a determination can be made whether a permit modification is required.
4. 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 40C-4 or chapter 40C-40, F.A.C.
5. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the activities authorized by the permit or any use of the permitted system.
6. The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of the permitted system or the real property at which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of rule 40C-1.612, F.A.C. The permittee transferring the permit shall remain liable for any corrective actions that may be required as a result of any permit violations prior to such sale, conveyance or other transfer.
7. 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.
8. The operation and maintenance entity shall inspect the stormwater or surface water management system once within two years after the completion of construction and every two years thereafter to determine if the system is functioning as designed and permitted. The operation and maintenance entity must maintain a record of each required inspection, including the date of the inspection, the name, address, and telephone number of the inspector, and whether the system was functioning as designed and permitted, and make such record available for inspection upon request by the District during normal business hours. If at any time the system is not functioning as designed and permitted, then within 14 days the entity shall submit an Exceptions Report to the District, on form number 40C-42.900(6), Exceptions Report for Stormwater Management Systems Out of Compliance.
9. This permit authorizes the operation and maintenance of the surface water management system in accordance with the plans received by the District on November 8, 2006.







February 13, 2019

Telka diFate  
President Fontana Estates HOA

Re: Scope of Work  
Fontana Estates Pond Remediation

To whom it may concern:

The Fontana Estates Pond is currently seeing adverse effects due to lower water levels from over-use for irrigation and eroded site slopes. This has caused some deterioration of the side slopes and depth of the pond has been compromised in a small area as well. Fontana Estates would like to remediate these issues and re-certify the pond through the St. Johns River Water Management District (SJRWMD).

Fontana Estates HOA has provided Kimley-Horn with a survey of the existing pond conditions which has been reviewed for conformance with the original design of the pond. Through this analysis, Kimley-Horn has provided a set of plans and cross sections that outline the recommended maintenance to mitigate these problems.

As can be seen in the plans, there is only about 15% of the pond that will need to be adjusted which falls within the middle lobe. Basically, the plan view shows where each cross section is taken from and covers a span of 400 feet. As you move south from Section A-A, the amount of soil that needs to be removed increases. As seen in Section F-F, the soil is about 5-6 feet higher in the pond than was designed which causes concerns of the mean depth being too low. Per our calculations within this 400-foot span, approximately 5,300 CY of soil will need to be removed from the pond bottom. In addition to performing this excavation, the existing control elevation of the pond will need to be brought back to its natural condition of 66.40', currently it is at 64.40'. Once this is all complete Kimley-Horn will inspect the pond and re-certify it through SJRWMD.

If you have any further questions or concerns, please do not hesitate to contact me at the office at 407-898-1511 or by email at [brent.lenzen@kimley-horn.com](mailto:brent.lenzen@kimley-horn.com).

Sincerely,

**KIMLEY-HORN AND ASSOCIATES, INC.**

A handwritten signature in blue ink, appearing to read "Brent A. Lenzen".

Brent A. Lenzen, P.E.  
FL PE No. 78537  
Project Engineer



June 5, 2019

St. Johns River Water Management District  
601 South Lake Destiny Road, Suite 200  
Maitland, FL 32751

Re: Operation and Maintenance Inspection Certification  
Fontana Estates HOA Stormwater Pond Maintenance Required

To whom it may concern:

Based on our site assessment on June 4, 2019 the following components of the existing stormwater system do not appear to be functioning properly:

1. Middle larger wet pond: A significant portion of the southern section of this pond appears to be significantly eroded and has expansive areas where the mean depth of the pond is at or below the 2' minimum requirement. This also reduces the permitted pond permanent pool volume. Vegetation is now beginning to grow through the surface of this portion of the pond along with additional underwater vegetation build-up. Based on recently obtained survey information on the existing pond bottom, the pond in this area is approximately 6-feet shallower than the permitted design.
2. The pond outfall on the north side of the development along the Lake Pickett Road right-of-way has extensive vegetation growth and needs to be properly maintained.

If you have any further questions or concerns, please do not hesitate to contact me at the office at 407-898-1511 or by email at [brent.lenzen@kimley-horn.com](mailto:brent.lenzen@kimley-horn.com).

Sincerely,

**KIMLEY-HORN AND ASSOCIATES, INC.**

A handwritten signature in blue ink, appearing to read "B. Lenzen", written over a horizontal line.

Brent A. Lenzen, P.E.  
FL PE No. 78537  
Project Engineer

EX-01

SHEET NUMBER

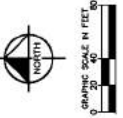
FONTANA ESTATES  
STORMWATER  
FLORIDA

COMPARATIVE  
CROSS SECTIONS

DATE 04/24/2019  
SCALE AS SHOWN  
DRAWN BY JSC  
CHECKED BY JSC  
DATE 04/24/2019  
PROJECT 78537  
OWNER PROJECT/CDM

Kimley-Horn  
© 2019 KIMLEY-HORN AND ASSOCIATES, INC.  
180 S. ORANGE AVENUE, SUITE 500, ORANGE, FL 32667  
WWW.KIMLEY-HORN.COM CA 00000006

NO.	REVISIONS	DATE	BY







FONTANA ESTATES  
STORMWATER

## ES

ORANGE COUNTY

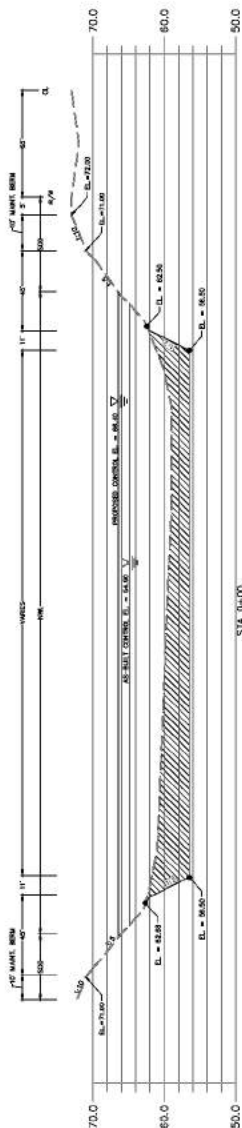
## COMPARATIVE CROSS SECTIONS

SN  
E

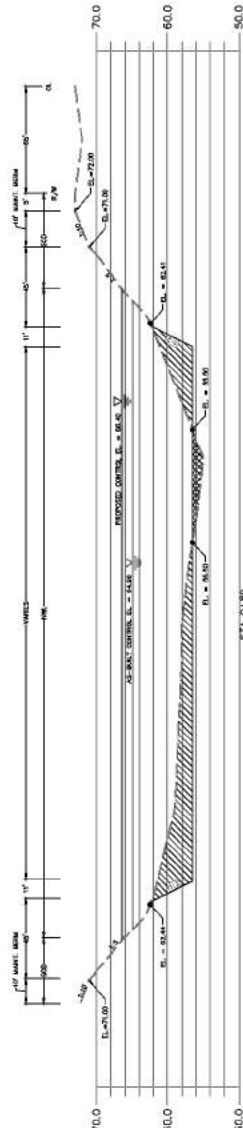
DATE	04/24/2019
SCALE	AS SHOWN
DESIGNED BY	DAR
DRAWN BY	JOE
CHECKED BY	BAL
DATE	FEBRUARY 12, 2019

78537  
A. LIGTEN, P.E.  
JANUARY 12, 2016

78537  
A. LIGTEN, P.E.  
JANUARY 12, 2016

[illegible]

Section	Distance Between Sections [FT] =				Net Volume [CC]
	Cat [IN]	Fill [IN]	Net Area [SQ]	Net Volume [CC]	
A-A	11.659 [IN]	9.4	11.048 [IN]	63,422.0	(1,204.7)
B-B	9.481 [IN]	00.9	14.812 [IN]		



Section	Distance Between Sections (F) = 80			Net Volume (CF)
	Cut (SF)	Fill (SF)	Net Area (SF)	
B-8	6548.11	60.9	(6487.2)	33,363.07
				(1,384.7)

**LEGEND**

	CUT
	FILL
	EXISTING POND SURFACE
	PROPOSED POND SURFACE





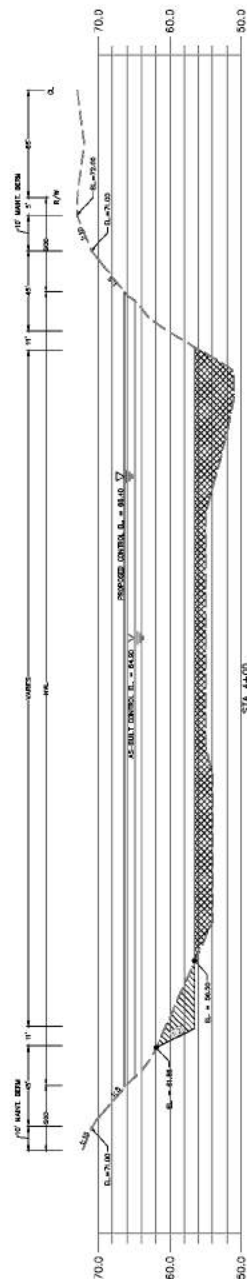
FONTANA ESTATES  
STORMWATER

FLORIDA

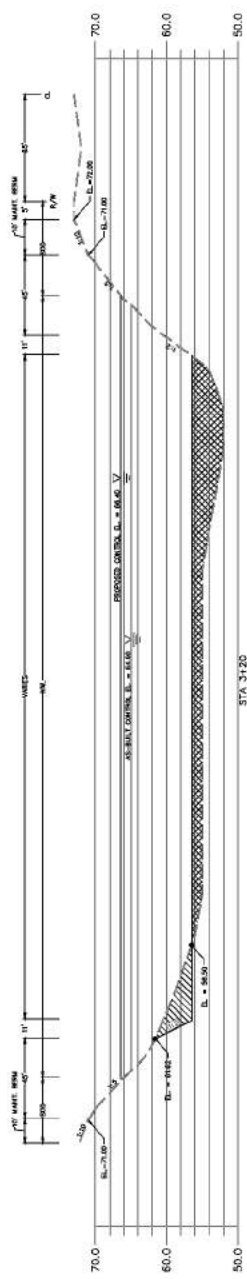
## COMPARATIVE CROSS SECTIONS

DATE	04/24/2019
SCALE	AS SHOWN
DESIGNED BY	DAE
DRAWN BY	JOE
CHECKED BY	BAL
DATE: FEBRUARY 12, 2016	

**Kimley-Horn**  
© 2016 KIMLEY-HORN AND ASSOCIATES, INC.  
1810 S. ORANGE AVENUE, SUITE 1000, ORLANDO, FL 32801  
PHONE: 407-898-1111  
WWW.KIMLEY-HORN.COM CA 00000069

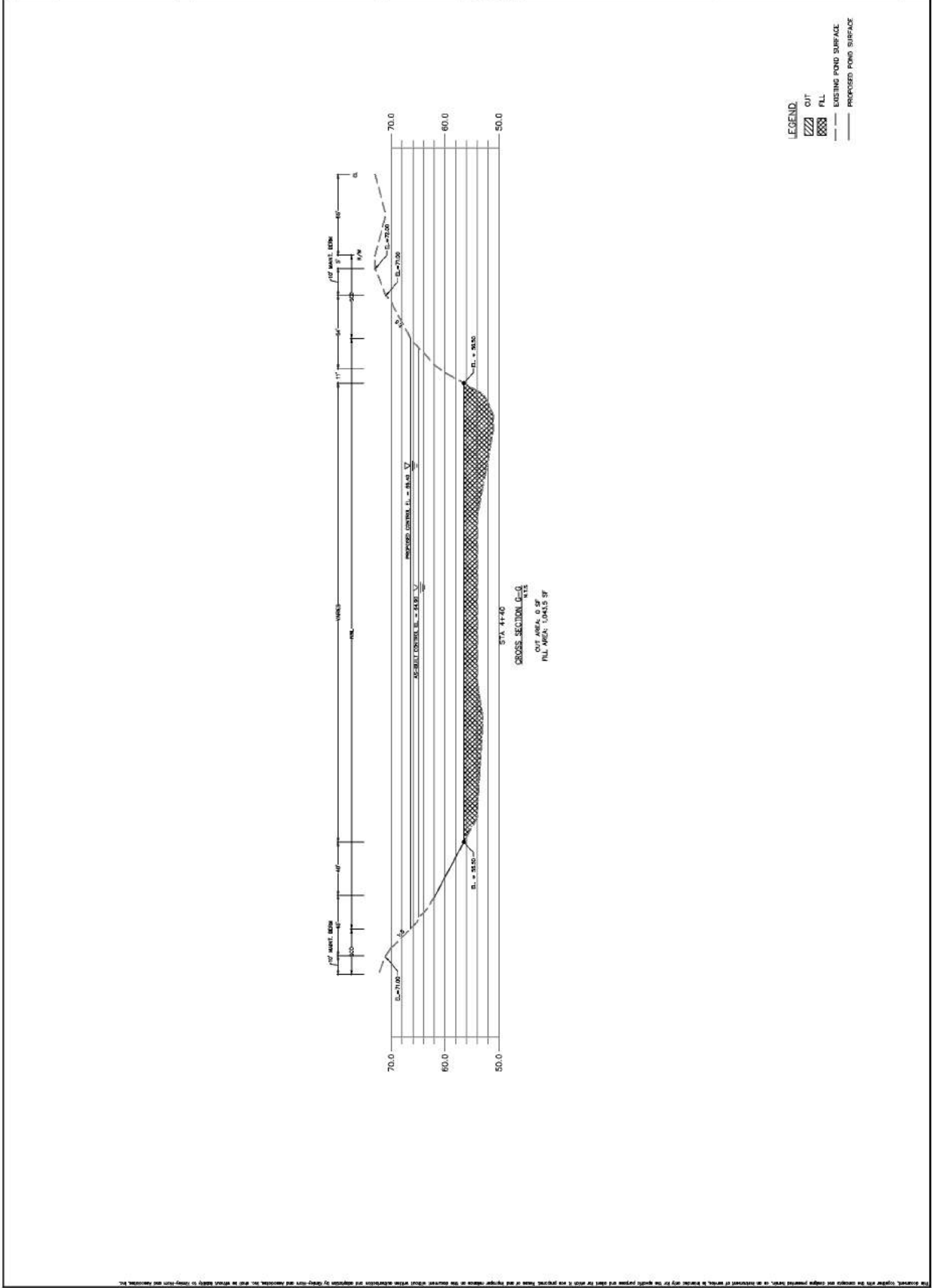
[illegible]

Section	Distance Between Sections [T] =			
	CuF [25]	Fill [26]	Net Area [23]	Net Volume [22]
E-F	(102.1)	776.1	626.0	55,072.0
E-E	(102.0)	865.4	763.8	2,029.7



Section	Distance Between Surfaces (FT) =				Net Volume (CF)	Net Volume (CY)
	Cut (SF)	Fill (SF)	Net Area (SF)	Net Volume (CF)		
F-2	(109.5)	855.4	752.8	35,352.0		
G-2	-	1,043.5	1,043.5			1,330.6

EX-00 SHEET NUMBER		ORANGE COUNTY FONTANA ESTATES STORMWATER		FLORIDA	
COMPARATIVE CROSS SECTIONS					
STA. PROJECT 149990000 DATE 04/24/2019 SCALE AS SHOWN DRAWN BY JSE CHECKED BY JSE		LICENSED PROFESSIONAL 78537 DATE: FEBRUARY 12, 2019 BRITT A. LUTZ, P.E.			
© 2019 KIMLEY-HORN AND ASSOCIATES, INC. 180 S. MARICAMP DRIVE, SUITE 1000, ORLANDO, FL 32807 WWW.KIMLEY-HORN.COM CA 00000969					
NO.	REVISIONS	DATE	BY		



This document, together with the contract and drawings, is to be used for the purpose of construction only. It is not to be used for any other purpose without the written approval of Kimley-Horn and Associates, Inc. and its clients. Kimley-Horn and Associates, Inc. and its clients shall be held harmless for any and all consequences resulting from the use of this document for any purpose other than that intended.

### Planting Service Agreement

Dear Telka,

We greatly appreciate the opportunity to bid on this project for you! Attached is the planting agreement for Fontana Estates.

Lake and Wetland Management is a full-service environmental resource management team, offering a wide a variety of services, including; lake management:

- Algae, border grass, and aquatic weed control.
- Wetland preserve management including invasive plant control.
- Fountain and aeration system sales and service.
- DredgeSox earth-friendly erosion control system.
- Beneficial native plant installation.
- Environmental and wetland monitoring for agency compliance.

Our team leads the industry and has an exemplary reputation with many government agencies, builders, developers, property managers and homeowner associations. Our State-certified, trained biologists have been providing environmental services for many of Florida's waterways and natural areas since 1992.

Lake and Wetland Management is fully insured, carrying full coverage to protect our customers, including workman's compensation, liability and property damage.

We pride ourselves on providing the highest level of service in the industry and look forward to the opportunity of exceeding your expectations!

**Respectfully yours,**

Chad Bass  
Lake & Wetland Management  
Central Florida  
815 Sawdust Trail  
Kissimmee, FL 34744



## Planting Service Agreement

This Agreement is made between *Lake and Wetland Management Orlando, Inc.*, and:

October 17, 2019

Telka diFate  
President Fontana Estates HOA  
mywc2016@gmail.com

Both *Fontana Estates (CUSTOMER)* and *Lake and Wetland Management (LWM)* agree to these terms and conditions for Special Service Agreement:

### Description of Service

❖ *Littoral Planting (approx. 2 plants every linear foot)*

Quantity	Plant	Spec.	Unit Price	Total
8,500	Pickeralweed	Bareroot	\$0.85	\$7,225.00
8,500	Duck Potato	Bareroot	\$0.85	\$7,225.00

**Planting Total: \$14,450.00**

### Investment Schedule

A. 50% mobilization deposit.	<b>\$7,225.00</b>
B. 50% due upon completion.	<b>\$7,225.00</b>

**Investment Total: \$14,450.00**

  
Chad Bass

Chad Bass  
Lake and Wetland Management, Inc.

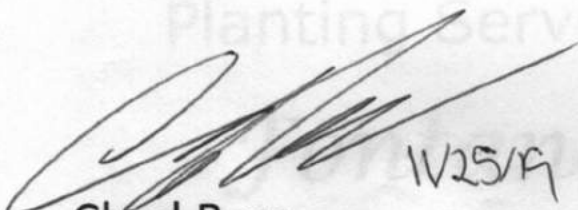
Customer acceptance - The above  
prices, specifications and  
conditions are hereby accepted.

  
Authorized signature  
Date: 11-25-2019



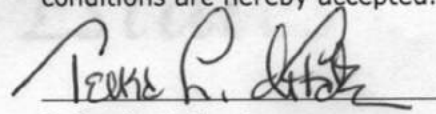
**Conditions:**

1. Ownership of property is implied by **CUSTOMER** with acceptance of this Agreement. In the event that **CUSTOMER** does not expressly own the areas where the above stated services are to be provided, **CUSTOMER** represents that express permission of the owner is given and that authorization to commence the above-mentioned services is allowed. In the event of dispute of ownership, **CUSTOMER** agrees to hold harmless **LWM** for the consequences of such services.
2. **LWM** shall not be responsible for acts beyond its reasonable control, including adverse soil and / or water conditions, adverse weather conditions, unavailable materials, Acts of God, war, acts of vandalism, theft or third-party actions. **CUSTOMER** further states that neither party shall be responsible in damages or penalties for any failure or delay in performance of any of its obligations caused by above named incidences.
3. Invoices submitted for work completed shall be paid within 30 days of receipt. A finance charge of 1.500% per month or an annual percentage rate of 18.000% will be computed on all past due balances.
4. Any incidental activity not explicitly mentioned in this proposal is excluded from the scope of work.
5. This proposal shall be valid for 30 days. Either party may cancel this contract with 30-day written notice. This Agreement automatically renews upon anniversary of execution date, unless notice is given by either party with at least 30 days written notice.
6. If **LWM** is required to enroll in any third-party compliance programs, invoicing or payment plans that assess fees in order to perform work for **CUSTOMER**, those charges will be invoiced back to **CUSTOMER** as invoiced to **LWM**.
7. **LWM** will maintain insurance coverage, which includes but is not limited to; General Liability Property Damage, Automobile Liability, and Workman's Compensation at its own expense.
8. No alterations or modifications, oral or written, of the terms contained above shall be valid unless made in writing, and wholly accepted by authorized representatives of both **LWM** and the **CUSTOMER**.

  
**Chad Bass**

Chad Bass  
Lake and Wetland Management, Inc.

Customer acceptance – The above prices, specifications and conditions are hereby accepted.

  
Authorized signature  
Date: 11-25-2019

Dear Telka,

We greatly appreciate the opportunity to bid on this project for you! Attached is the dredgesox agreement for Fontana Estates.

Our patented SOX system is bioengineered, and immediately halts soil erosion and stabilizes shorelines. The SOX system offers these unique attributes;

- Long lasting results that continue to improve over time
- Superior buffering and filtering results in improved waterway and ecosystem
- Exceptional water retention for vigorous growth of new vegetation
- The only erosion control system that literally becomes part of the earth
- Uses locally sourced organic fill
- Attaches directly to intact shore bank NOT to unstable shore bed
- Allows SOX to be re-tensioned whenever necessary
- Subsurface ground stakes virtually eliminate injury liability to humans and animals
- System self-tightens due to its ability to manage incredible weight displacement.

Lake and Wetland Management is fully insured, carrying full coverage to protect our customers, including workman's compensation, liability and property damage.

We pride ourselves on providing the highest level of service in the industry and look forward to the opportunity of exceeding your expectations!

**Respectfully yours,**

Chad Bass  
Lake & Wetland Management  
Central Florida  
815 Sawdust Trail  
Kissimmee, FL 34744



## Special Service Agreement

This Agreement is made between *Lake and Wetland Management Orlando, Inc.*, and:

October 17, 2019

Telka diFate

President Fontana Estates HOA

mywc2016@gmail.com

Both *Fontana Estates* (**CUSTOMER**) and *Lake and Wetland Management (LWM)* agree to these terms and conditions for Special Service Agreement: (1) year

### Description of Service

A. **Dredgesox Erosion Repair/Bank Restoration services** for 350 linear feet located on the shore of Lake 1.

- Repair approximately 350 linear feet of lake bank at \$53.50/per foot.
- Prep areas of debris/trash for Dredgesox.
- Fill Dredgesox with organic media dredged from the lake using our Truxor amphibious work vehicle.
- Materials consist of the following:
  - Dredgesox
  - Wooden Stakes
  - Organic Media
- Includes sod installation.

**Dredgesox Total: \$18,725.00**

Service includes material, equipment, and labor to complete the project.

**CUSTOMER is responsible for the cost of any necessary permits that may be required prior to commencement of work.**

**If chosen, it will be Fontana Estate's responsibility to irrigate the new sod/planted area once installed.**



### *Littoral Planting (approx. 2 plants every linear foot)*

Sprinkler heads will be marked by the landscaper; otherwise LWM not be responsible for damage to them during the course of work. LWM will repair any exposed sprinkler heads damaged during erosion work in a timely manner.

LWM is not responsible for damage to any underground irrigation, headwalls, piping, electrical, trees or any lines not noted on the as-builts or not located by Sunshine Locating Services (where digging is necessary).

The warranty/guarantee for Dredgesox material is for a ten (10) year period. The labor warranty for any manual adjustments needed is for a one (1) year period. Our guarantee does not include the loss of material due to 'acts of God' such as floods, fire, hurricanes, or other catastrophic events, nor does it include losses due to theft, lack of adequate irrigation, vandalism or negligence by others, or other factors outside the control of our organization.

### **SCHEDULE OF PAYMENT:**

- 50% Mobilization Deposit (\$9,362.50)
- 50% Upon Installation of Dredgesox (\$9,362.50)



## B. Littoral Planting (approx. 2 plants every linear foot)

Quantity	Plant	Spec.	Unit Price	Total
350	Pickrelweed	Bareroot	\$0.85	\$297.50
350	Duck Potato	Bareroot	\$0.85	\$297.50

**Planting Total: \$595.00****Total Investment: \$19,320.00**

Pickrelweed




Duck Potato



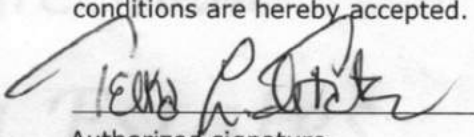


**Conditions:**

1. Ownership of property is implied by **CUSTOMER** with acceptance of this Agreement. In the event that **CUSTOMER** does not expressly own the areas where the above stated services are to be provided, **CUSTOMER** represents that express permission of the owner is given and that authorization to commence the above-mentioned services is allowed. In the event of dispute of ownership, **CUSTOMER** agrees to hold harmless **LWM** for the consequences of such services.
2. **LWM** shall not be responsible for acts beyond its reasonable control, including adverse soil and / or water conditions, adverse weather conditions, unavailable materials, Acts of God, war, acts of vandalism, theft or third-party actions. **CUSTOMER** further states that neither party shall be responsible in damages or penalties for any failure or delay in performance of any of its obligations caused by above named incidences.
3. Invoices submitted for work completed shall be paid within 30 days of receipt. A finance charge of 1.500% per month or an annual percentage rate of 18.000% will be computed on all past due balances.
4. Any incidental activity not explicitly mentioned in this proposal is excluded from the scope of work.
5. This proposal shall be valid for 30 days. Either party may cancel this contract with 30-day written notice. This Agreement automatically renews upon anniversary of execution date, unless notice is given by either party with at least 30 days written notice.
6. If **LWM** is required to enroll in any third-party compliance programs, invoicing or payment plans that assess fees in order to perform work for **CUSTOMER**, those charges will be invoiced back to **CUSTOMER** as invoiced to **LWM**.
7. **LWM** will maintain insurance coverage, which includes but is not limited to; General Liability Property Damage, Automobile Liability, and Workman's Compensation at its own expense.
8. No alterations or modifications, oral or written, of the terms contained above shall be valid unless made in writing, and wholly accepted by authorized representatives of both **LWM** and the **CUSTOMER**.

  
**Chad Bass**  
Chad Bass  
Lake and Wetland Management, Inc.

Customer acceptance – The above prices, specifications and conditions are hereby accepted.

  
Authorized signature  
Date: 11-25-2019



### **SPECIAL SERVICE AGREEMENT**

This Agreement is made between *Lake and Wetland Management, Inc.*, and:

October 4, 2019

Telka diFate/President  
Fontana Estates HOA

Both *Fontana Estates HOA* (**CUSTOMER**) and *Lake and Wetland Management* (**LWM**) agree to these terms and conditions for Special Service Agreement:

#### Description of Service

##### ***A. Overflow Structure Corrections***

1. LWM shall provide all supervision, labor, equipment, materials and incidentals necessary.
2. LWM will remove the sediment from around the skimmer to allow water to enter the overflow structure.
3. Regrade lake embankment behind the overflow structure.
4. Install permanent erosion control blanker per manufacturer's specifications.
5. Install 50' Type 1 Turbidity barrier around the work area. Temporarily cap weep pipe during removal. Apply APS 712 Silt Stop Powder in the work area to correct turbidity. Remove temporary cap. When the curtain is no longer necessary, LWM will remove the curtain in a manner that minimizes turbidity.
6. Includes Bahia sod installation.

**Total Investment: \$2,450.00**



Conditions:

1. Ownership of property is implied by **CUSTOMER** with acceptance of this Agreement. In the event that **CUSTOMER** does not expressly own the areas where the above stated services are to be provided, **CUSTOMER** represents that express permission of the owner is given and that authorization to commence the above mentioned services is allowed. In the event of dispute of ownership, **CUSTOMER** agrees to hold harmless **LWM** for the consequences of such services.
2. **LWM** shall not be responsible for acts beyond its reasonable control, including adverse soil and / or water conditions, adverse weather conditions, unavailable materials, Acts of God, war, acts of vandalism, theft or third party actions. **CUSTOMER** further states that neither party shall be responsible in damages or penalties for any failure or delay in performance of any of its obligations caused by above named incidences.
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7. **LWM** will maintain insurance coverage, which includes but is not limited to; General Liability Property Damage, Automobile Liability, and Workman's Compensation at its own expense.
8. No alterations or modifications, oral or written, of the terms contained above shall be valid unless made in writing, and wholly accepted by authorized representatives of both **LWM** and the **CUSTOMER**.

Customer acceptance – The above prices, specifications and conditions are hereby accepted.

**Chad Bass**

Chad Bass  
Lake and Wetland Management, Inc.

\_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Date





1301 S. International Pkwy  
Suite 2001  
Lake Mary, Florida, 32746  
(407) 678-3366  
www.IrelandSurveying.com

## INVOICE

IS-54498

DATE: 1/2/2019

DATE ORDERED: 12/7/2018

DATE COMPLETED: 01/02/19

CLIENT: SELF PAY

, FLORIDA

CLIENT ORDER NUMBER:

PROPERTY ADDRESS:

0 LAKE PICKET ROAD

ORLANDO, FLORIDA 32820

SELLER:

BUYER: FONTANA ESTATES COMMUNITY HOA

BOUNDARY SURVEY		\$ 1,500.00
TAX		
DISCOUNT		

TOTAL: \$ 1,500.00

BALANCE DUE: \$ 1,500.00

Invoice Notes:

**\$125/HR FIELD**  
**\$65/HR CAD/CALC**

**Make Check Payable To:**

Ireland & Associates Surveying  
1301 South International Parkway  
Suite 2001  
Lake Mary, Florida 32746



THANK YOU FOR YOUR BUSINESS!



10pt blank space

FONTANA ESTATES COMMUNITY HOA  
ATTN: DR TELKA DIFATE  
18210 BELLEZZA DRIVE  
ORLANDO, FL 32820

Invoice No: 149980000-0119  
Invoice Date: Jan 31, 2019  
Invoice Amount: \$1,786.05  
  
Project No: 149980000  
Project Name: FONTANA ESTATES SW CERT  
Project Manager: RAMSBURG, DEREK

Please send payments to:  
KIMLEY-HORN AND ASSOCIATES, INC.  
P.O. BOX 932520  
ATLANTA, GA 31193-2520

Client Reference:

For Services Rendered through Jan 31, 2019

Federal Tax Id: 56-0885615

## LUMP SUM

0151861448800002251221149980000.LLS-INONE

KHA Ref # 149980000.1-12974677

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
TASK 3- POND INSPECTION AND SJRWMD CERTIFICATION	2,200.00	0.00%	0.00	0.00	0.00
<b>Subtotal</b>	<b>2,200.00</b>	<b>0.00%</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Total LUMP SUM</b>					<b>0.00</b>

## COST PLUS MAX

0151861499800002251221149980000.3CPM-LTC

KHA Ref # 149980000.3-13165654

### Project Summary

Contract Value	14,200.00
Previous Billings	0.00
Current Invoice	1,786.05
Remaining Contract Value	12,413.95

Description	Current Amount Due
LABOR	1,707.50
EXPENSES	78.55
<b>Subtotal</b>	<b>1,786.05</b>
<b>Total COST PLUS MAX</b>	<b>1,786.05</b>

### **DESCRIPTION OF SERVICES PERFORMED:**

REVIEW OF POND AS-BUILT SURVEY, SURVEY OVERLAY WITH ORIGINAL POND DESIGN, IDENTIFIED AREAS OF CONFLICT WHERE MAINTENANCE WILL BE REQUIRED.

**Total Invoice: \$1,786.05** 149980000

FONTANA ESTATES COMMUNITY HOA  
ATTN: DR TELKA DIFATE  
18210 BELLEZZA DRIVE  
ORLANDO, FL 32820

Invoice No: 149980000-0119  
Invoice Date: Jan 31, 2019  
Project No: 149980000  
Project Name: FONTANA ESTATES SW CERT  
Project Manager: RAMSBURG, DEREK

## COST PLUS MAX

KHA Ref # 149980000.3-13165654

0151261499800002251223149980000.3C2M-1T0CPM

Task	Description	Hrs/Qty	Rate	Current Amount Due
EXISTING POND EVALUATION	ANALYST	7.5	115.00	862.50
	SENIOR PROFESSIONAL I	3.0	215.00	645.00
	SUPPORT STAFF	1.0	95.00	95.00
		1.0	105.00	105.00
TOTAL EXISTING POND EVALUATION		12.5		1,707.50
OFFICE EXPENSE	OFFICE EXPENSE			78.55
TOTAL OFFICE EXPENSE				78.55
TOTAL LABOR AND EXPENSE DETAIL				1,786.05

*This page is for informational purposes only. Please pay amount shown on cover page.*

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FONTANA ESTATES COMMUNITY HOA  
ATTN: DR TELKA DIFATE  
18210 BELLEZZA DRIVE  
ORLANDO, FL 32820

Invoice No: 149980000-0219  
Invoice Date: Feb 28, 2019  
Invoice Amount: \$4,531.80  
  
Project No: 149980000  
Project Name: FONTANA ESTATES SW CERT  
Project Manager: RAMSBURG, DEREK

Please send payments to:  
KIMLEY-HORN AND ASSOCIATES, INC.  
P.O. BOX 932520  
ATLANTA, GA 31193-2520

Client Reference:

For Services Rendered through Feb 28, 2019

Federal Tax Id: 56-0885615

## LUMP SUM

0151861449800002251221149980000.1LS-INCNE

KHA Ref # 149980000.1-12974677

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
TASK 3- POND INSPECTION AND SJRWMD CERTIFICATION	2,200.00	0.00%	0.00	0.00	0.00
<b>Subtotal</b>	<b>2,200.00</b>	<b>0.00%</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Total LUMP SUM</b>					<b>0.00</b>

## COST PLUS MAX

0151861449800002251221149980000.3CPM-LTC

KHA Ref # 149980000.3-13308932

### Project Summary

Contract Value	14,200.00
Previous Billings	1,786.05
Current Invoice	4,531.80
Remaining Contract Value	7,882.15

Description	Current Amount Due
LABOR	4,332.50
EXPENSES	199.30
<b>Subtotal</b>	<b>4,531.80</b>
<b>Total COST PLUS MAX</b>	<b>4,531.80</b>

### DESCRIPTION OF SERVICES PERFORMED:

CONTINUED SURVEY ANALYSIS OF EXISTING POND WITH FURTHER DEVELOPMENT OF REMEDIATION TACTICS. CROSS SECTIONS AND EARTHWORK ANALYSIS TO DETERMINE TOTAL IMPACT OF IMPROVEMENTS AND PREPARATION OF BID DOCUMENTS FOR CONTRACTOR TO UNDERSTAND SCOPE OF WORK.

**Total Invoice: \$4,531.80** 149980000

FONTANA ESTATES COMMUNITY HOA  
ATTN: DR TELKA DIFATE  
18210 BELLEZZA DRIVE  
ORLANDO, FL 32820

Invoice No: 149980000-0219  
Invoice Date: Feb 28, 2019  
Project No: 149980000  
Project Name: FONTANA ESTATES SW CERT  
Project Manager: RAMSBURG, DEREK

## COST PLUS MAX

KHA Ref # 149980000.3-13308932

0151261499800002251223149980000.3C2M-1T0CPM

Task	Description	Hrs/Qty	Rate	Current Amount Due
EXISTING POND EVALUATION	ANALYST	23.5	115.00	2,702.50
		1.0	140.00	140.00
	PROFESSIONAL	7.5	170.00	1,275.00
	SENIOR PROFESSIONAL I	1.0	215.00	215.00
<b>TOTAL EXISTING POND EVALUATION</b>		<b>33.0</b>		<b>4,332.50</b>
OFFICE EXPENSE	OFFICE EXPENSE			199.30
<b>TOTAL OFFICE EXPENSE</b>				<b>199.30</b>
<b>TOTAL LABOR AND EXPENSE DETAIL</b>				<b>4,531.80</b>

*This page is for informational purposes only. Please pay amount shown on cover page.*



C&M Dredging, Inc.  
31653 Executive Boulevard,  
Suite 2  
Leesburg, FL 34748  
352-314-8900  
[www.cmdredging.com](http://www.cmdredging.com)

**Date: May 10, 2018**

**Project Owner Representative:  
Fontana Estates**

**Re: Dredge and Fill Stormwater Restoration**

Thank you for considering C&M Dredging for your proposed project. We are pleased for the opportunity to provide you with the following proposal for dredging services.

**Intent**

It is understood that the scope of work is to include all equipment, personnel, support and supervision to complete dredging of approximately 4,500 cubic yards of material from the Fontana Estates Stormwater pond to include in-water placement of material per Kimley Horn survey and design cross sections.

**Project Costs**

Mobilization Dredge and Pipeline Lump Sum	\$81,640.00
Hydraulic Dredging and In Water Placement 5,300 CY @ \$35.00/CU	\$157,500.00
<b><u>TOTAL</u></b>	<b><u>\$239,140.00</u></b>



## **General Notes and Scope Coverage Explanation**

- Material will be dredged hydraulically.
- Position and Depth will be monitored via Dredgepack GPS Software.
- Dredge discharge line will be controlled by barge and/or cable discharge system for material placement in proposed fill sections of pond.
- Turbidity Control Measures will be deployed at outfall locations during dredging activities.
- The dredging to be performed is considered maintenance, and there is no anticipation of encountering hard rock, clay or other hard virgin material. If encountered, this material will be verified and avoided.
- Dredge launch location to be determined prior to commencement of mobilization.
- Quantities will be verified by pre and post dredge hydrographic surveys.
- If a target elevation is pertinent to permit acceptance for the work to be performed, it is customary for there to be an over-dredging allowance to ensure this elevation is met. Paid over dredging will be performed at the unit price of \$35.00 per CY and will be limited to +/- 10% of the target volume (450 CY).
- Project Draw Schedule
  - Draw 1 due upon execution of agreement to secure services \$26,714.00
  - Draw 2 due upon commencement of mobilization \$53,428.00
  - Draw 3 due upon commencement of dredging \$80,142.00
  - Draw 4 due upon completion of dredging \$78,856.00

We truly appreciate the opportunity to provide you with this proposal and look forward to earning your business.

Respectfully Submitted,

Christian Miller - President  
C&M Dredging, Inc. CBC #1260793

## **Acceptance of Proposal**

The above scope of work, prices and payment schedule are hereby accepted and C&M Dredging, Inc. is authorized to perform the work. Upon acceptance, this proposal will be incorporated into an agreement for dredging services.

Client Signature\_\_\_\_\_ Date\_\_\_\_\_



## **Fontana Estates Dredging Proposal**

**Client:**

Name: Fontana Estates CHOA

c/o: Telka diFate, President

Address: Near 18210 Bellezza Dr.

Orlando, FL 32820

Phone: 203-675-9817

Email: mywc2016@gmail.com

**Date:** 5/15/2019

**John Schamp**

13630 50<sup>th</sup> Way North

Clearwater, FL 33760

Office: 727-527-1300 Ext 2

Cell: 727-480-6390

Fax: 727-527-1303

john@gatordredging.com

[www.gatordredging.com](http://www.gatordredging.com)



5/15/2019

### **Maintenance Dredging Location:**

**Thank you** for considering Gator Dredging for your proposed dredging project. We are pleased to present this proposal for dredging services for your above referenced project.

Preliminary analysis of the criteria which you provided result in a maximum sediment clean out of approximately 4,500cy from areas A, B, C, and D, to a design depth elevation of 56.5.. An exhibit is attached indicating the scope of work and is hereby part of this contract. (Exhibit Initial Required)

### **Engineering/Permitting Services:**

Client or its delegate is responsible to secure required exemptions/ permits for the project including: City of Orlando, Orange County, Florida Department of Environmental Protection (FDEP), and US Army Corps of Engineers on behalf of the property owner(s), if required. Client is responsible for all direct permit application fees, tipping fees, and severance fees, if required.

No seagrass or mangrove, marine habitat or wetland mitigation is anticipated. Should agencies require any monitoring or mitigation, associated costs will be in addition to those identified below.

### **Dredging Services:**

The sediment will be dredged hydraulically with sediment pumped via a temporary pipeline into the deeper portions of the lake (green area) as shown in the exhibit. The material will be left onsite within the lake for client to manage. No hardened sediment or clay is anticipated as this is considered a maintenance lake cleanup. Should clay, rock, hardened sediment, or debris be encountered there will be additional costs to those identified below. Gator Dredging will not dredge into rock or remove rock from dredge site.

Costs include all turbidity curtains, soil erosion control measures, and signage required by permitting agencies. Client is responsible to remove all boats and/or personal watercrafts, fountains and/or piping from the dredge area during the project. Client is responsible to provide access for equipment mobilization/ demobilization to the dredge area. If the dredge equipment has to be removed from the site due to lack of payment or other problems, there will be a demobilization-mobilization fee added to the sum of the project.

. Client shall provide access to dredge area alongside yards and street right-of-way and limited usage of owner's hose bib/potable water source during dredging operations.

Gator Dredging will not be responsible to Damages caused to landscaping, grass, driveways, fences, concrete patios, electrical wiring, or any other damages caused as a result of the dredging activity. Gator Dredging will not be liable for damages caused by their equipment on this project. Gator Dredging will exercise due diligence in avoiding such damage.

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**Client Initials**\_\_\_\_\_





5/15/2019

### **Project Costs**

Mobilization/ Demobilization - \$100,000

Dredging - \$26.5 per cubic yard (4,500cy) - \$119,250 leaving onsite

**Total Project Cost - \$219,250.00**

### **Payment Schedule**

Contract Execution Payment- \$30,000

Mobilization Payment - \$30,000

30% Completion Payment - \$60,000

60% Completion Payment - \$60,000

Final Completion Payment - \$39,250

### **Notes:**

1. All deposits are non-refundable
2. Client is responsible for all direct permit application fees, tipping fees, and severance fees.
3. All remaining fees due on day of project completion
4. Payment shall not be delayed due to final surveys, certifications, or for any other reason.
5. Gator Dredging will facilitate an acceptance inspection with the property owner on the day of project completion before full payment may be made.
6. If needed, client will be responsible to replace or adjust electrical wiring for boat lifts.
7. Payment by credit card is subject 3.5% processing fee (MasterCard or VISA only).

Gator Dredging may withdraw this proposal if not accepted within thirty (30) days.

**Payment Terms and Conditions:** All payments are due and payable as outlined and agreed upon by the client in the Agreement of Services. Proof of agreement to the payment terms by the client is indicated by the client's signature on the Agreement for Services "Acceptance of Proposal. Gator Dredging is not responsible for fees or actions associated with existing or previous unpermitted/ unauthorized work. Gator Dredging is not responsible for current, future or unpaid fees associated with performing work on State owned submerged (sovereign) land which includes dock leases, private easements, public easements and dredge severance fees.

**Delinquent Accounts:** If Gator Dredging must make efforts to collect amounts due from the "client" Gator Dredging will be entitled to collect as an additional charge all expenses of the collection effort, (i) reasonable attorneys' and expert witness fees; clerical fees and (ii) interest on the amount due from the date due at the prime interest rate plus five percent, or up to the maximum permitted by law.

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**Client Initials**\_\_\_\_\_





5/15/2019

The owner holds fee simple title to the property described herein. Said property abuts a bay, river, inter-coastal, Gulf waters or Ocean. The services being performed by the contractor will improve and be of permanent benefit to the real property. For this reason, the owner hereby grants to the contractor the right to impose a construction lien upon the real property pursuant to Chapter 713 Florida Statutes. The lien and the enforcement thereof shall be governed in the same manner as liens filed pursuant to Chapter 713. Client will execute a Notice of Commencement form for submission to County Clerk's Office prior to mobilization. If you should have any questions or comments, please do not hesitate to contact me. We appreciate the opportunity to provide this scope of services and look forward to working with you.

Respectfully submitted,

John Schamp - Sales Associate  
Waterfront Property Services LLC, dba Gator Dredging (CGC#1512360)

William Coughlin - President

### ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. Gator Dredging is authorized to do the work as specified above. Payment will be made as outlined in this proposal. I acknowledge by my signature below I have read and understand and agree to the Terms and Conditions of this Sales Agreement.

Signature/Client: \_\_\_\_\_ Date: \_\_\_\_\_

(Exhibit Initial Required)

Property owner

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Client Initials \_\_\_\_\_

## COMPARATIVE CROSS SECTIONS

DATE	04/24/2019
SCALE AS SHOWN	
DESIGNED BY	DAR
DRAWN BY	JOB
CHECKED BY	BAL
DATE:	FEBRUARY 12, 2019

**Kimley-Horn**  
© 2019 KIMLEY-HORN AND ASSOCIATES, INC.  
169 S. ORANGE AVENUE, SUITE 1000, ORLANDO, FL 32801  
PHONE: 407-228-1511  
WWW.KIMLEY-HORN.COM CA 00000818

[illegible][illegible]



# Sales Quote

Company Address Pure Lake Services, LLC  
11199 Polo Club Rd  
Wellington, FL 33414

Created Date 5/30/2019  
Expiration Date 6/31/2019  
Quote Number 00000372

Prepared By Chris Douglas  
Phone (520) 250-7070  
Email sales@purelakepro.com

Bill To Name Fontana Estates Community HOA, Inc  
Bill To 18210 Bellezza Dr  
Orlando, FL  
32820

Ship To Name Fontana Estates  
Ship To Orlando FL  
Additional To

Quote To United States

Product Code	Product	Product Description	List Price	Quantity	Total Price
Dredg1	Silt removal	Silt Sediment removal and relocation in sections AA-DD per plans dated 4/19/19 by Kimley Horn	\$33/cu yd	4500 cu yd	\$148,500.
MOBDEMOB		Mobilization/demobilization		1.00	\$10,000.
		Notes: This includes removal of vegetation in sections AA-DD prior to dredging. Turbidity barriers in removal and fill areas			

Subtotal \$158,500.

Total Price \$158,500

## Terms and Conditions

33% deposit due upon bid award, 33% due upon completion of section AA & BB, Balance due upon job completion

KLR Well Drilling LLC  
2000 Burma Rd  
New Smyrna Beach, FL 32168  
(321) 377-4187  
klrwelldrilling@gmail.com



## Service Proposal

### ADDRESS

John Desantis  
Fontana Estates  
Fontana Estates Dr  
Orlando, FL 33829

SERVICE PROPOSAL 1852

#

DATE 10/28/2019

EXPIRATION DATE 11/28/2019

DATE	ACTIVITY	QTY	RATE	AMOUNT
10/28/2019	<b>Service Call</b> It is our recommendation to use the 5HP 4" submersible for the irrigation system 100% of the time. Due to zone flow rates ranging from 27.7 gpm to 64.4 gpm, a cycle stop is needed.	1	95.00	95.00
10/28/2019	<b>Cycle Stop</b> 2" NPT cycle stop with csv1a regulator. Installed on existing pump system at the well head. Includes all necessary plumbing for install.	1	900.00	900.00

Thank you for the opportunity to bid on this project! If this proposal is acceptable, please sign and email a copy to klrwelldrilling@gmail.com or call 321-377-4187.

**TOTAL**

**\$995.00**

Accepted By

Accepted Date



KLR Well Drilling LLC  
2000 Burma Rd  
New Smyrna Beach, FL 32168  
(321) 377-4187  
klrwelldrilling@gmail.com



## Service Proposal

### ADDRESS

Fontana Estates  
Fontana Estates Dr  
Orlando, FL 33829

SERVICE PROPOSAL 1854

#

DATE 10/28/2019

EXPIRATION DATE 11/30/2019

DATE	ACTIVITY	QTY	RATE	AMOUNT
10/28/2019	<b>Service Call</b> Convert single source irrigation system to a two source irrigation system. Convert system to use the above ground pump lake source water for the irrigation when water level is high enough. When the water reaches a low level the deep well will then be used as source of water for irrigation water.	1	95.00	95.00
10/28/2019	<b>Parts</b> Convert deep well pump start relay system to pressure system (on demand system). Install a 24 volt irrigation valve that will be controlled via float system in lake. Includes cycle stop, bladder tank, pressure switch, irrigation valve and isolation valve.	1	1,800.00	1,800.00
10/28/2019	<b>Lake Level Controls</b> Includes up to 3 submersible floats mounted in 8" pipe, j-box enclosure with ice cube relays and transformer and irrigation valve to control discharge of above ground pump. Low volt wiring between valve locations and lake level controls estimated 250'	1	2,200.00	2,200.00
10/28/2019	<b>NOTES</b> Due to above ground pump being oversized a previous quote was given to regulate the flow this work would still have to be completed before this system would work properly. This info is included below:	1	0.00	0.00
10/28/2019	<b>Cycle Stop</b> Install a 2" cycle stop onto existing lake suction above ground pump. Includes transitioning from existing victaulic fittings to NPT and all required plumbing required for installation.	1	1,800.00	1,800.00

Thank you for the opportunity to bid on this project! If this proposal is acceptable, please sign and email a copy to klrwelldrilling@gmail.com or call 321-377-4187.

**TOTAL**

**\$5,895.00**



Accepted By

Accepted Date

August 15, 2019 from John D.

Dear Dr. DiFate,

Please be advised that I spoke with Brock Fanning RVP for Toll Brothers yesterday who was our project manager at Fontana. I explained to him my role on the SMS committee and the issues at Fontana as follows:

- 1) Violations of Code Section 40C with the SMS that was left to Fontana Estates.
- 2) No record of a well permit for use of groundwater under a CRP with STJWMD under 40C.
- 3) Current delinquency of permit standards as filed by Kimley-Horn to STJRMD.
- 4) No record of required engineering inspections for 2012 and 2014.
- 5) Alterations of supply lines, lake level control, and irrigation equipment since 2016.
- 6) Failed inspection by STJWMD and scheduled date for meeting of August 24, 2019
- 7) Current conditions of loss of slope, erosion, loss of pond volume, and algae blooms per survey done by Ireland Surveying Inc. and in the reports filed by Kimley Horn.
- 8) Failed inspection from 2009 was not addressed at STJWMD (no record exists).
- 9) Cost of repairs for remediation of the slopes, 5300 CY of excess fill, and re-construction or repair of the SMS control structure as required by STJWMD.

Relative to code violations under Items 1,2,4, and 8, Brock was unaware of these violations and could offer no assistance even though these date back to when Toll Brothers personnel controlled the Board. (Date of Permit Transfer October 3, 2012 until turnover to homeowners in 2016) See permit transfer items attached.

Relative to items 3,6,7, and 9, Brock stated that no funds exist at Toll Brothers for SMS remediation. He stated that this is the sole responsibility of the HOA and recommended that an assessment be done to raise the funds needed to bring the SMS into compliance. Furthermore he stated that Toll Brothers has no records of HOA business and that by law, these were turned over to Leland Management.

Relative to item 5, Brock stated that it was his "**opinion**", that the prior Board made an error when they altered the equipment/functions of the SMS", but it would be difficult to prove in regard to any legal action". He did ask if there was any E&O insurance covering the Board at the time. I answered that I believe there was.

Brock's best recommendation is that an assessment be done to bring the SMS back to it's original design and function. Further, that "it was unfortunate that I was right in my original assessment" regarding the draw-down in the Spring of 2016. Nonetheless, an assessment would be the best course of action in order to avoid the consequences on non-compliance. Brock stated that any failure could result in Orange County taking over Fontana and we could lose our gated community resulting in an immediate drop in property values. ("I have heard of it happening before").

Brock's final statement was that he "left Fontana in good order and that Toll Brothers is not responsible for what happened afterward". As such, no personnel from Toll Brothers would attend the meeting with STJWMD.

Brock had to take another call and he asked that I e-mail his assistant Stacie Sneidenthal on any further developments. As such I would ask Stacie to relay this document to Brock in the event that I got anything wrong, misquoted him, or to make any other additional statement, correction, or to provide any additional information in this matter.

Sincerely yours

John DeSantis  
SMS Committeeman  
304-374-6158

**\*\*Dr. Telka DiFate is the President of the Fontana HOA and Robert Hollister is Vice President**

OPERATION AND MAINTENANCE (O&M) PERMIT TRANSFER TECHNICAL STAFF  
REPORT  
03-Oct-2012  
APPLICATION #: 40-095-106299-2

**O&M Entity:** Fontana Estates Community Homeowners Association Inc  
Ken Thirtyacre  
2966 Commerce Park Dr Ste 100  
Orlando FL 32819 USA

**Project Name:** Fontana Estates (Transfer)

**Authorization Statement:**

This permit authorizes the operation and maintenance of the surface water management system, with stormwater treatment by wet detention, serving Fontana Estates, a single family residential project consisting of 79.8 acres constructed in accordance with plans received by the District on November 8, 2006.

**Recommendation:** Approval

**Reviewers:** Bill Carlie; Rick Sobczak; Cecilia Tyne

**AS-BUILT INSPECTION DATE:** 10/14/2009, 12/17/2009, 1/22/2010

**FILED/RECORDED O & M DOCUMENTS SUBMITTED?** Yes

**PROJECT IN COMPLIANCE?** Yes

**STORMWATER TREATMENT TYPE:** Wet Detention

**OTHER COMMENTS:** Sequence 2 is an O & M Permit Transfer of sequence 1. Upon completion of the Permit Transfer, please close sequence 1 of the permit. The permittee for sequence 1 is an inactive corporate entity that no longer controls any of the site. The successor developer has requested the transfer to the HOA.

**Conditions**

1. All activities shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted



# St. Johns River Water Management District

Hans G. Tanzler III, Executive Director

4049 Reid Street • P.O. Box 1429 • Palatka, FL 32178-1429 • (386) 329-4500  
On the Internet at [floridaswater.com](http://floridaswater.com).

October 3, 2012

Fontana Estates Community Homeowners Association Inc  
2966 Commerce Park Dr Ste 100  
Orlando FL 32819

SUBJECT: Transfer of an Environmental Resource Permit  
Permit Number 40-095-106299-2  
Project Name: Fontana Estates (Transfer)

Dear Sir/Madam:

The surface water management system serving the above-referenced project has been constructed and is functioning in conformance with the requirements of the St. Johns River Water Management District.

The Fontana Estates Community Homeowners Association Inc is identified as the operation and maintenance entity in the permit. The permit has now been transferred to Fontana Estates Community Homeowners Association Inc, who is authorized to operate the system and responsible for its routine maintenance.

**Maintenance of Your Stormwater System:**

Enclosed you will find an operation permit plan, maintenance guidelines, and a pamphlet entitled "Neighborhood Guide to Stormwater Systems." The permit, plan and maintenance guidelines provide information to assist you in assuring the system is properly maintained and will continue to function as designed. Please review this material carefully to assure that your association meets all of the requirements contained in your permit and keep it with other important documents. The pamphlet contains general information about the stormwater systems that will be useful to the homeowners in your development.

**Transferring Your Permit:**

If you wish to transfer your permitted facility, you must notify the District in writing within 30 days of any sale, conveyance or other transfer of a permitted system or facility, or within 30 days of any transfer of ownership or control of the real property where the permitted system or facility is located. You will need to provide the District with the information specified in District rule 40C-1.612, Florida Administrative Code (name and address of the transferee and a copy of the instrument effectuating the transfer). Please note that a permittee remains liable for any corrective actions that may be required as a result of any permit violations that occur before the sale, conveyance, or other transfer of the system or facility, so it is recommended that you request a permit transfer in advance.

---

**GOVERNING BOARD**

Lad Daniels, CHAIRMAN  
JACKSONVILLE

John A. Mikos, VICE CHAIRMAN  
ORLANDO

Douglas C. Bournique, SECRETARY  
VERO BEACH

Maryam H. Ghyabi, TREASURER  
ORMOND BEACH

Chuck Drake  
ORLANDO

Richard G. Hamann  
GAINESVILLE

George W. Robbins  
JACKSONVILLE

Fred N. Roberts, Jr.  
OCALA

W. Leonard Wood  
FERNANDINA BEACH





Speth, Nadira  
BECKER POLAKOFF PA  
111 N Orange Ave  
Ste 1400  
Orlando FL 32801

USPS CERTIFIED MAIL™



9414 8149 0237 0624 0334 51

UNITED AGENT GROUP INC., REGISTERED  
AGENT  
TOLL FL VIII LIMITED PARTNERSHIP  
801 US HIGHWAY 1  
NORTH PALM FL 33408-3852  
BEACH

Speth, Nadira  
BECKER POLAKOFF PA  
  
111 N Orange Ave  
Ste 1400  
Orlando FL 32801

USPS CERTIFIED MAIL™



9414 8149 0237 0624 0334 68

Toll FL VIII Limited Partnership  
Toll FL VIII Limited Partnership  
250 GIBRALTAR RD  
HORSHAM PA 19044-2323

Patrick C. Howell  
Office Managing Shareholder  
Board Certified Construction Law & Litigation  
Attorney  
Phone: 407.215.9660 Fax: 407.999.2209  
phowell@beckerlawyers.com



Becker & Poliakoff  
111 N. Orange Avenue  
Suite 1400  
Orlando, FL 32801

June 24, 2020

**NOTICE OF CLAIM**  
**PURSUANT TO CHAPTER 558,**  
**FLORIDA STATUTES**

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**  
**AND VIA FIRST CLASS MAIL**

Toll Bros, Inc.  
250 Gibraltar Road  
Horsham, PA 19044

United Agent Group Inc., Registered Agent  
Toll Bros, Inc.  
801 US Highway 1  
North Palm Beach, FL 33408

***Re: Fontana Estates Community Homeowners' Association, Inc.***

Dear Sir or Madam:

Fontana Estates Community Homeowners' Association, Inc. (hereinafter referred to as the ("Association")), hereby provides its written Notice of Claim pursuant to §558, *et seq.*, *Florida Statutes*, to Toll Bros, Inc. ("Toll Bros"). The instant Notice of Claim pertains to various construction and design defects existing within the Fontana Estates, located in Orlando, in Orange County, Florida (the "Community"). Enclosed is the Infrastructure Inspection Report by Central Florida Engineering Consultants dated November 20, 2014 ("Infrastructure Report"), requested by Toll Bros to comply with the requirements of the Orange County Code §§ 34-290 – 34-291 for gated communities ("Code") and the Declaration of Covenants, Conditions and Restrictions of Fontana Estates Community ("Declaration").

The Infrastructure Report identifies certain construction and design defects in reasonable detail that have been discovered to exist in and to the stormwater drainage system, inlets, structures, ponds, roadways, curbs, sidewalks, and buffer walls in the Community. However, despite the requirements of the Code and the Declaration requiring that all identified construction defects and maintenance issues be corrected by Toll Bros, the defects were never addressed by Toll Bros. To confirm this, and to review other construction defects in the Community, the Association retained expert engineers with Kimley-Horn, who issued reports dated February 13, 2019, and June 5, 2019,

Toll Bros VIII Limited Partnership

June 24, 2020

Page 2

along with plans dated April 24, 2019, detailing the defects and how they must be addressed. All of this is enclosed for your review. Additionally, we have included invoices, proposals, and contracts supporting the damages incurred by the Association as a direct result of the defects identified in the Infrastructure Report and Toll Bros' failure to address the defects. These documents include the following:

**Contracts, Invoices, and Documents for Damages Incurred by Association**

- Agreement between Lake & Wetland Management to the Association regarding planting agreement for Community - **\$14,450**
- Agreement between Lake & Wetland Management and the Association regarding dredgesox agreement - **\$19,320**
- Special Service Agreement between Lake & Wetland Management and the Association regarding the Overflow Structure Corrections - **\$2,450**
- Invoice dated December 7, 2018 from Ireland Surveying to the Association re Boundary Survey for pond issue - **\$1,500**

**Work by Kimley-Horn for Remediation of Stormwater/Pond Issues**

- Letter dated February 13, 2019, from Kimley-Horn to the Association regarding pond remediation
- Letter dated June 5, 2019, from Kimley-Horn to St. Johns River Water Management District regarding Stormwater Pond Maintenance Required
- Invoice #149980000-0119 from Kimley-Horn for Engineering Services regarding review of pond as-built, survey overlay with original pond design, and identification of areas of conflict - **\$1,786.05**
- Invoice #149980000-0219 Invoice from Kimley-Horn for Engineering Services regarding continued survey analysis of existing pond for further development of remediation plans, cross section and earthwork analysis, and for preparation of bid documents for contractor for determination of scope of work - **\$4,531.80**
- Comparative Cross Sections Map by Kimley Horn dated April 24, 2019 regarding stormwater issue

**Proposals and Issues Still Remaining to be Remediated**

- Proposal dated May 10, 2018 from C&M Dredging to the Association re Dredge and Fill Stormwater Restoration - **\$239,140**
- Proposal dated May 15, 2019 from Gator Dredging to the Association re dredging services - **\$219,250**
- Proposal from Pure Lake Specialist to the Association regarding silt sediment removal and relocation - **\$158,500**
- Proposal dated October 28, 2019 from KLR Well Drilling to the Association regarding irrigation services - **\$5,895**

- Letter dated August 15, 2019 from John DeSantis, SMS Committeeman, to Association regarding issues with Fontana Estates

The defects discovered at the Community were relayed to Brock Fanning with Toll Bros on August 14, 2019, as confirmed by the enclosed letter from John DeSantis from the Association. Despite notifying your company of these defects, nothing has been done by Toll Bros to address or rectify the defects. Further investigation is ongoing and additional reports on defects and deficiencies will be provided accordingly.

Pursuant to Chapter 558, *Florida Statutes*, the Association expects Toll Bros to contact the undersigned to schedule a mutually convenient time for inspections which are to occur **within fifty (50) days** after receipt of this Notice of Claim. Additionally, the Association expects Toll Bros, **within thirty (30) days** after receipt of this Notice of Claim to forward a copy of this Notice of Claim to each person or entity whom it reasonably believes is responsible for each defect specified in the enclosed Report, noting the specific defect for which it believes the particular person or entity is responsible. Further, the Association expects Toll Bros to serve a written response to the undersigned, providing:

- (a) A written offer to remedy the alleged defects at no cost to the Association, a detailed description of the proposed repairs necessary to remedy the defects, and a timetable for the completion of such repairs;
- (b) A written offer to compromise and settle the claim by monetary payment, that will not obligate the person's insurer, and a timetable for making payments;
- (c) A written offer to compromise and settle the claim by combination of repairs and monetary payment, that will not obligate the person's insurer, that includes a detailed description of the proposed repairs and a timetable for completion of such repairs and making payment;
- (d) A written statement that the person disputes the claim and will not remedy the alleged defects or compromise and settle the claim; or
- (e) A written statement that a monetary payment, including insurance proceeds, if any, will be determined by the person's insurer within thirty (30) days after notification to the insurer by means of forwarding the claim, which notification shall occur at the same time the Association is notified of this settlement option, which the Association can accept or reject. A written statement under this paragraph may also include an offer under Paragraph (c) above, but such offer shall be contingent upon the Association also accepting the determination of the insurer whether to make any monetary payment, in addition thereto. If the insurer of the person receiving the claim makes no response within the 30 days following notification, then the Association shall be deemed to have met all conditions precedent to commencing an action.



**Association's Request to Toll Bros to Provide to the Association  
All Available Discoverable Evidence Relating to Defects**

In accordance with §558.004(15), *Florida Statutes*, the Association hereby requests Toll Bros provide to the Association, **within thirty (30) days** of receipt of this Notice of Claim, all available discoverable evidence relating to the construction and design defects at the Community referenced in the attached Report, including but not limited to, producing all of the following:

1. All design plans, specifications, and as-built plans concerning all of the defects specified in this Notice of Claim and the Report attached hereto;
2. All photographs and videos of the construction defect identified in this Notice of Claim and the Report attached hereto;
3. All expert reports that describe any defect alleged herein;
4. All subcontracts as to all defects alleged herein;
5. All purchase orders for any work that the Association has claimed defective per this Notice of Claim and the Report attached hereto, or any part of such materials used in such work; and
6. All information received by the Toll Bros as a result of its forwarding of a copy of this Notice of Claim to any person or entity, whom it reasonably believes is responsible for each defect specified in this Notice of Claim and the enclosed Report pursuant to Florida Statute §558.004(3) and (4).

**Please provide the Association with an estimate for the reasonable costs of reproduction of the foregoing documents.**

Kindly accept this letter also as the Association's communication of the requirements and restrictions set forth in the Uniform Fraudulent Transfer Act (Florida Statute 726.101, et seq.), and other related acts which restrict Toll Bros, and any related or apparent companies of Toll Bros, any subsidiaries of Toll Bros, partnerships, partners, associates, etc. from rendering any such entity and/or Toll Bros themselves without sufficient funds to satisfy the debt which may be owed to the Association as a "present and future creditor" under the Statute, or otherwise. These restrictions include, but are not limited to, the transference, liquidation, sale, acquisition, merger or any other means of asset depletion or secreting which serves to leave any such entity or person without sufficient funds to satisfy the debt which will be owed to the Association. Note, that under these circumstances, the statute entirely restricts any attempt to liquidate a Florida corporation in order to transfer any balance to a foreign or domestic corporation or other person or entity. In accordance with the statute, demand is hereby made upon you to ensure that sufficient funds exist and remain to satisfy the debt which may be owed to the Association as a "present and future creditor" under the statute, or otherwise.

Toll Bros VIII Limited Partnership

June 24, 2020

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Nothing contained herein or attached hereto should be construed as a waiver of any of the Association's rights under Chapter 558, *Florida Statutes* or any other applicable law. The Association expressly reserves its right to supplement or amend its claims to Toll Bros. This demand is being made without waiver of and under full reservation of all rights, relief, and damages previously, presently and hereafter available to the Association.

In addition, pursuant to §627.4137, *Florida Statutes* (and/or §626.9372, *Florida Statutes*, as applicable), the Association requests that Toll Bros provide the undersigned, within thirty (30) days from the date of this request, a statement, under oath, of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance which does or may provide coverage for the Association's claim, including excess or umbrella insurance:

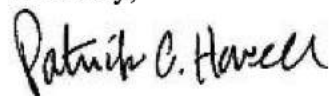
1. The name of the insurer;
2. The name of each insured;
3. The limits of the liability coverage;
4. A statement of any policy or coverage defense which each insurer reasonably believes is available to such insurer at the time of filing such statement; and
5. A complete copy of each such insurance policy.

Pursuant to §627.4137(1) and §626.9372(1), *Florida Statutes*, the Association requests that Toll Bros forward the foregoing request to all affected insurers and any and all other insurance companies that might have issued policies which do or may provide coverage for the Association's claims. In addition, the Association requests that any statement provided in response to the foregoing be amended immediately upon discovery of facts calling for an amendment to such statement. §627.4137(2) and §626.9372(2), *Florida Statutes*.

In the event you have any questions or comments, please contact the Association's legal counsel, Patrick C. Howell, Esq., at your earliest opportunity.

The Association maintains the right to supplement the enclosed Report and the requests contained within this Notice of Claim. Please forward all responses to this Notice of Claim to the undersigned counsel at Becker & Poliakoff, P.A., 111 N. Orange Avenue, Suite 1400, Orlando, Florida 32801.

Sincerely,



Patrick C. Howell  
For the Firm

Toll Bros VIII Limited Partnership

June 24, 2020

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PCH/ns

Enclosure

cc: Fontana Estates Community Homeowners' Association, Inc. (w/o encl.; via email)

ACTIVE 13887431v.1

# FONTANA ESTATES

ORANGE COUNTY, FLORIDA

## INFRASTRUCTURE INSPECTION REPORT

Submitted to:

**Fontana Estates Homeowners Association, Inc.**

**November 20, 2014**

Prepared By:

**CENTRAL FLORIDA**  
**ENGINEERING CONSULTANTS**  
Civil Engineering and Infrastructure Consultants

500 N. Maitland Avenue STE 102  
Maitland, Florida 32751  
[www.Floridaeng.com](http://www.Floridaeng.com)  
407-599-7010

FONTANA  
ESTATES

by "The Windward"



**Montje S. Plank, P.E**  
FL License Registration No. 36149



**CENTRAL FLORIDA ENGINEERING CONSULTANTS, LLC**

INFRASTRUCTURE CONSULTANTS

November 20, 2014

**Fontana Estates Community Homeowners Association, Inc.**  
**c/o Ms. Zaimelyn Rodriguez, LCAM**  
**Leland Management**  
6972 Lake Gloria Blvd  
Orlando, FL 32809-3200

Re: **Fontana Estates Community**  
Infrastructure Inspection and Report of Findings  
Orange County (unincorporated), FL

Dear Ms. Rodriguez:

Pursuant to your request and in accordance within the scope of service agreed upon, we have performed a visual inspection of the above referenced community.

The following report of our findings from our investigation, presents the current level of maintenance for the project as it relates to the storm drainage system, roadways and other commonly owned infrastructure.

We thank you for our engagement; should you have any questions or want further qualifications upon our report please contact Montje Plank.

Sincere regards,  
**CENTRAL FLORIDA ENGINEERING CONSULTANTS, LLC**



Montje S. Plank, P.E.  
Managing Member



Russell C. Maynard  
Managing Member



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## **PROJECT OVERVIEW**

The **Fontana Estates** community is comprised of 79 single-family lots, and is located within eastern unincorporated Orange County, Florida. This privately owned and maintained community is accessed off of Lake Pickett Road, within portions of **Section 10, Township 22 South, and Range 32 East**.

The community is platted as **FONTANA ESTATES**. The underlying plat is recorded in the Public Records of Orange County, Florida, within the following Plat Book and Pages:

**FONTANA ESTATES**

**PB 75 PGS 85-87**

A copy of this plat is attached in the appendix.

Maintenance of the Fontana Estates community infrastructure (not including the central water and sanitary sewer systems) is the responsibility of the community association (“Fontana Estates Community Homeowners Association, Inc.”; “Association”). Included within this Association responsibility is the on-going maintenance on all of the Association-owned common-areas and improvements thereon (streets, pond, sidewalks and curbs, stormwater collection and conveyance system, buffer walls, gates, common-area fencing, landscaping and street trees).

We understand that the control of the Association Board is to soon pass from the developer’s control, to the resident’s control. Therefore, this Report has been prepared by **Central Florida Engineering Consultants, L.L.C.** (“CFEC”; “Engineer”), as authorized by and for the **Fontana Estates Community Homeowners Association, Inc.** (“Association”); this is so that the developer and the member residents (as well as the non-board member residents -see Code Requirements) upon the Association Board would be sufficiently apprised of remediations as necessary to abet turnover a sound and sufficient private infrastructure.

Accordingly, this report presents the engineer-recognized current defects or shortcomings, due to failures, omissions, and/or *neglected* maintenance of the subdivision infrastructure components and community appurtenances, as related to the roadways, curbs, sidewalks, storm drainage conveyance system, the retention/detention pond and tract, and common-area tract, due to:

- **Accelerated wear, beyond that which is commonly expected from residential community infrastructure usage;**
- **Patent construction defects, as evident and observed by Engineer;**
- ***Neglected* maintenance.**

Also, it is not the intention nor within the scope of this report to determine the soundness of the drainage and roadway (or other) designs, *nor to present alternative or remediation designs*, but rather to identify and report current insufficiencies upon these flawed components of the infrastructure.

This report additionally manifests Central Florida Engineering Consultant’s philosophy of using pragmatism in identifying infrastructure deficiencies, in that we seek to call for remediation upon consequential issues, or issues that could become consequential; rather than calling for excessive

and functionally unnecessary restoration. That being said, we heartily endorse preventative maintenance and vigilance as an ongoing priority.

## **JURISDICTIONAL ENTITIES, CRITERIA AND COMPLETIONS**

### **St. Johns River Water Management District**

The Fontana Estates Community Homeowners Association, Inc. is listed upon the operational and maintenance permit, as was issued by the St. Johns River Water Management District upon community stormwater system completion permitting closeout. Further, the criteria associated with the completion certification and transfer of this permit has been correctly performed. A copy of this referenced St. Johns River Water Management District (SJRWMD) Operation and Maintenance (O&M) Permit is included within the Appendix.

### **Unincorporated Orange County, Florida Government**

This private community, being a Gated Subdivision within unincorporated Orange County, Florida – is subject to the Orange County gated community ordinance, ARTICLE VIII Chapter 34 of the Orange County Code.

Orange County, Florida, Code of Ordinances >> PART II - ORANGE COUNTY CODE >> Chapter 34 - SUBDIVISION REGULATIONS >> ARTICLE VIII. - GATED COMMUNITIES >> DIVISION 2. - REQUIREMENTS >>

### **DIVISION 2. - REQUIREMENTS**

Sec. 34-290. - Requirements.

Sec. 34-291. - HOA accounts for maintenance and repair.

Sec. 34-290. - Requirements (9); Require that:

a. No earlier than one hundred eighty (180) days before turnover of the HOA and/or transfer of control of subdivision infrastructure, the HOA must retain the services of a Florida registered engineer experienced in subdivision construction (other than the engineer of record for the subdivision as of the date of the county's approval of the subdivision infrastructure construction plans, and engineers who are principals of, employed by, or contractors of the same firm as the engineer of record) to inspect the streets, sidewalks and drainage system, including stormwater detention/retention areas in accordance with the existing approved plans, and prepare a report recommending the amount of scheduled maintenance and unscheduled repair that likely will be needed each year for the streets, sidewalks and drainage system (including stormwater detention/retention areas), in accordance with standards that may be established and revised from time to time by the County Engineer or his or her designee, which recommends the amounts of money that should be deposited each year in the routine-infrastructure-maintenance account, and determining what repairs, if any, are needed prior to turnover of the HOA;

b. The report be signed and sealed by the engineer;

c. The HOA pay the cost of this initial engineer's report, and the HOA may pay such cost from the routine-infrastructure-maintenance account;

d. A copy of the initial engineer's report be provided to all owners of lots, blocks, and tracts in the subdivision and to the County Engineer within fifteen (15) days after it is completed;

e. Any needed repairs or replacements identified by the report be completed by the developer, at the developer's sole expense, prior to either the developer's turnover of the HOA to the property owners of the subdivision or transfer of control of subdivision infrastructure to the HOA, whichever occurs first; and

f. If turnover of the HOA and/or transfer of control of subdivision infrastructure occurs and the foregoing requirements have not been fulfilled, the rights of the HOA, any of its members, and any and all owners of land in the subdivision to enforce these requirements against the developer shall survive the turnover of the HOA, with the prevailing party to be entitled to attorneys' fees and costs. ....”

The Orange County code goes on to require other maintenance as well, we recommend Association Board familiarity with the code.

[https://www.municode.com/library/fl/orange\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances)



## **INSPECTION PROCEDURE**

The **Fontana Estates** community has streets and stormwater collection/conveyance systems and other common-area Tracts that are owned and are to be maintained by the **Fontana Estates Community Homeowners Association, Inc.** The following items have been reviewed and evaluated by our inspector, **Montje Plank, P.E.** of **Central Florida Engineering Consultants, L.L.C.**, based upon a *visual* inspection of the various components and limited testing consisting of:

- probing of the submerged, *accessible* stormwater inlet and manhole structures;
- limited soils probing as determined important in qualifying the looseness of earthen backfill, or for locating below-grade structures;
- roadway soundings via a tamped dowel, if/as relevant.

The objective was to determine deficiencies and of any functional concerns upon the relevant infrastructure components. Observations were made upon the streets, curbing, sidewalks and stormwater drainage systems, and upon certain identified amenities and appurtenances. Included within the inspection were:

### **Roadways, Curbs, Sidewalks and Drive Aprons within the Access Tracts**

- Inspection upon all roadways for failures and damage;
- Inspection of all sidewalks and driveway aprons for excessive deterioration, or trip hazards;
- Inspection of traffic control signage for maintenance insufficiencies
- Observations upon community landscaping.

### **Stormwater Collection and Drainage System; Retention/Detention Ponds and Inflow/Outfall Control Structures**

- Inspection of the storm inlets for structural integrity, excess sedimentation, debris or blockage;
- Inspection of the pond outfall control structure for functional performance as designed;
- Inspection of pond banks and berms for stability and adequate maintenance.

### **Association Common-Area Tracts and Appurtenances**

- Inspection of the subdivision entry features and buffer walls, and gates (not the gate operators, however);
- Observations upon the park tracts, open spaces and community landscaping

Our on-site Inspections of the community were performed upon October 23<sup>rd</sup>, 2014. The following Report identifies the observed conditions and noted concerns observed by the inspectors, commensurate with the authorized Scope of Services.

## **I. ROADWAYS, CURBS, SIDEWALKS AND RIGHT-OF-WAYS**

### **Pavement:**

The streets, the sidewalks along them, and the majority of the stormwater collection system, are located within the platted 'Right-of-Way' Tract 'J' of the Fontana Estates subdivision. This Tract was dedicated to the Association, by way of the recorded plat; we reference Note #6, upon Sheet 1 of 3 of the Fontana Estates community plat. This tract including the streets was walked by the inspectors, for determination of defects.

**The sealcoat and crack-sealing completion of the community roads (work already begun in 2012 upon the Fontana Estates Drive) should be completed upon the remainder of the community roads, along with the ancillary work preceding placement of the sealcoat, and pavement markings repainting following.**

Our recommended specifications upon the upfront work to sealcoating are:

#### ***PRE-SEALCOAT PLACEMENT WORK:***

*Previous to sealcoat placement, the pavement patching, sealing of the larger pavement cracks, and treatment of the oil-damaged pavement areas are all needed.*

*Crack-sealing: the crack sealing, with a standard bituminous sealing material, is to be upon the wider cracks, those that approximate 3/4 inch wide, and wider. The crack-sealing application is to follow sufficient compressed-air cleaning out of the loose material and any vegetation presently within the cracks.*

*Oil-stained and Damaged Pavement: The larger or more significant of the excessive present oil spill stains need applicable treatment, which includes spot cleaning, scraping and use of a degreasing solution; together with the correct application of a sufficient oil-seal product.*

#### ***Full-Depth Asphalt Replacement:***

*Asphaltic repair areas are to be saw-cut with straight edges, and in approximation to a rectangle, where practicable. The faces of the excavation are to be straight and vertical. Contractor to provide sufficient base compaction below all removed asphalt, from proof rolling, and from other compactive efforts by contractor, as needed to provide sufficient compaction. Contractor to tack coat the revealing sides of existing remaining asphalt on perimeters of patch areas prior to asphalt placement by broom application.*

*Asphalt Replacement shall be 1 Inch Type S-III. All new asphalt shall be rolled by steel drum roller sufficient for the task.*

*Contractor to maintain pavement surface grading to assure positive drainage, where such was existing prior to Work by Contractor. Pavement patches are NOT to pond water.*

The original asphalt had debris within the mix, and this has led to numerous small voids within the pavement, most of which can be 'plugged'. However, some localized excessively impacted areas are dense enough to mandate localized pavement removal and replacement (patching). These areas are identified in the following tabulation; the observed locations of pavement issues meriting attention or repair are as follows:

1. The pavement throughout the community, except upon the previously seal-coated Fontana Estates Drive, is raveling, the asphalt surface is open-graded from the loss of fines; we recommend application of a sealcoat (two coatings) including sand.
2. Numerous small pieces of wood and rubber are embedded in the surface of the asphalt. This recycled product was the result of poor quality control in the asphalt mix; the evident and unstable of the embedded debris locations should be repaired with removal of the debris or rubber, and the hole patched with either an appropriate asphaltic filler or cold mix.
3. Appropriate spot treatments should be placed upon oil stain areas prior to any seal coating, such as at 18014 Bellezza Drive.
4. In proximity to 18000 Galileo Court – at the access to the retention pond: the Miami curb has subsided next to an existing pavement patch; approximately 15 feet of curb replacement is likely needed, to provide for positive gradient for runoff. **Limited localized pavement will likely be required to be removed and replaced at the new grades as well (Fig. 1.01).**
5. The Galileo court cul-de-sac has excessive pavement voids and localized areas where the pavement does not appear to have a full 1 inch asphaltic thickness; an approximate 600 square foot (SF) pavement patch will be needed to remedy this (Fig. 1.02).
6. Within Fontana estates drive, along 18018 Galileo Court, a pavement hole needs plugging.
7. 3112 Fontana Estates Dr.-an approximate 8 inch square pavement patch is needed in front of the inlet.





8. 18312 Bellezza Drive - an approximate 40' x 5' pavement area is excessively raveled and needs removal and replacement (Fig. 1.03).



9. 18252 Bellezza Drive - several pavement voids needs plugging or patching (Fig. 1.04).

10. 18240 Bellezza Dr. - an area of pavement that approximates 100 square yards (SY) is excessively distressed and needs replacement (Fig. 1.05).



11. 18133 Bellezza Dr.- the remediation following removal of four bollards within the pavement has left rebar is exposed within the pavement; this presents a possible trip hazard, therefore we *recommend* removal of the concrete and steel to allow for a one-inch thick pavement patch across the pavement in this location (Fig. 1.06). Also, numerous distresses and voids within the pavement necessitates an approximate 4 foot x 22 foot pavement patch on the 18133 side of the crown (Fig. 1.07).



**12. 18132 Bellezza Drive - several small holes in the pavement need filling (Fig. 1.08).**

**13. 18114 Bellezza Drive - excessive pavement edge crumbling necessitates an approximate 50 foot x 1 foot pavement patch along the curb; also, a hole in the pavement needs plugging.**

**14. At Bellezza Drive and San Rocco Drive - a 4 inch pavement plug or patch is needed, due to the needed removal and patching of organic debris within the pavement (Fig. 1.09).**

**15. The San Rocco Drive cul-de-sac is excessively raveled over an irregular area, necessitating pavement replacement; to do this pavement replacement in a rectangular patch would necessitate replacement of about one third of the cul-de-sac pavement surface. Either pavement patching, or milling and overlay of the entire cul-de-sac is our recommendation (Fig. 1.10).**

**16. 3109 San Rocco Dr. - an approximate 4' x 1' pavement patch is needed along the curb (Fig. 1.11).**



(Fig. 1.08)



(Fig. 1.09)



(Fig. 1.10)



(Fig. 1.11)



**17. 3121 San Rocco Dr. - excessively fractured reflective cracks necessitates a pavement patch of about 14' x 2' with crack filling of the remainder (Fig. 1.12). All of the reflective cracking within the cul-de-sac necessitates crack filling, as do the larger reflective cracks throughout the community.**



## **Curbs and Gutters:**

The curbs and gutters throughout the community were generally in good and sufficient condition. The localized items needing current remediation however, are:

- **18001 Galileo Court - patching is needed in four locations.**
- **In proximity to 18000 Galileo Court - at the access to the retention pond: the Miami curb has subsided next to an existing pavement patch; approximately 15 feet of curb replacement is likely needed, to provide for positive gradient for runoff. Limited localized pavement will likely be required to be removed and replaced at the new grades as well (See Fig 1.01).**
- **3120 San Rocco Dr. - numerous cracks in the curb would be stabilized with the application of a concrete adhesive, which is to be used in curb patching where merited (Fig. 2.01).**



(Fig. 2.01)

## **Sidewalks:**

**The sidewalks were found to be in good and sufficient condition, throughout the community. The items needing current remediation, however, are:**

- **Along the Lake Pickett road frontage sidewalk in front of the community on either side of the Fontana estates drive entrance, a handrail is needed along the retaining wall, as was obviously planned for (Fig. 3.01).**
- **Along Lake Pickett Road frontage, the most eastern extents of the sidewalk, and the landscaping/irrigation do not continue the last 30 feet to the end of the buffer wall; this should be completed, unless there is good reason not to do so (Fig. 3.02).**



### **Street/Traffic Control Signage:**

The traffic control signage and pavement markings - speed limit, stop signs, stop bars, crosswalks, directional signage, and pavement stripping, and the fire department blue pavement markers are very important to be maintained, in protection of Public Safety. Also, the detectable warning mats that each of the sidewalk ramps additionally are important for the same reason. Maintenance upon all of this signage and markings upon and along these private streets is the responsibility of Fontana Estates Community Homeowners Association, Inc. Thusly, it should be a remaining priority for the Association to keep it in sufficient condition, in address of both safety concerns and any Association liability.

**The street signs and the sidewalk detectable warning mats are generally sufficient, except for the following:**

**Pavement markings, such as stop bars, are generally aged, and many are in need of refreshing; pavement markings replacement or augmentation will be needed after sealcoating, that we are recommending.(962-Galileo Ct.)(San Rocco Drive too)**

**We believe that a thermoplastic stop bar is needed at the Late Pickett Road entrance, connecting the two detectable warning mats in either side of Fontana Estates Drive (Fig. 4.01).**



(Fig. 4.01)

- At Bellezza Drive and San Rocco Drive; and at 3109 San Rocco Dr. - the blue reflective pavement marker (RPM) for the fire hydrant needs placement (See Fig. 1.09); **the RPMs throughout the community would be replaced following a sealcoat treatment as well. In addition, the fire hydrants need final color-coded painting.**



## **II. COMMON AREAS, AMENITIES, AND APPURTENANCES**

### **Landscaping/ Open Spaces and Common-Area Tracts/Miscellaneous:**

The common-area landscaping and amenities are generally sufficiently and well maintained.

**Noteworthy items needing current attention, however, are:**

- **The irrigation system in the Tract ‘H’ landscape tract along the north side of the pond Tract ‘B’ needs a checkup by a qualified irrigation contractor, with removal of piping that is not functional.**
- **We observed a boot around the bottom of a tree in the landscape area within Tract ‘H’ landscape tract along the north side of the pond Tract ‘B’; should this boot be removed? A string-line in this area should be removed and the exposed irrigation piping confirmed as functional; there are also some flagpoles lying upon the ground behind the wall that should be removed (Fig. 5.01).**
- **Upon the Tract ‘D’ recreation track, upon the gazebo – there are two downspouts on the northern side of the gazebo that are discharging to unprotected ground adjacent to the columns and are undermining the columns. Minor remediation and appropriate accommodation to curtail the erosion is needed. Installation of two splash pads is also warranted (Fig. 5.02). A maintenance measure of pressure-washing of the gazebo is merited, which would also remove the current wasp nests that we observed (Fig. 5.03).**
- **Within the plastic curbing upon the perimeter of the playground a couple of connection-pins should be re-secured (Fig. 5.04).**



(Fig. 5.01)



(Fig. 5.02)



(Fig. 5.03)



(Fig. 5.04)



## **Gates, Walls and Fences:**

The entrance gates and community walls and fences throughout the community are in generally satisfactory shape. However, **the following items should be currently addressed:**

- **The gate operator system including the battery backup, surge suppression, and siren operated sensors - should all be given a checkout by the gate maintenance company.**
- **The extruded aluminum fence on the west perimeter of the property approximately 50 yards south of the Lake Pickett buffer wall needs straightening (Fig. 6.01).**



- **Along Lake Pickett Road frontage, the most eastern extents of the sidewalk, and the landscaping do not continue the last 30 feet to the end of the buffer wall; this should be completed, unless there is good reason not to do so (See Fig. 3.02). Also, minor sodding around the most easterly column along with localized stabilizing is needed.**
- **Some wall caulking and painting maintenance is needed behind the westerly entrance features, and in the normal course of wall preservation (Fig. 6.02).**



### **III. STORMWATER COLLECTION AND CONVEYANCE SYSTEM; RETENTION/DETENTION PONDS AND INFLOW / OUTFLOW STRUCTURES**

#### **Stormwater Collection and Conveyance System:**

The stormwater collection and drainage system is designed to collect the stormwater runoff from the lots and streets and convey it to the stormwater retention/detention ponds. The stormwater runoff from the subdivision is by-and-large collected in the curb and gutter alongside the roads, thence flows into the curb inlets that are built integrally into the roadside curbing; thence, it is conveyed through drainage pipes - discharging into the on-site ponds. The ponds 'treat' the stormwater, by retaining the first flush of runoff, and then the outfalling excess stormwater which passes through a specially-designed "control structure", which blocks the passage off the initial flush of stormwater, and additionally provides the moderating of the outfall rate of discharge.

The street drainage inlets and manholes were inspected, to a practical but somewhat limited extent, as they were not pumped down. We believe that the scope of our inspection is sufficient, however.

The community still has on-going construction upon the residential units, and we observed sufficient current inlet protection, from sedimentation and debris being allowed into the system.

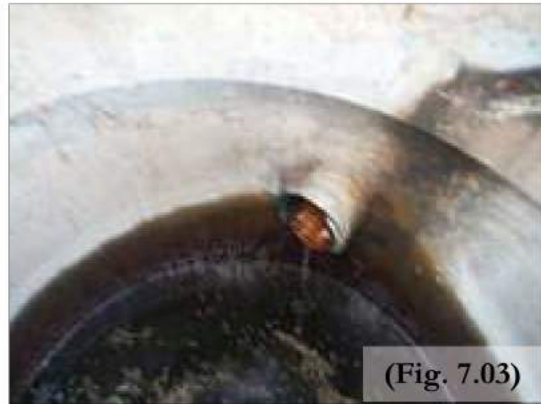
**NOTE: Siltation protection upon inlets should be removed –from both the curb inlets as well as the grated inlets - in all areas where construction is completed and the nearby ground surface has been stabilized by sodding or other method. Removal of any adjacent siltation within the curb or the inlet throat should be made at that time (Fig. 7.01).**

**The following list identifies those structures/locations that we have determined as specifically needing sediment removal, floating debris removal and/or remedial work:**

- **The curb inlet on the east side of Fontana estates drive at Lake Pickett road has excessive floating debris, which needs removal (Fig. 7.02).**
- **A small patch can be made to the curb adjacent to the curb inlet at the entrance.**



- **18234 Bellezza Drive- inlet needs silt removal.**
- **Rust colored sedimentation in the invert of the underdrain intercepting the curb inlet indicates that the underdrain should be washed – we recommend with a low pressure approach – on a periodic basis (Fig. 7.03).(7368)**
- **18133 Bellezza Dr.-the curb inlet as excessive floating debris, which needs removal.**





## **Retention/Detention Ponds and Inflow / Outfall Control Structures:**

The existing wet retention/detention ponds provide for water quality and peak-discharge attenuation treatment. To accomplish this, the ponds are designed to retain stormwater runoff; and also to moderate 'overflowing' stormwater discharge through the use of control structures, allowing for the downstream discharging of the treated runoff as per approved design.

The inspector reviewed the control structures and any other visible structures located within the ponds to determine if the required components were intact, that the structures were properly functioning, and to ascertain the general maintenance in and around the structures.

The pond berms appeared stable, with sufficient grass ground cover. The lakes were not impacted by detrimental weed growth; however, lakeshore algae blooms are likely due in large in part to the fertilization of the grass. *The HOA should assure that the fertilization is with phosphorus-free fertilizer; also, the fertilizer should not be placed on the sloped shoreline.*

**Current noteworthy items are:**

- **Upon the Tract 'B' retention pond, the control structure needs to have the soils removed from below the baffle to provide for a lease six inches of clearance to allow sufficient water flow (Fig. 8.01).(7082)**



(Fig. 8.01)

**Engineer's Cost Estimate for  
FONTANA ESTATES  
Routine Infrastructure Maintenance  
Funding for the Next Three Years  
November 2014**

**NOTE:** *The costs tabulated below do NOT include remediation as is currently needed, and addressed within this report.*

<b>Items</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
Pavement Repairs	\$2000	\$2000	\$2000
Storm and Piping System - Clean, Repairs	\$1000	\$1000	\$1000
Sidewalk and Curb Repairs	\$500	\$500	\$1000
Pavement Striping and Signage Repairs	-	\$500	\$500
Pond Tract-areas Erosion Control	\$2000	\$2000	\$2000
Gate Maintenance	Not Incl.	Not Incl.	Not Incl.
Gates and Walls Maintenance	\$2000	\$2000	\$2000
Pond and Tract Mowing	Not Incl.	Not Incl.	Not Incl.
Landscape and Irrigation – Maint.	Not Incl.	Not Incl.	Not Incl.
<b>Total</b>	<b>\$7500</b>	<b>\$8000</b>	<b>\$8500</b>

Notes:

Items noted as “Not Incl.” are so noted, because the items of reference should be maintained through enlistment of qualified contractors, wherein the cost would be determined



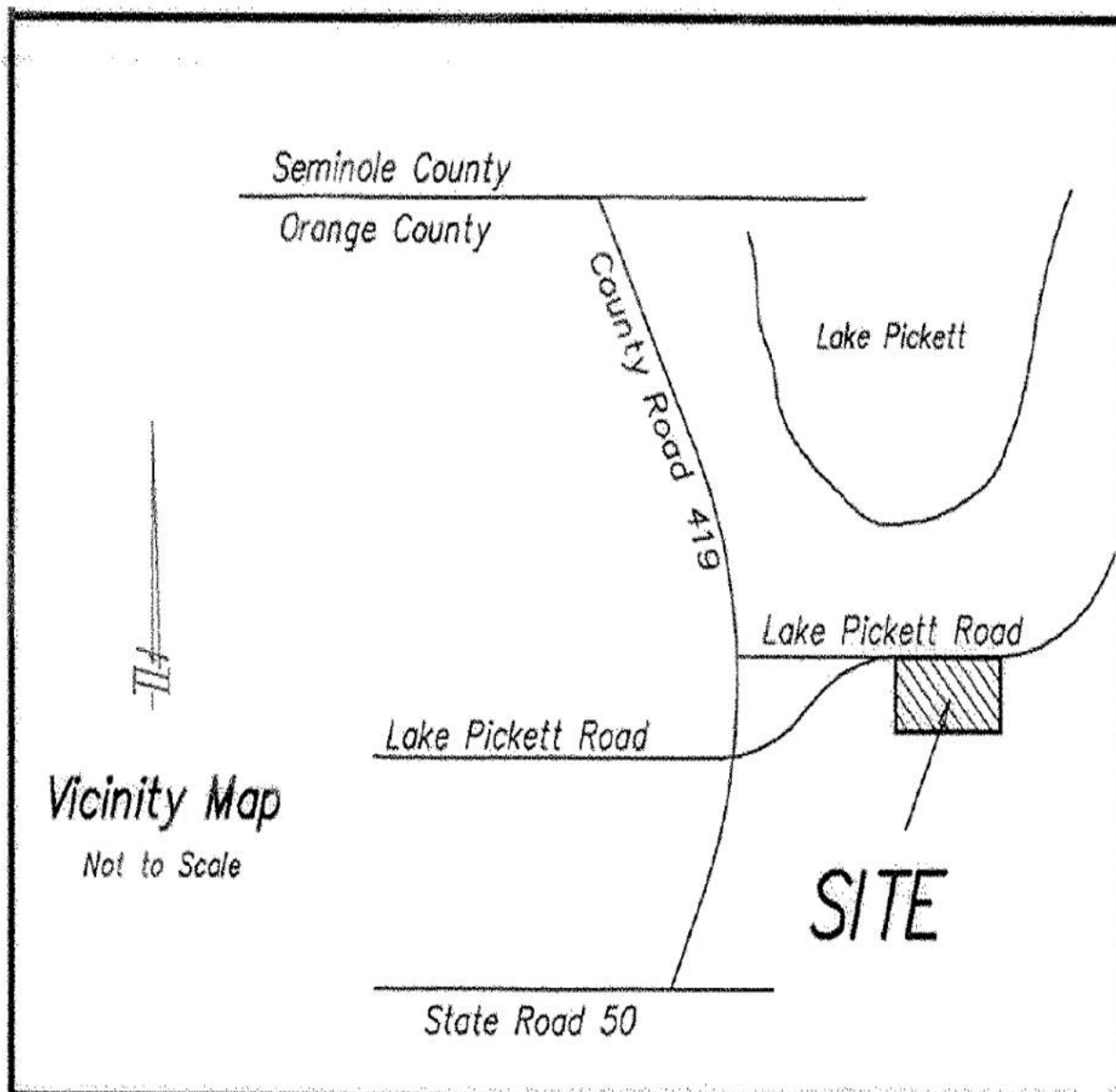
## **SUMMARY OF NEEDED REMEDIAL WORK AT PRESENT**

- 1. The roadways are distressed and merit sealcoating (2 coats are standard); sealcoat to include at least 3 pounds of sand per gallon, due to the raveling and oxidation. Also, crack filling is needed, we recommend this upon cracks larger than  $\frac{3}{4}$  inch.**
- 2. Most of the pavement markings need refreshing; this would nonetheless follow a sealcoat treatment.**
- 3. The curbs in the sidewalks are in generally sufficient condition with needed remediation as itemized.**
- 4. The stormwater collection system needs limited minor restoration upon limited and qualified components.**
- 5. The ponds and adjacent areas minimal additional maintenance, as detailed within the Report.**
- 6. Miscellaneous minor maintenance is needed upon some of the common-area components, as detailed.**
- 7. The landscaping and irrigation is generally healthy throughout the community; minor maintenance –type work has been identified as warranted.**
- 8. It appears that additional work along the Late Pickett Road frontage needs to be completed, including handrails, sidewalk extension, landscape hedge extension, and crosswalk painting at the entrance.**

# **Appendix**

# **Appendix A**

## **Project Location Map**



## **Appendix B**

### **Master Paving & Drainage Plan**



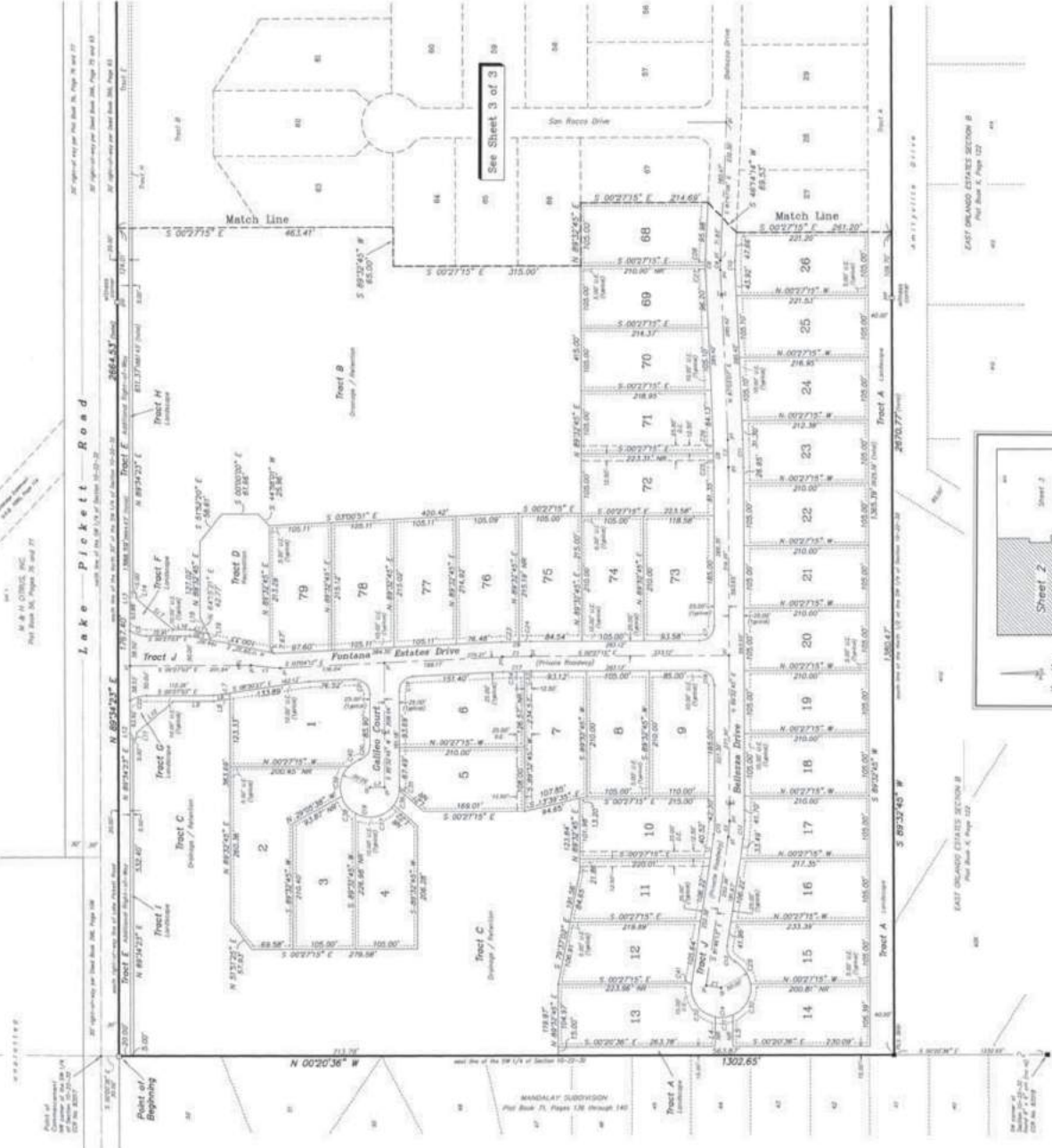






# FONTANA ESTATES

A portion of Section 10, Township 22 South, Range 32 East  
Orange County, Florida



LINE TABLE

LINE	BEARING	DISTANCE
1	N 89°42'15" E	48.76
2	N 89°42'15" E	25.00
3	N 89°42'15" E	25.00
4	N 89°42'15" E	49.47
5	N 89°42'15" E	25.00
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58	N 89°42'15" E	25.00
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60	N 89°42'15" E	25.00

DEED TABLE

DEED	DATE	BOOK	PAGE	DESCRIPTION
1	10/15/02	75	101	TO TRACT A
2	10/15/02	75	102	TO TRACT B
3	10/15/02	75	103	TO TRACT C
4	10/15/02	75	104	TO TRACT D
5	10/15/02	75	105	TO TRACT E
6	10/15/02	75	106	TO TRACT F
7	10/15/02	75	107	TO TRACT G
8	10/15/02	75	108	TO TRACT H
9	10/15/02	75	109	TO TRACT I
10	10/15/02	75	110	TO TRACT J
11	10/15/02	75	111	TO TRACT K
12	10/15/02	75	112	TO TRACT L
13	10/15/02	75	113	TO TRACT M
14	10/15/02	75	114	TO TRACT N
15	10/15/02	75	115	TO TRACT O
16	10/15/02	75	116	TO TRACT P
17	10/15/02	75	117	TO TRACT Q
18	10/15/02	75	118	TO TRACT R
19	10/15/02	75	119	TO TRACT S
20	10/15/02	75	120	TO TRACT T
21	10/15/02	75	121	TO TRACT U
22	10/15/02	75	122	TO TRACT V
23	10/15/02	75	123	TO TRACT W
24	10/15/02	75	124	TO TRACT X
25	10/15/02	75	125	TO TRACT Y
26	10/15/02	75	126	TO TRACT Z
27	10/15/02	75	127	TO TRACT AA
28	10/15/02	75	128	TO TRACT AB
29	10/15/02	75	129	TO TRACT AC
30	10/15/02	75	130	TO TRACT AD
31	10/15/02	75	131	TO TRACT AE
32	10/15/02	75	132	TO TRACT AF
33	10/15/02	75	133	TO TRACT AG
34	10/15/02	75	134	TO TRACT AH
35	10/15/02	75	135	TO TRACT AI
36	10/15/02	75	136	TO TRACT AJ
37	10/15/02	75	137	TO TRACT AK
38	10/15/02	75	138	TO TRACT AL
39	10/15/02	75	139	TO TRACT AM
40	10/15/02	75	140	TO TRACT AN
41	10/15/02	75	141	TO TRACT AO
42	10/15/02	75	142	TO TRACT AP
43	10/15/02	75	143	TO TRACT AQ
44	10/15/02	75	144	TO TRACT AR
45	10/15/02	75	145	TO TRACT AS
46	10/15/02	75	146	TO TRACT AT
47	10/15/02	75	147	TO TRACT AU
48	10/15/02	75	148	TO TRACT AV
49	10/15/02	75	149	TO TRACT AW
50	10/15/02	75	150	TO TRACT AX
51	10/15/02	75	151	TO TRACT AY
52	10/15/02	75	152	TO TRACT AZ
53	10/15/02	75	153	TO TRACT BA
54	10/15/02	75	154	TO TRACT BB
55	10/15/02	75	155	TO TRACT BC
56	10/15/02	75	156	TO TRACT BD
57	10/15/02	75	157	TO TRACT BE
58	10/15/02	75	158	TO TRACT BF
59	10/15/02	75	159	TO TRACT BG
60	10/15/02	75	160	TO TRACT BH

LEGEND

- 1 - 100' Right of Way
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- 59 - 100' Right of Way
- 60 - 100' Right of Way

# FONTANA ESTATES

A portion of Section 10, Township 22 South, Range 32 East  
Orange County, Florida



ONE TABLE

LINE	BEARING	LENGTH
1	S 89°23'00" E	20.00'
2	S 89°23'00" E	20.00'
3	N 41°43'30" W	10.00'
4	N 70°23'24" E	63.22'
5	N 82°58'30" W	65.58'
6	N 89°23'00" E	20.00'
7	N 89°23'00" E	20.00'
8	S 41°43'30" W	10.00'
9	S 89°23'00" E	20.00'

ONE TABLE

LINE	BEARING	LENGTH	ADJACENT
1	S 89°23'00" E	20.00'	20.00'
2	S 89°23'00" E	20.00'	20.00'
3	N 41°43'30" W	10.00'	10.00'
4	N 70°23'24" E	63.22'	63.22'
5	N 82°58'30" W	65.58'	65.58'
6	N 89°23'00" E	20.00'	20.00'
7	N 89°23'00" E	20.00'	20.00'
8	S 41°43'30" W	10.00'	10.00'
9	S 89°23'00" E	20.00'	20.00'

- 1 = 1/4" = 1' of
- 2 = 1/2" = 1' of
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- 68 = 17" = 1' of



# **Appendix C**

## **Recorded Plat**



## **Appendix D**

### **SJRWMD Documents**



# St. Johns River Water Management District

Hans G. Tanzler III, Executive Director

4049 Reid Street • P.O. Box 1429 • Palatka, FL 32178-1429 • (386) 329-4500  
On the Internet at [floridaswater.com](http://floridaswater.com).

October 3, 2012

Fontana Estates Community Homeowners Association Inc  
2966 Commerce Park Dr Ste 100  
Orlando FL 32819

SUBJECT: Transfer of an Environmental Resource Permit  
Permit Number 40-095-106299-2  
Project Name: Fontana Estates (Transfer)

Dear Sir/Madam:

The surface water management system serving the above-referenced project has been constructed and is functioning in conformance with the requirements of the St. Johns River Water Management District.

The Fontana Estates Community Homeowners Association Inc is identified as the operation and maintenance entity in the permit. The permit has now been transferred to Fontana Estates Community Homeowners Association Inc, who is authorized to operate the system and responsible for its routine maintenance.

### **Maintenance of Your Stormwater System:**

Enclosed you will find an operation permit plan, maintenance guidelines, and a pamphlet entitled "Neighborhood Guide to Stormwater Systems." The permit, plan and maintenance guidelines provide information to assist you in assuring the system is properly maintained and will continue to function as designed. Please review this material carefully to assure that your association meets all of the requirements contained in your permit and keep it with other important documents. The pamphlet contains general information about the stormwater systems that will be useful to the homeowners in your development.

### **Transferring Your Permit:**

If you wish to transfer your permitted facility, you must notify the District in writing within 30 days of any sale, conveyance or other transfer of a permitted system or facility, or within 30 days of any transfer of ownership or control of the real property where the permitted system or facility is located. You will need to provide the District with the information specified in District rule 40C-1.612, Florida Administrative Code (name and address of the transferee and a copy of the instrument effectuating the transfer). Please note that a permittee remains liable for any corrective actions that may be required as a result of any permit violations that occur before the sale, conveyance, or other transfer of the system or facility, so it is recommended that you request a permit transfer in advance.

---

#### GOVERNING BOARD

Lad Daniels, CHAIRMAN JACKSONVILLE	John A. Miklos, VICE CHAIRMAN ORLANDO	Douglas C. Bournique, SECRETARY VERO BEACH	Maryam H. Ghyabi, TREASURER ORMOND BEACH
Chuck Drake ORLANDO	Richard G. Hamann GAINESVILLE	George W. Robbins JACKSONVILLE	Fred N. Roberts, Jr. OCALA
			W. Leonard Wood FERNANDINA BEACH

Thank you and please let us know if you have additional questions. For general questions contact [e-permit@sjrwmd.com](mailto:e-permit@sjrwmd.com) or (386) 329-4570.

Sincerely,



Victor Castro, Director  
Bureau of Regulatory Support  
St. Johns River Water Management District  
4049 Reid St  
Palatka FL 32177

cc: District Permit File

Fontana Estates Development LLC  
C/O Scott Masey  
6444 Waggoner Dr  
Dallas TX 75230

**ST. JOHNS RIVER WATER MANAGEMENT DISTRICT**  
**Post Office Box 1429**  
**Palatka, Florida 32178-1429**

**PERMIT NO.** 40-095-106299-2

**TRANSFER PERMIT ISSUED:** October 3, 2012

**PROJECT NAME:** Fontana Estates (Transfer)

**A PERMIT AUTHORIZING:**

This permit authorizes the operation and maintenance of the surface water management system, with stormwater treatment by wet detention, serving Fontana Estates, a single family residential project consisting of 79.8 acres constructed in accordance with plans received by the District on November 8, 2006.

**LOCATION:**

Section(s): 10  
Orange County

Township(s): 22S

Range(s): 32E

**ISSUED TO:**

Fontana Estates Community Homeowners Association Inc  
2966 Commerce Park Dr Ste 100  
Orlando FL 32819

Permittee agrees to hold and save the St. Johns River Water Management District and its successors harmless from any and all damages, claims, or liabilities which may arise from permit issuance. Said application, including all plans and specifications attached thereto, is by reference made a part hereof.

This permit does not convey to permittee any property rights nor any rights or privileges other than those specified herein, nor relieve the permittee from complying with any law, regulation or requirement affecting the rights of other bodies or agencies. All structures and works installed by permittee hereunder shall remain the property of the permittee.

This permit may be revoked, modified or transferred at any time pursuant to the appropriate provisions of Chapter 373, Florida Statutes:

**PERMIT IS CONDITIONED UPON:**

See conditions on attached "Exhibit A", dated October 3, 2012

**AUTHORIZED BY:** St. Johns River Water Management District

By: 

---

Janice Unger  
Environmental Resource Program Manager

**"EXHIBIT A"**  
**CONDITIONS FOR ISSUANCE OF PERMIT NUMBER 40-095-106299-2**  
**Fontana Estates Community Homeowners Association Inc**  
**TRANSFER PERMIT DATED OCTOBER 3, 2012**

1. All activities 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.
2. Activities approved by this permit shall be conducted in a manner which do not cause violations of state water quality standards.
3. Should any other regulatory agency require changes to the permitted system, the permittee shall provide written notification to the District of the changes prior implementation so that a determination can be made whether a permit modification is required.
4. 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 40C-4 or chapter 40C-40, F.A.C.
5. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the activities authorized by the permit or any use of the permitted system.
6. The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of the permitted system or the real property at which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of rule 40C-1.612, F.A.C. The permittee transferring the permit shall remain liable for any corrective actions that may be required as a result of any permit violations prior to such sale, conveyance or other transfer.
7. 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.
8. The operation and maintenance entity shall inspect the stormwater or surface water management system once within two years after the completion of construction and every two years thereafter to determine if the system is functioning as designed and permitted. The operation and maintenance entity must maintain a record of each required inspection, including the date of the inspection, the name, address, and telephone number of the inspector, and whether the system was functioning as designed and permitted, and make such record available for inspection upon request by the District during normal business hours. If at any time the system is not functioning as designed and permitted, then within 14 days the entity shall submit an Exceptions Report to the District, on form number 40C-42.900(6), Exceptions Report for Stormwater Management Systems Out of Compliance.
9. This permit authorizes the operation and maintenance of the surface water management system in accordance with the plans received by the District on November 8, 2006.







February 13, 2019

Telka diFate  
President Fontana Estates HOA

Re: Scope of Work  
Fontana Estates Pond Remediation

To whom it may concern:

The Fontana Estates Pond is currently seeing adverse effects due to lower water levels from over-use for irrigation and eroded site slopes. This has caused some deterioration of the side slopes and depth of the pond has been compromised in a small area as well. Fontana Estates would like to remediate these issues and re-certify the pond through the St. Johns River Water Management District (SJRWMD).

Fontana Estates HOA has provided Kimley-Horn with a survey of the existing pond conditions which has been reviewed for conformance with the original design of the pond. Through this analysis, Kimley-Horn has provided a set of plans and cross sections that outline the recommended maintenance to mitigate these problems.

As can be seen in the plans, there is only about 15% of the pond that will need to be adjusted which falls within the middle lobe. Basically, the plan view shows where each cross section is taken from and covers a span of 400 feet. As you move south from Section A-A, the amount of soil that needs to be removed increases. As seen in Section F-F, the soil is about 5-6 feet higher in the pond than was designed which causes concerns of the mean depth being too low. Per our calculations within this 400-foot span, approximately 5,300 CY of soil will need to be removed from the pond bottom. In addition to performing this excavation, the existing control elevation of the pond will need to be brought back to its natural condition of 66.40', currently it is at 64.40'. Once this is all complete Kimley-Horn will inspect the pond and re-certify it through SJRWMD.

If you have any further questions or concerns, please do not hesitate to contact me at the office at 407-898-1511 or by email at [brent.lenzen@kimley-horn.com](mailto:brent.lenzen@kimley-horn.com).

Sincerely,

**KIMLEY-HORN AND ASSOCIATES, INC.**

A handwritten signature in blue ink, appearing to read "Brent A. Lenzen".

Brent A. Lenzen, P.E.  
FL PE No. 78537  
Project Engineer



June 5, 2019

St. Johns River Water Management District  
601 South Lake Destiny Road, Suite 200  
Maitland, FL 32751

Re: Operation and Maintenance Inspection Certification  
Fontana Estates HOA Stormwater Pond Maintenance Required

To whom it may concern:

Based on our site assessment on June 4, 2019 the following components of the existing stormwater system do not appear to be functioning properly:

1. Middle larger wet pond: A significant portion of the southern section of this pond appears to be significantly eroded and has expansive areas where the mean depth of the pond is at or below the 2' minimum requirement. This also reduces the permitted pond permanent pool volume. Vegetation is now beginning to grow through the surface of this portion of the pond along with additional underwater vegetation build-up. Based on recently obtained survey information on the existing pond bottom, the pond in this area is approximately 6-feet shallower than the permitted design.
2. The pond outfall on the north side of the development along the Lake Pickett Road right-of-way has extensive vegetation growth and needs to be properly maintained.

If you have any further questions or concerns, please do not hesitate to contact me at the office at 407-898-1511 or by email at [brent.lenzen@kimley-horn.com](mailto:brent.lenzen@kimley-horn.com).

Sincerely,

**KIMLEY-HORN AND ASSOCIATES, INC.**

A handwritten signature in blue ink, appearing to read "B. Lenzen", written over a horizontal line.

Brent A. Lenzen, P.E.  
FL PE No. 78537  
Project Engineer









FONTANA ESTATES  
STORMWATER

## ES

ORANGE COUNTY

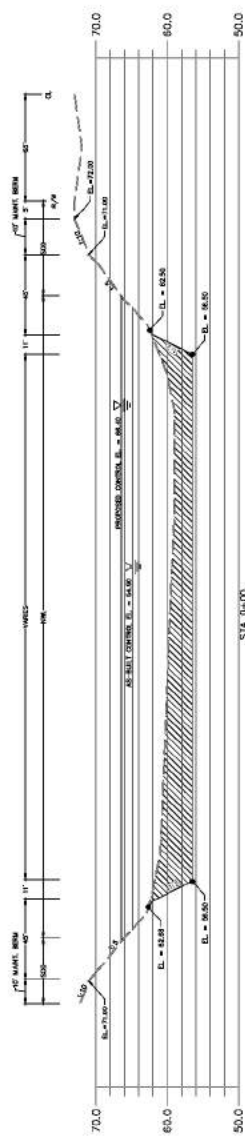
## COMPARATIVE CROSS SECTIONS

SN  
=

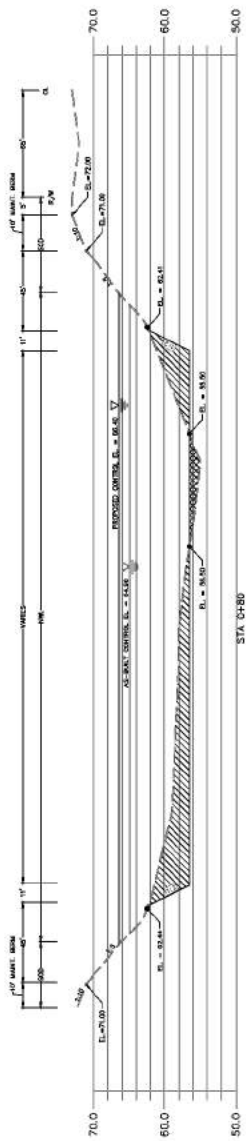
DATE	04/24/2019
SCALE	AS SHOWN
DESIGNED BY	DAR
DRAWN BY	JOE
CHECKED BY	BAL
DATE	03/07/2019
DESIGNED BY	BAL
DRAWN BY	JOE
CHECKED BY	BAL
DATE	03/07/2019

**A. LIGNIER, Ph.D.**  
78557  
OCTOBER 12, 2016

**Kimley-Horn**  
© 2018 KIMLEY-HORN AND ASSOCIATES, INC.  
180 S. ORANGE AVENUE, SUITE 1000, ORLANDO, FL 32801  
PHONE: 407-882-1111  
WWW.KIMLEY-HORN.COM CA 00000066

[illegible]

Section	Distance Between Sections (ft) =			Net Volume (CY)
	Cap (Sq. Ft.)	Fill (Sq. Ft.)	Net Area (Sq. Ft.)	
A-A	11,999.8	9.4	11,048.6	65,472.0
B-B	2,488.2	60.9	(487.2)	(1,276.3)



Section	Distance Between Sections (F) = 80			
	Cat (in)	Flt (in)	Mat Area (sq ft)	Net Volume (cu ft)
B-1	5.48 (1)	60.9	(447.2)	33,988.0
				(1,284.7)

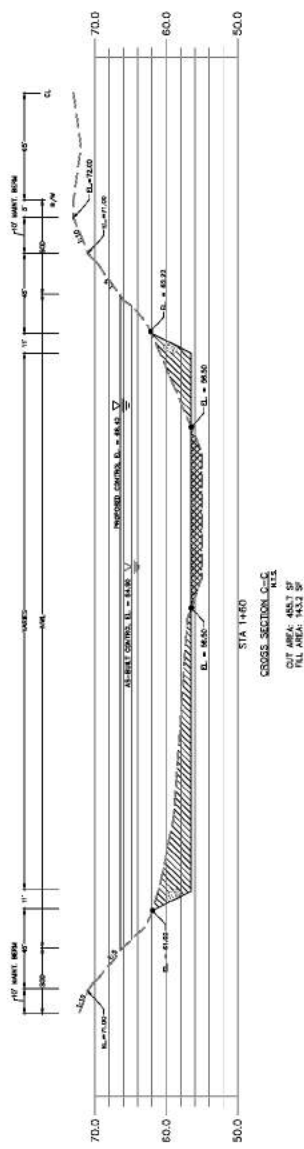
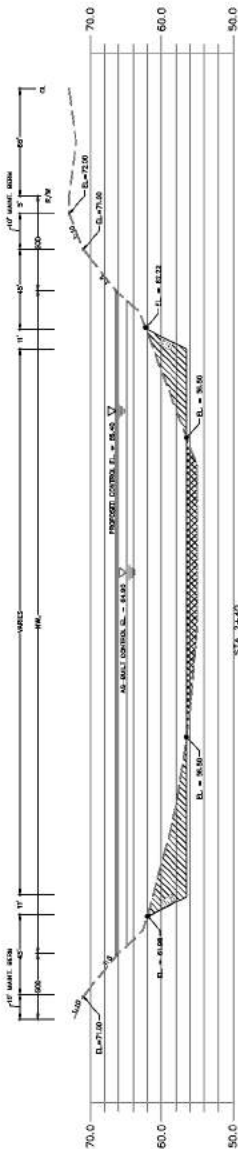
**LEGEND**

	OUT
	FILL
---	EXISTING POND SURFACE
---	PROPOSED POND SURFACE

## COMPARATIVE CROSS SECTIONS

DATE: FEBRUARY 12, 2016	CHECKED BY: BAL
78537	ISSUED BY: JOE
	DEIGNED BY: DAF
	SOCAL AS SHOWN
	DATE: 04/24/2019
	DATE: 11/19/2000
LOANED PROFESSIONAL	
BRENT A LONZEN, P.E.	

**Kimley-Horn**  
© 2016 KIMLEY-HORN AND ASSOCIATES, INC.  
1810 S. ORANGE AVENUE, SUITE 1000, ORLANDO, FL 32801  
PHONE: 407-855-1211  
WWW.KIMLEY-HORN.COM CA 00000949

[illegible]

Section	Distance Between Sections (IT) =			Net Volume (CY)	Net Volume (m <sup>3</sup> )
	Cut (m)	Fill (m)	Net Area (m <sup>2</sup> )		
C-2	(655.7)	143.2	(312.5)	(17,930.0)	(603.0)
D-9	(354.8)	219.0	(135.0)		

Section	Distance Between Sections (FT) =			Net Volume (CY)
	Cut (32)	Fill (32)	Net Area (32)	
D-5	(354.8)	210.0	(145.0)	19,580.0
E-5	(102.1)	736.1	634.0	734.4

FONTANA ESTATES  
STORMWATER

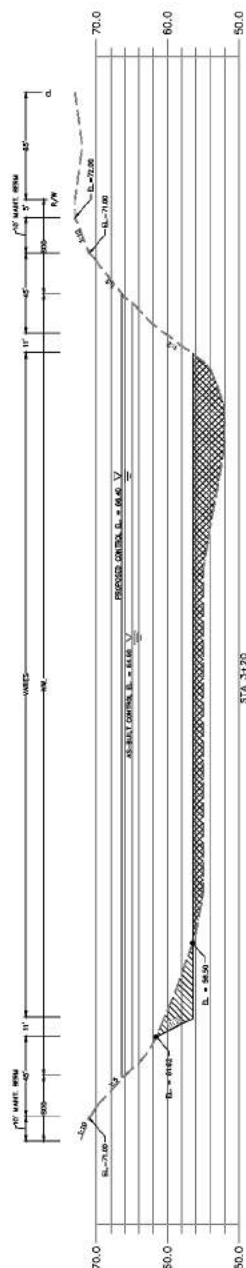
FLORIDA

## COMPARATIVE CROSS SECTIONS

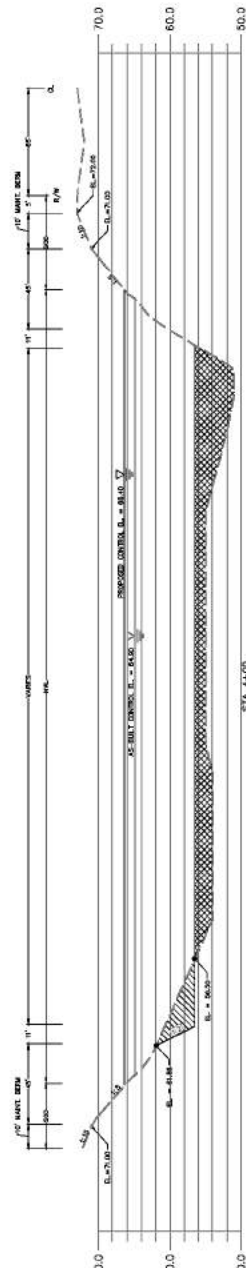
DATE	04/24/2019
SOURCE AS SHOWN	
DESIGNED BY	DAR
DRAWN BY	JOE
CHECKED BY	BAL
DATE: FEBRUARY 12, 2016	

78537  
A. LENTZ, P.E.  
JANUARY 12, 2016

**Kimley-Horn**  
© 2016 KIMLEY-HORN AND ASSOCIATES, INC.  
1810 S. ORANGE AVENUE, SUITE 1000, ORLANDO, FL 32801  
PHONE: 407-898-1111  
WWW.KIMLEY-HORN.COM CA 00000069

[illegible]

Section	Biological Barriers Sections (BT) =			80 Net Volume (IC)	Net Volume (IC)	Net Volume (IC)
	Cof (IC)	Fill (IC)	Net Area (IC)			
E-E	(102.1)	726.1	624.0	55,072.0		2,027.7
E-E	(102.4)	865.4	762.8			

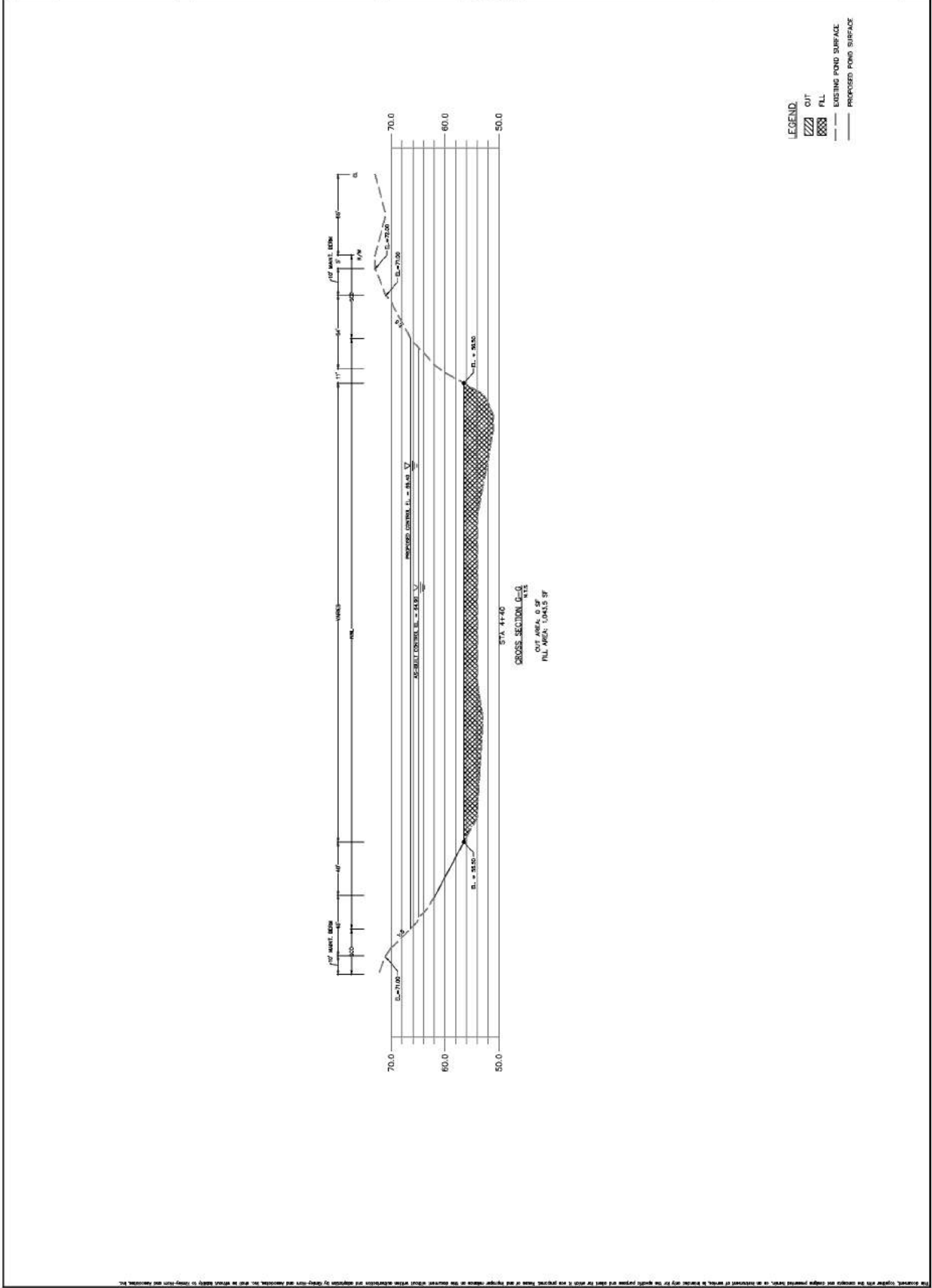


Section	Distance Between Surfaces (FT) =			Net Volume (CY)
	Cut (SF)	Fill (SF)	Net Area (SF)	
F-6	(102.6)	665.4	752.8	35,041.0
G-6	-	1,043.5	1,043.5	1,193.6

LEGEND

	OUT
	FILL
	EXISTING POND SURFACE
	PROPOSED POND SURFACE

EX-00 SHEET NUMBER		ORANGE COUNTY FONTANA ESTATES STORMWATER		FLORIDA	
COMPARATIVE CROSS SECTIONS					
STA. PROJECT 149980000 DATE 04/24/2019 SCALE AS SHOWN DRAWN BY JSE CHECKED BY JSE		LICENSED PROFESSIONAL 78537 DATE: FEBRUARY 12, 2019 BRITT A. LUTZ, P.E.			
© 2019 KIMLEY-HORN AND ASSOCIATES, INC. 180 S. MARICAMP DRIVE, SUITE 1000, ORLANDO, FL 32807 WWW.KIMLEY-HORN.COM CA 00000066					
NO.	REVISIONS	DATE	BY		



This document, together with the drawings and reports, is prepared for the specific project and shall not be used for any other project without the written consent of Kimley-Horn and Associates, Inc. and its subsidiaries. Kimley-Horn and Associates, Inc. and its subsidiaries shall not be held responsible for any errors or omissions in this document.

### Planting Service Agreement

Dear Telka,

We greatly appreciate the opportunity to bid on this project for you! Attached is the planting agreement for Fontana Estates.

Lake and Wetland Management is a full-service environmental resource management team, offering a wide a variety of services, including; lake management:

- Algae, border grass, and aquatic weed control.
- Wetland preserve management including invasive plant control.
- Fountain and aeration system sales and service.
- DredgeSox earth-friendly erosion control system.
- Beneficial native plant installation.
- Environmental and wetland monitoring for agency compliance.

Our team leads the industry and has an exemplary reputation with many government agencies, builders, developers, property managers and homeowner associations. Our State-certified, trained biologists have been providing environmental services for many of Florida's waterways and natural areas since 1992.

Lake and Wetland Management is fully insured, carrying full coverage to protect our customers, including workman's compensation, liability and property damage.

We pride ourselves on providing the highest level of service in the industry and look forward to the opportunity of exceeding your expectations!

**Respectfully yours,**

Chad Bass  
Lake & Wetland Management  
Central Florida  
815 Sawdust Trail  
Kissimmee, FL 34744





## Planting Service Agreement

This Agreement is made between *Lake and Wetland Management Orlando, Inc.*, and:

October 17, 2019

Telka diFate  
President Fontana Estates HOA  
mywc2016@gmail.com

Both *Fontana Estates (CUSTOMER)* and *Lake and Wetland Management (LWM)* agree to these terms and conditions for Special Service Agreement:

### Description of Service

❖ *Littoral Planting (approx. 2 plants every linear foot)*

Quantity	Plant	Spec.	Unit Price	Total
8,500	Pickerelweed	Bareroot	\$0.85	\$7,225.00
8,500	Duck Potato	Bareroot	\$0.85	\$7,225.00

**Planting Total: \$14,450.00**

### Investment Schedule

- A. 50% mobilization deposit. **\$7,225.00**
- B. 50% due upon completion. **\$7,225.00**

**Investment Total: \$14,450.00**

*Chad Bass*

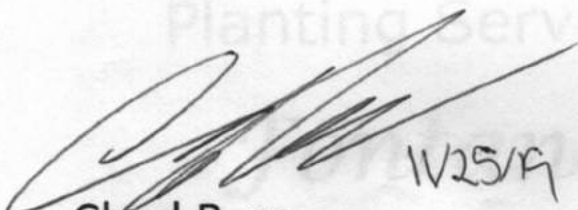
Chad Bass  
Lake and Wetland Management, Inc.

Customer acceptance - The above prices, specifications and conditions are hereby accepted.

*Telka diFate*  
Authorized signature  
Date: 11-25-2019

**Conditions:**

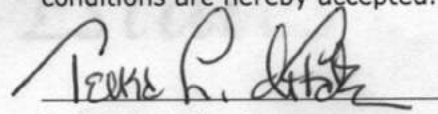
1. Ownership of property is implied by **CUSTOMER** with acceptance of this Agreement. In the event that **CUSTOMER** does not expressly own the areas where the above stated services are to be provided, **CUSTOMER** represents that express permission of the owner is given and that authorization to commence the above-mentioned services is allowed. In the event of dispute of ownership, **CUSTOMER** agrees to hold harmless **LWM** for the consequences of such services.
2. **LWM** shall not be responsible for acts beyond its reasonable control, including adverse soil and / or water conditions, adverse weather conditions, unavailable materials, Acts of God, war, acts of vandalism, theft or third-party actions. **CUSTOMER** further states that neither party shall be responsible in damages or penalties for any failure or delay in performance of any of its obligations caused by above named incidences.
3. Invoices submitted for work completed shall be paid within 30 days of receipt. A finance charge of 1.500% per month or an annual percentage rate of 18.000% will be computed on all past due balances.
4. Any incidental activity not explicitly mentioned in this proposal is excluded from the scope of work.
5. This proposal shall be valid for 30 days. Either party may cancel this contract with 30-day written notice. This Agreement automatically renews upon anniversary of execution date, unless notice is given by either party with at least 30 days written notice.
6. If **LWM** is required to enroll in any third-party compliance programs, invoicing or payment plans that assess fees in order to perform work for **CUSTOMER**, those charges will be invoiced back to **CUSTOMER** as invoiced to **LWM**.
7. **LWM** will maintain insurance coverage, which includes but is not limited to; General Liability Property Damage, Automobile Liability, and Workman's Compensation at its own expense.
8. No alterations or modifications, oral or written, of the terms contained above shall be valid unless made in writing, and wholly accepted by authorized representatives of both **LWM** and the **CUSTOMER**.



11/25/19  
**Chad Bass**

Chad Bass  
Lake and Wetland Management, Inc.

Customer acceptance – The above prices, specifications and conditions are hereby accepted.



Authorized signature  
Date: 11-25-2019

Dear Telka,

We greatly appreciate the opportunity to bid on this project for you! Attached is the dredgesox agreement for Fontana Estates.

Our patented SOX system is bioengineered, and immediately halts soil erosion and stabilizes shorelines. The SOX system offers these unique attributes;

- Long lasting results that continue to improve over time
- Superior buffering and filtering results in improved waterway and ecosystem
- Exceptional water retention for vigorous growth of new vegetation
- The only erosion control system that literally becomes part of the earth
- Uses locally sourced organic fill
- Attaches directly to intact shore bank NOT to unstable shore bed
- Allows SOX to be re-tensioned whenever necessary
- Subsurface ground stakes virtually eliminate injury liability to humans and animals
- System self-tightens due to its ability to manage incredible weight displacement.

Lake and Wetland Management is fully insured, carrying full coverage to protect our customers, including workman's compensation, liability and property damage.

We pride ourselves on providing the highest level of service in the industry and look forward to the opportunity of exceeding your expectations!

**Respectfully yours,**

Chad Bass  
Lake & Wetland Management  
Central Florida  
815 Sawdust Trail  
Kissimmee, FL 34744



## Special Service Agreement

This Agreement is made between *Lake and Wetland Management Orlando, Inc.*, and:

October 17, 2019

Telka diFate

President Fontana Estates HOA

mywc2016@gmail.com

Both *Fontana Estates* (**CUSTOMER**) and *Lake and Wetland Management (LWM)* agree to these terms and conditions for Special Service Agreement: (1) year

### Description of Service

A. **Dredgesox Erosion Repair/Bank Restoration services** for 350 linear feet located on the shore of Lake 1.

- Repair approximately 350 linear feet of lake bank at \$53.50/per foot.
- Prep areas of debris/trash for Dredgesox.
- Fill Dredgesox with organic media dredged from the lake using our Truxor amphibious work vehicle.
- Materials consist of the following:
  - Dredgesox
  - Wooden Stakes
  - Organic Media
- Includes sod installation.

**Dredgesox Total: \$18,725.00**

Service includes material, equipment, and labor to complete the project.

**CUSTOMER is responsible for the cost of any necessary permits that may be required prior to commencement of work.**

**If chosen, it will be Fontana Estate's responsibility to irrigate the new sod/planted area once installed.**



### *Littoral Planting (approx. 2 plants every linear foot)*

Sprinkler heads will be marked by the landscaper; otherwise LWM not be responsible for damage to them during the course of work. LWM will repair any exposed sprinkler heads damaged during erosion work in a timely manner.

LWM is not responsible for damage to any underground irrigation, headwalls, piping, electrical, trees or any lines not noted on the as-builts or not located by Sunshine Locating Services (where digging is necessary).

The warranty/guarantee for Dredgesox material is for a ten (10) year period. The labor warranty for any manual adjustments needed is for a one (1) year period. Our guarantee does not include the loss of material due to 'acts of God' such as floods, fire, hurricanes, or other catastrophic events, nor does it include losses due to theft, lack of adequate irrigation, vandalism or negligence by others, or other factors outside the control of our organization.

### **SCHEDULE OF PAYMENT:**

- 50% Mobilization Deposit (\$9,362.50)
- 50% Upon Installation of Dredgesox (\$9,362.50)





## B. Littoral Planting (approx. 2 plants every linear foot)

Quantity	Plant	Spec.	Unit Price	Total
350	Pickrelweed	Bareroot	\$0.85	\$297.50
350	Duck Potato	Bareroot	\$0.85	\$297.50

**Planting Total: \$595.00****Total Investment: \$19,320.00**

Pickrelweed




Duck Potato

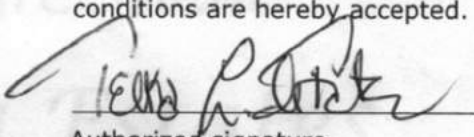


**Conditions:**

1. Ownership of property is implied by **CUSTOMER** with acceptance of this Agreement. In the event that **CUSTOMER** does not expressly own the areas where the above stated services are to be provided, **CUSTOMER** represents that express permission of the owner is given and that authorization to commence the above-mentioned services is allowed. In the event of dispute of ownership, **CUSTOMER** agrees to hold harmless **LWM** for the consequences of such services.
2. **LWM** shall not be responsible for acts beyond its reasonable control, including adverse soil and / or water conditions, adverse weather conditions, unavailable materials, Acts of God, war, acts of vandalism, theft or third-party actions. **CUSTOMER** further states that neither party shall be responsible in damages or penalties for any failure or delay in performance of any of its obligations caused by above named incidences.
3. Invoices submitted for work completed shall be paid within 30 days of receipt. A finance charge of 1.500% per month or an annual percentage rate of 18.000% will be computed on all past due balances.
4. Any incidental activity not explicitly mentioned in this proposal is excluded from the scope of work.
5. This proposal shall be valid for 30 days. Either party may cancel this contract with 30-day written notice. This Agreement automatically renews upon anniversary of execution date, unless notice is given by either party with at least 30 days written notice.
6. If **LWM** is required to enroll in any third-party compliance programs, invoicing or payment plans that assess fees in order to perform work for **CUSTOMER**, those charges will be invoiced back to **CUSTOMER** as invoiced to **LWM**.
7. **LWM** will maintain insurance coverage, which includes but is not limited to; General Liability Property Damage, Automobile Liability, and Workman's Compensation at its own expense.
8. No alterations or modifications, oral or written, of the terms contained above shall be valid unless made in writing, and wholly accepted by authorized representatives of both **LWM** and the **CUSTOMER**.

  
**Chad Bass**  
Chad Bass  
Lake and Wetland Management, Inc.

Customer acceptance – The above prices, specifications and conditions are hereby accepted.

  
Authorized signature  
Date: 11-25-2019



### **SPECIAL SERVICE AGREEMENT**

This Agreement is made between *Lake and Wetland Management, Inc.*, and:

October 4, 2019

Telka diFate/President  
Fontana Estates HOA

Both *Fontana Estates HOA* (**CUSTOMER**) and *Lake and Wetland Management* (**LWM**) agree to these terms and conditions for Special Service Agreement:

#### Description of Service

##### ***A. Overflow Structure Corrections***

1. LWM shall provide all supervision, labor, equipment, materials and incidentals necessary.
2. LWM will remove the sediment from around the skimmer to allow water to enter the overflow structure.
3. Regrade lake embankment behind the overflow structure.
4. Install permanent erosion control blanker per manufacturer's specifications.
5. Install 50' Type 1 Turbidity barrier around the work area. Temporarily cap weep pipe during removal. Apply APS 712 Silt Stop Powder in the work area to correct turbidity. Remove temporary cap. When the curtain is no longer necessary, LWM will remove the curtain in a manner that minimizes turbidity.
6. Includes Bahia sod installation.

**Total Investment: \$2,450.00**





Conditions:

1. Ownership of property is implied by **CUSTOMER** with acceptance of this Agreement. In the event that **CUSTOMER** does not expressly own the areas where the above stated services are to be provided, **CUSTOMER** represents that express permission of the owner is given and that authorization to commence the above mentioned services is allowed. In the event of dispute of ownership, **CUSTOMER** agrees to hold harmless **LWM** for the consequences of such services.
2. **LWM** shall not be responsible for acts beyond its reasonable control, including adverse soil and / or water conditions, adverse weather conditions, unavailable materials, Acts of God, war, acts of vandalism, theft or third party actions. **CUSTOMER** further states that neither party shall be responsible in damages or penalties for any failure or delay in performance of any of its obligations caused by above named incidences.
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8. No alterations or modifications, oral or written, of the terms contained above shall be valid unless made in writing, and wholly accepted by authorized representatives of both **LWM** and the **CUSTOMER**.

Customer acceptance – The above prices, specifications and conditions are hereby accepted.

**Chad Bass**  
Chad Bass  
Lake and Wetland Management, Inc.

\_\_\_\_\_  
Authorized signature                      Date





1301 S. International Pkwy  
Suite 2001  
Lake Mary, Florida, 32746  
(407) 678-3366  
www.IrelandSurveying.com

## INVOICE

IS-54498

DATE: 1/2/2019

DATE ORDERED: 12/7/2018

DATE COMPLETED: 01/02/19

CLIENT: SELF PAY

, FLORIDA

CLIENT ORDER NUMBER:

PROPERTY ADDRESS:

0 LAKE PICKET ROAD

ORLANDO, FLORIDA 32820

SELLER:

BUYER: FONTANA ESTATES COMMUNITY HOA

BOUNDARY SURVEY		\$ 1,500.00
TAX		
DISCOUNT		

TOTAL: \$ 1,500.00

BALANCE DUE: \$ 1,500.00

Invoice Notes:

**\$125/HR FIELD**  
**\$65/HR CAD/CALC**

**Make Check Payable To:**

Ireland & Associates Surveying  
1301 South International Parkway  
Suite 2001  
Lake Mary, Florida 32746



THANK YOU FOR YOUR BUSINESS!

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FONTANA ESTATES COMMUNITY HOA  
ATTN: DR TELKA DIFATE  
18210 BELLEZZA DRIVE  
ORLANDO, FL 32820

Invoice No: 149980000-0119  
Invoice Date: Jan 31, 2019  
Invoice Amount: \$1,786.05  
  
Project No: 149980000  
Project Name: FONTANA ESTATES SW CERT  
Project Manager: RAMSBURG, DEREK

Please send payments to:  
KIMLEY-HORN AND ASSOCIATES, INC.  
P.O. BOX 932520  
ATLANTA, GA 31193-2520

Client Reference:

For Services Rendered through Jan 31, 2019

Federal Tax Id: 56-0885615

## LUMP SUM

0151861448800002251221149980000.1LS-INONE

KHA Ref # 149980000.1-12974677

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
TASK 3- POND INSPECTION AND SJRWMD CERTIFICATION	2,200.00	0.00%	0.00	0.00	0.00
<b>Subtotal</b>	<b>2,200.00</b>	<b>0.00%</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Total LUMP SUM</b>					<b>0.00</b>

## COST PLUS MAX

0151861499800002251221149980000.3CPM-LTC

KHA Ref # 149980000.3-13165654

### Project Summary

Contract Value	14,200.00
Previous Billings	0.00
Current Invoice	1,786.05
Remaining Contract Value	12,413.95

Description	Current Amount Due
LABOR	1,707.50
EXPENSES	78.55
<b>Subtotal</b>	<b>1,786.05</b>
<b>Total COST PLUS MAX</b>	<b>1,786.05</b>

### **DESCRIPTION OF SERVICES PERFORMED:**

REVIEW OF POND AS-BUILT SURVEY, SURVEY OVERLAY WITH ORIGINAL POND DESIGN, IDENTIFIED AREAS OF CONFLICT WHERE MAINTENANCE WILL BE REQUIRED.

**Total Invoice: \$1,786.05** 149980000

FONTANA ESTATES COMMUNITY HOA  
ATTN: DR TELKA DIFATE  
18210 BELLEZZA DRIVE  
ORLANDO, FL 32820

Invoice No: 149980000-0119  
Invoice Date: Jan 31, 2019  
Project No: 149980000  
Project Name: FONTANA ESTATES SW CERT  
Project Manager: RAMSBURG, DEREK

## COST PLUS MAX

0151261499800002251223149980000.3C2M-1T0CPM

KHA Ref # 149980000.3-13165654

Task	Description	Hrs/Qty	Rate	Current Amount Due
EXISTING POND EVALUATION	ANALYST	7.5	115.00	862.50
	SENIOR PROFESSIONAL I	3.0	215.00	645.00
	SUPPORT STAFF	1.0	95.00	95.00
		1.0	105.00	105.00
TOTAL EXISTING POND EVALUATION		12.5		1,707.50
OFFICE EXPENSE	OFFICE EXPENSE			78.55
TOTAL OFFICE EXPENSE				78.55
TOTAL LABOR AND EXPENSE DETAIL				1,786.05

*This page is for informational purposes only. Please pay amount shown on cover page.*

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FONTANA ESTATES COMMUNITY HOA  
ATTN: DR TELKA DIFATE  
18210 BELLEZZA DRIVE  
ORLANDO, FL 32820

Invoice No: 149980000-0219  
Invoice Date: Feb 28, 2019  
Invoice Amount: \$4,531.80  
  
Project No: 149980000  
Project Name: FONTANA ESTATES SW CERT  
Project Manager: RAMSBURG, DEREK

Please send payments to:  
KIMLEY-HORN AND ASSOCIATES, INC.  
P.O. BOX 932520  
ATLANTA, GA 31193-2520

Client Reference:

For Services Rendered through Feb 28, 2019

Federal Tax Id: 56-0885615

## LUMP SUM

0151861449800002251221149980000.1LS-INCONE

KHA Ref # 149980000.1-12974677

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
TASK 3- POND INSPECTION AND SJRWMD CERTIFICATION	2,200.00	0.00%	0.00	0.00	0.00
<b>Subtotal</b>	<b>2,200.00</b>	<b>0.00%</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Total LUMP SUM</b>					<b>0.00</b>

## COST PLUS MAX

0151861449800002251221149980000.3CPM-LTC

KHA Ref # 149980000.3-13308932

### Project Summary

Contract Value	14,200.00
Previous Billings	1,786.05
Current Invoice	4,531.80
Remaining Contract Value	7,882.15

Description	Current Amount Due
LABOR	4,332.50
EXPENSES	199.30
<b>Subtotal</b>	<b>4,531.80</b>
<b>Total COST PLUS MAX</b>	<b>4,531.80</b>

### DESCRIPTION OF SERVICES PERFORMED:

CONTINUED SURVEY ANALYSIS OF EXISTING POND WITH FURTHER DEVELOPMENT OF REMEDIATION TACTICS. CROSS SECTIONS AND EARTHWORK ANALYSIS TO DETERMINE TOTAL IMPACT OF IMPROVEMENTS AND PREPARATION OF BID DOCUMENTS FOR CONTRACTOR TO UNDERSTAND SCOPE OF WORK.

**Total Invoice: \$4,531.80** 149980000

FONTANA ESTATES COMMUNITY HOA  
ATTN: DR TELKA DIFATE  
18210 BELLEZZA DRIVE  
ORLANDO, FL 32820

Invoice No: 149980000-0219  
Invoice Date: Feb 28, 2019  
Project No: 149980000  
Project Name: FONTANA ESTATES SW CERT  
Project Manager: RAMSBURG, DEREK

### COST PLUS MAX

KHA Ref # 149980000.3-13308932

0151261499800002251223149980000.3C2M-1T0CPM

Task	Description	Hrs/Qty	Rate	Current Amount Due
EXISTING POND EVALUATION	ANALYST	23.5	115.00	2,702.50
		1.0	140.00	140.00
	PROFESSIONAL	7.5	170.00	1,275.00
	SENIOR PROFESSIONAL I	1.0	215.00	215.00
<b>TOTAL EXISTING POND EVALUATION</b>		<b>33.0</b>		<b>4,332.50</b>
OFFICE EXPENSE	OFFICE EXPENSE			199.30
<b>TOTAL OFFICE EXPENSE</b>				<b>199.30</b>
<b>TOTAL LABOR AND EXPENSE DETAIL</b>				<b>4,531.80</b>

*This page is for informational purposes only. Please pay amount shown on cover page.*





C&M Dredging, Inc.  
31653 Executive Boulevard,  
Suite 2  
Leesburg, FL 34748  
352-314-8900  
[www.cmdredging.com](http://www.cmdredging.com)

**Date: May 10, 2018**

**Project Owner Representative:  
Fontana Estates**

**Re: Dredge and Fill Stormwater Restoration**

Thank you for considering C&M Dredging for your proposed project. We are pleased for the opportunity to provide you with the following proposal for dredging services.

**Intent**

It is understood that the scope of work is to include all equipment, personnel, support and supervision to complete dredging of approximately 4,500 cubic yards of material from the Fontana Estates Stormwater pond to include in-water placement of material per Kimley Horn survey and design cross sections.

**Project Costs**

Mobilization Dredge and Pipeline Lump Sum	\$81,640.00
Hydraulic Dredging and In Water Placement 5,300 CY @ \$35.00/CU	\$157,500.00
<b><u>TOTAL</u></b>	<b><u>\$239,140.00</u></b>

## **General Notes and Scope Coverage Explanation**

- Material will be dredged hydraulically.
- Position and Depth will be monitored via Dredgepack GPS Software.
- Dredge discharge line will be controlled by barge and/or cable discharge system for material placement in proposed fill sections of pond.
- Turbidity Control Measures will be deployed at outfall locations during dredging activities.
- The dredging to be performed is considered maintenance, and there is no anticipation of encountering hard rock, clay or other hard virgin material. If encountered, this material will be verified and avoided.
- Dredge launch location to be determined prior to commencement of mobilization.
- Quantities will be verified by pre and post dredge hydrographic surveys.
- If a target elevation is pertinent to permit acceptance for the work to be performed, it is customary for there to be an over-dredging allowance to ensure this elevation is met. Paid over dredging will be performed at the unit price of \$35.00 per CY and will be limited to +/- 10% of the target volume (450 CY).
- Project Draw Schedule
  - Draw 1 due upon execution of agreement to secure services \$26,714.00
  - Draw 2 due upon commencement of mobilization \$53,428.00
  - Draw 3 due upon commencement of dredging \$80,142.00
  - Draw 4 due upon completion of dredging \$78,856.00

We truly appreciate the opportunity to provide you with this proposal and look forward to earning your business.

Respectfully Submitted,

Christian Miller - President  
C&M Dredging, Inc. CBC #1260793

## **Acceptance of Proposal**

The above scope of work, prices and payment schedule are hereby accepted and C&M Dredging, Inc. is authorized to perform the work. Upon acceptance, this proposal will be incorporated into an agreement for dredging services.

Client Signature\_\_\_\_\_ Date\_\_\_\_\_



## **Fontana Estates Dredging Proposal**

**Client:**

Name: Fontana Estates CHOA

c/o: Telka diFate, President

Address: Near 18210 Bellezza Dr.

Orlando, FL 32820

Phone: 203-675-9817

Email: mywc2016@gmail.com

**Date:** 5/15/2019

**John Schamp**

13630 50<sup>th</sup> Way North

Clearwater, FL 33760

Office: 727-527-1300 Ext 2

Cell: 727-480-6390

Fax: 727-527-1303

john@gatordredging.com

[www.gatordredging.com](http://www.gatordredging.com)



5/15/2019

### **Maintenance Dredging Location:**

**Thank you** for considering Gator Dredging for your proposed dredging project. We are pleased to present this proposal for dredging services for your above referenced project.

Preliminary analysis of the criteria which you provided result in a maximum sediment clean out of approximately 4,500cy from areas A, B, C, and D, to a design depth elevation of 56.5.. An exhibit is attached indicating the scope of work and is hereby part of this contract. (Exhibit Initial Required)

### **Engineering/Permitting Services:**

Client or its delegate is responsible to secure required exemptions/ permits for the project including: City of Orlando, Orange County, Florida Department of Environmental Protection (FDEP), and US Army Corps of Engineers on behalf of the property owner(s), if required. Client is responsible for all direct permit application fees, tipping fees, and severance fees, if required.

No seagrass or mangrove, marine habitat or wetland mitigation is anticipated. Should agencies require any monitoring or mitigation, associated costs will be in addition to those identified below.

### **Dredging Services:**

The sediment will be dredged hydraulically with sediment pumped via a temporary pipeline into the deeper portions of the lake (green area) as shown in the exhibit. The material will be left onsite within the lake for client to manage. No hardened sediment or clay is anticipated as this is considered a maintenance lake cleanup. Should clay, rock, hardened sediment, or debris be encountered there will be additional costs to those identified below. Gator Dredging will not dredge into rock or remove rock from dredge site.

Costs include all turbidity curtains, soil erosion control measures, and signage required by permitting agencies. Client is responsible to remove all boats and/or personal watercrafts, fountains and/or piping from the dredge area during the project. Client is responsible to provide access for equipment mobilization/ demobilization to the dredge area. If the dredge equipment has to be removed from the site due to lack of payment or other problems, there will be a demobilization-mobilization fee added to the sum of the project.

. Client shall provide access to dredge area alongside yards and street right-of-way and limited usage of owner's hose bib/potable water source during dredging operations.

Gator Dredging will not be responsible to Damages caused to landscaping, grass, driveways, fences, concrete patios, electrical wiring, or any other damages caused as a result of the dredging activity. Gator Dredging will not be liable for damages caused by their equipment on this project. Gator Dredging will exercise due diligence in avoiding such damage.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

**Client Initials**\_\_\_\_\_





5/15/2019

### **Project Costs**

Mobilization/ Demobilization - \$100,000

Dredging - \$26.5 per cubic yard (4,500cy) - \$119,250 leaving onsite

**Total Project Cost - \$219,250.00**

### **Payment Schedule**

Contract Execution Payment- \$30,000

Mobilization Payment - \$30,000

30% Completion Payment - \$60,000

60% Completion Payment - \$60,000

Final Completion Payment - \$39,250

### **Notes:**

1. All deposits are non-refundable
2. Client is responsible for all direct permit application fees, tipping fees, and severance fees.
3. All remaining fees due on day of project completion
4. Payment shall not be delayed due to final surveys, certifications, or for any other reason.
5. Gator Dredging will facilitate an acceptance inspection with the property owner on the day of project completion before full payment may be made.
6. If needed, client will be responsible to replace or adjust electrical wiring for boat lifts.
7. Payment by credit card is subject 3.5% processing fee (MasterCard or VISA only).

Gator Dredging may withdraw this proposal if not accepted within thirty (30) days.

**Payment Terms and Conditions:** All payments are due and payable as outlined and agreed upon by the client in the Agreement of Services. Proof of agreement to the payment terms by the client is indicated by the client's signature on the Agreement for Services "Acceptance of Proposal. Gator Dredging is not responsible for fees or actions associated with existing or previous unpermitted/ unauthorized work. Gator Dredging is not responsible for current, future or unpaid fees associated with performing work on State owned submerged (sovereign) land which includes dock leases, private easements, public easements and dredge severance fees.

**Delinquent Accounts:** If Gator Dredging must make efforts to collect amounts due from the "client" Gator Dredging will be entitled to collect as an additional charge all expenses of the collection effort, (i) reasonable attorneys' and expert witness fees; clerical fees and (ii) interest on the amount due from the date due at the prime interest rate plus five percent, or up to the maximum permitted by law.

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**Client Initials**\_\_\_\_\_



5/15/2019

The owner holds fee simple title to the property described herein. Said property abuts a bay, river, inter-coastal, Gulf waters or Ocean. The services being performed by the contractor will improve and be of permanent benefit to the real property. For this reason, the owner hereby grants to the contractor the right to impose a construction lien upon the real property pursuant to Chapter 713 Florida Statutes. The lien and the enforcement thereof shall be governed in the same manner as liens filed pursuant to Chapter 713. Client will execute a Notice of Commencement form for submission to County Clerk's Office prior to mobilization. If you should have any questions or comments, please do not hesitate to contact me. We appreciate the opportunity to provide this scope of services and look forward to working with you.

Respectfully submitted,

John Schamp - Sales Associate  
Waterfront Property Services LLC, dba Gator Dredging (CGC#1512360)

William Coughlin - President

### ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. Gator Dredging is authorized to do the work as specified above. Payment will be made as outlined in this proposal. I acknowledge by my signature below I have read and understand and agree to the Terms and Conditions of this Sales Agreement.

Signature/Client: \_\_\_\_\_ Date: \_\_\_\_\_

(Exhibit Initial Required)

Property owner

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Client Initials \_\_\_\_\_

FONTANA ESTATES  
STORMWATER

FLORIDA  
GRANGE COUNTY

COMPARATIVE  
CROSS SECTIONS

KHA PROJECT  
1-69960000  
DATE  
04/24/2019  
SCALE AS SHOWN  
DESIGNED BY JAF  
DRAWN BY JOE  
CHECKED BY TAY  
DATE FEBRUARY 12, 2019  
7/6537  
LUCAS PROFESSIONAL  
BRENT A. LUTSEN, P.E.

Kimley-Horn  
© 2019 KIMLEY-HORN AND ASSOCIATES, INC.  
100 S. GRANGE AVENUE, SUITE 100, ORLANDO, FL 32801  
PHONE: 407-499-1511  
WWW.KIMLEY-HORN.COM CA 00009616

NO.	REVISIONS	DATE	BY



THESE PLANS, SPECIFICATIONS AND NOTES ARE THE PROPERTY OF KIMLEY-HORN AND ASSOCIATES, INC. AND ARE NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF KIMLEY-HORN AND ASSOCIATES, INC. THE USER OF THESE PLANS, SPECIFICATIONS AND NOTES AGREES TO HOLD KIMLEY-HORN AND ASSOCIATES, INC. HARMLESS FROM AND AGAINST ALL SUCH REPRODUCTION OR TRANSMISSION. THE USER OF THESE PLANS, SPECIFICATIONS AND NOTES AGREES TO HOLD KIMLEY-HORN AND ASSOCIATES, INC. HARMLESS FROM AND AGAINST ALL SUCH REPRODUCTION OR TRANSMISSION. THE USER OF THESE PLANS, SPECIFICATIONS AND NOTES AGREES TO HOLD KIMLEY-HORN AND ASSOCIATES, INC. HARMLESS FROM AND AGAINST ALL SUCH REPRODUCTION OR TRANSMISSION.





# Sales Quote

Company Address Pure Lake Services, LLC  
11199 Polo Club Rd  
Wellington, FL 33414

Created Date 5/30/2019  
Expiration Date 6/31/2019  
Quote Number 00000372

Prepared By Chris Douglas  
Phone (520) 250-7070  
Email sales@purelakepro.com

Bill To Name Fontana Estates Community HOA, Inc  
Bill To 18210 Bellezza Dr  
Orlando, FL  
32820

Ship To Name Fontana Estates  
Ship To Orlando FL  
Additional To

Quote To United States

Product Code	Product	Product Description	List Price	Quantity	Total Price
Dredg1	Silt removal	Silt Sediment removal and relocation in sections AA-DD per plans dated 4/19/19 by Kimley Horn	\$33/cu yd	4500 cu yd	\$148,500.
MOBDEMOB		Mobilization/demobilization		1.00	\$10,000.
		Notes: This includes removal of vegetation in sections AA-DD prior to dredging. Turbidity barriers in removal and fill areas			

Subtotal \$158,500.

Total Price \$158,500

## Terms and Conditions

33% deposit due upon bid award, 33% due upon completion of section AA & BB, Balance due upon job completion

KLR Well Drilling LLC  
2000 Burma Rd  
New Smyrna Beach, FL 32168  
(321) 377-4187  
klrwelldrilling@gmail.com



## Service Proposal

### ADDRESS

John Desantis  
Fontana Estates  
Fontana Estates Dr  
Orlando, FL 33829

SERVICE PROPOSAL 1852

#

DATE 10/28/2019

EXPIRATION DATE 11/28/2019

DATE	ACTIVITY	QTY	RATE	AMOUNT
10/28/2019	<b>Service Call</b> It is our recommendation to use the 5HP 4" submersible for the irrigation system 100% of the time. Due to zone flow rates ranging from 27.7 gpm to 64.4 gpm, a cycle stop is needed.	1	95.00	95.00
10/28/2019	<b>Cycle Stop</b> 2" NPT cycle stop with csv1a regulator. Installed on existing pump system at the well head. Includes all necessary plumbing for install.	1	900.00	900.00

Thank you for the opportunity to bid on this project! If this proposal is acceptable, please sign and email a copy to klrwelldrilling@gmail.com or call 321-377-4187.

**TOTAL**

**\$995.00**

Accepted By

Accepted Date



KLR Well Drilling LLC  
 2000 Burma Rd  
 New Smyrna Beach, FL 32168  
 (321) 377-4187  
 klrwelldrilling@gmail.com



## Service Proposal

### ADDRESS

Fontana Estates  
 Fontana Estates Dr  
 Orlando, FL 33829

SERVICE PROPOSAL 1854

#

DATE 10/28/2019

EXPIRATION DATE 11/30/2019

DATE	ACTIVITY	QTY	RATE	AMOUNT
10/28/2019	<b>Service Call</b> Convert single source irrigation system to a two source irrigation system. Convert system to use the above ground pump lake source water for the irrigation when water level is high enough. When the water reaches a low level the deep well will then be used as source of water for irrigation water.	1	95.00	95.00
10/28/2019	<b>Parts</b> Convert deep well pump start relay system to pressure system (on demand system). Install a 24 volt irrigation valve that will be controlled via float system in lake. Includes cycle stop, bladder tank, pressure switch, irrigation valve and isolation valve.	1	1,800.00	1,800.00
10/28/2019	<b>Lake Level Controls</b> Includes up to 3 submersible floats mounted in 8" pipe, j-box enclosure with ice cube relays and transformer and irrigation valve to control discharge of above ground pump. Low volt wiring between valve locations and lake level controls estimated 250'	1	2,200.00	2,200.00
10/28/2019	<b>NOTES</b> Due to above ground pump being oversized a previous quote was given to regulate the flow this work would still have to be completed before this system would work properly. This info is included below:	1	0.00	0.00
10/28/2019	<b>Cycle Stop</b> Install a 2" cycle stop onto existing lake suction above ground pump. Includes transitioning from existing victaulic fittings to NPT and all required plumbing required for installation.	1	1,800.00	1,800.00

Thank you for the opportunity to bid on this project! If this proposal is acceptable, please sign and email a copy to klrwelldrilling@gmail.com or call 321-377-4187.

**TOTAL**

**\$5,895.00**

Accepted By

Accepted Date

August 15, 2019 from John D.

Dear Dr. DiFate,

Please be advised that I spoke with Brock Fanning RVP for Toll Brothers yesterday who was our project manager at Fontana. I explained to him my role on the SMS committee and the issues at Fontana as follows:

- 1) Violations of Code Section 40C with the SMS that was left to Fontana Estates.
- 2) No record of a well permit for use of groundwater under a CRP with STJWMD under 40C.
- 3) Current delinquency of permit standards as filed by Kimley-Horn to STJRMD.
- 4) No record of required engineering inspections for 2012 and 2014.
- 5) Alterations of supply lines, lake level control, and irrigation equipment since 2016.
- 6) Failed inspection by STJWMD and scheduled date for meeting of August 24, 2019
- 7) Current conditions of loss of slope, erosion, loss of pond volume, and algae blooms per survey done by Ireland Surveying Inc. and in the reports filed by Kimley Horn.
- 8) Failed inspection from 2009 was not addressed at STJWMD (no record exists).
- 9) Cost of repairs for remediation of the slopes, 5300 CY of excess fill, and re-construction or repair of the SMS control structure as required by STJWMD.

Relative to code violations under Items 1,2,4, and 8, Brock was unaware of these violations and could offer no assistance even though these date back to when Toll Brothers personnel controlled the Board. (Date of Permit Transfer October 3, 2012 until turnover to homeowners in 2016) See permit transfer items attached.

Relative to items 3,6,7, and 9, Brock stated that no funds exist at Toll Brothers for SMS remediation. He stated that this is the sole responsibility of the HOA and recommended that an assessment be done to raise the funds needed to bring the SMS into compliance. Furthermore he stated that Toll Brothers has no records of HOA business and that by law, these were turned over to Leland Management.

Relative to item 5, Brock stated that it was his "**opinion**", that the prior Board made an error when they altered the equipment/functions of the SMS", but it would be difficult to prove in regard to any legal action". He did ask if there was any E&O insurance covering the Board at the time. I answered that I believe there was.

Brock's best recommendation is that an assessment be done to bring the SMS back to it's original design and function. Further, that "it was unfortunate that I was right in my original assessment" regarding the draw-down in the Spring of 2016. Nonetheless, an assessment would be the best course of action in order to avoid the consequences on non-compliance. Brock stated that any failure could result in Orange County taking over Fontana and we could lose our gated community resulting in an immediate drop in property values. ("I have heard of it happening before").

Brock's final statement was that he "left Fontana in good order and that Toll Brothers is not responsible for what happened afterward". As such, no personnel from Toll Brothers would attend the meeting with STJWMD.

Brock had to take another call and he asked that I e-mail his assistant Stacie Sneidenthal on any further developments. As such I would ask Stacie to relay this document to Brock in the event that I got anything wrong, misquoted him, or to make any other additional statement, correction, or to provide any additional information in this matter.

Sincerely yours

John DeSantis  
SMS Committeeman  
304-374-6158

**\*\*Dr. Telka DiFate is the President of the Fontana HOA and Robert Hollister is Vice President**

OPERATION AND MAINTENANCE (O&M) PERMIT TRANSFER TECHNICAL STAFF  
REPORT  
03-Oct-2012  
APPLICATION #: 40-095-106299-2

**O&M Entity:** Fontana Estates Community Homeowners Association Inc  
Ken Thirtyacre  
2966 Commerce Park Dr Ste 100  
Orlando FL 32819 USA

**Project Name:** Fontana Estates (Transfer)

**Authorization Statement:**

This permit authorizes the operation and maintenance of the surface water management system, with stormwater treatment by wet detention, serving Fontana Estates, a single family residential project consisting of 79.8 acres constructed in accordance with plans received by the District on November 8, 2006.

**Recommendation:** Approval

**Reviewers:** Bill Carlie; Rick Sobczak; Cecilia Tyne

**AS-BUILT INSPECTION DATE:** 10/14/2009, 12/17/2009, 1/22/2010

**FILED/RECORDED O & M DOCUMENTS SUBMITTED?** Yes

**PROJECT IN COMPLIANCE?** Yes

**STORMWATER TREATMENT TYPE:** Wet Detention

**OTHER COMMENTS:** Sequence 2 is an O & M Permit Transfer of sequence 1. Upon completion of the Permit Transfer, please close sequence 1 of the permit. The permittee for sequence 1 is an inactive corporate entity that no longer controls any of the site. The successor developer has requested the transfer to the HOA.

**Conditions**

1. All activities shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted



# St. Johns River Water Management District

Hans G. Tenzler III, Executive Director

4049 Reid Street • P.O. Box 1429 • Palatka, FL 32178-1429 • (386) 329-4500  
On the Internet at [floridaswater.com](http://floridaswater.com).

October 3, 2012

Fontana Estates Community Homeowners Association Inc  
2966 Commerce Park Dr Ste 100  
Orlando FL 32819

SUBJECT: Transfer of an Environmental Resource Permit  
Permit Number 40-095-106299-2  
Project Name: Fontana Estates (Transfer)

Dear Sir/Madam:

The surface water management system serving the above-referenced project has been constructed and is functioning in conformance with the requirements of the St. Johns River Water Management District.

The Fontana Estates Community Homeowners Association Inc is identified as the operation and maintenance entity in the permit. The permit has now been transferred to Fontana Estates Community Homeowners Association Inc, who is authorized to operate the system and responsible for its routine maintenance.

**Maintenance of Your Stormwater System:**

Enclosed you will find an operation permit plan, maintenance guidelines, and a pamphlet entitled "Neighborhood Guide to Stormwater Systems." The permit, plan and maintenance guidelines provide information to assist you in assuring the system is properly maintained and will continue to function as designed. Please review this material carefully to assure that your association meets all of the requirements contained in your permit and keep it with other important documents. The pamphlet contains general information about the stormwater systems that will be useful to the homeowners in your development.

**Transferring Your Permit:**

If you wish to transfer your permitted facility, you must notify the District in writing within 30 days of any sale, conveyance or other transfer of a permitted system or facility, or within 30 days of any transfer of ownership or control of the real property where the permitted system or facility is located. You will need to provide the District with the information specified in District rule 40C-1.612, Florida Administrative Code (name and address of the transferee and a copy of the instrument effectuating the transfer). Please note that a permittee remains liable for any corrective actions that may be required as a result of any permit violations that occur before the sale, conveyance, or other transfer of the system or facility, so it is recommended that you request a permit transfer in advance.

---

**GOVERNING BOARD**

Lad Daniels, CHAIRMAN  
JACKSONVILLE

John A. Mikos, VICE CHAIRMAN  
ORLANDO

Douglas C. Bournique, SECRETARY  
VERO BEACH

Maryam H. Ghyabi, TREASURER  
ORMOND BEACH

Chuck Drake  
ORLANDO

Richard G. Hamann  
GAINESVILLE

George W. Robbins  
JACKSONVILLE

Fred N. Roberts, Jr.  
OCALA

W. Leonard Wood  
FERNANDINA BEACH



Patrick C Howell  
Office Managing Shareholder  
Board Certified Construction Law & Litigation  
Attorney  
Phone: 407.215.9660 Fax: 407.999.2209  
phowell@beckerlawyers.com

**Becker**

Becker & Poliakoff  
111 N. Orange Avenue  
Suite 1400  
Orlando, FL 32801

April 22, 2020

Toll FL VIII Limited Partnership  
250 Gibraltar Road  
Horsham, PA

United Agent Group Inc., Registered Agent  
Toll FL VIII Limited Partnership  
801 US Highway 1  
North Palm Beach, FL 33408

**Re: Fontana Estates Community Homeowners' Association, Inc.**  
Underfunded Reserves

Dear Sir or Madam:

I have the pleasure to represent and write you on behalf of Fontana Estates Community Homeowners' Association, Inc. (hereinafter referred to as the "Association"), the entity responsible for the operation of the Fontana Estates Community, which is located in Orange County, Florida (the "Community"). This correspondence is written for settlement purposes only, and may not be used for any other purpose.

In order to comply with the requirements of the Orange County Code §§ 34-290 - 34-291 for gated communities and the Declaration of Covenants, Conditions and Restrictions of Fontana Estates Community ("Declaration"), your client, Toll FL VIII Limited Partnership ("Toll FL"), was obligated to deposit one twelfth (1/12) of the amount necessary to replace the streets in the Community into the Capital Repair/Streets Account; one tenth (1/10) of the amount necessary to replace the drainage system for the Community into the Capital Repair/Drainage Pond Account; and one fiftieth (1/50) of the amount necessary to replace the remaining infrastructure in the Community into the Capital Repair/Other Infrastructure Account, starting in April of 2011. Furthermore, Toll FL was required to fund a storm debris reserve account and "superfund" the reserves by funding a full extra year of reserves prior to turning over the Association to the non-developer owners.

Despite establishing reserves and budgeting for the funding of same, these reserve accounts were not fully funded, in violation of the Declaration and the Orange County Code §34-291. Such actions also violates § 720.303(6), *Florida Statutes*, which was amended in 2007 to provide for the mandatory funding of HOA reserve accounts each year if initially established by the developer.

April 22, 2020  
PAGE 2  
Toll FL VIII Limited Partnership  
Demand

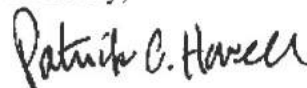
Joseph Michalak, CPA, conducted a turnover audit of the Association's financial statements, which revealed that Toll FL owes the Association \$90,860, of which \$90,910 is for missing reserve funds. Mr. Michalak's turnover audit dated June 25, 2015, is attached hereto as Exhibit "A."

Toll FL mismanaged the Association's funds while in control of the Association. Such funds are the property of the Association and should have been turned over to the Association on June 25, 2015, pursuant to §720.307(4)(j), *Florida Statutes*. Interest accrued at the statutory interest rate results in Toll FL owing the Association an additional \$23,327.64. As such, please remit the total amount of \$115,187.64 to us with thirty (30) days of the date of this letter.

We anticipate your timely response to this demand. While the Association would prefer to resolve this matter amicably, the Association is prepared to take legal action, as necessary, to recover the Association's property. If the Association is required to file suit against Toll FL to recover the Association's property, it will make a demand to recover its prevailing party attorneys' fees and costs, as allowed by Article XX, Section 6.(i) of the Declaration and Orange County Code § 34.290(18).

**PLEASE GOVERN YOURSELF ACCORDINGLY.**

Sincerely,



Patrick C. Howell  
For the Firm

PCH/tn  
Enclosures as noted

ACTIVE 13618330v.1

**FONTANA ESTATES  
HOMEOWNERS ASSOCIATION, INC.**

**FINANCIAL STATEMENTS AND  
SUPPLEMENTARY INFORMATION**

**JUNE 25, 2015**

**EXHIBIT A**

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**INDEPENDENT AUDITOR'S REPORT**

To the Board of Directors and Members  
Fontana Estates Homeowners Association, Inc.

We have audited the accompanying financial statements of Fontana Estates Homeowners Association, Inc., which comprise the balance sheet as of June 25, 2015, and the related statements of revenue, expenses, and changes in fund balance and cash flows for the period April 21, 2011(inception) through June 25, 2015 (turnover), and the related notes to the financial statements.

**Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

**Auditor's Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Fontana Estates Homeowners Association, Inc. as of June 25, 2015, and the results of its operations and its cash flows for the period April 21, 2011 (inception) through June 25, 2015 (turnover) in accordance with accounting principles generally accepted in the United States of America.

### **Disclaimer of Opinion on Supplementary Information**

Accounting principles generally accepted in the United States of America require that the information on future major repairs and replacements be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Financial Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

*Joseph R. Michalak, LLC*

Joseph R. Michalak, LLC  
Certified Public Accountant

Maitland, Florida  
September 17, 2015



**FONTANA ESTATES HOMEOWNERS ASSOCIATION, INC.**

**BALANCE SHEET**

**June 25, 2015**

	<u>OPERATING FUND</u>	<u>REPLACEMENT FUND</u>	<u>TOTAL</u>
<b>ASSETS:</b>			
Cash, including interest-bearing deposits	\$ 12,040	\$ 75,950	\$ 87,990
Assessments receivable, net of allowance ( Note 7 )	2,480	-	2,480
Due from Developer ( Note 3 )	< 50 >	90,910	90,860
Prepaid expenses	1,730	-	1,730
Deposit	<u>1,790</u>	<u>-</u>	<u>1,790</u>
<b>TOTAL ASSETS</b>	<u>\$ 17,990</u>	<u>\$ 166,860</u>	<u>\$ 184,850</u>
 <b>LIABILITIES:</b>			
Accounts payable and accrued expenses	\$ 5,490	\$ -	\$ 5,490
Assessments received in advance	10,480	-	10,480
Deferred assessments	<u>2,020</u>	<u>-</u>	<u>2,020</u>
<b>TOTAL LIABILITIES</b>	<u>17,990</u>	<u>-</u>	<u>17,990</u>
 <b>FUND BALANCE:</b>	<u>-</u>	<u>166,860</u>	<u>166,860</u>
<b>TOTAL LIABILITIES AND FUND BALANCE</b>	<u>\$ 17,990</u>	<u>\$ 166,860</u>	<u>\$ 184,850</u>

The accompanying notes are an integral part of the financial statements.

**FONTANA ESTATES HOMEOWNERS ASSOCIATION, INC.**

**STATEMENT OF REVENUE, EXPENSES AND CHANGES IN FUND BALANCE**

**For the Period April 21, 2011 (Inception) through June 25, 2015 (Turnover)**

	<u>OPERATING FUND</u>	<u>REPLACEMENT FUND</u>	<u>TOTALS</u>
<b>REVENUE:</b>			
Assessments	\$ 135,950	\$ 79,730	\$ 215,680
Developer contribution	142,340	90,910	233,250
Interest	20	120	140
Other	2,540	-	2,540
Initial fees	21,000	-	21,000
<b>TOTAL REVENUE</b>	<u>301,850</u>	<u>170,760</u>	<u>472,610</u>
<b>EXPENSES:</b>			
Utilities	51,030	-	51,030
Lakes and waterways	22,410	-	22,410
Entry gate	9,500	-	9,500
Contract grounds maintenance	103,420	-	103,420
Irrigation repair	12,880	-	12,880
Other grounds maintenance	51,740	-	51,740
Fertilizer/chemicals	9,450	-	9,450
Contract management fee	32,560	-	32,560
Office and other	3,820	-	3,820
Legal and accounting	910	-	910
Bad debt	1,480	-	1,480
Reserve study	2,650	-	2,650
Replacement fund expense	-	3,900	3,900
<b>TOTAL EXPENSES</b>	<u>301,850</u>	<u>3,900</u>	<u>305,750</u>
<b>REVENUE IN EXCESS OF EXPENSES</b>	-	166,860	166,860
<b>FUND BALANCE – April 21, 2011</b>	<u>-</u>	<u>-</u>	<u>-</u>
<b>FUND BALANCE – June 25, 2015</b>	<u>\$ -</u>	<u>\$ 166,860</u>	<u>\$ 166,860</u>

The accompanying notes are an integral part of the financial statements.

**FONTANA ESTATES HOMEOWNERS ASSOCIATION, INC.**

**STATEMENT OF CASH FLOWS**

**For the Period April 21, 2011 (Inception) through June 25, 2015 (Turnover)**

	<u>OPERATING FUND</u>	<u>REPLACEMENT FUND</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Revenue in excess of expenses	\$ -	\$ 166,860
Adjustment to reconcile excess of revenue over expenses to net cash provided by operating activities:		
(Increase) decrease in:		
Assessments receivable	< 2,480 >	-
Due from Developer	50	< 90,910 >
Prepaid expenses	< 1,730 >	-
Deposit	< 1,790 >	-
Increase (decrease) in:		
Accounts payable and accrued expenses	5,490	-
Assessments received in advance	10,480	-
Deferred assessments	<u>2,020</u>	<u>-</u>
 NET CASH PROVIDED (USED) BY OPERATIONS	 12,040	 75,950
 CASH AT April 21, 2011	 <u>-</u>	 <u>-</u>
 CASH AT June 25, 2015	 <u>\$ 12,040</u>	 <u>\$ 75,950</u>

The accompanying notes are an integral part of the financial statements.

**FONTANA ESTATES HOMEOWNERS ASSOCIATION, INC.**

**NOTES TO FINANCIAL STATEMENTS**

**June 25, 2015**

**NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Organization**

Fontana Estates Homeowners Association, Inc. was incorporated in the State of Florida as a not-for-profit corporation on April 21, 2011. The Association is responsible for the operation and maintenance of the common property within the development. The development consists of 79 residential units located in Orange County, Florida.

The Association's original Declaration of Covenants was filed on May 18, 2011 and was amended on July 26, 2011. The Association began its operations in July 2011.

Control of the Board of Directors was transferred from the Developer, Toll FL VIII Limited Partnership, to the unit owners on June 25, 2015.

**Fund Accounting**

The Association presents its financial statements on the accrual basis using fund accounting. The financial statements are therefore segregated into funds based upon different funding policies established for operating and capital expenses.

The operating fund reflects the maintenance assessments paid by unit owners to meet the regular, recurring costs of operations. Expenses from this fund are limited to those connected with daily operations.

The replacement fund is composed of capital assessments paid by unit owners to fund future replacements and major repairs. Expenses from this fund are restricted to those items for which assessments were specifically collected. Interest earned on replacement funds remains in the replacement fund and is allocated to the components based on their respective balances.

**Cash and Cash Equivalents**

For purposes of the Statement of Cash Flows, cash equivalents include time deposits, certificates of deposit, and all highly liquid debt instruments with original maturities of three months or less.

**Real and Common Area Property**

Real and common area property owned by the Association is not recorded in the Association's financial statements as it was acquired in a nonmonetary transaction from the Developer and the fair value of the assets cannot be reasonably determined. As a result, improvements made to the real property and common areas are not capitalized.

**Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

**FONTANA ESTATES HOMEOWNERS ASSOCIATION, INC.**

**NOTES TO FINANCIAL STATEMENTS**

**June 25, 2015**

**NOTE 2: RESERVE FOR MAJOR REPAIRS AND REPLACEMENTS**

The Association is funding for major repairs and replacements based on estimated current replacement costs, the Association's Declaration and annual budgets and local regulatory code. Actual expenditures, however, may vary from the estimated amounts and the variations may be material. Therefore, amounts accumulated in the replacement fund may not be adequate to meet future needs. If additional funds are needed, the Association has the right to increase regular assessments, to levy special assessments, or it may delay major repairs and replacements until funds are available. The effect on future assessments has not been determined at this time..

The following table presents significant information about the components of common property:

COMPONENT	BALANCE 4/21/2011 (INCEPTION)	FUNDING	INTEREST INCOME	EXPENSES DURING YEAR	BALANCE 6/25/2015 (TURNOVER)
Routine infrastructure maintenance	\$ -	\$ 46,800	\$ 20	\$ 3,900	\$ 42,920
Major capital repair - streets	-	29,380	20	-	29,400
Major capital repair - drainage	-	15,480	-	-	15,480
Major capital repair - other infrastructure	-	38,860	20	-	38,880
Storm debris removal	-	23,590	20	-	23,610
Gazebo / Tot lot	-	9,900	-	-	9,900
Engineering study	-	6,630	-	-	6,630
Interest	-	-	40	-	40
	<u>\$ -0-</u>	<u>\$ 170,640</u>	<u>\$ 120</u>	<u>\$ 3,900</u>	<u>\$ 166,860</u>



**FONTANA ESTATES HOMEOWNERS ASSOCIATION, INC.**

**NOTES TO FINANCIAL STATEMENTS**

**June 25, 2015**

**NOTE 3: DEVELOPER GUARANTEE**

Section 720.308(1)(b) of the Florida Statutes provides that a Developer may be excused from payment of its share of the operating expenses and assessments related to its parcels for any period of time for which the Developer has, in its declaration, obligated itself to pay any operating expenses incurred that exceed the assessments receivable from other members and other income of the Association. The Developer guaranteed this through turnover of the Association on June 25, 2015.

The Developer's obligation under the guarantee for the period April 21, 2011 (inception) to June 25, 2015 (turnover) was as follows:

	<u>Operating Fund</u>	<u>Replacement Fund</u>	<u>Total Funds</u>
Common expenses	\$ 301,850	\$ -	\$ 301,850
Budgeted reserves and interest earned on reserves	-	170,760	170,760
Less: Income other than Developer	<u>159,510</u>	<u>79,850</u>	<u>239,360</u>
Developer obligation	\$ 142,340	\$ 90,910	\$ 233,250
Less payments from Developer	<u>142,390</u>	<u>-</u>	<u>142,390</u>
Due from Developer	<u>\$ &lt; 50 &gt;</u>	<u>\$ 90,910</u>	<u>\$ 90,860</u>

Under the terms of the Association's Declaration and local regulatory code, deposits to infrastructure and capital repair reserve accounts were required to begin in April 2011, as the county had issued its certificate of completion in 2010. In addition, the Developer was required to deposit an initial amount into the Storm Debris Removal reserve, calculated based on acreage, and increased annually based on an external cost index.

**FONTANA ESTATES HOMEOWNERS ASSOCIATION, INC.**

**NOTES TO FINANCIAL STATEMENTS**

**June 25, 2015**

**NOTE 4: CAPITAL CONTRIBUTIONS**

For all sales agreements signed after August 16, 2012, the Declarant assessed an initial capital contribution of \$ 500 at the unit closing. This fee was not included in the original or amended Declaration filed by the Association. The amounts may be used by the Association for any expense and are not required to be restricted or accumulated.

**NOTE 5: MEMBERSHIP ASSESSMENTS CHARGED TO LOT OWNERS**

Pursuant to the Community Declaration and Bylaws of the Association, membership assessments (both regular and special) are allocated to the lot owners in the proportion provided in the Declaration.

The Declaration and Bylaws provide, among other matters, that any excess of membership assessments and other cash income collected over expenses in a year is to be taken into account in the preparation of the annual budget for the succeeding year.

The membership assessments charged to lot owners for the period April 21, 2011 through June 25, 2015 are summarized as follows:

<u>Year/Period Ended</u>	<u>Quarterly Membership Assessment Per Lot</u>
December 31, 2011	\$ -
December 31, 2012	\$ 396.00
December 31, 2013	\$ 415.00
December 31, 2014	\$ 415.00
June 25, 2015	\$ 415.00

**FONTANA ESTATES HOMEOWNERS ASSOCIATION, INC.**

**NOTES TO FINANCIAL STATEMENTS**

**June 25, 2015**

**NOTE 6: DATE OF TRANSITION AND TURNOVER OF CONTROL**

The date of transition is the date that the control of the Board of Directors is transferred to the non-developer unit owners. As of June 25, 2015, the date of transition for the Association, 74 units that will be operated ultimately by the Association have been conveyed to the purchasers.

The Declaration requires the Developer to obtain an engineering study to be completed no earlier than 180 days before turnover. The engineering study for the Association was completed on November 20, 2014.

These financial statements were prepared pursuant to Section 720.303 and 720.307 of the Florida Statutes.

**NOTE 7: MEMBER ASSESSMENTS**

Association members are subject to assessments to provide funds for the Association's operating expenses, future capital acquisitions, and major repairs and replacements. Assessments receivable at the balance sheet date represent fees due from unit owners. Members' assessments prepaid are classified as assessments received in advance. It is the Association's policy to retain legal counsel and place liens on the property of delinquent homeowners. Assessments which have been deemed to be uncollectable as of the report date have been charged to bad debts. Any excess assessments at year end are retained by the Association for use in future operation periods. The allowance for bad debt expense is \$ 1,480 as of June 25, 2015.

**NOTE 8: INCOME TAXES**

Common interest realty associations may elect to be taxed as regular corporations or as homeowners' associations, under Section 528 of the Internal Revenue Code. With either election the Association is generally taxed only on its non-membership income, such as bank interest, investment earning and other non-exempt function income.

**NOTE 9: COMMITMENTS AND CONTINGENCIES**

The Association has entered into various short-term contractual agreements with outside vendors and service providers to maintain its common property and to administer the Association. These contracts have different expiration dates and renewal terms.

In preparing the financial statements, the Association has evaluated events and transactions for potential recognition or disclosure through September 17, 2105, the date that the financial statements were issued. No subsequent events have been recognized or disclosed.

**FONTANA ESTATES HOMEOWNERS ASSOCIATION, INC.**

**NOTES TO FINANCIAL STATEMENTS**

**June 25, 2015**

**NOTE 10: CONCENTRATIONS OF CREDIT RISK**

Financial instruments that potentially subject the Association to concentrations of credit risk consist primarily of bank accounts and certificates of deposit. The Association maintains its cash balances at a single financial institution. Accounts at this institution are insured by the FDIC up to \$ 250,000. As of June 25, 2015, all of the Association's funds were fully insured.

The Association's major source of revenue is member assessments, which are receivable from its members and may be secured by a lien on their property. The Association monitors the collectability of these receivables and pursues collection. Management routinely assesses the collectability of these receivables and provides for an allowance for doubtful accounts based on this assessment.

**FONTANA ESTATES HOMEOWNERS ASSOCIATION, INC.**

**SUPPLEMENTARY INFORMATION ON FUTURE MAJOR REPAIRS AND REPLACEMENTS  
(UNAUDITED)**

**June 25, 2015**

The Association's Board has estimated the remaining useful lives and the replacement costs of components of common property. Replacement costs were based on the estimated costs to repair or replace the common property components. Estimated current replacement costs have not been revised and do not take into account the effects of inflation between the date of the estimate and the date that the components will require repair or replacement.

The following is based on the estimate and presents significant information about the components of common property:

COMPONENT	ESTIMATED REMAINING USEFUL LIFE (YEARS)	ESTIMATED CURRENT REPLACEMENT COST	REPAIRS/REPLACEMENTS JUNE 25, 2015
Routine infrastructure maintenance	-	\$ -	\$ 42,920
Major capital repair - streets	6-18	234,870	29,400
Major capital repair - drainage	9	26,840	15,480
Major capital repair - other infrastructure	2-27	631,830	38,880
Storm debris removal	-	-	23,610
Gazebo / Tot lot	14-19	62,000	9,900
Engineering study	2	1,950	6,630
Interest	-	-	40
TOTALS		<u>\$ 957,490</u>	<u>\$ 166,860</u>

See auditor's report.



**FONTANA ESTATES COMMUNITY HOMEOWNERS ASSOCIATION, INC.**  
**STATEMENT OF REVENUE, EXPENSES AND CHANGES IN OPERATING FUND BALANCE**  
For the Period April 21, 2011 (Inception) through June 25, 2015 (Turnover)

	April 21 through December 31, 2011		January 1 through December 31, 2012		January 1 through December 31, 2013	
	Operating Fund	Replacement Fund	Operating Fund	Replacement Fund	Operating Fund	Replacement Fund
<b>REVENUE:</b>						
Assessments	\$ -	\$ -	\$ -	\$ -	\$ 33,190	\$ 18,690
Developer contribution	15,020	36,210	6,350	4,370	32,590	18,730
Interest	-	-	64,810	33,040	-	10
Other	-	-	-	10	-	-
Initial fees	-	-	30	-	630	-
	-	-	-	-	7,000	-
<b>TOTAL REVENUE</b>	<b>15,020</b>	<b>36,210</b>	<b>71,190</b>	<b>37,420</b>	<b>73,410</b>	<b>37,430</b>
<b>EXPENSES:</b>						
Utilities	6,510	-	16,960	-	11,270	-
Lakes and waterways	3,600	-	5,400	-	5,400	-
Entry gate	260	-	100	-	1,850	-
Contract grounds maintenance	4,200	-	21,090	-	29,810	-
Irrigation repair	-	-	1,260	-	5,450	-
Other grounds maintenance	4,900	-	11,470	-	14,970	-
Fertilization/chemicals	500	-	550	-	3,210	-
Contract management fee	3,500	-	8,200	-	8,400	-
Office and other	90	-	520	-	710	-
Legal and accounting	-	-	230	-	220	-
Bad debt	-	-	-	-	-	-
Reserve study	-	-	-	-	-	-
<b>TOTAL EXPENSES</b>	<b>23,560</b>	<b>-</b>	<b>85,780</b>	<b>-</b>	<b>81,060</b>	<b>-</b>
<b>REVENUE IN EXCESS OF EXPENSES</b>	<b>(8,560)</b>	<b>36,210</b>	<b>5,410</b>	<b>37,420</b>	<b>(7,660)</b>	<b>37,430</b>
<b>FUND BALANCE - Beginning of period</b>	<b>-</b>	<b>-</b>	<b>(8,560)</b>	<b>36,210</b>	<b>(3,150)</b>	<b>73,630</b>
<b>FUND BALANCE - End of period</b>	<b>\$ - (8,560)</b>	<b>\$ 36,210</b>	<b>\$ (3,150)</b>	<b>\$ 73,630</b>	<b>\$ (10,830)</b>	<b>\$ 111,060</b>

See auditor's report.

**FONTANA ESTATES COMMUNITY HOMEOWNERS ASSOCIATION, INC.**  
**STATEMENT OF REVENUE, EXPENSES AND CHANGES IN OPERATING FUND BALANCE**  
**For the Period April 21, 2011 (Inception) through June 25, 2015 (Turnover)**

	January 1 through December 31, 2014		January 1 through June 25, 2015		April 21, 2011 through June 25, 2015	
	Operating Fund	Replacement Fund	Operating Fund	Replacement Fund	Operating Fund	Replacement Fund
<b>REVENUE:</b>						
Assessments	\$ 59,060	\$ 37,140	\$ 37,350	\$ 19,530	\$ 135,950	\$ 79,730
Developer contribution	29,970	4,180	(50)	(1,250)	142,340	90,910
Interest	10	60	10	40	20	120
Other	1,450	-	430	-	2,540	-
Initial fees	10,500	-	3,500	-	21,000	-
<b>TOTAL REVENUE</b>	<b>100,990</b>	<b>41,380</b>	<b>41,240</b>	<b>18,320</b>	<b>301,850</b>	<b>170,760</b>
<b>EXPENSES:</b>						
Utilities	10,910	-	5,380	-	51,030	-
Lakes and waterways	5,400	-	2,610	-	22,410	-
Entry gate	5,810	-	1,460	-	9,500	-
Contract grounds maintenance	32,710	-	15,810	-	103,420	-
Irrigation repair	5,590	-	580	-	12,880	-
Other grounds maintenance	17,930	-	2,470	-	51,740	-
Fertilization/chemicals	3,500	-	1,690	-	8,450	-
Contract management fee	8,400	-	4,080	-	32,560	-
Office and other	1,070	-	1,430	-	3,820	-
Legal and accounting	110	-	350	-	910	-
Bad debt	780	-	700	-	1,480	-
Reserve study	2,850	-	-	-	2,650	-
<b>TOTAL EXPENSES</b>	<b>94,860</b>	<b>-</b>	<b>36,540</b>	<b>-</b>	<b>301,850</b>	<b>-</b>
<b>REVENUE IN EXCESS OF EXPENSES</b>	<b>6,130</b>	<b>41,380</b>	<b>4,700</b>	<b>18,320</b>	<b>-</b>	<b>170,760</b>
<b>FUND BALANCE - Beginning of period</b>	<b>(10,830)</b>	<b>111,060</b>	<b>(4,700)</b>	<b>152,440</b>	<b>-</b>	<b>-</b>
<b>FUND BALANCE - End of period</b>	<b>\$ (4,700)</b>	<b>\$ 152,440</b>	<b>\$ -</b>	<b>\$ 170,760</b>	<b>\$ -</b>	<b>\$ 170,760</b>

See auditor's report.

Spath, Nadine  
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