



# Planning and Zoning Board Meeting

Wednesday, February 24, 2021 at 6:00 pm

**1. CALL TO ORDER**

**2. ROLL CALL**

**3. APPROVAL OF AGENDA**

**4. CONSENT AGENDA**

**a. Approval of Minutes of 01/13/2021 (Not Ready)**

Exhibit: Agenda Report Number 4a

**Attachments:**

- **Agenda Report Number 4a** (Agenda\_Report\_Number\_4a.pdf)

**5. PUBLIC HEARING**

**a. Final Plat Approval: Twin Lakes Subdivision (16 lots) - MVB Engineering  
Mr. Brian Dangle, Project Manager, Representing Property Owner Mr.  
Malcolm Kirschenbaum**

Exhibit: Agenda Report Number 5a

Recommendation: Discussion & Action to Council

**Attachments:**

- **Agenda Report Number 5a** (Agenda\_Report\_Number\_5a.pdf)

**6. ACTION ITEMS**

**7. DISCUSSION/POSSIBLE ACTION ITEMS**

**8. ADDITIONAL ITEMS FOR FUTURE MEETING**

**9. PUBLIC COMMENTS**

**10. OLD BUSINESS/NEW BUSINESS**

**a. Old Business**

**b. New Business**

Board Member Comments

Next regular Meeting - March 10th, 2021

**11. ADJOURNMENT**

**TOWN OF MALABAR**  
**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 4.a**

**Meeting Date: February 24, 2021**

**Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary**

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**SUBJECT: Approval of Minutes**

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**BACKGROUND/HISTORY:**

The minutes must reflect the actions taken by the Board:

- Who made the motion
- What is the motion
- Who seconded the motion
- What was the vote

Malabar has historically included discussion to provide the reader the understanding of how the Board came to their vote. It is not verbatim, and some editing is done to convey the thought. People do not speak the way they write.

**ATTACHMENTS:**

Draft minutes of P&Z Board Meeting of 1/13/2021 ( Not Ready)

**ACTION OPTIONS:**

Secretary requests approval of the minutes.

# TOWN OF MALABAR

## PLANNING AND ZONING

### AGENDA ITEM REPORT

**AGENDA ITEM NO: 5.a.**  
**Meeting Date: February 24, 2021**

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

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**SUBJECT: Final Plat Approval: Twin Lakes Subdivision (16 lots)- MVB Engineering Mr. Brian Daigle, Project Manager Representing Property Owner, Mr. Malcolm Kirschenbaum**

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#### **BACKGROUND/HISTORY:**

This Board shall conduct a Public Hearing to consider a request for a Final Plat Approval for Twin Lakes Subdivision consisting of 16 homesites in Rural Residential (RR-65) Zoning located on the south side of Malabar Road, east of Weber Road.

The Town Council will convene in the Town Hall, 2725 Malabar Road on Monday March1, 2021 at 7:30PM. The Council will consider the recommendation from this Board and make a determination.

We will accommodate any situation if any additional meetings are needed.

#### **ATTACHMENTS:**

- Town of Malabar Code for Final Plat Review- Article XVI Sect 1-16.4
- Legal Notice for Public Hearing
- Staff comments
  
- Final Plat Package from Twin Lakes Subdivision- MVB Engineering

#### **ACTION OPTIONS:**

Action to Council

**TWIN LAKES  
SUBDIVISION**

**TOWN OF MALABAR  
INFORMATION**

- c. No permit for improvements shall be issued or construction allowed within a subdivision and no bonding shall be accepted for a subdivision unless and until all documents and permits required by this section have been submitted to and accepted by the Town.

8. *Temporary Structures.* Subdivision preliminary plats showing temporary structures or permanent structures having a temporary use shall be reviewed by the Town staff within eighteen (18) months from the last approval date. Following approval of a preliminary plat subdivision master plat or site plan, such approved temporary structures may be erected prior to plan recording. All Town permit requirements, including but not limited to Town zoning regulations governing temporary structures, land clearing, excavation and pond construction, as amended, shall be satisfied. A mobile home may not be used as a temporary structure, except that mobile homes approved for use as temporary construction trailers, may be considered for exemption from the application of said definition when fully bonded to assure removal.

See 1-16.4.

→ D. *Final Plat Procedures.* As the final step in the review procedure for obtaining approval of a subdivision in the Town of Malabar, the developer shall have prepared and shall submit a final plat. No final plat shall be recorded until the required improvements have been installed or surety bond posted pursuant to Section 1-16.4.D.5.d.4. and 1-16.4.D.5.e. No such required improvements including streets, drainage and other required facilities shall be accepted and maintained by the Town, unless and until the same have been duly inspected and approved by the Town Staff, and have also been approved and accepted for maintenance by the Town Council. Prior to acceptance and approval of the required improvements the final plat shall be approved by the Town surveyor, Town Engineer and the Town Council and it shall be duly recorded by the Clerk of the Circuit Court who shall record only those final plats which have been so approved in accordance with this Ordinance.

1. *Fee for Final Plat.* Upon filing application for final plat approval, the applicant shall pay to the Town of Malabar a processing fee, the amount of which shall be determined by resolution of the Town Council in order to help defray the cost of processing the final plat.
2. *Timing of Final Plat Submission.* The subdivider shall be required to submit a final plat package a minimum of fifteen (15) days prior to a regularly scheduled meeting of the Planning and Zoning Board. Failure to submit the final plat within a specified amount of time shall require reapplication under the Preliminary Plat section of this Article. The timing of PUD final plat submittal requirements shall control in case of conflict with provisions herein set forth.
3. *Required Compliance.* The final plat shall conform to the approved subdivision master plan, shall meet the legal requirements of platting as defined by F.S. Ch. 177, as amended, and shall consist of a fully executed correct plat map, meeting all State and Town standards, final engineering drawings and auxiliary submittals, and all required

legal instruments. Notwithstanding, the final plat shall constitute only that portion of the approved preliminary plat and subdivision master plan which the subdivider proposes to record and develop within twenty-one (21) months.

4. *Content of Final Plat.* The final plat shall be drawn or printed on 24 inch × 36 inch linen, chronoflex, mylar or other approved material. The final plat shall be prepared by a Florida Registered Engineer and is to be clearly and legibly drawn with black permanent drawing ink or veritype process to a scale of not smaller than 1 inch = 200 feet, or as otherwise determined by the Town. The final plat shall be prepared in accordance with the provisions of F.S. Ch. 177, as amended, and shall conform to the following requirements:
  - a. *Name of Subdivision.* The plat shall have a title or name acceptable to the Town printed in bold lettering across the top of the sheet. When the plat is a new subdivision, the name of the subdivision shall not duplicate or be phonetically similar to the name of any existing subdivision. When the plan is an addition to a recorded subdivision, it shall carry the same name as the existing subdivision.
  - b. *Title Block.* The plat shall have a title block printed in bold legible letters containing the name of the subdivision; the name of the city, county and state; the section, township and range as applicable or if in a land grant, so stated; and if the plat is a replat, amendment or addition to an existing subdivision, it shall include the words "section," "unit," "replat," "amendment," or similar designation reflecting the same.
  - c. *Legal Description.* A full and legal description of the land within the plat shall be lettered or printed upon the plat. The description shall show the section, township and range in which the lands are situated or if a land grant, so stated, and must be so completed that from it, without reference to the map, the starting point can be determined and the boundaries run.
  - d. *Index Sheet.* If more than one (1) sheet is required for the map, the plat shall contain an index sheet on Page 1, showing the entire subdivision on the sheet indexing the area shown on each succeeding sheet and each sheet shall contain an index delineating that portion of the subdivision shown on that sheet in relation to the entire subdivision. When more than one (1) sheet must be used to accurately portray the land subdivided, each sheet shall show the particular number of that sheet and the total number of sheets included, as well as clearly labeled match lines to each sheet.
  - e. *Required Survey Data.* The final plat shall fully comply with F.S. Ch. 177, and shall show the length of all arcs together with central angles, radii, and points of curvature. Sufficient survey data shall be shown to positively describe the boundary of each lot, block, right-of-way, easement, building line and all other areas shown on the plat and all areas shall be within the boundary of the plat as shown in the description. The survey data contained on the plat shall also include:

- i. The scale, both stated and graphically illustrated, on each sheet.
  - ii. A north arrow shall be drawn on every sheet including showing any portion of the lands subdivided. The bearing or azimuth reference shall be clearly stated on the face or first page of the plat in the notes or legend.
  - iii. The point of beginning shall be boldly shown together with the letters "P.O.B." in bold letters.
  - iv. All intersecting street right-of-way lines shall be joined by the long chord of minimum radius of twenty-five (25) feet and all dimensions shall be shown.
  - v. All adjoining property shall be identified by a subdivision title, plat book and page or if unplatted, the land shall be so designated.
  - vi. Permanent reference monuments (P.R.M.) and permanent control points (P.C.P.) shall be shown in the manner prescribed by F.S. Ch. 177, as amended, and shall be installed prior to submission of the final plat.
  - vii. There shall be reserved on each sheet of the plat a three-inch by five-inch space in the upper right-hand corner to be used by the Clerk of the Circuit Court for recording information and each sheet shall reserve three (3) inches on the left margin and a half inch margin on all remaining sides.
  - viii. The map shall mathematically close within 0.01 feet and shall be accurately tied to all, township, range and section lines occurring within the subdivision by distance and bearing. In addition, the initial point in the description shall be accurately tied to the nearest quarter section corner or section corner or government corner.
  - ix. The cover sheet or first page of the plan shall show a vicinity sketch, showing the subdivision's location in reference to other areas of the Town or abutting unincorporated areas.
- f. *Lot and Block Identification.* Each lot and block shall be numbered or lettered. All lots shall be numbered in each block by progressive numbers individually throughout the subdivision in a clockwise direction starting at the northwest corner of each block of the subdivision. Blocks in each incremental plat shall be lettered consecutively throughout a subdivision in a clockwise direction starting at the northwesternmost corner of the subdivision.
- g. *Street Names.* The plat shall contain the name of each street shown on the plat. Proposed streets which are in alignment with other existing and named streets shall bear the same name of the existing street. In no case, except as indicated in the preceding sentence, shall the name of the proposed street, excluding a numerical system, duplicate or be phonetically similar to existing street names, regardless of the use of the suffix street, avenue, boulevard, drive, place, court, or similar suffix. All proposed street names must be approved by the Brevard County, E 9-11 Department prior to final plat submittal.

- h. *Not-included Parcels.* "Not-included" or "excepted" parcels must be marked "not part of this plat." Where a not-included parcel is completely surrounded by areas included within the plat, sufficient easements or rights-of-way shall be provided for access, utilities, and drainage for the not-included parcel. No strip or parcel of land shall be reserved by the owner unless the same is sufficient in size and area to be of some particular use or service. The intended use for all reserved areas shall be shown on the plat in note form on the cover sheet.
- i. *Rights-of-way and Easements.* All right-of-way and easement widths and dimensions shall be shown on a plat. The plat shall contain a statement that "no buildings, septic tanks or any kind of construction or trees or shrubs shall be placed on easements without written approval of the Town Council."
- j. *Restrictions, Reservations and Restrictive Covenants.* Restrictions pertaining to the type and use of water supply; type and use of sanitary facilities; use and benefits of water areas, canals and other open spaces, odd-shaped and standard parcels; restrictions controlling building lines; establishment and maintenance of buffer strips and walls; and restrictions of similar nature shall require the establishment of restrictive covenants and such covenants shall be noted on the plat. Documents pertaining to restrictive covenants shall be submitted with the final plat.
- k. *Private Streets and Related Facilities.* All streets and their related facilities designed to serve more than one (1) property owner shall be dedicated to the public use. Notwithstanding, private streets shall be permitted within property under single ownership, a property owners' association or a condominium or cooperative association as defined by Florida Law. Where private streets are permitted, ownership and maintenance association documents shall be submitted with the final plat and the dedication contained on the plat shall clearly dedicate the roads and maintenance responsibility to the association without recourse to the Town or any other public agency. The rights-of-way and related facilities shall be identified as tracts for road purposes under specific ownership.
- l. *Certifications and Approvals.* The plat shall contain on the face or first page the following certifications and approvals, acknowledged as required by law.
  - i. *Dedications.* The purpose of all reserved areas shown on the plat shall be defined in the dedication on the plat. All areas reserved for use by the residents of the subdivision as well as all areas reserved for public use, including but not limited to parks, rights-of-way for roads, streets or alleys, utility or drainage easements or rights-of-way, together with all other area lands to be used by the public or subdivision residents shall be dedicated by the owner of the land at the time the plat is recorded.
  - ii. *Mortgagee's Consent and Approval.* All mortgages, along with the Mortgagee's Consent and Approval of the dedication shall be required on all plats where mortgages encumber the land to be platted. The signature(s) of the mort-



gagee or mortgagees, as the case may be, must be witnessed and the execution must be acknowledged in the same manner as mortgages are required to be witnessed and acknowledged. In case the mortgagee is a corporation, the consent and approval shall be signed in behalf of the corporation by the president or a vice president and the secretary or an assistant secretary, respectively, by and with the authority of the Board of Directors.

- iii. *Certification of Surveyor.* The plat shall contain the signature, registration number and official seal of the land surveyor, certifying that the plat is a true and correct representation of the land surveyed under his responsible direction and supervision and that the survey data compiled and shown on the plat complies with all of the requirements of this Ordinance and Chapter 177, Florida Statutes, as amended. The certification shall also state that permanent reference monuments, "P.R.M.," have been set in compliance with this Ordinance and F.S. Ch. 177, as amended, and the permanent control points, "P.C.P.," will be set under the direction and supervision of the surveyor within one (1) year from the date the plat was recorded.

When required improvements have been completed prior to the recording of a plat, the certification shall state the P.C.P.'s have been set in compliance with the laws of the State of Florida and Ordinances of the Town of Malabar.

When plats are recorded and improvements are to be accomplished under surety posted as provided for by this Ordinance, the required improvements and surety shall include installation of P.C.P.'s.

- iv. *Town Engineer.* The plat shall contain an approval and signature block for the Town Engineer.
- v. *Mayor and Town Clerk.* The plat shall contain an approval and signature block for the Mayor and the acknowledgment and signature block of the Town Clerk. Upon adoption of an Ordinance approving the plat, the Mayor shall execute the plat and the plat shall be presented to the Clerk of the Circuit Court by the Town Clerk for recording.
- vi. *Certification of Title.* A title certificate shall be contained on the face or first page of the plat. The title certification shall state:
- (1) That the lands as described and shown on the plat are in the name and apparent record title is held by the person, persons or organization executing the dedication,
  - (2) That all taxes have been paid on said lands as required by F.S. Ch. 197.0151, as amended,
  - (3) All mortgages on the land and indicate their official record book and page number. The title certification must be an opinion of an attorney at law licensed in Florida, or the certification of an abstractor, or a title insurance company licensed in Florida.

- vii. *Instrument Prepared By.* The name and address of the natural person who prepared the plat or under whose supervision it was prepared shall be contained on the plat as required by F.S. Ch. 695.24, as amended. The name and address shall be in statement form consisting of the words, "This instrument was prepared by (name), (address)."
- m. *Existing or Recorded Streets.* The plat shall show the name, location and width of all existing or recorded streets intersecting or contiguous to the boundary of the plat, accurately tied to the boundary of the plat by bearings and distances.
5. ~~8.~~ *Timing of Improvements and/or Posting of Surety.* In addition to the foregoing requirements and items to be shown on the face of the plat, the final plat when submitted, shall be accompanied by a statement of the developer indicating whether the required improvements are to be constructed prior to the recording of the plat or after recording under guarantees posted with the Town as provided for in this Ordinance.
- a. *Completion of Improvements Prior to Issuance of Building Permit.* When the improvements are to be completed prior to the recording of the plat, it shall be expressly understood that no building permits shall be issued for any structure on a lot wherein the final plat has not been approved and recorded on [in] a manner prescribed in this Ordinance. The approval to construct required improvements shall not be construed as authority for the sale of lots in reference thereto.
- b. *Surety.* When the required improvements are to be completed after recording under guarantees, as provided in this Ordinance, the final plat upon submittal shall be accompanied by the following: A certified cost estimate shall be prepared by the applicant's engineer and shall include the cost of all required improvements and/or shall include contract bid for all work required to complete the required improvements. Such certified costs shall be subject to the approval of the Town Engineer.
- c. *Additional Guarantees.* Guarantees in the amount equal to one hundred twenty-five (125) percent of the sum of engineering and construction costs based on the applicant's engineer's estimate or contract bid prices. The guarantee shall be in one of the following forms:
- i. Cash deposit.
  - ii. Personal bond with irrevocable letter of credit acceptable to the Town.
  - iii. Surety bond (having a Best's rating of A:AAAA) from a firm licensed to do business in Florida.
- D.S.D. → .d. If the subdivider chooses to construct the improvements prior to final plat recording, the following exhibits shall accompany the final plat package. All exhibits shall be reviewed and approved by the Town staff prior to approval of the final plat.

1. Five (5) copies of final as-built drawings prepared, signed, and sealed by a professional engineer or land surveyor registered and licensed in the state and showing the following:
  - a. Potable water supply system, both on site and off site, including line sizes, service connections, valves, and fire hydrants.
  - b. Sanitary sewer collection and pumping system, both on site and off site, including line sizes, manholes, laterals, force mains and lift stations.
  - c. Culverts with size and grades.
  - d. Sidewalks.
  - e. Streets, including any off-site improvements.
  - f. Location of all traffic control devices, markers, and required signs, including stop signs, traffic signals, crosswalks, street signs, and the like.
  - g. Bulkheads, if applicable.
2. A maintenance warranty bond in the amount of twenty (20) percent of the estimated construction cost, as approved by the Town, shall accompany the final plat if all improvements have been installed by the subdivider. Such maintenance warranty bond shall be from a company licensed as a surety in the state, listed by the U.S. Treasury Department, and rated A:AAAA in Best's Insurance Guide. A cash bond in the same amount as required in this subsection may be used by the subdivider in lieu of the maintenance warranty bond. The bond shall be for a period of two years and shall cover all improvements installed by the subdivider.
3. A bill of sale shall be submitted by the subdivider conveying to the Town water, sewer, and reuse utility lines, mains, and lift stations and other personal property required to be installed in dedicated rights-of-way or easements or approved private rights-of-way in accordance with this chapter. A minimum 30' x 30' site for any sewage pump stations to be operated by Malabar shall be conveyed by warranty deed to Malabar.
4. Submittal by the subdivider of instruments indicating that all necessary off site easements or dedications have been acquired. In lieu of originals, certified true copies will be accepted if the recording information from public records of the county is included thereon.
5. For residential subdivisions, dedication of land by the subdivider to the Town for use as park or recreation areas or a payment to the Town in lieu of dedication of such land shall be required. The amount to be dedicated or the fee to be paid shall be determined in accordance with the requirements set forth in Article XVII.
- 6. A full and complete copy of the proposed deed restrictions for the subdivision shall be submitted. The deed restrictions shall be approved by the Town

Council prior to recording of the plat. The deed restrictions shall include a provision requiring the owners of property within the subdivision to notify and obtain the council's approval of any and all amendments or alterations to the deed restrictions. The deed restrictions shall provide a mechanism to assess and fund any needed repairs or replacements of commonly held assets.

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7. The certificate of completion and/or proof of acceptance of the construction of drainage, driveway connection, and utilities by all applicable outside agencies, such as the St. Johns River Water Management District, the state department of transportation, the state department of environmental protection, the county, and the Melbourne-Tillman Water Control District shall be submitted.
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8. If the developer has been permitted by the Town to bond sidewalks in lieu of installing them prior to obtaining final plat approval, a performance, labor, and material bond shall be filed by the developer.
- e. If the subdivider chooses to bond the project in lieu of constructing the improvements prior to final platting, the following is required at the time of submittal of the final plat:
1. A guarantee by the subdivider of installation of the required improvements using one of the following methods:
    - a. Filing of a performance, labor, and material payment bond by the developer or jointly by the developer and builder in the amount of one hundred twenty-five (125) percent of the estimated construction costs as determined by the Town for any portions not constructed, including water, sewer, streets and street drainage, sidewalks, and retention areas. Such performance, labor, and material payment bond shall be from a company licensed as a surety in the state, listed by the U.S. Treasury Department, and rated A:AAAA in Best's Insurance Guide.
    - b. Depositing or placing in escrow a certified check, cash, or other acceptable pledge in the amount of one hundred twenty-five (125) percent of the estimated construction costs as determined by the Town. If the subdivider elects to provide an escrow agreement, he shall pay to the Town, for the administration cost of the escrow agreement, a sum of money equivalent to five (5) percent of the estimated construction costs.
  2. For residential subdivisions, dedication of land by the subdivider to the Town for use as park or recreation areas or a payment to the Town in lieu of dedication of such land. The amount to be dedicated or the fee to be paid shall be determined in accordance with the requirements set forth in this chapter.
  3. Final engineering plans.

- f. Following the completion of the requirements set forth in subsection D.5.e. of this section, the subdivider shall be required to install all of the required improvements within one (1) year of the final plat approval date. The Town Council, with justification provided by the subdivider, may extend the time for installation for a period not to exceed six (6) months. The Town may require an additional bond amount to guarantee installation if it is determined that the initial amount is no longer sufficient to fund the improvements.
- g. Upon completion of the installation of the improvements, the subdivider shall submit those requirements set forth in subsections D.5.d.1.—4., D.5.d.6.—8., of this section. Upon acceptance of all improvements by the Town, the performance, labor, and material payment bond shall be released.
- h. If the subdivider fails to install the improvements within the time periods set forth in subsection D.5.f. of this section, the Town shall be authorized to take such action to require the improvements to be installed, including forfeiture of the bond. If the bond amount is insufficient to fund all improvements, the subdivider shall be liable to the Town for the balance of the cost of the installation.

E. *Schedule of Development Phases.* The applicant may schedule proposed development phases within any proposed subdivision. The scheduled development phases shall have been specified on the approved preliminary plat and shall be of such a size and design and be scheduled so that all portions completed at any time can exist independently as a subdivision in complete conformity with the requirements of this Ordinance. Any change in the schedule of phases must receive prior approval by the Town Council. If phased, the applicant shall have the option of requesting either final plat approval or the issuance of a certificate of completion on one (1) or more of the development phases in conformity with all the procedures and requirements of this Ordinance.

F. *Time Restriction on Development.* The applicant may not apply for final plat approval on any portion of the approved preliminary plat which he does not propose to record and develop within the following eighteen (18) months. Failure to make application for final plat approval of a development phase or for the issuance of a certificate of completion for a development phase on an approved preliminary plat within a period of eighteen (18) months from the date of approval of the preliminary plat (or within eighteen (18) months of the final plat approval for a related phase of a multi-phase development) may result in revocation of said preliminary plat unless the applicant applies for an extension from the Town Council prior to the lapse. The request for extension must be made in writing to the Town Council a minimum of ninety (90) days prior to the scheduled expiration of the preliminary plat. The applicant must demonstrate good cause for the extension. The Town Council shall consider the request at a meeting and may extend the prescribed time period up to eighteen (18) months if the applicant presents evidence which demonstrates that the applicant has progressed in good faith toward implementing the preliminary plat.

Sec 1-16.4  
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G. *Submission of Final Plat.* Upon completion of the foregoing requirements, four (4) prints of the final plat and two (2) reproducible mylars of the final plat shall be submitted to the Town Clerk and be accompanied by the following:

- (a) A statement indicating whether the required improvements are to be constructed prior to recording of the plat or after recording of the plat.
- (b) A check payable to the Town of Malabar, the amount of which shall reflect the fee for final plat approval, the amount to be based on the fee schedule determined by resolution of the Town Council. \$ 1200.00
- (c) A check made payable to the Clerk of the Circuit Court of Brevard County for recording the plat in the amount established by that office.
- (d) A copy of the homeowner's association or condominium documents if applicable. Such documents shall indicate the maintenance responsibility for the required improvements and shall provide for the formation of a special taxing district to assume maintenance responsibility for the required improvements in the event of the dissolution of the condominium or homeowners' association.
- (e) If the developer elects to construct the required improvements after recording the plat, the following shall be submitted:
  - (i) A contract, executed in triplicate, between the Town and the applicant for the construction of required improvements in the form so titled and set forth in the Appendix of this Ordinance.
  - (ii) Guarantees of one hundred twenty-five (125) percent of the amount defined in Section 1-16.4 H.2.
- (f) Supplementary material designated by the Town, i.e., deeds, easements, etc., when access, drainage, or utility services cannot be accomplished through platted rights-of-way deeds or easements to accomplish access, drainage or utility service.
- (g) [Review procedures shall be as follows:]
  1. *Review by Staff.* The Town Engineer, Town Planner, Town Building Official and Town Administrator shall examine the final plat as to its compliance with the Ordinances of the Town of Malabar and shall in writing, within thirty (30) days, or at such other time as shall be determined by resolution of the Town Council, report their findings, recommendations or approval to the applicant. Such action shall be specified in writing.
    - a. If any deficiency exists, a reference shall be made to the specific article or section with which the final plat does not comply. Any such deficiency shall be corrected by the applicant upon written notice.
    - b. If the final plat meets the provisions of this Ordinance, complies with the Ordinances of the Town of Malabar, the Town Engineer shall recommend approval to the Town Council.
    - c. No revisions shall be allowed to the final plat after it has received Town Council approval.

2. *Review Procedure Where Required Improvements Constructed Prior to Recording.* Upon submittal of the reproducible final plat, certification and approvals contained on the plat shall be current and the plat shall be checked as required by this article prior to presentation to the Town Council for approval.
3. *Review Procedure Where Surety Posted.* In the event the developer elects to record the plat prior to completion of the required improvements under guarantees as provided for in this Ordinance, the final plat shall be presented to the Town Council by the Town Attorney accompanied by appropriate legal instruments. See Appendices for legal forms of surety.

Upon approval by the Town Council the plat shall be submitted by the Town Clerk for recording in the Office of the Clerk of the Circuit Court.

H. *Final Plat Recording Requirements.* The final plats for subdivisions, within the incorporated area of the Town of Malabar, shall not be recorded until the developer has installed the required improvements or has guaranteed to the satisfaction of the Town Council that such improvements will be installed.

1. *Completion of Required Improvements Prior to Final Plat Recording.* In the event the developer exercises the right to construct and complete required improvements prior to recording of the final plat, the Town Staff shall have the right of entry upon the property to be platted for the purpose of inspecting and reviewing the construction of the required improvements during the progress of such construction. The applicant shall coordinate the construction with the Town Staff. When the required improvements are complete, the final plat along with the records and data as herein prescribed shall be submitted by the applicant to the Town Clerk as provided for in this article. When all requirements of this Ordinance have been complied with, the plat and a completion certificate, rendered on a form to be provided by the Town Clerk, shall be presented for review and approval to the Town Council by the Town Staff, not later than thirty (30) days after receipt of the completion certificate. Upon such approval, the plat shall be submitted by the Town Clerk to the Office of the Clerk of the Circuit Court for recording.
2. *Completion of Required Improvements After Recording of Plat.* When the applicant desires to record the plat in lieu of prior construction of required improvements, the applicant shall file with the Town surety documents guaranteeing that such improvements will be installed. All guarantees shall be incorporated in a bonded agreement for the construction of the required improvements in the form prescribed in the appendix to this Ordinance. All agreements, guarantees and documents shall be subject to approval of the Town Attorney and Town Council. The guarantee shall be in one of the following forms unless an alternate irrevocable form is approved in writing by Town Attorney and is approved by the Town Council.
  - a. *Cash Deposit.* The applicant shall deposit with the Town or place in an escrowed bank account subject to the control of the Town, cash in the full amount of one hundred twenty-five (125) percent of engineering and construction costs for the

installation and completion of the required improvements. The applicant shall be entitled to receive all interest earned on such deposit or account. In the event of default by the applicant or failure of the applicant to complete such improvements within the time required by this Ordinance the Town, after sixty (60) calendar days written notice to the applicant shall have the right to use such cash deposit or account to secure satisfactory completion of the required improvements; or

b. *Personal Bond with Letter of Credit.* The applicant may furnish to the Town a personal bond secured by the unconditional and irrevocable letter of credit, in an amount equal to one hundred twenty-five (125) percent of the total estimated cost of engineering and construction for the installation and completion of the required improvements. The expiration date of the letter of credit shall be at least three (3) months following the date of certification of all improvements. The letter of credit shall be issued to the Town by a State of Florida or United States banking institution. Such letter of credit shall be in the form set forth by the Town Attorney and approved by the Town Council. In the event of default by the applicant or failure to the applicant to complete such improvements within the time required by this Ordinance, the Town, after sixty (60) calendar days written notice to the applicant, shall have the right to use any funds resulting from drafts on the letter of credit to secure satisfactory completion of the required improvements; or

c. *Surety Bond.* The applicant may furnish the Town a surety bond obtained from a company having a Best's rating of A:AAAA, guaranteeing that within the time required by this Ordinance, all work required will be completed in full accordance with the plat and all conditions attached thereto, copies of which shall be attached to and constitute a part of the bonded agreement. Said bond shall be in the amount equal to one hundred twenty-five (125) percent of the total estimated cost of engineering and construction for the installation and completion of all required improvements. In the event of default by the applicant or failure of the applicant to complete such improvements within the time required by this Ordinance, the Town, after sixty (60) calendar days written notice to the applicant shall call on the bond to insure satisfactory completion of the required improvements.

(Ord. No. 06-06, § 1, 3-6-06)



CONSTRUCTION OF REQUIRED IMPROVEMENTS

Section 1-18.1. Construction methods.

Construction methods shall be those prescribed in these regulations and those prescribed by: (1) the current Florida Department of Transportation Standards Specifications for Road and Bridge Construction; (2) the American Waterworks Association for Water Improvements Construction; and (3) the Water Pollution Control Federation for Wastewater Facilities Construction.

Section 1-18.2. Administration of construction.

After submittal of the final plat and supplementary material, an applicant may construct the required improvements subject to obtaining all required permits. The Town Engineer shall be notified in advance of the date of commencement of such construction.

- 
- A. *Surveillance by Town Engineer.* Construction shall be performed under the surveillance of, and shall at all times be subject to, review by the Town Engineer. However, this in no way shall relieve the applicant and his engineer of the responsibility for close field coordination and final compliance with the approved plans, specifications and the requirements of this ordinance.
  - B. *Construction Administration by Florida Registered Engineer.* The applicant shall employ a Florida registered engineer for complete administration of the construction of the required improvements. The applicant shall require progress reports and final certification of the construction of the required improvements from such engineer be filed with the Town Engineer.
  - C. *Right to Enter.* The Town Engineer or his duly authorized representative shall have the right to enter upon the property for the purpose of inspecting the quality of materials and workmanship and reviewing the construction of required improvements during the progress of such construction.
  - D. *Progress Reports.* The applicant's engineer shall submit construction progress reports at point of progress prescribed by the Town Engineer. The applicant's engineer shall coordinate joint reviews of the construction with the Town Engineer.
  - E. *Stop Work Orders.* The Town Engineer shall have the authority to stop the work upon failure of the applicant or his engineer to coordinate the construction of the required improvements as prescribed by this ordinance.
  - F. *Final Inspections.* Upon completion of the required improvements the applicant's engineer shall give the Town Engineer not less than three (3) working days notice to make the final inspection of the required improvements, landscaping, and sign installations. The Town Engineer shall also have the authority to withhold or deny approval of Certificates of Occupancy relative to buildings and/or structures of a

subdivision until the construction and installation of required improvements of that subdivision have been satisfactorily completed in accordance with the land development regulations as prescribed by this ordinance.

#### **Section 1-18.3. Measurements and tests.**

During construction, the applicant's engineer shall make such measurements, field tests and laboratory tests or cause them to be made to certify that the work and materials conform with the approved development plans and the provisions of this ordinance. The Town Engineer may require, at his discretion, tests and measurements which he deems necessary and which shall be performed at the expense of the applicant or his engineer.

#### **Section 1-18.4. Completion certificate.**

The required improvements shall not be considered complete until a completion certificate along with the final project records, including "as built" drawings have been furnished to, reviewed and approved by the Town Engineer. The certificate shall be certified by the applicant's engineer stating that the required improvements were installed under his responsible direction and that the improvements conform with the approved construction plans and this ordinance. The applicant's engineer shall also furnish a copy of each of the construction plans on a high quality, durable reproducible material acceptable to the Town Engineer, showing the original design in comparison to the actual finished work and a copy of the measurements, tests and reports made on the work and material during the progress of the construction.

#### **Section 1-18.5. Conditions for release of developer from bond.**

As a condition for the final release of the developer from his bond, or for the release of any cash securities deposited with the Town Clerk, the following must be furnished.

1. A statement from the developer's engineer that all work has been completed in strict accordance with the approved development plan and appropriate specifications;
2. Evidence by reference to plat book and page that the approved final plat has been filed;
3. A statement from the Town Engineer that he has found the work to be in accordance with the general provisions of the development plan;
4. The submission by the developer's engineer to the Town Engineer of a complete set of "as built" drawings together with operating manuals and parts lists for any mechanical installations made;
5. A statement by the developer's surveyor that he has completed all the survey work required and that all indicated P.R.M.'s have been installed; and
6. A release from the contractor, engineer, surveyor or any other person or persons performing any service or furnishing any material for the subdivision that they will not file a lien on the subdivision for nonpayment of service or material charges.

**Section 1-18.6. Time extensions.**

All required improvements for a project or each phase thereof shall be completed within eighteen (18) months from the date of preliminary plat approval. Time extensions for demonstrated good cause may be granted by the Town Council upon the recommendation of the Town Engineer. The applicant shall present a written request for extension to the Office of the Town Engineer. Each time extension shall not exceed one (1) year.

**Section 1-18.7. Acceptance and maintenance of required improvements.**

A. *Workmanship and Material Agreement.* The applicant shall execute an agreement guaranteeing the required improvements against defect in workmanship and materials for one year after acceptance of such improvements by the Town Council. Said agreement shall be submitted to the Town Engineer along with the completion certificate and project records.

B. *Procedure for Accepting Dedications.* The dedication of public space, parks, streets, rights-of-way, easements or the like on the plat shall not constitute an acceptance of the dedication by the Town. The applicant shall apply to the Town for acceptance of required improvements by the Town Council. The acceptance of the dedication shall be subject to the inspection and approval of the Town Engineer. Such acceptance shall occur only upon adoption of resolution by the Town Council which shall accept the subject dedications at such time as all improvements meet or exceed the standards set forth by this ordinance. The applicant's engineer shall furnish to the Town Engineer in writing a sealed and signed certificate stating that the required improvements have been completed in accordance with the approved plan therefor and comply with this ordinance and all other applicable codes.

C. *Recommendation of Town Engineer.* The Town Engineer upon satisfactory completion, receipt of the applicant's engineer's completion certificate, affidavits from all contractors and others who furnished goods and services for the required improvements acknowledging payment in full therefor, and receipt of the agreement shall certify that the applicant has complied with all of the provisions of this ordinance and shall recommend to the Town Council the acceptance of the dedications and, when applicable, the maintenance of the required improvements.

D. *Acceptance by the Town Council.* Upon recommendations by the Town Engineer the Town Council, by resolution shall approve the subdivision, the dedications on the plat and the maintenance of responsibilities of the required improvements.

E. *Developer's Failure to Complete Required Improvements.*

1. *Premature Recording of Plats (or Where Applicant Fails to Complete Required Improvements).* When a plat has been recorded and the applicant fails to complete the required improvements as required by this ordinance, the Town Council shall complete the required improvements under the guarantees provided by the applicant. In such case, the Town Council shall direct the Town Engineer to call upon the guarantees to secure satisfactory completion of the required improvements. Legal notice of such action shall be deemed to have been duly served upon posting via Certified Mail

Town of Malabar, 2725 Malabar Road, Malabar, FL 32950  
321-727-7764 (Office) 321-727-9997 (Fax) [www.townofmalabar.org](http://www.townofmalabar.org)

To: [brelegals@gannett.com](mailto:brelegals@gannett.com)

February 4, 2021

From: Debby Franklin, Town Clerk, Town of Malabar, Acct # 126287

Please place the following legal ad one time on Tuesday, February 9, 2021. Please put the heading in **BOLD** font. Please send proof via email to: [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) and mail ONE affidavit to 2725 Malabar Road, Malabar, FL 32950.

**TOWN OF MALABAR  
NOTICE OF PUBLIC HEARINGS**

The Town of Malabar's Planning and Zoning Board shall conduct a Public Hearing on Wednesday **February 24, 2021 at 6:00 PM** to consider a request for Final Plat Approval for Twin Lakes Subdivision, consisting of 16 homesites in Rural Residential (RR-65) Zoning located on the south side of Malabar Road, east of Weber Road. Applicant: Malcom Kirschenbaum, Weber Woods LLC, represented by Mr. Bruce Moia, PE of MBV Engineering, Inc.

The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, **March 1, 2021 at 7:30 PM** or as soon thereafter as the matter can be heard, to conduct a Public Hearing on the same request, consider the recommendation from the Planning and Zoning Board make a determination.

Copies of this plat are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may email comments to [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) or mail comments to 2725 Malabar Road, Malabar, FL 32950 or appear and be heard at this meeting of the Town Council with respect to these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Debby Franklin, CMC, Town Clerk/Treasurer

**REVISED TOWN OF MALABAR  
MEMORANDUM**

Date:	<del>January 26, 2024</del> February 16, 2020	Memo: 21-CE-02
To:	Lisa Morrell, Interim Town Administrator Denine Sherear, Building Department Manager	Project No.
From:	Morris Smith, Town Engineer	Variance No.:
Ref:	Twin Lakes Subdivision – Final Plat Review	

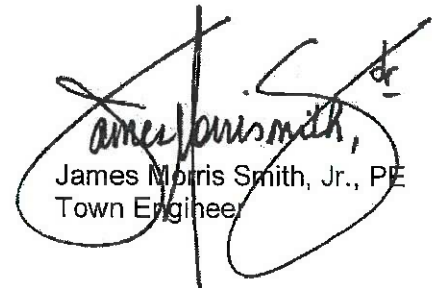
---

As per your request, I have made a review of the submitted Final Plat.

Based upon the land developer having provided a bond, I have no objections to the tree removal and replacement issues that I have previously brought forward, in my Memo 20-CE-20.

I recommend approval of this Final Plat.

Very Truly Yours,



James Morris Smith, Jr., PE  
Town Engineer

**TOWN OF MALABAR**  
**MEMORANDUM**

Date:	January 26, 2021	Memo: 21-CE-02
To:	Lisa Morrell, Interim Town Administrator Denine Sherear, Building Department Manager	Project No.
From:	Morris Smith, Town Engineer	Variance No.:
Ref:	Twin Lakes Subdivision – Final Plat Review	

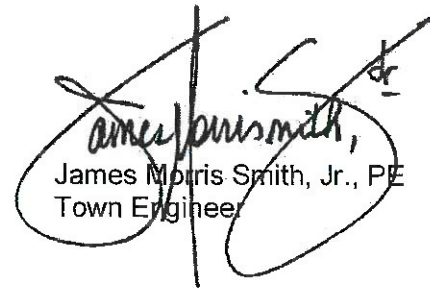
---

As per your request, I have made a review of the submitted Final Plat.

Based upon the land developer having provided a bond, I have no objections to the tree removal and replacement issues that I have previously brought forward.

I recommend approval of this Final Plat.

Very Truly Yours,

  
James Morris Smith, Jr., PE  
Town Engineer

TOWN OF MALABAR  
MEMORANDUM

TOWN OF MALABAR

DEC 22 2020

RECEIVED

Memo: 20-CE-20

Project No.

Variance No.:

Date: December 22, 2020  
To: Lisa Morrell, Interim Town Administrator  
Denine Sherear, Building Department Manager  
From: Morris Smith, Town Engineer  
Ref: Twin Lakes Subdivision – Tree Preservation Plan

---

Now that the site has been cleared, utilities and roadway are being installed, I have made a review of the project Site. After seeing the condition of the site, I am requiring that the land development company prove to the Town that they have left the trees in place that the Town of Malabar required of them to leave untouched via the Town's subdivision approval processes.

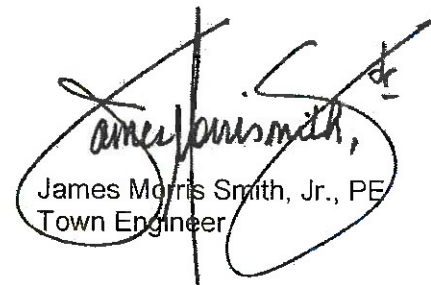
I am requiring that the land developer retain the services of a Florida Licensed Professional Surveyor and Mapper and task that surveyor with placing a 36" long, ribbon flagged, lath in the ground at the centroid of each location of the trees that were agreed upon to stay untouched during the land clearing process.

On that lath the surveyor shall label the tree species and the diameter of the tree, in inches.

The land developer will notify the Town after the tree locations have been staked on the ground. A site visit will be made by Town staff to review the conditions of all the staked tree locations.

If a tree is found not to have been preserved, that was required to be preserved, the Town will assess the value of the tree or trees. Based upon that assessment a fine will be calculated, to be paid by the land developer prior, to the approval of the final plat.

Very Truly Yours,



James Morris Smith, Jr., PE  
Town Engineer

**Town of Malabar**

**Twin Lakes Subdivision - Malabar Road**

**Tree Removal Matrix**

Based Upon Erosion Control and Demolition Plan - Dated 04-26-2019

Prepared for: Town of Malabar

Prepared by: Town Engineer

From Morris  
10-1-2020

Item No.	Tree Description	Caliper @ 4.5' Above Grade (inches)	Quantity	Total Caliper (inches)
1	Oak	4	2	8
2	Oak	6	6	36
3	Oak	7	1	7
4	Oak	8	10	80
5	Oak	10	6	60
6	Oak	12	11	132
7	Oak	13	1	13
8	Oak	14	3	42
9	Oak	16	2	32
10	Oak	18	4	72
11	Oak	22	1	22
12	Oak	32	2	64
<b>Total Replacement Caliper Inches</b>				<b>568</b>

1.20.21 [Signature]

568  
9  
557"

Replacement Trees (inches)	No. of Trees	Total Inches
4	142	568
6	95	570
8	71	568

Type I Tree Removal Permit Required



JUL 23 2019

RECEIVED



Permit Application  
APPLICATION FOR TREE REMOVAL

Part A: 1. General Information:

TWP: 29 RNG: 37 SEC#: 02 BLK/PAR: 00 LOT 253 SUBDIVISION NAME Twin Lakes

SITE ADDRESS: Tax Account 2963199  
STREET CITY ZIP

PROPERTY OWNER: Malcolm Kirschenbaum - Weber Woods, LLC  
LAST FIRST TEL #

ADDRESS: 516 Delannoy Avenue Cocoa, FL 32922  
# STREET CITY ZIP

CONTRACTOR: Not yet Determined  
LAST FIRST TEL. #

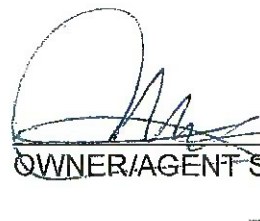
CONTRACTOR ADDRESS:  
# STREET CITY ZIP

Type of tree(s) to be removed: Oak No. to be removed: 64  
206 Existing Trees to remain in place.

Type of tree(s) to be replaced: Live Oak - 20 No. to be replaced: 120  
Splash Pine - 36  
Wax Myrtle - 16  
Bald Cypress - 18  
Magnolia - 30

FEE: \_\_\_\_\_

The applicant is hereby advised that all directives of Ordinance 03-17 are to be complied with. Permit expires if authorized work is no started in ninety (90) days.

  
OWNER/AGENT SIGNATURE

APPROVED BY \_\_\_\_\_

WEBER WOOD, LLC  
516 Delannoy Ave.  
Cocoa, FL 32922  
321-632-4141



2083  
63-1403  
631

5/14/2020

PAY TO THE ORDER OF Town of Malabar

\$ \*\*120.00

One Hundred Twenty and 00/100 \*\*\*\*\* DOLLARS

Town of Malabar

AUTHORIZED SIGNATURE

MEMO Twin Lakes: Engineering & Inspection

⑈002083⑈ ⑆063114030⑆ 11488038⑈

WEBER WOOD, LLC  
Town of Malabar

Twin Lakes: Engineering & Inspection

5/14/2020

2083  
120.00

Cash-8038 Twin Lakes: Engineering & Inspection 120.00

RECEIPT

No. 696762

DATE 5/20/2020

FROM Weber Wood LLC, MBU for \$120.00

Twin Lakes Recessional Fee DOLLARS

FOR RENT BP# 710

ACCT.		<input type="radio"/> CASH #2083	FROM	TO
PAID		<input checked="" type="radio"/> CHECK	BY	RWK
DUE		<input type="radio"/> MONEY ORDER		
		<input type="radio"/> CREDIT CARD		

A-1152  
T-4161

CARL WEAVER

Denine Sherear

**From:** Carl Weaver <cweaver3@cfl.rr.com>  
**Sent:** Friday, November 20, 2020 3:55 PM  
**To:** Denine Sherear  
**Cc:** todm@redtaildg.com; Sharon@redtaildg.com  
**Subject:** Re: Twin Lakes - Final Plat

FIRE MARSH.

Good afternoon. Unless I'm missing it, they still haven't addressed the on street parking issue and the required clear width needed. Thank you

Sent from my iPhone

On Nov 20, 2020, at 15:37, Denine Sherear <dsherear@townofmalabar.org> wrote:

To All,

This is a HOA update from Twin Lakes Subdivision, for your review.

*Respectfully,*  
Denine

Denine Sherear, Building Department Manager  
Town of Malabar  
2725 Malabar Road, Malabar FL 32950  
office: 321-727-7764 x 14  
fax: 321-727-9997  
Office Hours: 8:30AM to 5:00PM

---

**From:** Wanda Walker <>wandaw@mbveng.com>  
**Sent:** Thursday, October 29, 2020 10:22 AM  
**To:** Denine Sherear <dsherear@townofmalabar.org>  
**Cc:** morris@morrissmitheng.com <morris@morrissmitheng.com>; Bruce M <brucem@mbveng.com>  
**Subject:** Twin Lakes - Final Plat

Hi Denine and Morris

I am attaching a updated HOA Declaration for the above project along with a comparison copy so you know where the changes are.

Thanks

*Wanda Walker*

Permitting Coordinator - MBV Engineering, Inc.  
1250 W. Eau Gallie Blvd., Suite H - Melbourne, FL 32935  
P: 321-253-1510 - F: 321-253-0911  
[wandaw@mbveng.com](mailto:wandaw@mbveng.com) - [www.mbveng.com](http://www.mbveng.com)

Also with offices in:

Ver0 : [772-569-0035](tel:772-569-0035), Ft. Pierce: [772-468-9055](tel:772-468-9055), and Stuart: [772-266-9795](tel:772-266-9795)

## Denine Sherear

---

**From:** cweaver3@cfl.rr.com  
**Sent:** Monday, October 19, 2020 7:24 AM  
**To:** Denine Sherear  
**Cc:** Lisa Morrell; 'todm@redtaildg.com'; 'Sharon@redtaildg.com'; 'Morris Smith'; Matt Stinnett; Debby Franklin; Richard Kohler  
**Subject:** RE: Fw: Twin Lakes Final Plat

Denine:

Good morning. The only issue I see is the roadway is not wide enough for on street parking. The Declaration of Covenants, Article III, section 3A states that on street parking is not permitted between 2AM and 5AM. The current 20' width does not allow any on street parking. Section 18.2.3.4.1.1 of NFPA 1, 5th Edition of the Florida Fire Prevention Code requires a minimum 20' clear unobstructed width of the fire department access roadway.

There needs to be NO on-street parking or the roadway needs to be widened to 40' clear width to allow parking on both sides or 30' clear width for parking on one side with appropriate "NO PARKING" signs on the opposite side.

This requirement was noted during the original site plan review.

Thank you,  
Carl

Carl F Weaver, CFPS, EFO  
Coastal Fire Safety, LLC

---

From: "Denine Sherear"  
To: "Lisa Morrell", "todm@redtaildg.com", "Sharon@redtaildg.com", "Morris Smith", "cweaver3@cfl.rr.com"  
Cc: "Matt Stinnett", "Debby Franklin", "Richard Kohler"  
Sent: Thursday October 15 2020 10:07:29AM  
Subject: Fw: Twin Lakes Final Plat

Good Morning,  
Please see drop box below provided by MVB Engineering with all information concerning the Final Plat for Twin Lakes Subdivision. Please review and provide comments on or before 10/26/2020.

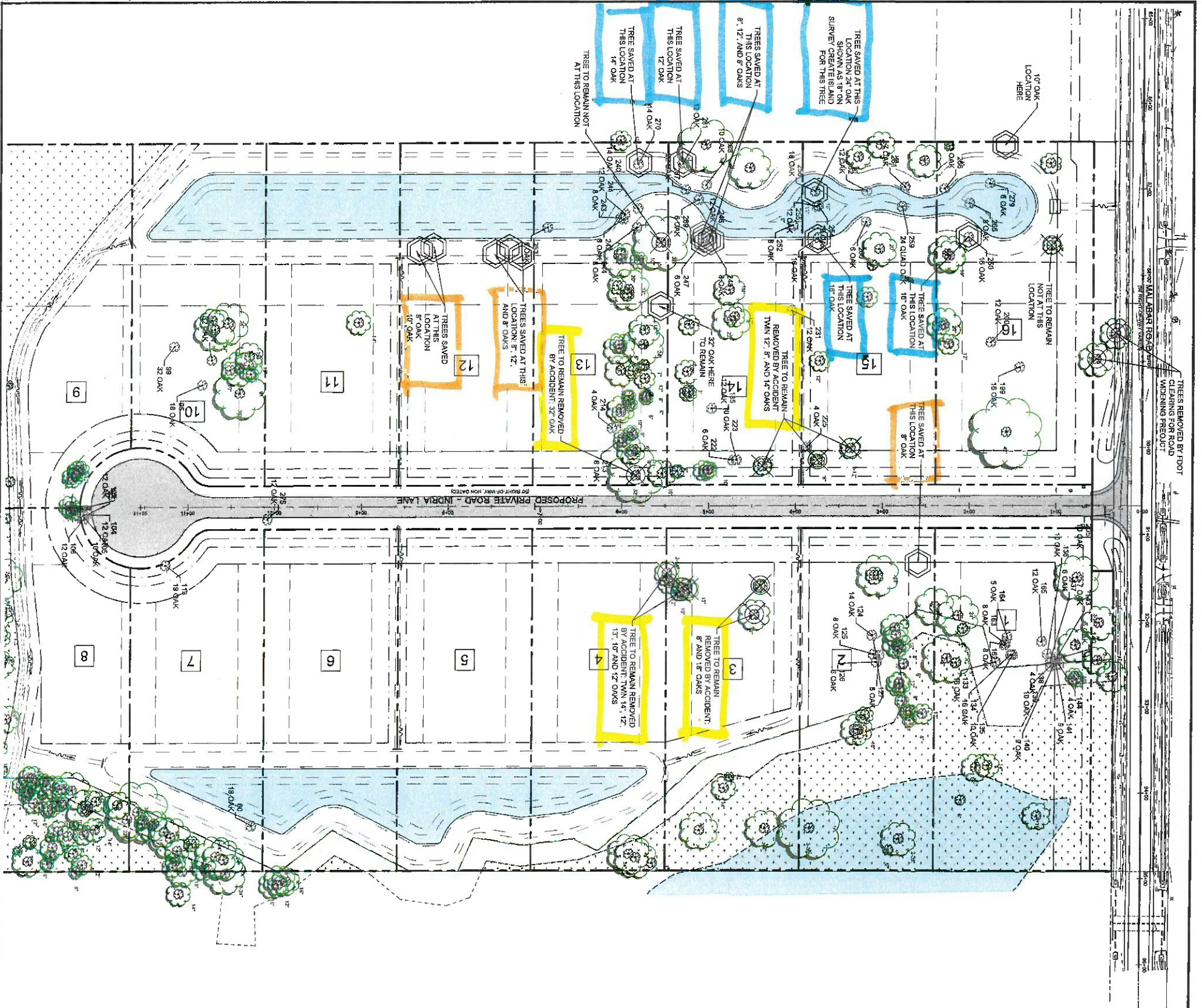
As always, Thank you for your assistance.

*Respectfully,*  
Denine

Denine Sherear, Building Department Manager  
Town of Malabar  
2725 Malabar Road, Malabar FL 32950  
office: 321-727-7764 x 14  
fax: 321-727-9997  
Office Hours: 8:30AM to 5:00PM

**TWIN LAKES  
SUBDIVISION**

**TREE SURVEY POST  
CONSTRUCTION**

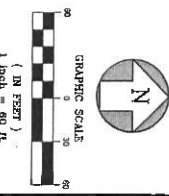


**FIELD CONDITION TREE TABLE**

DESCRIPTION	TREE SIZE (INCHES)	SUBTOTAL
<b>TREES TO REMAIN THAT HAVE BEEN REMOVED</b>		
REMOVED	OAK	12
REMOVED	OAK	8
REMOVED	OAK	14
REMOVED	OAK	32
REMOVED	OAK	8
REMOVED	OAK	18
REMOVED	OAK	14
REMOVED	OAK	12
REMOVED	OAK	13
REMOVED	OAK	10
REMOVED	OAK	12
SUBTOTAL	OAK	153
<b>TREES SHOWN TO BE REMOVED THAT HAVE BEEN SAVED</b>		
SAVED	OAK	16
SAVED	OAK	15
SAVED	OAK	24
SAVED	OAK	8
SAVED	OAK	12
SAVED	OAK	8
SAVED	OAK	12
SAVED	OAK	14
SUBTOTAL	OAK	110
<b>ADDITIONAL TREES NOT SHOWN THAT HAVE BEEN SAVED</b>		
SAVED	OAK	8
SAVED	OAK	8
SAVED	OAK	12
SAVED	OAK	8
SAVED	OAK	8
SAVED	OAK	10
SUBTOTAL	OAK	54

153" Removed

164" Saved



<p><b>C-9.1</b></p> <p>15-1600</p> <p>PERMITTING SET</p>	<p><b>811</b></p> <p>Know what's below. Call before you dig.</p> <p>THOURS SERVICE: 8AM - 5PM CALL TOLL FREE: 1-800-4-A-FLORIDA</p>	<p>TOWN OF MALABAR</p> <p>FLORIDA</p>	<p><b>MBV ENGINEERING, INC.</b></p> <p>MOYA ROWLES VILLALBAZ &amp; ASSOCIATES</p> <p>CIVIL • STRUCTURAL • SURVEYING • ENVIRONMENTAL</p> <p>1250 W. EAU GALLE BLVD., SUITE H MELBOURNE, FLORIDA 32955 P: 321-253-1510 F: 321-253-0911</p> <p>ALSO WITH OFFICES IN: VERO 774-648-1038 FT. PIERCE 772-469-4945 PALM CITY 772-426-2252</p>	<p>JOB NO. 15-1600</p> <p>DESIGNED BJD</p> <p>DRAWN BJD</p> <p>DATE JULY, 2019</p> <p>CHECKED BAM</p> <p>DATE ISSUED 1/10/2021</p>	<p>8</p> <p>7</p> <p>6</p> <p>5</p> <p>4</p> <p>3</p> <p>2</p> <p>1</p> <p>1 FOOT COMMENTS 02/24/2020</p> <p>COMMENTS 10-20-2020</p> <p>REVISIONS DATE</p>
		<p>PROJECT: TWIN LAKES MALABAR ROAD</p> <p>DATE: 1/10/2021</p>			

**FINAL PLAT FOR  
TWIN LAKES  
SUBDIVISION**

**ATTACHED LARGE  
PAPER**

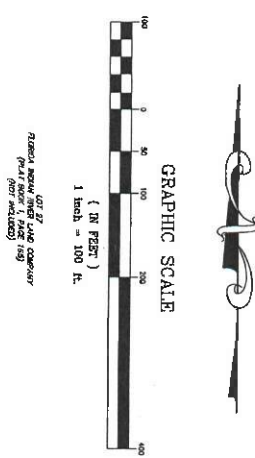
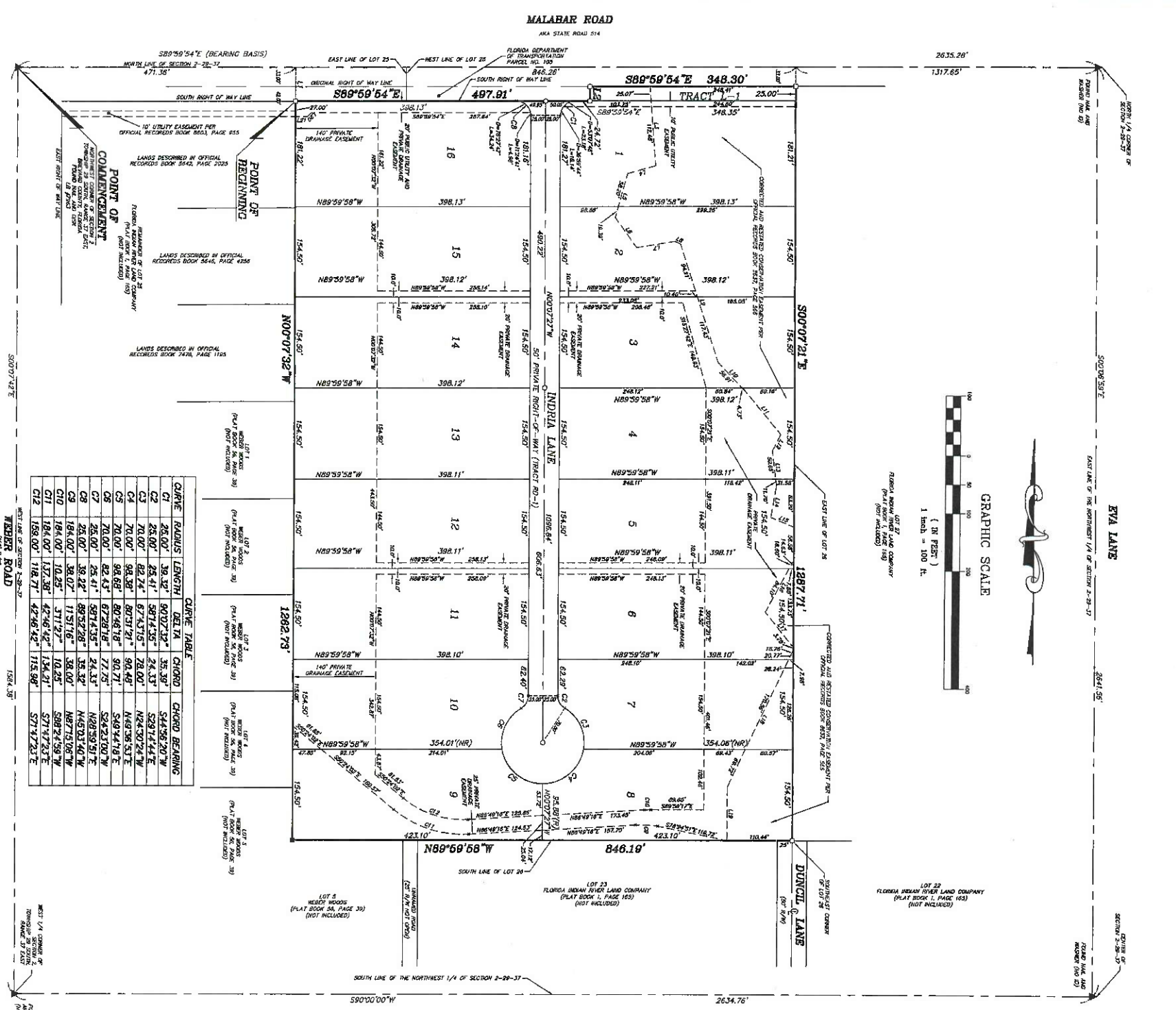
FEB 18 2021

RECEIVED

PLAT PREPARED BY -  
**MAL LAND SURVEYING SERVICES, INC.**  
 5970 WASHINGTON ROAD 32904  
 WEST PALM BEACH, FL 33411  
 (561) 759-8110

# TWIN LAKES OF MALABAR

BEING A REPLAT OF A PORTION OF LOTS 25 AND 26,  
 FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION, PLAT BOOK 1, PAGE 165,  
 LYING IN SECTION 2, TOWNSHIP 29 SOUTH, RANGE 37 EAST,  
 TOWN OF MALABAR, BREVARD COUNTY, FLORIDA



LOT #	CURVE RADIUS	LENGTH	DELTA	CHORD	CHORD BEARING
C1	28.00'	39.32'	90.0733°	35.35'	S44.58°20'7\"
C2	25.00'	28.41'	58.7435°	24.33'	S29.14°44'7\"
C3	70.00'	82.74'	87.4315°	78.00'	N24.30°04'4\"
C4	70.00'	98.69'	80.5191°	90.44'	N49.30°54'7\"
C5	20.00'	25.41'	87.2818°	22.75'	S24.23°00'7\"
C6	25.00'	38.22'	89.5228°	35.35'	N43.01°40'7\"
C7	184.00'	127.39'	115.116°	118.86'	N87.75°08'7\"
C8	184.00'	127.39'	47.9642°	118.86'	S89.24°59'7\"
C9	184.00'	127.39'	37.1727°	118.86'	S71.42°24'7\"
C10	184.00'	127.39'	27.3812°	118.86'	S59.72°24'7\"
C11	184.00'	127.39'	17.5897°	118.86'	S47.97°24'7\"
C12	184.00'	127.39'	7.7982°	118.86'	S36.22°24'7\"

**CURVE TABLE**

AREA OF LOT # (NOT INCLUDING 1/4 AC. WOODS WITHIN LOT #)

AREA OF LOT # (NOT INCLUDING 1/4 AC. WOODS WITHIN LOT #)

AREA OF LOT # (NOT INCLUDING 1/4 AC. WOODS WITHIN LOT #)

AREA OF LOT # (NOT INCLUDING 1/4 AC. WOODS WITHIN LOT #)

AREA OF LOT # (NOT INCLUDING 1/4 AC. WOODS WITHIN LOT #)

**LEGEND**

NAO NORTH AMERICAN DATUM

ORB OFFICIAL RECORDS BOOK

PLS PROFESSIONAL LAND SURVEYOR

R CURVE RADIUS

L CURVE LENGTH

CH CHORD

NON-NON-RADIAL

RD RADIAL

LN LICENSED BUSINESS

PS PROFESSIONAL SURVEYOR

PLS PROFESSIONAL LAND SURVEYOR

PRM PERMANENT CONTROL POINT

PLS PROFESSIONAL LAND SURVEYOR

R/W RIGHT OF WAY

P.U.D. PLANNED UNIT DEVELOPMENT

LINE	BEARING	LENGTH
L1	S00°07'32\"	68.00'
L2	N00°07'32\"	26.00'
L3	S07°46'12\"	42.00'
L4	S72°41'17\"	48.28'
L5	S01°15'27\"	51.81'
L6	S72°46'37\"	53.82'
L7	S19°08'57\"	72.58'
L8	S52°21'18\"	62.84'
L9	N68°43'58\"	68.10'
L10	S82°28'49\"	68.10'
L11	S19°07'32\"	128.97'
L12	S72°46'12\"	128.97'
L13	S07°46'12\"	37.06'
L14	S41°23'09\"	118.95'
L15	S19°07'32\"	24.49'
L16	S28°42'05\"	100.20'
L17	S63°01'52\"	78.48'
L18	S00°07'32\"	259.05'
L19	S00°07'32\"	91.34'
L20	S00°07'32\"	17.00'
L21	N89°59'54\"	20.00'

**DESCRIPTION**

A PORTION OF LOTS 25 AND 26, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION, SECTION 2, TOWNSHIP 29 SOUTH, RANGE 37 EAST, PLAT BOOK 1, PAGE 165, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT MARKING THE NORTHWEST CORNER OF SAID SECTION 2, THENCE RUN SOUTH 89°59'54\" EAST ALONG THE WEST LINE OF SAID SECTION 2, A DISTANCE OF 47.8 FEET TO A POINT, THENCE RUN SOUTH 00°07'32\" EAST A DISTANCE OF 68.00 FEET TO A POINT, THENCE RUN SOUTH 07°46'12\" EAST A DISTANCE OF 42.00 FEET TO A POINT, THENCE NORTH 07°46'12\" WEST A DISTANCE OF 26.00 FEET TO THE POINT OF BEGINNING OF THE RIGHT-OF-WAY LINE OF STATE ROUTE 514, A DISTANCE OF 48.28 FEET, THENCE NORTH 00°07'32\" EAST A DISTANCE OF 51.81 FEET TO A POINT, THENCE NORTH 72°46'37\" EAST A DISTANCE OF 53.82 FEET TO A POINT, THENCE SOUTH 19°08'57\" WEST A DISTANCE OF 72.58 FEET TO A POINT, THENCE SOUTH 52°21'18\" WEST A DISTANCE OF 62.84 FEET TO A POINT, THENCE SOUTH 68°43'58\" WEST A DISTANCE OF 68.10 FEET TO A POINT, THENCE SOUTH 82°28'49\" EAST A DISTANCE OF 68.10 FEET TO A POINT, THENCE SOUTH 19°07'32\" EAST A DISTANCE OF 128.97 FEET TO A POINT, THENCE SOUTH 72°46'12\" EAST A DISTANCE OF 128.97 FEET TO A POINT, THENCE SOUTH 07°46'12\" EAST A DISTANCE OF 37.06 FEET TO A POINT, THENCE SOUTH 41°23'09\" EAST A DISTANCE OF 118.95 FEET TO A POINT, THENCE SOUTH 19°07'32\" EAST A DISTANCE OF 24.49 FEET TO A POINT, THENCE SOUTH 28°42'05\" EAST A DISTANCE OF 100.20 FEET TO A POINT, THENCE SOUTH 63°01'52\" EAST A DISTANCE OF 78.48 FEET TO A POINT, THENCE SOUTH 00°07'32\" WEST A DISTANCE OF 259.05 FEET TO A POINT, THENCE SOUTH 00°07'32\" WEST A DISTANCE OF 91.34 FEET TO A POINT, THENCE SOUTH 00°07'32\" WEST A DISTANCE OF 17.00 FEET TO A POINT, THENCE NORTH 89°59'54\" WEST A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

SEE TWIN LAKES SUBDIVISION RECORDS IN ORB PAGE 165

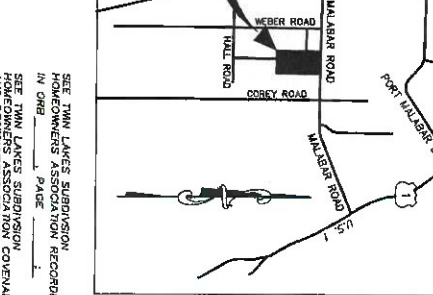
SEE TWIN LAKES SUBDIVISION RECORDS IN ORB PAGE 165

SEE TWIN LAKES SUBDIVISION RECORDS IN ORB PAGE 165

SEE TWIN LAKES SUBDIVISION RECORDS IN ORB PAGE 165

SEE TWIN LAKES SUBDIVISION RECORDS IN ORB PAGE 165

SEE TWIN LAKES SUBDIVISION RECORDS IN ORB PAGE 165



**NOTICE:** THIS PLAT AS RECORDED IN ITS GRAPHIC FORM, IS THE ORIGINAL DEPOSIT OF THE SUBDIVISION AND IS SUBJECT TO THE ORIGINAL RECORDS OF THE TOWN OF MALABAR. THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT RECORDED ON THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.

**DEDICATION:**

I HEREBY dedicate and give as being "Tract 78-1" a hereby dedicated to be dedicated and used as a public right-of-way for the road right-of-way of Malabar Property Owners' Association, Inc. for road right-of-way, public utility and other public purposes for the purpose of access, installation, operation, inspection and maintenance of public utilities and for emergency purposes, and hereby dedicate public utility easements as follows:

The easement shall be granted to the public, it being the intention of the undersigned that it shall be a permanent easement created by this plat be privately owned and maintained by each lot and that the Town of Malabar and the public have no right or interest therein.

The notes herein are hereby adopted by the undersigned, and the dedications made in said notes are hereby included in this dedication.

I, WITNESS HEREOF, the undersigned, has caused these presents to be signed and attested to by the officer named below on \_\_\_\_\_

TWIN LAKES, LLC  
 816 Delaney Avenue  
 Cocoa, Florida 32922  
 State of Florida, County of Brevard  
 Signed and sealed in the presence of:

(Print name)  
 (Print name)

STATE OF FLORIDA, COUNTY OF BREVARD  
 (Print name)

THIS IS TO CERTIFY that on \_\_\_\_\_ 2021 before me by means of physical presence or on-line notarization, on \_\_\_\_\_ duly authorized to take acknowledgments in the State and County aforesaid, personally appeared Malcolm Kretschbaum as District President of the Town of Malabar, to me known to be the authorized officer and that he executed the foregoing Dedication and other instruments which are hereby acknowledged; and that the said Dedication is the act and deed of said company.

I, WITNESS HEREOF, I have hereunto set my hand and seal on the date aforesaid.

(Print name)  
 Notary Public  
 County and State aforesaid  
 My Commission Expires \_\_\_\_\_

**CERTIFICATE OF SURVEYOR**

I, HEREBY CERTIFY, that the undersigned, being a licensed professional surveyor and mapmaker, does hereby certify that on February 16, 2021, he completed the survey of the lands shown on this foregoing plat, and that said plat was prepared under his personal supervision and that said plat complies with all the laws of the State of Florida and that it is a true and correct copy of the original survey, and that said plat is located in Brevard County, Florida.

Andrew W. Pogonick  
 Mal Land Surveying Services, Inc.  
 3970 Veterans Road  
 W. Melbourne, Florida 32904  
 Registration No. \_\_\_\_\_ 33851

**CERTIFICATE OF APPROVAL**

I, HEREBY CERTIFY that I, \_\_\_\_\_, the \_\_\_\_\_ of the Town of Malabar, Florida approved the foregoing plat, and that it is in conformity with the Town of Malabar code of ordinances.

CITY CLERK

**CERTIFICATE OF REVIEWING SURVEYOR**

FOR THE TOWN OF MALABAR

I, HEREBY CERTIFY, that I have examined the foregoing plat, and find that it is in conformity with Chapter 177, part 1, Florida Statutes.

ATTN:

Chris Madison, T.S.S. 5097  
 Brevard Surveyor for the Town of Malabar

**CERTIFICATE OF CLERK**

I HEREBY CERTIFY, that I have examined the foregoing plat, and find that it complies in form with all the requirements of Chapter 177, Florida Statutes, and was filed for record on \_\_\_\_\_ at \_\_\_\_\_ Fla. No. \_\_\_\_\_

Clerk of the Circuit Court  
 in and for Brevard County, Fla.



FEB 18 2021

RECEIVED

Paul R. Amos  
 Kevin M. Barry <sup>3 4</sup>  
 Brooke M. Benzio <sup>1</sup>  
 Rebecca F. Emmons <sup>5</sup>  
 Amber M. Kourofsky  
 Chelsea A. Miller  
 J. Cole Oliver  
 Tyler G. Puttick  
 Bradley W. Rossway  
 Jason D. Slater <sup>2</sup>  
 R. Blake Smith  
 John M. Stewart, President,  
 The Florida Bar 2019-2020  
 Michael J. Swan  
 Thomas W. Tierney <sup>2</sup>

---

William J. Stewart,  
 Of Counsel

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<sup>1</sup> LL.M Master of Laws – Estate Planning  
<sup>2</sup> Also admitted in CA  
<sup>3</sup> Also admitted in MA  
<sup>4</sup> Also admitted in NY  
<sup>5</sup> Also admitted in OH

**LOCATIONS**

**MELBOURNE**

One Harbor Place  
 1901 S. Harbor City Blvd.  
 Suite 500  
 Melbourne, FL 32901  
 321.984.2700

**VERO BEACH**

The Modern One Building  
 2101 Indian River Blvd.  
 Suite 200  
 Vero Beach, FL 32960  
 772.231.4440

**CORAL GABLES\***

Gables International Plaza  
 2655 Leleune Rd.  
 Penthouse 1-C  
 Coral Gables, FL 33134  
 305.443.5020

*\*By Appointment*

February 17, 2021

Town Council  
 Town of Malabar  
 2725 Malabar Road  
 Malabar, FL 32950-4427

**RE: OPINION OF TITLE** for the Plat of Twin Lakes (“Plat”) through  
February 9, 2021 at 5:00 PM

---

Ladies and Gentlemen:

Our Firm has been engaged by Weber Woods, LLC, a Florida limited liability company, as the developer of the subject property. The undersigned, an attorney licensed to practice law in the State of Florida, has been asked to furnish a title opinion with respect to that real property more particularly described on **Exhibit “A”** attached to this letter and described on the Plat (the “Property”), which title is evidenced by that certain Commonwealth Land Title Insurance Company (the “Title Company”) Property Information Report, dated effective February 9, 2021 (the “Title Report”), constituting an updated search of Brevard County Public Records (“Public Records”), with respect to the Property, through February 9, 2021 at 5:00 PM. Based solely upon examination of the foregoing, and assuming the accuracy of the information contained therein, the following are ownership, mortgage, and easement interests affecting title to the Property:

1. **OWNERSHIP:** The record title to the Property described on the Plat is in the name of Weber Woods, LLC, a Florida limited liability company, by virtue of Corrective Quit Claim Deed dated January 8, 2018 and recorded January 8, 2018, in Official Records Book 8065, Page 1488 of the Public Records of Brevard County, Florida.

2. The following are all recorded **EASEMENTS** and **POTENTIAL LIENS** affecting the Property:

A. Notice of Commencement recorded January 26, 2021, in Official Records Book 8991, Page 2633.

B. Deed of Conservation Easement by and between Weber Woods, LLC, a Florida limited liability company, Grantor, and St. Johns River Water Management District, Grantee, recorded November 21, 2019, in Official Records Book 8594, Page 2907, Corrected and Restated Conservation Easement recorded January 14, 2020 in Official Records Book 8637 page 566.

FEB 18 2021

RECEIVED

Paul R. Amos  
 Kevin M. Barry<sup>3 4</sup>  
 Brooke M. Benzio<sup>1</sup>  
 Rebecca F. Emmons<sup>5</sup>  
 Amber M. Kourofsky  
 Chelsea A. Miller  
 J. Cole Oliver  
 Tyler G. Puttick  
 Bradley W. Rossway  
 Jason D. Slater<sup>2</sup>  
 R. Blake Smith  
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 The Florida Bar 2019-2020  
 Michael J. Swan  
 Thomas W. Tierney<sup>2</sup>

---

William J. Stewart,  
 Of Counsel

---

<sup>1</sup> LL.M Master of Laws --  
 Estate Planning  
<sup>2</sup> Also admitted in CA  
<sup>3</sup> Also admitted in MA  
<sup>4</sup> Also admitted in NY  
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 321.984.2700

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 Suite 200  
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 772.231.4440

**CORAL GABLES\***  
 Gables International Plaza  
 2655 LeJeune Rd.  
 Penthouse 1-C  
 Coral Gables, FL 33134  
 305.443.5020

\*By Appointment

C. City of Palm Bay Water System Agreement recorded January 14, 2020, in Official Records Book 8637, Page 1114.

D. Recorded Notice of Environmental Resource Permit recorded March 11, 2020, in Official Records Book 8688, Page 1270.

E. 2020 Real Property Taxes in the gross amount of \$5,002.58 are paid, under Tax I.D. No. 29-37-02-00-253/2963199.

No opinions are to be inferred or may be implied beyond the opinions expressly stated in this letter.


Note: All of the recording information contained herein refers to the Public Records of Brevard County, Florida, unless otherwise indicated. Any reference herein to a Book and Page or Instrument Number is a reference to the Official Record Books of said county, unless indicated to the contrary.

The foregoing opinion is rendered solely for the purpose of complying with the Section 177.041 of the Florida Statutes, and may not be relied upon by, and is not for the benefit of, any person or legal entity other than the Town of Malabar.

Very truly yours,

ROSSWAY SWAN TIERNEY BARRY &  
 OLIVER, P.L.

By:

\_\_\_\_\_   
 J. Cole Oliver, Member

FEB 18 2021

RECEIVED



Paul R. Amos  
 Kevin M. Barry<sup>3,4</sup>  
 Brooke M. Benzio<sup>1</sup>  
 Rebecca F. Emmons<sup>5</sup>  
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William J. Stewart,  
 Of Counsel

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**CORAL GABLES\***

Gables International Plaza  
 2655 LeJeune Rd.  
 Penthouse 1-C  
 Coral Gables, FL 33134  
 305.443.5020

*\*By Appointment*

**Exhibit "A" - Legal Description of the Property**

A portion of Lots 25 and 26, Florida Indian River Land Company Subdivision, Section 2, Township 29 South, Range 37 East, Plat Book 1, page 165, of the Public Records of Brevard County, Florida, being more particularly described as follows:

Commencing at a point marking the Northwest corner of said Section 2, thence run South 89°59'54" East, along the North line of said Section 2, a distance of 471.36 feet to a point; thence run South 00°07'32" East, a distance of 58.00 feet to a point, said point being on the South right of way line of State Route 514 and also being the Point of Beginning of the herein described parcel, thence run South 89°59'54" East, along the South right of way line of said State Route 514, a distance of 497.91 feet; thence North 00°00'06" East, a distance of 25.00 feet; thence South 89°59'54" East, a distance of 348.30 feet to a point on the East line of Lot 26, Florida Indian River Land Company Subdivision of said section 2; thence South 00°07'21" East, along the East line of said Lot 26, a distance of 1287.71 feet to a point, said point also being the Southeast corner of said Lot 26; thence run North 89°59'58" West, along the South line of said Lot 25 and 26, a distance of 846.19 feet; thence run North 00°07'32" West, a distance of 1287.73 to the Point of Beginning.



**LETTER OF SUBMISSION**

Date: 10/7/20

MBV Project No.: 15-1690:FP

MBV Project Name: Twin Lakes Subdivision

Municipality: Town of Malabar

Attention To: Denine

Submittal Description: Final Plat

Municipality Control No.: Parcel 29-37-02-00-25

Submittal For:  Permitting  Compliance  RAI  Revision

HAND DELIVERY  PIC-UP   
 FED EX  OVERNIGHT   
 ELECTRONIC  OTHER:

TOWN OF MALABAR  
 OCT 07 2020  
 RECEIVED

OCT 8 2020 10:02

# of Copies	Detailed Description
1	Final Plat Application ✓
1	Final Plat Fee, \$1,200.00 ✓
1	Hold Harmless Agreement ✓
1	Articles of Incorporation ✓
1	Bylaws ✓
1	Declaration of Covenants ✓
1	Performance Bond (executed, copy) ✓
1	Approved Construction Estimate ✓ (Morris)
1	City of Palm Bay executed Utility Agreement ✓
1	City of Palm Bay recorded Easement ✓
1	FDEP NOI Permit ✓
1	FDEP Water Main Permit ✓
1	FDOT Drainage Permit ✓
1	FDOT Driveway Permit ✓
1	SJRWMD ERP Permit ✓
1	School Board Concurrence ✓
1	Address Assignment "Street Name "India" ISSUED BY E 911 Addressing ✓
1	RECREATION FEE & PAYMENT ✓
1	Storm Water CALCS. JULY 2019 ✓

Submitted By: Wanda Walker  
 Permitting Coordinator, MBV Engineering, Inc.

Received By: *Dennis Khan* Date: 10/8/2020

CIVIL ■ STRUCTURAL ■ SURVEYING ■ ENVIRONMENTAL

1250 W. Eau Gallie Blvd., Unit L Melbourne, Florida 32935

321.253.1510 / Fax: 321-253-0911

www.mbveng.com

133.100720

TOWN OF MALABAR  
2725 Malabar Road, Malabar, Florida 32950  
(321) 727-7764 – Telephone  
(321) 727-9997 - Fax

TOWN OF MALABAR

OCT 08 2020

RECEIVED

APPLICATION FOR FINAL PLAT OF MAJOR SUBDIVISION

Before completing this application, please refer to the attached and attach all information requested:

- Article XVI – Subdivision Administration and Procedures
- Article V – General Provisions
- Article VII – Site Plan Review
- Article VIII – Surface Water Management
- Article IX – Off-Street Parking and Internal Traffic Circulation
- Article XIII – Concurrency Management
- Article XIV – Landscape Regulations
- Article XV – Tree Protection
- Article XVII – Required Improvements and Design Standards
- Article XVIII – Construction of Required Improvements
- Florida Statutes, Chapter 177

pd  
10/8/2020  
Final Plat  
\$1200.00  
CK #2106

This application must be completed, with required attachments, and returned to the Town Clerk's office.

Name of Applicant(s): Weber Wood LLC Telephone: 321-258-3076  
Mailing Address: 516 Delannoy Avenue, Cocoa, FL 32922

Name of Property Owner(s): Same as applicant Telephone: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_

Legal Description of Property covered by application: \_\_\_\_\_ Acreage: 24.2

Township: 29 Range: 37 Section: 02 Lot/Block: 00 Parcel(s): 253  
Other Legal: Lots 26 and part of Lot 25 of PB 1 Pg 165 as described in Orb 5447 Pg 7116

Proposed Subdivision Name: Twin Lakes Subdivision Present Zoning Classification: RR-65

Fees:

- Site Plan Pre-Application Conference ----- \$1500.00
- Preliminary Plat ----- \$1500.00
- Final Plat ----- \$1200.00

(\*Includes advertising, administrative time, and mailing. Any additional costs shall be paid by the applicant. Additional costs may include, but are not limited to, engineering fees, attorney fees, etc.)

Required Attachments:

- Completed application, including Disclosure of Ownership (Pages 1 and 2).
- Fee of \$ 1200.00 in cash or check, payable to the Town of Malabar.
- Hold Harmless, Article XVI, Section 1-16.2(D).
- Documentation as required in Article XVI, Section 1-16.4.
- Copies of all Federal, State, and Local agency permits. It shall be the applicant's responsibility to obtain such outside permits.
- Check payable to Brevard Clerk of Court in amount required to Record final plat.

TOWN OF MALABAR  
APPLICATION FOR MAJOR SUBDIVISION

Where the property is not owned by the applicant, a letter/letters must be attached giving the notarized consent of the owner/owners to the applicant to request a final plat approval for the subdivision.

Please complete only one of the following:

I, \_\_\_\_\_, being first duly sworn, depose and say that  
I, \_\_\_\_\_, am the legal representative of the Owner  
or Lessee of the property described, which is the subject matter of this application; that all of  
the answers to the questions in said application, and all data and matter attached to and made  
a part of said application are honest and true to the best of my knowledge and belief.

\_\_\_\_\_  
Applicant Date

\_\_\_\_\_  
Applicant Date

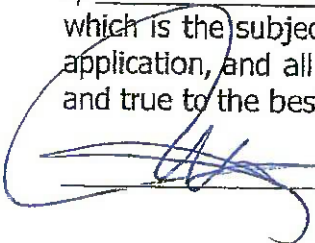
Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

NOTARY PUBLIC  
STATE OF FLORIDA  
Commission No.:

My Commission Expires: \_\_\_\_\_.

-----

I, Malcolm Kirschenbaum, being first duly sworn, depose and say that  
I, Malcolm Kirschenbaum, am the Owner of the property described,  
which is the subject matter of this application; that all of the answers to the questions in said  
application, and all data and matter attached to and made a part of said application are honest  
and true to the best of my knowledge and belief.

  
\_\_\_\_\_  
Applicant

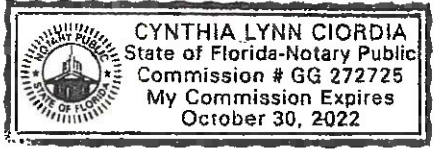
10/5/2020  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Date

Sworn and subscribed before me this 5<sup>th</sup> day of October, 2020.

NOTARY PUBLIC Cynthia Lynn Ciordia  
STATE OF FLORIDA  
Commission No.: 66272725 My Commission Expires: 10/30/2022.



TOWN OF MALABAR

OCT 03 2020

RECEIVED

Original Submitted April 2019

Space above This Line for Recording

HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

- 1. The undersigned agree to Hold Harmless and Indemnify the Town of Malabar, Brevard County, Florida from any liability to and responsibility including provisions for indemnification for any and all damages or losses caused directly or indirectly by the breakdown, collapse or failure to any buildings, installations or structures constructed or installed in connection with the applicable development or project as documented below.

Township 29, Range 37, Section 02, Lot 26 and part of lot 25, Parcel 253. As recorded in Platbook 1, Page 1, per ORB 5447, Pages 7116

IN WITNESS WHEREOF, this agreement is to be executed this 26<sup>th</sup> of April, 2019

WITNESS:

Cynthia Cadea  
(print) Cynthia Ciorotia

OWNER(S):

Malcolm Kirschenbaum

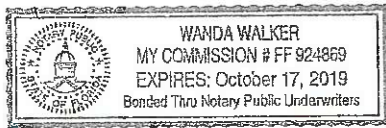
Malcolm Kirschenbaum, Weber Woods LLC

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledge before me this day 26<sup>th</sup> of April, 2019, by Malcolm Kirschenbaum who is/are personally known to me or has produced Personally Known as identification and did/did not take an oath.

Wanda Walker

(print)  
Notary Public  
My commission expires:



When recorded, DELIVER TO:

Town Of Malabar  
2725 Malabar Road  
Malabar, FL 32950

Space above This Line for Processing Data

Space above This Line for Recording

**HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

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**Township 29, Range 37, Section 02, Lot 26 and part of lot 25, Parcel 253. As recorded in Platbook 1, Page 1, per ORB 5447, Pages 7116**

IN WITNESS WHEREOF, this agreement is to be executed this 26<sup>th</sup> of April, 2019

WITNESS:

Cynthia Ciorotia  
(print) Cynthia Ciorotia

OWNER(S):

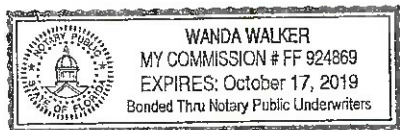
[Signature]  
Malcolm Kirschenbaum, Weber Woods LLC

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledge before me this day 26<sup>th</sup> April, 2019, by Malcolm Kirschenbaum who is/are personally known to me or has produced Personally Known as identification and did/did not take an oath.

Wanda Walker

(print) \_\_\_\_\_  
Notary Public  
My commission expires:





**ARTICLES OF INCORPORATION  
OF  
TWIN LAKES OF MALABAR HOMEOWNERS ASSOCIATION, INC.**

TOWN OF MALABAR

OCT 08 2020

RECEIVED

The undersigned, acting as incorporator of a corporation not for profit under Chapters 617 and 720, *Florida Statutes*, adopts the following Articles of Incorporation (“Articles”) for the corporation:

ARTICLE I

NAME

The name of this corporation is “Twin Lakes of Malabar Homeowners Association, Inc.” which shall be referred to as the “Association” in these Articles.

ARTICLE II

PRINCIPAL OFFICE

The Association's initial principal office and mailing address is 516 Delannoy Avenue, Cocoa, Florida 32922.

ARTICLE III

INTERPRETATION

All capitalized terms used herein that are not defined shall have the meaning set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for Twin Lakes, to be recorded by Weber Woods, LLC, a Florida limited liability company as “Developer” (and herein the “**Developer**”), in the public records of Brevard County, Florida, as such Declaration may be amended from time to time (“**Declaration**”). Reference is made to the terms and provisions of the Declaration where necessary to interpret, construe, and clarify the provisions of these Articles, and the rules of interpretation set forth in the Declaration apply to the interpretation, construction, application, and enforcement of these Articles. By subscribing and filing these Articles, the Incorporator intends their provisions to be consistent with the provisions of the Declaration and to be interpreted, construed, applied, and enforced with those of the Declaration to avoid inconsistencies or conflicting results.

ARTICLE IV

PURPOSE AND POWERS OF THE ASSOCIATION

The Association does not contemplate pecuniary gain or benefit, direct or indirect, to its Members. The purposes for which the Association is formed are: (a) to promote the health, safety, and general welfare of the residents within all or any portion of that tract of land located in Brevard County, Florida, which is described in and made subject to the provisions of the Declaration, and any additions to such lands as hereafter may be brought within the Association's jurisdiction in the manner provided in the Declaration (collectively, the “**Property**”); and (b) to perform all obligations and duties and to exercise all rights and powers of the Association as specified in the Declaration and the other Governing Documents described therein, and as provided by law.

In furtherance of its purposes, unless indicated otherwise by the Declaration, these Articles or the Bylaws, the Association is empowered to, without limitation:

- (a) exercise all powers authorized by Chapters 617 and 720, *Florida Statutes*;

(b) exercise all powers necessary or desirable to perform the obligations and duties and to exercise the rights, powers, and privileges of the Association from time to time set forth in these Articles, the Declaration, and the Bylaws, including, without limitation, the right to enforce all of the provisions of these Articles, the Declaration, and the Bylaws pertaining to the Association in its own name, including, without limitation, enforcement of the provisions relating to the operation and maintenance of the Surface Water or Stormwater Management System;

(c) own, hold, improve, operate, maintain, sell, lease, transfer, and otherwise dispose of property of any nature whatsoever, real, personal, or mixed, tangible or intangible, in connection with the Association's affairs;

(d) adopt budgets and fix, levy, collect, and enforce by any lawful procedure all charges or assessments established by, or pursuant to, the Declaration, including, without limitation, adequate assessment of fees for the costs of operation and maintenance of the Surface Water or Stormwater Management System and assessments for services or materials for the benefit of Owners or the Property for which the Association has contracted with third party providers;

(e) use the proceeds collected from assessments to pay all costs, expenses, and obligations lawfully incurred in connection with the Association's affairs including, without limitation, all licenses, taxes, or other governmental charges levied or imposed against the Association's property;

(f) maintain, control, manage, repair, replace, improve, and operate all the Common Area and Common Property, including but not limited to any private street rights-of-way and the Surface Water or Stormwater Management System and all associated facilities. The Association shall operate, maintain and manage the Surface Water or Stormwater Management System in a manner consistent with the District Permit requirements and applicable District Rules and shall assist in the enforcement of the restrictions contained therein. The Association shall levy and collect adequate assessments against members of the Association for the cost of the maintenance, repair and operation of the Surface Water and Stormwater Management Systems. Such assessments shall be levied for and such maintenance, repair and operation shall include but not be limited to work within retention areas, drainage structures and drainage easements;

(g) buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association;

(h) borrow money for any lawful purpose;

(i) participate in mergers and consolidations with other nonprofit corporations organized for similar purposes, subject to such limitations as may be set forth in these Articles, the Declaration or the Bylaws;

(j) from time to time adopt, amend, rescind, and enforce reasonable rules and regulations regarding the use of the Property and/or the Common Areas consistent with the rights and duties established by the Declaration;

(k) employ personnel, retain independent contractors and professional personnel, and enter into service contracts to provide for the maintenance, operation, administration and management of the Property and to enter into any other agreements consistent with the purposes of the Association, including, but not limited to, agreements with respect to professional management of the Property and to delegate to such professional manager certain powers and duties of the Association;

(l) enforce by legal means the obligations of the Members and the provisions of the Governing Documents;

(m) adopt, alter, and amend or repeal such Bylaws as may be necessary or desirable for the proper management of the Association's affairs, subject to such limitations as may be set forth in these Articles, the Declaration or the Bylaws; provided that such Bylaws may not be inconsistent with or contrary to any provisions of the Declaration; and

(n) have and exercise all rights, powers, and privileges that a corporation not for profit may now or hereafter have or exercise under the laws of the State of Florida, together with all other rights, powers, and privileges reasonably to be implied from the existence of any right, power, or privilege so granted, or granted by the Declaration, or these Articles, or reasonably necessary, convenient, or desirable to exercise any right, power, or privilege so granted.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers that may now or hereafter be allowed or permitted by law, subject to such limitations as may be set forth in these Articles, the Declaration or the Bylaws. The Association's powers may be exercised by its Board of Directors, unless indicated otherwise by these Articles, the Declaration or the Bylaws.

Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of three-fourths (3/4) of all Members (at a duly called meeting of the Members at which a quorum is present) prior to the engagement of legal counsel by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes: (a) the collection of Assessments; (b) the collection of other charges which Owners are obligated to pay pursuant to the Governing Documents; (c) the enforcement of any applicable use and occupancy restrictions contained in the Governing Documents; (d) dealing with an emergency when waiting to obtain the approval of the Members creates a substantial risk of irreparable injury to the Property or to Member(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4) of the Members); or (e) filing a compulsory counterclaim.

The costs of any legal proceedings initiated by the Association, which are not included in the above exceptions shall be financed by the Association only with monies that are collected for that purpose by Special Assessment(s) and the Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations for such purpose.

## ARTICLE V

### MEMBERSHIP; VOTING REQUIREMENTS

The Association shall be a membership corporation without certificates or shares of stock. The Owner of each Lot shall be a "Member" of the Association, including contract sellers, but excluding any person holding such fee simple title merely as security for the performance of an obligation, the Association, and governmental authorities that have received dedications or conveyances of title to any portion of the Property. An Owner of more than one Lot is entitled to one membership for each Lot owned. Membership is appurtenant to, and may not be separated from ownership of the Lot or transferred except by transfer of record title to the Lot. There shall be two (2) classes of Membership as provided in the Bylaws, which shall have such voting rights as set forth in the Bylaws.

ARTICLE VI

BOARD OF DIRECTORS

The number, manner of election and indemnification of the Board of Directors shall be as provided for in the Bylaws of the Association, as amended from time to time in accordance therewith.

ARTICLE VII

EXISTENCE AND DURATION

Existence of the Association shall commence with the filing of these Articles with the Florida Department of State, Division of Corporations. The Association exists perpetually. In the event of termination, dissolution or liquidation of the Association: (a) the assets of the Association shall be conveyed to an appropriate governmental unit or public entity, or, if not accepted by a governmental unit or public entity, conveyed to a non-profit corporation similar in nature to the Association, which shall assume the Association's responsibilities; and (b) all responsibility relating to the Surface Water or Stormwater Management System and the related permits must be assigned to and accepted by an entity approved by the District.

ARTICLE VIII

AMENDMENTS

For so long as Developer has the right to appoint or elect a majority of the Board of Directors, these Articles may be amended by Developer without a vote of the membership and without the joinder or consent of the holder of any mortgage, lien or other encumbrance affecting any portion of the Property or any other Person. Thereafter, these Articles may be amended only upon a resolution duly adopted by the Board of Directors, with the affirmative vote or written consent of Members representing at least two-thirds (2/3) of the total votes of the Association, and the written consent of Developer for so long as Developer owns and holds any Lot for sale in the ordinary course of business.

ARTICLE IX

INCORPORATOR

The name and address of the incorporator of this corporation is:

Malcolm R. Kirschenbaum  
516 Delannoy Avenue  
Cocoa, Florida 32922

ARTICLE X

REGISTERED AGENT AND OFFICE

The initial registered office of the Association is 516 Delannoy Avenue, Cocoa, Florida 32922, and the initial registered agent of the Association at such address is Weber Woods, LLC

**IN WITNESS WHEREOF**, for the purpose of forming this corporation under the laws of the State of Florida, the undersigned, constituting the sole incorporator of the Association, has executed these Articles of Incorporation this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Malcolm R. Kirschenbaum  
Incorporator

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Malcolm R. Kirschenbaum, who is personally known to me.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**CERTIFICATE OF DESIGNATION  
REGISTERED AGENT/REGISTERED OFFICE**

Pursuant to the provisions of Section 617.0501, *Florida Statutes*, the undersigned corporation, organized under the laws of the State of Florida, submits the following statement in designating the registered office/registered agent, in the State of Florida.

1. The name of the corporation is: Twin Lakes of Malabar Homeowners Association, Inc.
2. The name and address of the initial registered agent and office is:

Weber Woods, LLC  
516 Delannoy Avenue  
Cocoa, Florida 32922

HAVING BEEN NAMED AS REGISTERED AGENT TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY ACCEPT THE APPOINTMENT AS REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. I AM FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF MY POSITION AS REGISTERED AGENT.

WEBER WOODS, LLC,  
a Florida limited liability company

By: \_\_\_\_\_  
Malcolm R. Kirschenbaum, Manager

OCT 03 2020

RECEIVED

**BYLAWS  
OF  
TWIN LAKES HOMEOWNERS ASSOCIATION, INC.**

These are the Bylaws of TWIN LAKES Of MALABAR HOMEOWNERS ASSOCIATION, INC. (“Association”) as duly adopted by its Board of Directors (“Board”). The Association is a corporation not-for-profit, organized pursuant to Chapters 617 and 720, *Florida Statutes*.

ARTICLE I  
NAME, PRINCIPAL OFFICE AND DEFINITIONS

1. Name. The name of the corporation is Twin lakes of Malabar Homeowners Association, Inc. (“Association”).
2. Principal Office. The Association's principal office shall be located in Florida or such other place as is designated by the Board of Directors. The Association may have such other offices, either within or outside Florida, as the Board may determine or as the Association’s affairs require.
3. Definitions and Interpretation. All capitalized terms used herein that are not defined shall have the meaning set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for Twin Lakes, to be recorded by Weber Woods, LLC, a Florida limited liability company as “Declarant” (and referred to herein as, the “**Declarant**”), in the public records of Brevard County, Florida, as such declaration may be amended from time to time (“**Declaration**”). In the case of any conflict between the Declaration, the Association’s Articles of Incorporation (“**Articles**”) and these Bylaws, the Declaration governs over the Articles and Bylaws, and the Articles govern over the Bylaws, unless otherwise provided by law.

ARTICLE II  
MEETINGS OF MEMBERS

1. Membership. The Association shall have two (2) classes of membership, Class A and Class B, as defined in the Declaration. The provisions of the Declaration pertaining to membership are incorporated herein by this reference. Members of the Association are referred to generally in these Bylaws as “**Members**.”
2. Meetings in General. The Association shall hold meetings at its principal office or at such other suitable place in the County convenient to the Members as the Board may designate.
3. Annual Membership Meetings. Commencing with the year following the year in which the Articles are filed with the Secretary of State, the annual meeting of the Members (“**Annual Membership Meeting**”) shall be held each year on such date and at such time and place as the Board designates in its notice of such meeting. Annual Membership Meetings may be conducted electronically (*i.e.*, via the Internet, intranet, or teleconference) if, and to the extent, permitted by law.
4. Special Membership Meetings. Special membership meetings may be called at any time: (a) by the President of the Association; (b) by the Board of Directors; or (c) upon the written request of the Members in good standing who are entitled to cast at least one-third (1/3) of the total number of votes entitled to be cast by Members at any such special meeting. Such meetings shall be held on such date and at such time and place as determined by the Board of Directors.
5. Notice of Meetings. The President, the Secretary or the Officer or other persons calling a meeting of the Members, whether an Annual Membership Meeting or a special meeting, shall give or cause to be given to

all Members actual notice of all membership meetings, which shall be mailed, delivered, or electronically transmitted to the Members not less than fourteen (14) days but no more than forty-five (45) days prior to the meeting. In the case of a special meeting or when otherwise required by law, the Declaration, the Articles or these Bylaws, the purpose of the meeting shall also be stated in the notice. No business shall be conducted or transacted at a special meeting except as stated in the notice.

6. Proof of Notice. The person or persons actually giving notice of any meeting shall execute an affidavit confirming compliance with the notice requirements for such meeting; and any such executed affidavit, attested by the Secretary and filed among the official records of the Association, is conclusive as to the regularity of any notice with respect to any Person absent actual knowledge of any defect in notice.

7. Waiver of Notice. Notice of any meeting may be waived before, during or after such meeting by a Member or by the person entitled to vote for such Member by signing a document setting forth the waiver of such notice. In addition, a Member's attendance at any meeting constitutes a waiver by such Member of notice of the time, date and place thereof, and of all defects in notice, unless an objection on the basis of lack of proper notice is raised at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

8. Written Action. Any action required to be taken at a meeting of the Members by the Declaration, Articles, these Bylaws or Florida law may be taken without a meeting, without prior notice and without a vote if the action is approved by written consent of Members representing at least the minimum number of votes that would be necessary to authorize such action at a meeting where all Members entitled to vote were present and voted. Such approval shall be evidenced by one (1) or more written consents specifically authorizing the proposed action, dated and signed by approving Members holding the requisite number of votes. The Association need not give prior notice before soliciting such consent; however, the Association must send written consent forms to all Members for action authorized pursuant to this Section to be valid. All consents must be signed, dated and delivered to the Secretary within sixty (60) days after the Association's receipt of the earliest dated consent. The Secretary shall file (or cause to be filed) such consents with the Association's minutes, and the consents shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members summarizing the authorized action.

9. Certificate. An instrument signed by any executive Officer of the Association, and attested by the Secretary, is conclusive proof that any required approval has been obtained in accordance with these Bylaws as to persons without actual knowledge to the contrary.

10. Quorum. The presence of Members in good standing in person or by proxy entitled to cast thirty percent (30%) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. If such quorum is not present or represented at any meeting, the Members present and entitled to vote shall have the power to adjourn the meeting from time to time, as provided in Section 12 below, until a quorum is present or represented.

11. Adjournment. If any Association meeting cannot be held because a quorum is not present, the Members entitled to cast a majority of the votes present at such meeting may adjourn the meeting to a time at least five (5) but not more than thirty (30) days from the scheduled date of the original meeting. Unless the time and place at which the adjourned meeting will be held is announced at the original meeting, the Association shall give Members notice of the adjourned meeting not less than ten (10) days prior to the meeting. Otherwise, the Board shall provide notice to the Members of the time and place for reconvening the meeting in the manner prescribed for regular meetings of Members. At the adjourned meeting, if a quorum is present, any business may be transacted that might have been transacted at the original meeting.



12. Proxies. At all meetings of Members, each Member may vote in person or by limited proxy. All proxies shall be in writing, dated and signed by the Member and filed with the Secretary prior to its use, and shall identify the Lot for which it is given and the meeting for which it is to be effective. No Person shall be permitted to hold more than five (5) proxies. A Member represented by a valid proxy at any meeting is "present" for all purposes. Every proxy shall be effective only for the specific meeting for which originally given and any lawfully adjourned meeting thereof. A proxy is revocable at any time at the pleasure of the Member who executes it. A proxy shall automatically expire ninety (90) days from the date of granting, unless a shorter period is provided in the proxy. A proxy shall not be valid for more than ninety (90) days.

13. Membership List. A complete list of the Members entitled to vote at all meetings, and their respective addresses, must be kept on file at the Association's office, open to inspection by any Member. The list must also be available at any meeting for inspection by any Member.

14. Voting Requirements.

(a) Members shall have such voting rights as are expressly set forth in these Bylaws, the Articles or the Declaration, which provisions are specifically incorporated by this reference. Except where these Bylaws, the Articles or the Declaration establish different voting requirements or expressly require the approval of Declarant or any other Person, the majority vote of those Members entitled to vote present in person or by proxy at a duly called and convened meeting at which a quorum is present shall constitute the act of the membership. Only those Members shown as Members in good standing upon the Association's books are entitled to vote.

(b) The following actions must be approved by two-thirds (2/3) of the total votes of each class of Members, present in person or by proxy and voting at a duly convened meeting at which a quorum is present, and by Declarant for so long as Declarant is a Member: (i) any mortgaging of the Association's property; (ii) any merger or consolidation of the Association; or (iii) any dissolution of the Association.

(c) Any purchase of additional lands to be owned by the Association for the benefit of Owners must be approved by two-thirds (2/3) of the total voting interests of the Members present in person or by proxy, at a meeting duly convened for such a purpose at which a quorum is present, and by Declarant for so long as Declarant is a Member.

15. Conduct of Meetings. The President shall preside over all Association meetings, provided that in the President's absence, the Vice President or another Board designee shall preside. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are recorded in the Association's minute books. At any meeting of the membership, a Member shall have the right to speak for at least three (3) minutes on any item properly before the meeting. The Board may adopt reasonable written rules governing the frequency, duration and other manner of Member statements consistent with Section 720.306, *Florida Statutes*.

### ARTICLE III BOARD OF DIRECTORS

1. Qualification and Governance. The Board of Directors shall govern the Association's affairs. Each Director shall have one (1) vote. Directors, other than those appointed by Declarant, shall be Members. Directors must be at least eighteen (18) years old. If an Owner is not an individual, any officer, director, partner, or any trust officer of such Owner shall be eligible to serve as a Director unless a written notice to the Association signed by the Owner specifies otherwise. An Owner or resident of any Lot on which any Assessments, fines, or

other charges owed to the Association are more than ninety (90) days past due is not eligible to serve as a Director. A person who has been convicted of a felony in Florida or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony under Florida law, is not eligible to serve as a Director unless his or her civil rights have been restored for at least five (5) years as of the date on which such person seeks election to the Board. The validity of any Board action is not affected if it is later determined that a Director was ineligible to serve.

2. Number of Directors; Initial Directors. Initially, the Board shall consist of three (3) Directors. After fifty percent (50%) of the Lots (as defined in the Declaration) in the Property (as defined in the Declaration) have been conveyed to Owners other than Declarant or Builders, the Board shall consist of five (5) Directors. The Board must consist of an odd number of Directors at all times.

3. Term of Office. So long as Declarant has the right to appoint all Directors, Directors shall hold office as determined by Declarant. Otherwise, the term of office for all Directors shall be one (1) year. Each Director shall hold office until a successor has been appointed or elected, as applicable, unless the Director sooner dies, resigns, is removed, is incapacitated or otherwise unable to serve. Directors may serve any number of consecutive terms.

#### ARTICLE IV

#### APPOINTMENT; NOMINATION, ELECTION, AND REMOVAL OF DIRECTORS:

1. Appointment and Election of Directors

(a) Until Turnover.

(i) Until Turnover, and subject to subsection (b) below, Declarant has the right to appoint, remove and replace all members of the Board of Directors, who shall serve at the pleasure of Declarant.

(ii) Members of the Association, other than the Declarant or Builders, are entitled to elect one (1) member of the Board of Directors when fifty percent (50%) of the Lots in the Property have been conveyed to Owners other than Declarant or Builders.

(b) Upon Turnover. Upon Turnover, Members are entitled to elect at least a majority of the Directors. Declarant is entitled to appoint, remove and replace one (1) Director for so long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots in all phases of the Development that will ultimately be operated by the Association. After Turnover, nominations for election to the Board of Directors may be made by a nominating committee appointed by the Board ("**Nominating Committee**"), or in any other manner determined by the Board of Directors from time to time. If there is no Nominating Committee, nominations may be made from the floor at the annual meeting. Nominations for positions on the Board of Directors may include as many persons as the Board of Directors shall in its discretion determine, but not less than the number of vacancies that are to be filled. Any Member other than Declarant or Builders may nominate himself or herself as a candidate by notice to the Nominating Committee (or to the Secretary if there is no Nominating Committee).

2. Manner of Election of Directors. Election to the Board of Directors shall be by secret written ballot and, unless a greater number is required under the Governing Documents, shall be accomplished by a plurality vote. Cumulative voting is not permitted. Directors shall be elected by the membership at the first meeting of Members held after Turnover. If the number of nominees is equal to or less than the number of positions to be filled, then those candidates shall be deemed elected without a vote. If the number of nominees exceeds the

number of positions to be filled, an election shall be held, and the person receiving the largest number of votes cast by the Members entitled to vote is elected. At any meeting of the Members at which Directors are to be elected, the President (defined below) shall appoint an “**Election Committee**” consisting of three (3) Members to supervise the election, count and verify ballots, disqualify votes if such disqualification is justified under the circumstances and certify the results of the election to the Board. The Election Committee shall be able to determine questions within its jurisdiction by plurality vote of all three (3) members, but matters resulting in deadlocked votes of the Election Committee shall be referred to the entire Board for resolution.

3. Removal; Vacancies. Any member of the Board of Directors can be recalled (voted out of office), with or without cause, by a majority vote of the total voting interests of the Association. However, if appointed or elected by a certain class of Members, only that class of Members can vote to recall a Director so elected or appointed. In the event of death, resignation or removal of a Director, a majority of the remaining members of the Board of Directors 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. At any meeting at which a quorum is present, a majority of the Directors may remove any Director who has three (3) consecutive unexcused absences from Board meetings or who is more than thirty (30) days delinquent in the payment of any Assessments or other charges due to the Association. The Board may appoint a successor to fill the vacancy for the remainder of the term. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose.

#### ARTICLE V MEETINGS OF DIRECTORS

1. Organizational Meeting. The Board shall hold an organizational meeting within ten (10) days following each annual Association meeting, at such place and time as the Board may determine.

2. Regular Meetings. The Board shall conduct regular meetings at such place and time as the Board may determine, but the Board shall meet at least four (4) times each fiscal year, with at least one (1) meeting per quarter.

3. Special Meetings. Special Board meetings must be held when called by the President, or by any two Directors.

4. Petition by Members. If Members entitled to cast at least twenty percent (20%) of the total voting interest in the Association petition the Board in writing to address a particular item of business at a Board meeting, the Board shall place the petitioned item of business on its agenda at its next regular Board meeting or at a special Board meeting, which shall be held within sixty (60) days after receipt of the petition. Other than addressing the petitioned item at the meeting, the Board is not obligated to take any other action required by the petition.

5. Open to Members. All meetings of the Board must be open to all Members, except for: (a) meetings of the Board held for discussing personnel matters; (b) meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege; and (c) such other matters, if any, as provided by law. The right to attend meetings of the Board includes the right to participate in meetings with reference to all designated agenda items in accordance with Chapter 720, *Florida Statutes*, and any rules and regulations promulgated by the Association.

6. Notice and Quorum.

(a) Notice; Waiver of Notice.

(i) Notice to Directors. Notices of Board meetings shall specify the place and time of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall give notice to each Director by personal delivery, first class mail, postage prepaid, facsimile, electronic mail or other electronic communication device, with confirmation of transmission. All such notices shall be sent to the Director's fax number, electronic mail address, or address as shown on the Association's records. Notices sent by first class mail shall be sent at least seven (7) business days before the time set forth meeting. Except for emergency meetings, notices given by personal delivery, facsimile, or other device shall be delivered or transmitted at least seventy-two (72) hours before the time set for the meeting. A Director's presence at any meeting constitutes a waiver of notice of such meeting and of any and all objections to the place or time of such meeting, or the manner in which it has been called or convened, unless the Director at the beginning of the meeting objects to the transaction of business because the meeting is improperly called or convened.

(ii) Notice to Members. Except for emergency meetings, notice of all Board meetings shall be mailed or delivered to each Member at least seven (7) days before the meeting, or, in the alternative, shall be posted in a conspicuous place within the Property at least forty-eight (48) hours in advance of the meeting. Assessments may not be levied at a Board meeting unless the notice of the meeting includes a statement that Assessments will be considered and the nature of the Assessments. Written notice of any meeting petitioned by Members in accordance with this Article V, Section 4 above, or at which Special Assessments or amendments to rules regarding use of Lots will be considered must be mailed, delivered, or electronically transmitted to each Member and posted conspicuously on the Property not less than fourteen (14) days before the meeting. Notice may be transmitted electronically only to those Members who have consented in writing to receive notice by electronic means, and then only in a manner authorized by law. A Member's presence at any meeting constitutes a waiver of notice of such meeting and of any and all objections to the place or time of such meeting, or the manner in which it has been called or convened, unless the Member at the beginning of the meeting objects to the transaction of business because the meeting is improperly called or convened.

(iii) Waiver of Notice. Transactions of any Board meeting, 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 (1) a quorum is present, and (2) either before or after the meeting each Director 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 meeting's purpose. 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.

(b) Participation by Telephone. Members of the Board or any committee designated by the Board may participate in Board or committee meetings by means of telephone or other electronic means, through which all persons participating in the meeting can hear each other. Participation in this manner shall constitute presence at the meeting for all purposes.

(c) Quorum. At all Board meetings, a majority of the Directors shall constitute a quorum for all purposes, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the act of the Board, unless otherwise provided in the Governing Documents or by Florida law. A meeting at which a quorum is initially present may continue, notwithstanding the withdrawal of one or more Directors, if at least a majority of the required quorum for that meeting approves any action taken.

7. Conduct of Meetings. The President shall preside over all Board meetings, provided that in the President's absence, the Vice President or another Board designee shall preside. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such

meetings are recorded in the minute books. The Board may adopt reasonable written rules governing the right of Members to speak consistent with Section 720.303, *Florida Statutes*.

8. Adjournment. A majority of the Directors present at any meeting duly called, regardless of whether a quorum exists, may adjourn the meeting to another time and place not less than five (5) but not more than thirty (30) days from the date of the original meeting, but notice of such adjourned meeting must be given to the Directors not present at the time of adjournment. At the reconvened meeting, if a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

9. Voting. Any Director present at a Board Meeting at which action on any matter is taken is presumed to have assented to such action unless the Director votes against the action, or abstains from voting because of an asserted conflict of interest. Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in the election of Officers. A vote or abstention from voting on each matter voted upon for each Director present at a Board meeting must be recorded in the minutes.

10. Action Without a Meeting. Any Board action taken or to be taken at a Board meeting may be taken without a meeting if a written consent to such action is signed by all Directors and filed in the minutes of the Board. Such consent shall have the same force and effect as a unanimous vote.

## ARTICLE VI POWERS AND DUTIES OF DIRECTORS

### 1. Powers of Directors.

(a) The Board of Directors may exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of the Governing Documents or Florida law, including but not limited to the following:

(i) Operate the Association in accordance with applicable law, including, Chapters 617 and 720, *Florida Statutes*, the Declaration, Articles and the Bylaws;

(ii) Employ for the Association a manager, an independent contractor, or such other consultants or employees as they deemed necessary, and to prescribe their duties, provided, however, that the Board shall not delegate policy-making authority or ultimate responsibility for those duties set forth in this Article VI, Section 2 below. The Board may delegate to one of its members the authority to act on its behalf on all matters relating to the duties of the managing agent or manager that might arise between Board meetings;

(iii) Adopt, publish, and amend from time to time rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Members and their guests thereon, establish penalties for the infraction thereof; and

(iv) Adopt and amend from time to time procedures for the Association's imposition of sanctions for violation of the Governing Documents.

(b) The Board shall not take any action, or implement any policy or program that would tend to impair rights of Declarant or Builders under the Declaration or these Bylaws, interfere with development or construction of any portion of the Property, or diminish the level of services the Association provides.

### 2. Duties of Directors. The Board of Directors has the following duties:

- (a) As more fully provided in the Declaration:
- (i) Prepare and adopt an annual budget, including maintenance of Common Area, and if elected by the Declarant or the membership in the manner proscribed by Florida law, to establish reserve accounts for replacement of those parts of the Common Area which have a limited useful life span;
  - (ii) Budget and fix the amount of the Annual Maintenance Assessment against each Lot at least sixty (60) days before the fiscal year begins;
  - (iii) establish and fix the amount of the other Assessments described in the Declaration;
  - (iv) send a copy of each annual budget, and written notice of the amount of the Annual Maintenance Assessments to be levied pursuant to such budget, to every Owner at least thirty (30) days before the fiscal year begins;
  - (v) foreclose the lien against any Lot for which Assessments have not been paid, in accordance with the Declaration and applicable law or to bring an action at law against the Owner personally obligated to pay the same; and
  - (vi) levy fines and impose sanctions for violation of the Declaration and other published guidelines and standards imposed under the Declaration in the manner provided by the Declaration and applicable law;
- (b) Provide for the operation, care, upkeep and maintenance of the Common Area and Common Maintenance Areas;
- (c) Contract with and/or employ any and all contractors, managers, employees, or other personnel or entities necessary to carry out the duties and obligations of the Association contained in the Governing Documents;
- (d) Supervise employees of the Association and, where appropriate, provide for compensation of such employees and for the purchase of necessary equipment, supplies, and materials to be used by such employees in the performance of their duties;
- (e) Enter into, perform, and enforce contracts and other agreements between the Association and third parties;
- (f) Open bank accounts on the Association's behalf and designate signatories;
- (g) Deposit all funds received on the Association's behalf in a bank depository which the Board shall approve, and use such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;
- (h) Prepare, provide and file such financial reports and other reports as may be required by Chapter 720, *Florida Statutes*, subject to the terms thereof;

(i) Enforce by legal means, or in the manner provided in the Declaration, the provisions of the Governing Documents and bringing any proceedings that may be instituted on behalf of or against the Owners concerning the Association;

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

(k) Pay the cost of all services rendered to the Association;

(l) Keep a detailed accounting of the Association's receipts and expenditures;

(m) Make available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Article XIII, Section 3 of these Bylaws;

(n) Initiate or defend litigation on behalf of the Association;

(o) Maintain, and retain for the time periods required, the "official records" of the Association, as required by Chapter 720, *Florida Statutes*; and

(p) Otherwise undertake all duties, enforce all rights, and perform all obligations granted to the Association pursuant to the Declaration.

3. Standard of Care. The Board shall exercise its powers in a reasonable, fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents. Directors shall discharge their duties in a manner that the Director reasonably believes in good faith to be in the best interests of the Association.

4. Compensation. No Director shall receive any salary or compensation for the performance of any duties as a Director or for any service he may render to the Association. The Association may reimburse any Director or Officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other Directors.

5. Conflict of Interest. Notwithstanding anything in these Bylaws, the Articles or the Declaration to the contrary, any contract or other transaction between the Association and any of its Directors or Officers, or with any entity in which a Director or Officer has a financial interest, must comply with the requirements of Section 617.0832, *Florida Statutes*, and Chapter 720, *Florida Statutes*. Notwithstanding anything to the contrary contained herein, Directors appointed by Declarant may be employed by or otherwise transact business with Declarant or its affiliates, and Declarant may transact business with the Association or its contractors, subject to applicable law.

6. Certification by Directors. Within ninety (90) days after election or appointment to the Board, each Director shall deliver to the Secretary of the Association a written certification meeting the requirements of Section 720.3033, *Florida Statutes*. A Director who does not timely file the certification or education certificate shall be suspended from the Board until he or she complies with this requirement and the Board may temporarily fill the vacancy during the period of suspension. The Board shall retain a copy of each certification and educational certificate for a period of five (5) years after the Director's election; provided, however, the failure to have the written certification or educational certificate on file does not affect the validity of any Board action.

ARTICLE VII  
OFFICERS

1. Enumeration. The Association's Officers are a President, Vice President, Secretary, and Treasurer. The President and Secretary shall at all times be members of the Board of Directors. The Board may appoint by resolution such other Officers, who shall hold office for such period, have such authority, and perform such duties as the Board may determine, from time to time, subject to Section 5 of this Article. Any two or more offices may be held by the same person, except the offices of President and Secretary.

2. Election and Term of Office. The initial Officers of the Association shall be elected by the Board at its organizational meeting or by unanimous written consent in lieu thereof, and thereafter at the first Board meeting following each annual meeting of the Members or by unanimous written consent in lieu thereof. Officers shall be elected annually by the Board and each shall hold office for one (1) year unless the officer shall sooner resign, or shall be removed, or otherwise disqualified to serve. After Turnover, Officers may not hold the same office for more than two (2) consecutive terms.

3. Removal and Vacancies. The Board may remove any Officer with or without cause, by a vote of at least a majority of the Directors, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise for the unexpired portion of the term.

4. Resignation. Any Officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

5. Powers and Duties. The Association's Officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the Association's budgets 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. The Secretary shall prepare or supervise the preparation of meeting minutes as required by Florida law.

ARTICLE VIII  
COMMITTEES

1. Permanent Committees. At such time as the Association has the right to appoint the Design Review Committee as provided in the Declaration, the Board shall appoint a Design Review Committee on behalf of the Association.

2. Other Committees. The Board, from time to time, may appoint and dissolve such other committees as the Board deems appropriate in carrying out the business of the Association and to serve for such periods as the Board may designate by resolution. Committees may not act without specific Board authority and may not bind the Association contractually or financially.

ARTICLE IX  
DECLARANT'S RIGHT TO DISAPPROVE

1. Notice to Declarant. For so long as Declarant is a Member, the Association shall give Declarant written notice of all meetings of the Members, the Board, and committees and any actions that any of them propose



to take by written consent in lieu of a meeting. The Association shall give such notice to Declarant at Declarant's principal address as it appears on the Department of State's records or at such other address as Declarant has designated in writing to the Association, or as to Board meetings, in accordance with Article V, Section 6 of these Bylaws. Such notice shall set forth with reasonable particularity the agenda to be followed at such meeting.

2. Declarant's Right to Disapprove. So long as Declarant holds any Lot for sale in the ordinary course of business, Declarant shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee that, in Declarant's sole judgment, would tend to impair rights of Declarant or Builders under the Declaration or these Bylaws, interfere with development or construction of any portion of the Property, or diminish the level of services the Association provides.

#### ARTICLE X INDEMNIFICATION OF OFFICERS AND DIRECTORS

To the fullest extent permitted by law, the Association shall indemnify every Officer, Director, employee, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an Officer, Director, employee, or committee member, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that such action was unlawful. The termination of any such action, suit, or proceeding by judgment, order, settlement, conviction, or a plea of nolo contendere or its equivalent shall not in and of itself create a presumption that the person did not act in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interest of the Association or that he or she had reasonable cause to believe that his or her conduct was unlawful. The right to indemnification provided herein shall not be exclusive of any other rights to which any present or former Officer, Director, employee, or committee member may be entitled. In accordance with the procedures and subject to the conditions and limitations of Florida law, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former Officer, Director, employee, or committee member in any proceeding to which he or she may be a party by reason of being or having been an Officer, Director, or committee member. The foregoing indemnification obligations shall be controlled and interpreted by applicable law with respect to the indemnification of directors and officers of a not-for-profit corporation.

#### ARTICLE XI ACCOUNTING

The Board shall follow the following accounting standards unless the Board specifically determines otherwise by a resolution duly adopted and permitted under Florida law:

1. GAAP. Accounting and controls should conform to generally accepted accounting principles; and
2. No Comingling. The Association's cash accounts shall not be commingled with any other accounts, and during the period that Declarant has the right to appoint or elect at least a majority of the Board of Directors, operating accounts shall not be commingled with reserve accounts.

ARTICLE XII  
EMERGENCY PROVISIONS

In the event of an “emergency” as defined in Sections 6 and 7 below, the Board may execute the emergency powers described in this Article XIII and any other emergency powers authorized by Sections 617.0207 and 617.0303, *Florida Statutes*, as amended from time to time:

1. The Board may name as assistant officers, any Members of the Association who are not Directors, which assistant officers shall have the same authority as the executive officers to whom they are assistant during the period of emergency, to accommodate the incapacity or absence of any officer of the Association.

2. The Board may relocate the principal office of the Association or designate alternative principal offices or authorize the officers to do so.

3. During the emergency, the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practical manner, including publication, radio, cellular phone, or e-mail. The Director or Directors in attendance at such meeting shall constitute a quorum and all actions taken thereat shall be actions of the Board.

4. Corporate action taken in good faith during an emergency under this Article in the interest of the Association shall bind the Association and shall have the rebuttable presumption of being reasonable and necessary.

5. Any officer, director, or employee of the Association acting with a reasonable belief that his actions are lawful in accordance with these emergency provisions shall incur no liability for doing so.

6. These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

7. For purposes of this Article only, an “emergency” exists only during the period of the time that the Property or the immediate geographic area in which the Property is located, is subjected to:

- (a) A state of emergency declared by local, state or federal civil or law enforcement authorities;
- (b) A hurricane warning;
- (c) A partial or complete evacuation order;
- (d) Federal or state disaster area status, or
- (e) A catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the Property, such as an earthquake, tidal wave, hurricane, tornado, war, civil unrest, or an act of terrorism.

8. An emergency also exists for purposes of this Article XII during the time when a quorum of the Board cannot readily be assembled because of the occurrence of an event as defined in subsection (g) above.

ARTICLE XIII  
MISCELLANEOUS

1. Fiscal Year. The Association’s fiscal year shall be the calendar year unless the Board establishes a different fiscal year.

2. Conflicts. If there are conflicts among the provisions of Florida law, the Articles, the Declaration, and these Bylaws, the provisions of Florida law, the Declaration, the Articles, and these Bylaws (in that order) shall prevail.

3. Books and Records.

(a) Inspection by Members and Mortgagees. The official records of the Association shall be maintained within the State of Florida for at least seven (7) years and shall at all times during reasonable business hours, be subject to inspection by any Member within ten (10) business days after receipt by the Association of a written request, subject to rules adopted by the Board from time to time reasonably restricting the frequency, time, place, and manner of inspection. The Board shall provide for such inspection to take place within forty-five (45) miles of the Property or within the County in which the Association is located. The Board may comply with this Section by making the records available to a Member electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed on request. A Member or the Member's authorized representative may use a portable scanning device or similar technology to make an electronic copy of records which the Member would otherwise be entitled to copy hereunder. Notwithstanding the above, the exempted records listed in Section 720.303(5), *Florida Statutes* shall not be available to Members for inspection or copying.

(b) Rules for Inspection. The Board may adopt reasonable written rules governing the frequency, time, location, notice, scope, and manner of inspections but may not require that an Owner state or demonstrate any proper purpose for the inspection or state any reason for the inspection, and may not limit an Owner's right to inspect records to less than one 8-hour business day per month. The Association shall maintain an adequate number of copies of the recorded governing documents to ensure availability to Members and prospective Members. The Association shall have the right to require reasonable proof that any person requesting access to the records of the Association is either a Member or an authorized representative of a Member. If the Association has a copy machine, it must provide Owners with copies requested if fewer than twenty-five (25) pages. The Association may charge up to \$0.25 per page. If the copies requested exceed twenty-five (25) pages, an outside duplicating service may be used and actual costs, as supported by the vendor invoice, may be charged. In addition, the Association may charge fees to cover the costs for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and the personnel costs do not exceed \$20.00 per hour; provided, however, that personnel costs may not be charged for records requests that result in the copying of twenty-five (25) or fewer pages.

(c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. A Director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

(d) Additional Information. Neither the Association nor any authorized agent thereof shall be required to provide a prospective purchaser or lienholder with information about the Property or the Association except as required by Section 720.301, *Florida Statutes*. If, upon request of the current Owner, the Association elects to provide information which is not required by law to be provided or disclosed, it may charge a reasonable fee to the current Owner for providing good faith responses to requests for such information, such fee not to exceed the amount set forth in Section 720.303, *Florida Statutes*, as it may be amended, plus the reasonable cost of photocopying and any attorney fees incurred by the Association in connection with such response.

(e) Minutes of Meetings. Minutes of all meetings of Members and of the Board of Directors shall be available for inspection by Members, or their authorized representatives, and Board members at reasonable times. The Association shall retain these minutes for at least seven (7) years.

4. Amendment.

(a) Prior to Turnover, Declarant shall have the right to unilaterally amend these Bylaws for any purpose, except as prohibited by law. After Turnover, these Bylaws may be amended only with the approval of at least two-thirds (2/3) of the votes of the Members, present in person or by proxy, at a meeting duly convened for such purpose, at which a quorum is present, and with the written consent of Declarant for so long as Declarant is a Member.

(b) Notwithstanding Subsection (a) above, after Turnover, no amendment to these Bylaws which purports to change the quorum requirement or percentage of votes necessary to take action under a specific clause shall be effective unless approved by at least that fraction or percentage of votes that would be required for action to be taken under that clause. A copy of any amendment shall be provided to the Owners within thirty (30) days after same is executed and all necessary consents (if any) are obtained.

(c) No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant, or the assignee of such right or privilege.

*[Remainder of page left blank intentionally; Attestation on following page.]*

ATTESTATION

IN WITNESS WHEREOF, the undersigned has signed this document for the purpose of authenticating it as the Bylaws of Twin Lakes of Malabar Homeowners Association, Inc., a Florida not for profit corporation, as adopted by its Board of Directors, this \_\_\_ day of \_\_\_\_\_, 2019.

TWIN LAKES OF MALABAR HOMEOWNERS  
ASSOCIATION, INC.,  
a Florida not for profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Prepared by and return to:

Jessica Swann Ward, Esq.  
516 Delannoy Avenue  
Cocoa, Florida 32922

Revised 10/29/2020

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
TWIN LAKES OF MALABAR**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TWIN LAKES OF MALABAR (“Declaration”) is made this \_\_\_\_ day of \_\_\_\_\_, 2020, by WEBER WOODS, LLC, a Florida limited liability company (“Developer”).**

ARTICLE I

INTRODUCTION AND DEFINITIONS

1. Introduction.

a. Developer hereby restricts the use of Property (defined below) and declares that all of any portion of the Property shall be held, occupied, sold and transferred subject to the easements, restrictions, covenants, charges and liens of this Declaration, each and all of which is and are for the benefit of the real property subjected to this Declaration and each owner of any portion thereof, for the purpose and with the intent of preserving the value and maintaining the desirability of the Property.

b. This Declaration shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. Every Person acquiring title to any portion of the Property shall be deemed to have agreed to all of the terms and provisions of this Declaration and shall be entitled to its benefits and subject to its obligations.

2. Definitions. Unless the context expressly requires otherwise, the words defined below whenever used in this Declaration and in the Governing Documents shall have the following meanings:

a. “ACOE” means the U.S. Army Corps of Engineers.

b. “Annual Maintenance Assessment” means the Association’s annual maintenance assessment for each Lot as determined in accordance with the provisions of this Declaration.

c. “Association” means Twin Lakes of Malabar Homeowners Association Inc., a corporation not for profit organized and operated pursuant to Chapters 617 and 720, *Florida Statutes*, its successors and assigns.

d. “Assessments” means all assessments established, imposed or levied under or pursuant to the terms of this Declaration.

e. “Board” or “Board of Directors” means the Association’s Board of Directors.

f. “Builder” means any person designated in writing as such by Developer who purchases Lots within the Property for the purpose of constructing Residential Units thereon for sale to Lot Owners.

g. “Common Area” means all real property or any interest in real property (including easements), including any improvements thereto from time to time, owned by the Association or designated for ownership by the Association for the common use and enjoyment of all Lot Owners, subject to any restrictions or limitations set forth in this Declaration or the Rules. The Common Area includes, without limitation, any private roadways, private drainage areas, private pump station, entry gate facilities, if installed, and associated hardscaping, landscaping, irrigation, lighting, signage, and/or other improvements owned and/or maintained by the Association, from time to time. Notwithstanding anything contained herein to the contrary, no Lot Owner may be denied access to a private roadway due to failure of such Lot Owner to pay any dues or assessments hereunder.

h. “Common Maintenance Areas” means all real property and tangible personal property interests, including improvements, fixtures and landscaping, from time to time, designated by this Declaration, the Association (with Developer’s consent if prior to Turnover) or Developer, as a maintenance responsibility of the Association for the benefit of all Owners. Common Maintenance Areas may or may not be owned by the Association and may or may not be located within the Property. The Common Maintenance Area includes, without limitation, the Surface Water Management System, Private Drainage Easements designated on the Plat and Conservation Areas (defined below).

i. “County” means Brevard County, Florida.

j. “Declaration” means this Declaration of Covenants, Conditions and Restrictions, together with any amendments and supplements hereto.

k. “Deficit Fund” has the meaning set forth in Article V, Section 2 of this Declaration.

l. “Design Guidelines” has the meaning set forth in Article VIII of this Declaration.

m. “Developer” means Weber Woods, LLC, a Florida limited liability company, whose address is 516 Delannoy Avenue, Cocoa, Florida 32922, and its successors and assigns to whom rights of the Developer hereunder are specifically assigned by instrument recorded in the Public Records. Developer may assign all or a portion of such rights in one or more assignments and on an exclusive or non-exclusive basis. In the event of a partial assignment, the assignee shall not be deemed the Developer unless expressly stated in the assignment. Notwithstanding the foregoing, the Developer shall not be liable for any acts or omissions made by a successor Developer.

n. “Governing Documents” collectively means this Declaration, the Association’s Articles of Incorporation (the “Articles”) and the Association’s Bylaws (the “Bylaws”), together with any amendments thereto. A copy of the Articles is attached hereto as Exhibit B, and a copy of the Bylaws is attached hereto as Exhibit C. The Articles and Bylaws may be amended as provided in such documents.

o. “Initial Contribution Assessment” has the meaning set forth in Article V, Section 4 of this Declaration.

p. “Law” means any statute, ordinance, rule, regulation, or order adopted or enforced by the United States of America, or any agency, officer, or instrumentality thereof, or by the State of Florida, or any agency, officer, municipality, or political subdivision thereof, from time to time applicable to the Property or to any activities thereon.

q. “Lot” means any plot of land shown on any recorded Plat of the Property that is designated or intended as a building site for a Residential Unit, and does not include any areas designated as Common Area or any other tract of land that is not a residential parcel.

r. “Members” means the members of the Association.

s. “Mortgage” means any mortgage, deed of trust, or other instrument validly transferring any interest in any Lot, or creating a lien on any Lot, in either case as security for performance of an obligation. The term “Mortgage” does not include judgments, involuntary liens, or liens arising by operation of Law. “First Mortgage” means any Mortgage constituting a lien prior in dignity to all other Mortgages encumbering the same property.

t. “Mortgagee” means the Person(s) named as the obligee under any First Mortgage, or the successor in interest to any such Person, including the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Authority and similar guarantors or insurers of First Mortgages.

u. “Owner” or “Lot Owner” means the record owner of the fee simple title to any Lot, whether one or more Persons, including Developer, Builders and contract sellers, but excluding contract buyers, any Person holding such fee simple title merely as security for the performance of an obligation, the Association, and governmental authorities that have received dedications or conveyances of title to any portion of the Property.

v. “Person” means any natural person or entity having legal capacity.

w. “Plat” means the plat of the Property, to be recorded in the Public Records. The term “Plat” shall include any recorded revisions or re-plats of the Property.

x. “Property” means the real property located in Brevard County, Florida described in Exhibit A attached to this Declaration.

y. “Property Boundary Buffer” has the meaning set forth in Article II, Section 4 of this Declaration.

z. “Public Records” means the public records of the County.

aa. “Rules” means any rules and regulations regarding the use of the Property duly adopted by the Association in accordance with the Governing Documents, as amended from time to time.

bb. “Residential Unit” means any improvements on a Lot intended for use as a single-family residential dwelling unit, including, without limitation, any single-family attached or detached dwelling. Improvements shall constitute a Residential Unit at such time as construction of the dwelling unit is completed and a certificate of occupancy is issued therefor.

cc. “Special Assessments” has the meaning set forth in Article V, Section 5 of this Declaration.

dd. “Specific Assessments” has the meaning set forth in Article V, Section 7 of this Declaration.

ee. “Supplemental Declaration” means any instrument which extends the effect of this Declaration to Additional Property pursuant to Article II of this Declaration.



ff. “SJRWMD Permit” means any and all permits issued by the St. Johns River Water Management District (“SJRWMD”) applicable to the Property, as may be amended or modified from time to time. A copy of the SJRWMD Permit is attached hereto as Exhibit D.

gg. “Surface Water Management System” means a system 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 from the system, as permitted pursuant to Chapter 62-330, Florida Administrative Code (“F.A.C.”). The Surface Water Management System may include, but is not limited to: inlets, littoral areas, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands and any associated buffer areas, wetland mitigation areas, drainage easements, underdrains and filtration systems. The Surface Water Management System may be owned by the Association.

hh. “Turnover” has the meaning set forth in Article IV, Section 3 of this Declaration.

ii. “Town” means the Town of Malabar, Florida.

jj. “Work” means the initial development of all or any portion of the Property, including the construction and installation of streets, utility systems, community facilities, buildings, and other improvements, and the sale, lease, or other disposition of the Property as improved or unimproved parcels, but does not include the construction of individual Residential Units by a Builder. Such term is to be broadly construed to include any and all activities, uses, structures, and improvements necessary, convenient, or desirable to accomplish such construction and disposition.

## ARTICLE II

### PROPERTY RIGHTS AND COMMON AREA

1. Common Area and Common Maintenance Areas.

a. Conveyance of Common Area. The Developer will convey or cause to be conveyed to the Association in one or more conveyances, and the Association shall accept, the title in the Common Area. The conveyance shall be subject to taxes for the year of conveyance, restrictions, conditions, and limitations of record, including this Declaration and the Plat, and easements for ingress, egress, drainage and public utilities in favor of governmental entities or private parties as deemed appropriate by the Developer. Upon recordation of any deed or deeds conveying Common Area to the Association, the Association shall be conclusively deemed to have accepted the conveyance evidenced by such deed or deeds. No title insurance or title opinion shall be provided to the Association by the Developer.

THE ASSOCIATION SHALL ACCEPT “AS IS” THE CONVEYANCE OF SUCH COMMON AREA PROPERTY WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, WITH RESPECT THERETO, OR WITH RESPECT TO THE IMPROVEMENTS AND REPAIRS TO BE COMPLETED AFTER THE CONVEYANCE, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR THE ORDINARY OR ANY PARTICULAR PURPOSE, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES REGARDING FUTURE REPAIRS OR REGARDING THE CONDITION, CONSTRUCTION, ACCURACY, COMPLETENESS, DESIGN, ADEQUACY OF THE SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS OR FURNITURE WHICH HAS BEEN OR WILL BE USED IN SUCH PROPERTY OR REPAIRS, EXCEPT AS SET FORTH HEREIN.

All costs and expenses of any conveyance of any property to the Association shall be paid by the Association.

b. Right of the Developer to Designate Property as Common Area. Notwithstanding anything to the contrary contained in this Declaration or any Plat, the Developer shall have the right, in its sole discretion, to designate land, easements, use rights and personal property owned by the Developer as Common Area provided only that such land shall be located within the Property or contiguous to the Property (for purposes of this subsection, property separated only by public or private roads, water bodies, or open space shall be deemed contiguous). For so long as the Developer shall own any portion of the Property, no land owned by the Developer shall be deemed to be Common Area unless such land is expressly referenced as such herein, or subsequently conveyed or designated as such by the Developer, even if the Developer consents or acquiesces to the use of such land by the Owners.

c. Use by Developer and Other Persons. Notwithstanding the transfer of ownership of the Common Area to the Association, the Developer shall have the right to use and occupy, and to allow Builders to use and occupy, portions of the Common Area without payment of any rent or use fee for purposes of a sales and marketing center, special events, the placement of sales and construction trailers and equipment, vehicular parking, and the placement of sales signs, until Developer and all Builders have sold all Lots within the Property, notwithstanding Turnover. Developer shall have the right to cause the Association to enter into a written agreement evidencing this right and no such agreement shall be deemed to be a violation of any fiduciary or other duty of the officers or directors of the Association authorizing or executing such written agreement. The Association shall have the right and authority to allow, by easement, license, rental agreement or otherwise, the use of Common Area by Persons providing utility, telecommunications, security or other services to the Property. The Association shall also have the right and authority to allow school, civic charitable social groups, and other non-profit organizations to use the Common Area as determined from time to time by the Board of Directors, provided such use does not unreasonably interfere with the Owners' use of the Common Area.

2. Owner's Easements of Enjoyment. Every Owner of a Lot and his or her lessees have a nonexclusive right and easement of enjoyment in and to the Common Area, including but not limited to a right of ingress and egress through the private roadways, that is appurtenant to, and passes with, the title to every Lot subject to the easements and other property rights granted in this Article, and subject to the following:

a. Assessments. Assessments for maintenance, repair, replacement, and operation of the Common Area and improvements and facilities, if any, situated on the Common Area, as provided in this Declaration or other applicable recorded instruments.

b. Dedication. The right of the Developer to dedicate or transfer all or portions of the Common Area or interests therein to any public agency, authority, or utility. Any dedication or transfer made by Developer as part of the Work or prior to Turnover shall not require the approval of the Members or the Association. Any other dedication or transfer must be approved by at least two-thirds (2/3) of the votes of the Members present and voting in person or by proxy at a meeting duly convened for such purpose, and must be evidenced by a recorded certificate of the Association executed by the Association with the formalities from time to time required for a deed under the laws of the State of Florida.

c. Developer. The rights of the Developer hereunder to designate portions of the Property as Common Area and to occupy and use, and allow Builders and other third parties to use and occupy, portions of the Common Area for a sales and marketing center, the placement of sales and construction trailers and equipment, vehicular parking, and the placement of sales signs.

d. Rules and Regulations. The Association's right to adopt, alter, amend, rescind and enforce reasonable Rules governing the use of the Common Area.

e. Governing Documents and Additional Restrictions. The provisions of the Governing Documents and all matters shown on any Plat of all or part of the Property.

f. Suspension. Pursuant to applicable Florida Statutes as amended from time to time, the Association's right to suspend any Owner's right to use any facility owned or controlled by the Association for a period of unpaid Assessments or for any infraction of the Association's Rules.

g. Easements. The right of the Developer and, following the conveyance of the Common Area to the Association, the Board of Directors of the Association, to grant easements for utilities or drainage across all or any part of the Common Area, whether to governmental entities or private parties.

h. Requirements of Law. The provisions of applicable Laws and all permits issued in connection with the development of the Property.

i. General. Real estate taxes and special assessments levied by governmental authorities having jurisdiction over the Common Area, and restrictions, limitations and easements of record.

3. General Association Easements. All Lots are subject to the following perpetual, non-exclusive easements:

a. The Association is hereby granted a perpetual, non-exclusive easement for ingress and egress upon, over and across each Lot for the exercise of the Associations rights, and performance of the Association's duties, under this Declaration; provided that such easement will not encroach on any portion of the building pad on which a Residential Unit is constructed.

b. Developer hereby grants to the Association perpetual non-exclusive easements over all areas designated on the Plat as dedicated for the purpose of constructing, maintaining, repairing and replacing the landscaping, fences, utilities and any other improvements lying therein, each for construction, maintenance, repair and replacement of the improvements designated on the Plat as to such area, and purposes incidental thereto. Lot Owners are prohibited from obstructing the Association's access to, or constructing any improvements within, the easement areas described in this subsection b. without the Association's express written consent, which may be withheld. If any Lot Owner or occupant, or their respective agents, guests or invitees, constructs any unpermitted improvements within the easement area described in this subsection, then the Association shall have the right to remove the same at the Owner's expense, and to assess such Lot Owner for the cost thereof as a Specific Assessment.

c. Each portion of the Property is hereby burdened with a perpetual, non-exclusive easement in favor of each other portion of the Property for the drainage of ground and surface waters into, over and throughout the Surface Water Management System in the manner established by Developer as part of the Work.

4. Property Boundary Fence or Landscape Buffer. As part of the Work, Developer may construct privacy fence(s), wall(s) and/or landscaped buffer(s) across some of the Lots and/or portions of the Common Area to separate the Property or portions thereof from adjoining portions of the Property, rights-of-way or other properties (as applicable, the "Property Boundary Buffer"). All Lots adjacent to any Property Boundary Buffer, or upon which portions of the Property Boundary Buffer are located, are subject to an exclusive perpetual easement for the location of the Property Boundary Buffer. All such Lots are also subject to easements to the Association for maintenance, repair and replacement of the Property Boundary Buffer and the landscaping associated therewith, which may be exercised by the Association if the Lot Owner fails to properly maintain the Property Boundary Buffer as hereinafter provided. Additionally, with respect to Property Boundary Buffers, the following rules shall apply:

a. If any portion of a Property Boundary Buffer is located on or adjacent to any Lot, (i) the Owner of the adjacent Lot shall maintain, at such Lot Owner's cost and expense, the interior of such Property Boundary Buffer facing such Owner's Lot, (ii) the Association shall maintain the exterior of the Property Boundary Buffer, and (iii) the Association shall restore and repair such Property Boundary Buffer at its expense as and when required.

b. If any portion of a Property Boundary Buffer is located between adjacent Lots, even if located on only one of said Lots, then: (i) each applicable Lot Owner shall maintain, at such Lot Owner's cost and expense, the interior of such portion of the Property Boundary Buffer facing such Owner's Lot, and (ii) the Owners who own the adjacent Lots shall restore or repair it and shall each equally share in the cost of such restoration and repair of the Property Boundary Buffer.

c. Notwithstanding the above, a Lot Owner who by his or her negligent or willful act causes damage to or the destruction of a Property Boundary Buffer shall pay the entire cost of repair or replacement of the damaged portion. The Association shall have the right, but not the obligation, to maintain, repair or replace any Property Boundary Buffer that is the responsibility of a Lot Owner in the event the applicable Lot Owner fails to do so, and to assess such Lot Owner for the cost thereof as a Specific Assessment.

5. Plat Easements. Reference is made to the utilities, drainage, ingress and egress, non-access, and other easements shown on the Plat. The Developer shall have the unrestricted right without the approval or joinder of any other Person to designate the use and to alienate, release or otherwise assign the easements shown on the Plat unless such easements have been previously conveyed or dedicated. The easements may be used to construct, maintain and operate water mains, drainage ditches, sewer lines and other suitable installations for drainage and sewage disposal, or for the installation, maintenance, transmission and use of electricity, gas, telephone, cable systems, reclaimed irrigation water or treated effluent and other utilities, whether or not the easements are shown on the Plat to be for drainage, utilities, or other purposes. The Owners of the Lots subject to easements shown on the Plat shall acquire no right, title or interest in any of the cables, conduits, pipes, mains, lines, or other equipment or facilities placed on, over or under the easement area. The Owner of a Lot subject to any easement shall not construct any improvements on the easement areas, nor alter the flow of drainage, nor landscape such areas with hedges, trees or other landscape items that might interfere with the exercise of the easement rights. If any Owner constructs any improvements on such easement areas or landscapes such areas as aforesaid, the Owner of the Lot shall remove at the Owner's expense the improvements or landscape items upon written request of Developer, the Association or the grantee of the easement. If the Owner fails to promptly remove improvements or landscaping, the Developer, the Association or the grantee of the easement may enter on the Lot and remove the improvements or landscaping at the expense of the Owner, who shall reimburse the cost of removal within fifteen (15) days of demand. The party removing the improvements or landscaping shall not be liable for trespass, nor responsible for any damage caused by the removal and shall not be required to restore any portion of the Lot damaged by the removal.

6. Lake or Pond and Surface Water Management Easements. It is anticipated that the Association will own and/or maintain, as applicable, portions of the Surface Water Management System. The Association is hereby granted: (a) perpetual non-exclusive unobstructed drainage easements over and through the Surface Water Management System and the ponds, lakes, marshes and other wetlands situated in whole or in part on the Property, whether part of the Surface Water Management System or otherwise; (b) perpetual non-exclusive easements for access and maintenance, including an easement for ingress and egress over and across all areas of the Surface Water Management System and all streets, roadways, Common Areas, driveways and walkways, including the right to enter upon any portion of any Lot which is a part of, or adjacent to the Surface Water Management System or any pond, lake, marsh or wetland, whether part of the Surface Water Management System or otherwise, at any reasonable time and in a reasonable manner, for purposes of operating, maintaining and repairing the Surface Water Management System as required by this Declaration, any Plat, any instrument recorded in the Public Records, the SJRWMD Permit or by Law, as applicable, including, but not limited to, work within the retention areas, drainage structures, and drainage easements; and (c) perpetual non-exclusive easements over and across

each Lot bordering on or encompassing any portion of the Surface Water Management System, or a pond, lake, marsh or wetland, whether part of the Surface Water Management System or otherwise, from the top of the embankment to the rear lot line (including any submerged portions of the Lot), for the installation, use, maintenance, repair and replacement of the Surface Water Management System.

7. All Rights and Easements Appurtenant. The benefit of all rights and easements granted by this Article constitute a permanent appurtenance to, and pass with, the title to every portion of the Property enjoying such benefit. Whenever any such right or easement is described as nonexclusive by this Article, its benefit nevertheless is exclusive to the portions of the Property granted such benefit by this Article unless expressly granted to additional Persons. In no event does the benefit of any such easement extend to the general public.

8. Ownership Rights Limited to Those Enumerated. No transfer of title to any Lot passes any rights in and to the Common Area, except as expressly enumerated in this Declaration. No provision in any deed or other instrument of conveyance of any interest in any Lot shall be construed as passing any right, title, and interest in the Common Area, except as expressly provided in this Declaration. Any Owner may delegate his or her right of enjoyment and other rights in the Common Area to any Persons from time to time lawfully occupying such Owner's Lot, subject to the Association's Rules.

9. Platting and Subdivision Restrictions. Developer may, from time to time, replat all or any part of the Property owned by Developer, and may widen or extend any right-of-way shown on the Plat or convert a Lot or other portions of the Property for use as a right-of-way or other uses, provided that Developer owns the lands where such changes occur. Developer may also establish covenants and restrictions and amendments thereto with respect to any such portion of the Property. No Owner, other than Developer, shall subdivide or change the boundary lines of its Lots or combine its Lots without the prior written approval of (a) Developer, if prior to Turnover, or (b) the Board, if after Turnover. Any such action shall only be effective upon the prior written approval described in subsection (a) or (b) above, if required by this section, and recording in the Public Records of the Plat or other instrument reflecting the subdivision or new boundaries of the affected Lots.

### ARTICLE III

#### USE RESTRICTIONS AND NOTICES

1. Residential Use. Each Lot and the buildings constructed thereon shall be used for single family residential purposes only. Only one (1) single family dwelling may be constructed on each Lot. No trade, business, commercial activity or profession may be conducted in, on, or from any Lot. The foregoing does not prohibit a "home office" within a Residential Unit, provided that: (a) no work or service is conducted on the Lot that can be seen or heard outside of the Residential Unit; (b) there is not a material increase in traffic to and from the Lot; and (c) no one other than the Owner or lawful occupants of the Residential Unit shall regularly work at or visit the "home office" for business purposes. The letting, renting, or leasing of Residential Units for non-transient residential purposes shall not constitute a trade or business. The restriction herein does not prohibit Builder's operation of a model home or sale center on any Lot and/or Residential Unit.

2. Design Guidelines. In addition to this Declaration, the Property is subject to the Design Guidelines. Each Owner, by acceptance of title to Owner's Lot acknowledges and agrees that Owner's ownership, improvement and use of Owner's Lot is subject to the terms of the Design Guidelines and this Declaration. To the extent that the Design Guidelines are more restrictive as to any matter set forth in this Article III, then the provisions of the Design Guidelines shall control.

3. Parking Restrictions and Garages.

a. Parking. No vehicle, boat, mobile home, or trailer may be parked, stored, or repaired anywhere within the Property except that functional passenger automobiles, vans, motorcycles, and non-

commercial trucks of one (1) ton capacity or less (collectively "**Permitted Vehicles**") may be parked in the garage or driveway of the Residential Unit, or in any approved parking areas on the Lot. Street parking within the Property is prohibited during the hours of 2:00 a.m. to 5:00 a.m. No Permitted Vehicle may be parked on any sidewalk, including any sidewalk which crosses over a driveway. Boats, trailers, motor homes, recreational vehicles and other vehicles that are not Permitted Vehicles may be regularly parked only in the garage of a Residential Unit. No parking places may be constructed on any Lot, except as constructed in accordance with plans and specifications approved by Developer. Commercial vehicles or any Permitted Vehicles with advertising thereon shall not be parked within public view on a regular basis. The Association may enforce the foregoing restrictions in any lawful manner, including the imposition of reasonable, uniform fines for willful or repeated violations. Nothing in this subsection prohibits the emergency repair or servicing of Permitted Vehicles, so long as such repair or servicing is completed within forty-eight (48) hours, or the occasional parking of vehicles by delivery personnel or guests of Owners in a manner not complying with this subsection.

b. Garages. All Residential Units must be constructed with a garage, which shall contain at least two (2) standard size parking places usable for parking vehicles. All garages must have electric door openers which shall be maintained in a useful condition and shall be kept closed when not in use. No garage shall be permanently enclosed or converted to another use.

c. Driveways. All improved Lots shall have a paved driveway constructed of a material approved by the Developer as part of the plans and specifications for the Residential Unit.

4. Occupancy and Leasing Restrictions.

a. Occupancy. Each of the Residential Units shall be occupied only by the Owner or lessee of a Residential Unit, members of their family, their servants and nonpaying social guests. Entire (but not portions of) Residential Units may be rented provided the occupancy is only by the lessee and the members of their family, servants and nonpaying social guests.

b. Lease Requirements. All rentals of Residential Units shall be documented by a written lease which shall set forth, among other things, the address of the Residential Unit, the name(s) of the tenants, the lease commencement date and the term. A copy of the fully executed lease shall be delivered by the Owner to the Secretary of the Association within five (5) days of the full execution of such lease. Rentals of less than seven (7) months in duration, or the operation of a rooming house, hostel or hotel, shall be deemed to be a commercial use for purposes of enforcement of this Declaration, and are prohibited. The tenants who are occupying a Residential Unit pursuant to a written lease shall be permitted to use the Common Area during the lease term, provided that (i) the tenants comply with any and all policies, and Rules of the Association, and (ii) the Owner assigns to such tenant and relinquishes Owner's right to use the Common Area during the lease term. Sub-leasing is strictly prohibited, and the tenant under any lease must be the occupant of the Residential Unit.

c. Compliance. All tenants shall be subject to the terms and conditions of the Governing Documents and the rules and regulations promulgated thereunder as though such tenant were an Owner. Each Owner agrees to cause his or her lessee, and the occupants, or persons living with Owner or with his or her lessee to comply with the Governing Documents and the Rules. Each Owner is responsible and liable for all violations and losses caused by such tenants or occupants, notwithstanding the fact that the occupants of the Residential Unit are also fully liable for any violation of the documents and regulations. In the event that a lessee or occupant violates a provision of the Governing Documents or the Rules, the Board shall have the power to bring legal proceedings against the lessee to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity. The Owner will be jointly and severally liable with the tenant to the Association for any amount (as determined in the sole discretion of the Association) which is required by the Association to repair any damage to any portion of the Property or to pay any claim for personal injury, death or damage to property caused by the act or omission of the tenant. Special Assessments may be levied against the Lot for such amounts.

5. Animals. No animals, livestock, or poultry shall be raised, bred, or kept anywhere within the Property, except that common household pets may be kept by the occupants of each Residential Unit, provided such pets are not kept, bred or maintained for any commercial purpose and provided further that such pets are neither dangerous nor a nuisance to the residents of the Property. "Common household pets" means dogs (excluding Pit Bull and Rottweiler breeds), cats, rabbits, domestic birds, fish, gerbils, hamsters, and other types of pets that are contained inside the home within an aquarium, terrarium, small cage or similar type device as long as they are not poisonous or hazardous should they escape. Dogs must be kept on a leash or within enclosed areas at all times. Owners of a cat or dog shall be required to remove immediately all forms of animal waste from the Property, including, without limitation, lawns, walks, driveways, and parking areas. The maximum number of pets that may be kept on a Lot shall be two (2), unless otherwise set forth from time to time in the Rules of the Association.

6. Owner Maintenance. All Owners of Lots with completed residences thereon shall keep and maintain such Owner's Lot (including that portion of the Lot between sidewalks, if any, and the street), together with the exterior of all buildings, structures and improvements located thereon, in a first class, neat, attractive, sanitary and substantial condition and repair, including without limitation: having the grass regularly cut and exercising generally accepted landscape management practices including, without limitation, pruning, edging, weeding, insect control, and removal of dead plant material; painting, repairing, replacing and caring for roofs, gutters, downspouts, garage doors, exterior building surfaces, lighting fixtures, fences and gates, decks and patios, shutters, windowpanes, storm windows, house numbers, shrubs and other vegetation, walks, driveways and other paved areas, recreational equipment, playhouses, and all other exterior improvements, such as to keep the same in a condition comparable to their original condition, normal wear and tear excepted. All lawns must be kept free of clutter, including, without limitation, toys and play items and yard equipment.

No structure shall be permitted to stand with its exterior in an unfinished condition for longer than twelve (12) months after the commencement of construction. In the event of fire, windstorm, extreme weather or other damage, the exterior of a structure shall not be permitted to remain in a damaged condition for longer than three (3) months, unless expressly permitted by the Board in writing. The Association shall have the right to enter upon a Lot for the purposes of bringing a Lot in compliance with this Section, and this right shall include the right to mow grass, trim landscaping, and remove trash or debris. The cost for the Association to undertake this work shall be assessed against the Lot as a Specific Assessment.

7. Storage of Fuel Tanks, Garbage and Trash Receptacles. No on-site storage of liquefied petroleum, gas or other fuels shall be permitted on any Lot except as may be necessary or reasonably used for yard equipment, swimming pools, spas, barbecue grills, gas ranges, fireplaces or similar devices, and in compliance with the Rules and with all applicable laws and codes. Allowed propane tanks larger than five (5) gallons must be buried underground. This restriction is designed to reduce environmental risks associated with fuel storage and to minimize the hazards associated with on-site fuel storage. Except for regular collection and disposal, no rubbish, trash, garbage, or other waste material or accumulations shall be kept, stored, or permitted anywhere within a Lot, except inside the Residential Unit, or in refuse containers concealed from view. All trash, garbage and refuse shall be placed for pickup not earlier than the evening preceding pickup, and all containers for garbage and refuse shall be returned no later than the evening of pickup to their normal, hidden location. Except for normal construction debris on any Lot during the course of construction of the Residential Units, no weeds, garbage, refuse or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property.

8. Utilities.

a. All potable water facilities and service to the Property shall be supplied by the public water supply system installed by the City of Palm Bay or by the Developer as part of the Work. ~~Except for wells installed by Developer, no well of any kind~~ No individual water supply system shall be permitted on any Lot, except that wells may be dug or drilled on the Property, including wells used as necessary to provide irrigation for the landscaping located on Lots, provided that a method of stain reduction is utilized in conjunction with such irrigation well. The

irrigation systems for the Lots shall not draw upon water from creeks, streams, ponds, lakes, retention or detention areas, or other bodies of water within the Property. In the event and to the extent that a reclaimed or similar irrigation system is installed by Developer within the Property, then each Owner shall be required to use the same for irrigation in lieu of potable water. No wastewater may be discharged on the open ground or into any pond, lake, marsh or wetland. All electricity service lateral lines and installations on a Lot shall be located underground, and shall be installed and maintained in accordance with the specifications of the electric utility provider installing same. All Lots shall contain irrigation systems that are located entirely underground, and such system on each Lot must be maintained by the Lot Owner in good and operable condition and repair at all times, and in compliance with applicable governmental requirements. ~~The irrigation systems for the Lots shall not draw upon water from creeks, streams, ponds, lakes, retention or detention areas, or other bodies of water within the Property. In the event and to the extent that a reclaimed or similar irrigation system is installed by Developer within the Property, then each Owner shall be required to use the same for irrigation in lieu of potable water.~~

b. A septic tank and related system (“**Septic System**”) will be installed on each Lot to serve the Residential Unit to be constructed thereon, and such Septic System on each Lot must be maintained by the Lot Owner in good and operable condition and repair at all times, and in compliance with applicable Laws. Each Owner shall ensure that the Septic System located on such Owner’s Lot functions in a sanitary manner and does not create a sanitary nuisance or health hazard. The Association shall have the right to enter upon a Lot for the purposes of bringing a Lot in compliance with this Section 8(b), and this right shall include the right to repair the septic tank and related system. The cost for the Association to undertake this work shall be assessed against the Lot as a Specific Assessment.

9. Antenna Systems. No antennas, masts, towers, poles, aerials, satellite dishes, or similar appurtenances shall be erected, constructed, or maintained on the exterior of any Residential Unit or Lot, except that one satellite dish of one (1) meter or less may be installed, subject to reasonable architectural criteria established and reviewed by the Association regarding location and screening which do not unreasonably interfere with signal reception.

10. Renewable Resource Devices. Nothing in this Declaration shall be deemed to prohibit the installation of energy devices based on renewable resources (e.g., solar collector panels); provided, however, such devices shall be installed only in accordance with the reasonable standards adopted from time to time by the Board and with such Board’s approval. The standards shall be reasonably calculated to maintain the aesthetic integrity of the Property without making the cost of the aforesaid devices prohibitively expensive.

11. Signs, Banners, Flags and Mailboxes.

a. Signs. No sign of any kind shall be placed in the Common Area except by or with the approval of the Developer or the Board. No sign of any kind shall be displayed to public view within any Lot, except: (i) customary address signs; (ii) a lawn sign of not more than four (4) square feet in size advertising a Lot for sale or rent, which complies with the requirements of the Rules, and (iii) a sign no more than one (1) square foot in size provided by a contractor for security services located within ten (10) feet of any entrance to the Residential Unit on such Lot. All signs permitted by this subsection must be approved by the Developer (as to initial construction or address signs) or the Board.

b. Banners and Flags. The following flags may be displayed on each Lot in accordance with the Rules or the Design Review Guidelines: (i) one (1) flag of the United States of America; and (ii) one (1) flag of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag. No banners or other flags may be displayed on a Lot, except as permitted by the Board.

c. Mailboxes. The size, design and color of all mailboxes and the supporting structures must be approved by the Developer or the Board and must comply with United States Postal Service regulations. Developer or the Board may establish a uniform type of mailbox and supporting structure (including size, design



and color) for use within the Property, in which event only such uniform mailboxes shall be permitted within the Property. It is the responsibility of the Owner of each Lot to purchase and maintain its mailbox in an "as new" condition, and replace it as necessary with a mailbox approved by the Board. The Association shall have the right, but not the obligation, to maintain, repair or replace any mailboxes in the event the applicable Lot Owner(s) fail to do so, and to assess such Owner(s) for the cost thereof as a Specific Assessment.

12. Window Treatments and Air Conditioners. No reflective foil, reflective glass or other reflective material shall be installed or maintained on any windows of a Residential Unit. The portion of drapes, blinds, and other window coverings visible from the outside of the Residential Unit shall be a solid (non-patterned) color. No window air conditioning units shall be permitted. All exterior components of air conditioning units shall be screened from view from adjacent Lots and streets by approved fences, walls or shrubbery, which shall be installed to minimize noise from the air conditioning unit.

13. Barbeque Grills. No Barbeque grills shall be placed in the front yard of any Lot, except for temporary use during pre-approved neighborhood or special events.

14. Clothes Drying. No clothesline or similar device shall be erected or installed on any Lot or another part of the Property, and no exterior portion of any Lot shall be otherwise used as a drying or hanging area for laundry of any kind, unless erected, installed or used in such manner so as not to be visible from the streets within the Property or from any adjoining Lot, including Lots to the rear. This provision shall not be interpreted as a prohibition against clotheslines, but rather as a requirement that they be completely screened so as to not be visible to other Owners.

15. Security Alarms. Security alarms audible outside of the Residential Unit must be connected to a monitoring service that is able to shut-off the alarm, or the security alarm must automatically shut-off after not more than fifteen (15) minutes.

16. Obnoxious or Offensive Activity. No activity or use shall be allowed upon the Property which is a source of annoyance, embarrassment or discomfort to Owners or their tenants or invitees, or which interferes with the peaceful possession and proper use and enjoyment of the Property, nor shall any improper, unsightly, offensive or unlawful use be made of any Lot, Residential Unit or the Common Area, and all laws and regulations of applicable governmental bodies shall be observed. The Property shall be used, enjoyed and occupied in such manner as not to cause or produce any of the following effects discernible outside any Residential Unit; noise or sound that is objectionable because of its volume, duration, beat, frequency or shrillness; smoke; noxious, toxic or corrosive fumes or gases; obnoxious odors; dust, dirt or fly ash; unusual fire or explosive hazards; vibration; or interference with normal television, radio or other telecommunication by other Owners.

17. Soliciting. The distribution of any and all handbills, flyers or doorknob hangers, for the purpose of soliciting business or any other agenda is strictly prohibited. Door-to-door solicitation is not permitted within the Property.

18. Garage Sales. Owners may not advertise or hold garage sales or yard sales within the Property, except that community-wide garage sales may be held with prior approval of the Board.

19. Holiday Lights and Decorations. Outdoor holiday lighting and decorations may be placed upon the exterior portions of a residence or displayed upon a Lot during a period commencing thirty (30) days prior to a holiday and continuing for thirty (30) days after such holiday, after which time such lighting and decorations shall be removed.

20. Vegetable Gardens. No vegetable garden shall be erected, installed or maintained on any Lot unless erected, installed or maintained within a fenced-in rear yard in such manner so as not to be visible from the streets within the Property or from any adjoining Lot, including Lots to the rear.

21. Waterbodies and Wetlands.

a. Access by Owners. No Owner, other than the Owner of the particular Lot abutting a pond or lake, shall have any rights of access to the portions of the Property lying between the rear property line of any such Lot and the shoreline of any pond or lake.

b. Installations by Owners. Owners (other than Developer) and occupants of Lots located adjacent to ponds, lakes, marshes or wetlands have no right to attach docks, anchor or store boats or other watercraft, or to clear, or otherwise disturb vegetation between the boundary of the Lot and such ponds, lakes, marshes and wetlands. Owners and occupants of such Lots located adjacent to ponds, lakes, marshes or wetlands have no right to install landscaping, fences, retaining walls or other improvements along the boundary of their Lot or the pond, lakes, marsh or wetland, unless expressly permitted by the Design Review Committee.

c. Drainage and Irrigation Uses. No Owner except Developer shall have the right to pump or otherwise remove any water from any part of the Surface Water Management System for irrigation or any other use; however, Developer or the Association may do so in compliance with the SJRWMD regulations. Nothing other than stormwater or irrigation waters may be discharged into the Surface Water Management System. Notwithstanding any provision of this Declaration to the contrary, Developer reserves a perpetual easement and right to drain water into the Surface Water Management System in compliance with the SJRWMD Permit and to use the water within the Surface Water Management System for irrigation or any other use permitted pursuant to applicable governmental regulations and subject to obtaining appropriate permits therefor. Developer also reserves the right, subject to the SJRWMD Permit, to alter the Surface Water Management System from time to time to enhance the Surface Water Management Systems' operation and effectiveness, including dredging, reconstruction of banks, reconfiguration of shorelines, installation and removal of drainage facilities, and similar activities.

d. WARNING. ALL OWNERS, GUESTS, TENANTS, LICENSEES, INVITEES, AND ANY AND ALL OTHERS CONCERNED (COLLECTIVELY, "USERS"), ARE HEREBY NOTIFIED OF THE POTENTIAL DANGERS ASSOCIATED WITH THE PONDS, LAKES, MARSHES AND WETLANDS LOCATED WITHIN THE PROPERTY. ANY PONDS OR LAKES WITHIN THE PROPERTY ARE ARTIFICIAL AND MAY CONTAIN STEEP SLOPES, SHARP DROPS AND CHANGES IN DEPTH, UNRELIABLE EMBANKMENTS, AND/OR OTHER POTENTIAL HAZARDS OR DANGERS, INCLUDING, WITHOUT LIMITATION, ALLIGATORS, SNAKES AND OTHER WILDLIFE. ALL USERS ARE HEREBY FORMALLY NOTIFIED AND CAUTIONED OF THE POTENTIAL DANGERS ASSOCIATED WITH THE PONDS, LAKES, MARSHES AND WETLANDS. NEITHER THE DEVELOPER NOR THE ASSOCIATION ASSUMES ANY RESPONSIBILITY AS TO ANY PERSONAL INJURY OR DEATH THAT MAY ARISE IN CONNECTION WITH ANY PONDS, LAKES, MARSHES OR WETLANDS. ALL USERS ASSUME ALL RISKS AND ANY LIABILITY ASSOCIATED WITH ANY PERSONAL INJURY OR DEATH THAT MAY ARISE IN CONNECTION WITH ANY PONDS, LAKES, MARSHES OR WETLANDS.

Each Owner, by acceptance of title to a Lot, is deemed to have assumed all risks and liability associated with residing adjacent to, or near, any pond, lake, marsh or wetland, and is hereby deemed to have agreed to hold harmless the Developer and the Association from any claims associated with the ponds, lakes, marshes and wetlands within or adjacent to the Property, and to assume all risks and any liability associated with any personal injury or death that may arise in connection with the ponds, lakes, marshes and wetlands within or adjacent to the Property with respect to themselves, family members, invitees, licensees, social guests, lessees, or any others affiliated with the Owner. Any Person entering upon or near or otherwise using any pond, lake, marsh or wetland

shall be responsible for his or her own personal safety and shall assume all risks of personal injury or death relating to such entry or use. In particular, parents or caretakers of minors, or others which may require adult supervision or assistance, should exercise caution in connection with the ponds, lakes, marshes and wetlands within or adjacent to the Property. Developer and the Association shall not in any way be a guardian or insurer of safety in connection with the presence, entry upon, or use of any ponds, lakes, marshes or wetlands within or adjacent to or within the Property, and shall not be held liable or responsible for any personal injury or death, property damage, or any other loss due to, arising out of, or related to use thereof for any purpose. Because of the potential dangers, no Owner or his or her family members, invitees, licensees, social guests, lessees, or any others affiliated with the Owner shall have any right to utilize the ponds, lakes, marshes or wetlands for any recreational purposes, including, without limitation, swimming, fishing, boating, docks, or otherwise, except as expressly authorized by this Declaration, the Design Guidelines, the Association's Rules, the Lake Rules, the SJRWMD Permit, and/or any applicable County requirements, and subject to any prohibitions promulgated under any of the foregoing rules and regulations.

e. Disclaimer. Neither Developer nor the Association makes any warranties, representations or guaranties regarding the ponds, lakes, marshes and wetlands within or adjacent to the Property: (i) as to the use or fitness of the ponds, lakes, marshes or wetlands for a particular purpose, (ii) that the use of any ponds, lakes, marshes or wetlands may or may not be restricted or prohibited in the future, (iii) as to the water quality of any ponds, lakes, marshes or wetlands, (iv) that pond, lake, marsh or wetland levels will be maintained at any particular level, or that the elevation of such waters will remain the same, (v) that the view from any Lots abutting any ponds, lakes or wetlands will be maintained, remain unchanged or unobstructed, or (vi) that Common Docks will be provided or maintained, or that any personal watercraft will be approved, for use in any ponds or lakes. Neither Developer nor the Association makes any assurance or assumes any responsibility as to personal injury or death that may arise from residing adjacent to a pond, lake, marsh or wetland within or adjacent to the Property.

22. Conservation Areas. The Property includes conservation easements recorded against certain portions of the Lots as designated on Plats ("Conservation Areas"), as required by governmental or quasi-governmental authorities having jurisdiction over the Property. Each Owner, by acceptance of title to a Lot, acknowledges that such Conservation Areas have been created in compliance with applicable Law to provide for the perpetual restriction and maintenance of such areas to promote habitat preservation and to protect environmental resources within the Property. All such Conservation Areas are intended to be maintained by the Association as Common Maintenance Areas. Each Owner, by acceptance of title to a Lot, acknowledges that the Association is required to, and will conduct certain maintenance activities within the Conservation Areas from time to time, and each Owner agrees not to impede the same. Each Owner, by acceptance of title to a Lot, acknowledges and agrees that the Conservation Areas may be utilized only in such manner as permitted by the conservation easements established by the Plats, by separate conservation easements recorded against the Conservation Areas, by applicable Law, or as permitted by this Declaration, and for no other purposes. The Conservation Areas may not be utilized for development of any building sites and must, to the extent practicable, be left in their natural state. No Owner shall clear any Conservation Area, dump any materials into any Conservation Area, plant any nuisance or exotic species in or adjacent to any Conservation Area, or otherwise modify its natural state. The Developer reserves the right to provide for road and access crossings through Conservation Areas, and to otherwise make use of the Conservation Areas as permitted by applicable Law. Each Owner shall utilize Conservation Areas only in such manner as may be permitted from time to time by the Association or the Developer, and in no other manner and for no other purpose. The Association is hereby granted perpetual easements, across each Lot which abuts a Conservation Area or any portion of the Property adjacent to a Conservation Area, for ingress and egress to such Conservation Areas for the purposes of exercising any right or performing any obligation provided in this Declaration, the SJRWMD Permit or applicable County or Town requirements and criteria.

23. Permits and Restrictions. The Property has been or will be developed in accordance with requirements of the SJRWMD Permit, and the Association, or any permittee or successor permittee under the

SJRWMD Permit, has the right to assure that all terms and conditions thereof are enforced. The Association, or any permittee or successor permittee under the SJRWMD Permit, shall have the right to bring an action, at law or in equity, against a Lot Owner violating any terms or provision of the SJRWMD Permit. No person shall alter the drainage flow of the Surface Water Management System, including buffer areas or swales, without the prior written approval of the SJRWMD.

All Owners of Lots shall, by acceptance of title to a Lot, be deemed to have assumed the obligation to comply with the requirements of the SJRWMD Permit as such relate to the Lot. Except as required or permitted by the SJRWMD, no Owner of a Lot shall alter, fill, dredge, place sod or excavate, or perform similar activities on any portion of their Lot or adjacent areas which contains jurisdictional wetlands, uplands buffers, or conservation areas as established by the ACOE or SJRWMD, unless and until such activity is authorized by or exempt from the requirements of ACOE and SJRWMD. In the event that a Lot Owner violates the terms and conditions of the SJRWMD Permit and for any reason the Developer, the Association, or any permittee or successor permittee under the SJRWMD Permit, is cited therefor, the Lot Owner agrees to indemnify and hold the Developer, the Association, and any permittee or successor permittee under the SJRWMD Permit, harmless from all costs arising in connection therewith, including without limitation all costs and attorneys' fees as well as costs of curing such violation. Unless first approved by the Association and SJRWMD, no Owner other than the Developer may obstruct, alter or in any way modify the method and/or structures of drainage utilized or installed by Developer or the Association from, on or across any Lot, Common Area, Common Maintenance Area or easement area; nor shall any structure or material be erected, placed or maintained which shall in any way obstruct such drainage devices or facilities or impede their efficient operation. No elevation changes shall be permitted on any Lot which materially adversely affect the drainage of or to neighboring Lots or the Common Area.

The Owners shall not remove native vegetation (including cattails) that becomes established within the wet detention ponds abutting their Lot. Removal includes dredging, the application of herbicide, cutting, and the introduction of grass carp. Lot Owners shall address any questions regarding authorized activities within the wet detention ponds to SJRWMD.

No Owner of a Lot or other property within the Property may construct or maintain any building, Residential Unit, or structure, or undertake or perform any activity in or to any portion of the Surface Water Management System, including, without limitation, the wetlands, wetland mitigation areas, buffer areas, upland conservation areas and drainage easements described in the SJRWMD Permit and recorded Plat or Plats of the Property, unless prior approval is received from SJRWMD. Such prohibited activities shall include, without limitation, digging or excavation, depositing fill, debris or any other material or item, constructing or altering any water control structure, or any other construction to modify the Surface Water Management System.

Each Owner within the Property at the time of construction of a building, Residential Unit, or structure shall comply with the construction plans for the Surface Water Management System approved and on file with SJRWMD.

No Owner, except Developer, shall have the right to pump or otherwise remove any water from any part of the Surface Water Management System for irrigation or any other use; however, Developer or the Association may do so in compliance with the SJRWMD regulations. Nothing other than stormwater or irrigation waters may be discharged into the Surface Water Management System. Notwithstanding any provision of this Declaration to the contrary, Developer reserves a perpetual easement and right to drain water into the Surface Water Management System in compliance with the SJRWMD Permit and to use the water within the Surface Water Management System for irrigation or any other use permitted pursuant to applicable governmental regulations and subject to obtaining appropriate permits therefor. Developer also reserves the right, subject to the SJRWMD Permit, to alter the Surface Water Management System from time to time to enhance the Surface Water Management Systems' operation and effectiveness, including dredging, reconstruction of banks, reconfiguration of shorelines, installation and removal of drainage facilities, and similar activities.

24. General Prohibitions and Indemnity. No activity is permitted, nor shall any object or substance be kept, stored, or emitted, within the Property in violation of Law. Each Owner shall defend, indemnify, and hold the Association and other Owners harmless against all loss from damage or waste caused by such Owner, or by any occupant of such Owner's property. Notwithstanding the foregoing, or any other provision of the Declaration to the contrary, an Owner's liability to the Association for unintentional acts or omissions is limited to the available proceeds of any insurance maintained by such Owner or the Association if, at the time of such act or omission, such Owner or the Association has reasonably adequate insurance in force. Collection of such proceeds is at the Association's risk. To the extent from time to time available, the Association's insurance must provide for waiver of subrogation by the Association's insurer against any Owner because of any unintentional act or omission for which such Owner is responsible under this section.

25. Security. Neither Developer nor the Association shall be obligated to maintain or support certain activities within the Property designed to make the Property safer than they otherwise might be, and neither Developer nor the Association has assumed or shall be deemed to have assumed any such obligation by virtue of installing and maintaining an entry gate within the Property. Any such entry gate, if installed, is for privacy and appearance only and is not intended to serve as a security measure.

NEITHER THE ASSOCIATION NOR DEVELOPER SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY, HOWEVER, AND NEITHER THE ASSOCIATION NOR THE DEVELOPER 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 AND OCCUPANTS OF ANY LOT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND DEVELOPER DO NOT REPRESENT OR WARRANT THAT (A) ANY FIRE PROTECTION SYSTEM, ELECTRONIC MONITORING SYSTEM, GATEHOUSE OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DEVELOPER OR THE ARCHITECTURAL REVIEW COMMITTEE MAY NOT BE COMPROMISED OR CIRCUMVENTED, (B) THAT ANY FIRE PROTECTION OR ELECTRONIC MONITORING SYSTEMS, GATEHOUSE OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, OR (C) THAT FIRE PROTECTION OR ELECTRONIC MONITORING SYSTEMS, GATEHOUSE OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, AND DEVELOPER ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO HOMES AND TO THE CONTENTS OF HOMES AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, THE DEVELOPER HAS MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR ELECTRONIC MONITORING SYSTEMS, GATEHOUSES OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

26. Water Levels. Each Owner, by acceptance of title to such Owner's Lot, acknowledges that all lakes and ponds (singularly referred to as "Lake Area" and collectively referred to as "Lake Areas") within the Property are designed as Surface Water Management System areas and are not designed as aesthetic features. Permits from various regulatory agencies, including SJRWMD govern the control of water levels. Due to varying

climatic conditions, environmental conditions of water use requirements, including, without limitation, fluctuations in ground water elevations, water usage by applicable utilities, priorities established by governmental authorities, and other causes out of the control of Developer, the County, the Town, and the Association, the water levels in the Lake Areas, depending on conditions, will rise and fall as often as daily and on occasion the water level may decline significantly and result in changes to the appearance of the Lake Area. These water level fluctuations and changes in the appearance of the Lake Areas are considered normal occurrences. Each Owner further understands and acknowledges that neither Developer nor the Association have control over such water level fluctuation nor associated impacts to plant growth in the Lake Areas, therefore, by acceptance of title to such Owner's Lot, each Owner hereby releases and holds harmless Developer and the Association (the "Releasees") from and against any and all claims, demands, damages, costs and expenses, including attorneys' fee and costs, arising from water level fluctuations. No Owner, other than Developer and the Association, and then subject to the SJRWMD Permit, shall not alter, modify, expand, or fill any Lake Area.

27. **DRAINAGE EASEMENTS ON PLAT. THE PRIVATE DRAINAGE EASEMENTS SHOWN ON THE PLAT ("DRAINAGE AREAS") ARE COMMON MAINTENANCE AREAS TO BE MAINTAINED BY THE ASSOCIATION. NOTWITHSTANDING THE FOREGOING, THE OWNER OF A LOT LYING SUBJECT TO ANY SUCH DRAINAGE AREA SHALL SHALL MAINTAIN SUCH DRAINAGE AREA, KEEP IT FREE OF DEBRIS AND NOT CONSTRUCT ANY IMPROVEMENTS IN, OR LANDSCAPE THE DRAINAGE AREA EXCEPT AS EXPRESSLY ALLOWED BY THE ASSOCIATION. IF ANY OWNER OR OCCUPANT OF A LOT, OR THEIR RESPECTIVE AGENTS, GUESTS OR INVITEES, FAILS TO MAINTAIN SUCH DRAINAGE AREAS AS REQUIRED HEREIN, OR CONSTRUCTS ANY IMPROVEMENTS WITHIN ANY DRAINAGE AREA IN VIOLATION OF THIS SECTION 27, THEN THE ASSOCIATION SHALL HAVE THE RIGHT TO ENTER ONTO SUCH LOT AND MAINTAIN THE DRAINAGE AREA AND REMOVE THE SAME ANY IMPROVEMENTS THEREIN AT THE OWNER'S EXPENSE, AND TO ASSESS SUCH LOT OWNER FOR THE COST THEREOF AS A SPECIFIC ASSESSMENT.**

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

1. **Membership.** Every Owner of a Lot is a Member of the Association and is entitled to one (1) membership for each Lot owned. Each membership is appurtenant to the Lot upon which it is based and is transferred automatically by conveyance of title to the Lot whereupon the membership of the previous Owner automatically terminates. No Person other than an Owner of a Lot may be a Member of the Association, and a membership in the Association may not be transferred or encumbered except by the transfer of title of the Lot to which it is appurtenant.

2. **Classification.** The Association has two (2) classes of voting membership:

a. **Class A.** So long as there is Class B membership, Class A Members are all Lot Owners except Developer. Class A Members are entitled to one (1) vote for each Lot owned by the Lot Owner, except as herein provided regarding the Developer. Upon Turnover, Class A Members are all Lot Owners, including Developer so long as Developer is an Owner.

b. **Class B.** The Class B Member is the Developer who is entitled to three (3) votes for each Lot and proposed Lot owned by it within the Property. The provisions of Article V of the Declaration exempting portions of the Property owned by the Developer from the Association's assessments do not affect the calculation of the Class B Member's voting rights under this subsection. Developer's Class B membership will be converted to Class A membership upon Turnover.

3. Turnover of Association Control. Developer shall have the right to elect or appoint all members of the Board until such time as Members, other than Developer, are entitled to elect at least one (1) member of the Board in accordance with the Bylaws, provided the Members exercise such right. Thereafter, Developer shall be entitled to appoint or elect at least a majority of the Board until Turnover. Owners, other Developer, shall be entitled to elect at least a majority of the members of the Board when the earlier of the following events occurs ("Turnover"):

a. Three (3) months after ninety percent (90%) of the Lots in the Property have been conveyed to Owners other than Developer; or

b. When Developer, in its discretion, so determines and declares it in an instrument recorded in the Public Records; or

c. The occurrence of any event described in Section 720.307(1), *Florida Statutes*, or any successor provision thereto, which causes transition of control of the Association.

Upon Turnover, the Owners, other than Developer, shall be obligated to assume control of the Association, subject to Developer's rights set forth in this Declaration and in the Bylaws, which continue beyond Turnover. Notwithstanding Turnover, Developer shall be entitled to elect at least one (1) member of the Board of Directors as long as Developer holds for sale in the ordinary course of business at least five percent (5%) of the Lots in the Property. After Turnover, Developer may exercise the right to vote any Developer-owned voting interests in the same manner as any other Owner, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board of Directors.

4. Co-Ownership. If more than one Person holds the record title to any Lot, all such Persons are Members but only one (1) vote may be cast with respect to such Lot, and no fractional votes are permitted. Before any meeting at which a vote is to be taken, each co-owner must file the name of the authorized voting co-owner with the Secretary of the Association to be entitled to vote at any such meeting, unless such co-owners have filed a general voting authority with the Secretary applicable to all votes until rescinded. Notwithstanding the foregoing, if title to any Lot is held by husband and wife, either co-owner is entitled to cast the vote for such Lot unless and until a written voting authority is filed with the Association designating a voting co-owner. If title is held by a corporation, the secretary of the corporation shall file with the Association a certificate designating the authorized voting representative of the corporation, which shall be effective until rescinded by the corporation.

5. Inspection and Copying of Records. The official records of the Association shall be maintained, and shall be made available to Owners for inspection or photocopying, in accordance with the procedures and requirements of Section 720.303, *Florida Statutes*, and any changes thereto.

6. Extraordinary Action. Certain provisions of this Declaration, the Bylaws, or the Articles may provide the approval of a super-majority of the Members for certain actions. In addition, any such action shall require the written approval of the Developer for so long as the Developer is a Member of the Association.

7. Amplification. The Developer and/or Members of the Association shall elect (or appoint, as applicable) the Board of Directors of the Association, who shall manage the affairs of the Association as set forth herein and in the Bylaws. The Board of Directors shall appoint officers of the Association to administer the operation of the Association. The provisions of this Article are amplified by the Association's Articles and Bylaws, but no such amplification shall alter or amend substantially any of the rights or obligations of the Owners set forth in this Article. Developer intends that the provisions of this Declaration and the Articles and Bylaws be interpreted and enforced to avoid inconsistencies or conflicting results. If any such conflict necessarily results, however, Developer intends that the provisions of this Declaration shall control anything to the contrary in the Articles or Bylaws, and that the provisions of the Articles shall control anything to the contrary in the Bylaws.

8. Voting. Notwithstanding anything to the contrary in the Governing Documents, any provision in the Articles, the Bylaws or this Declaration requiring a vote of the Membership shall be deemed to require the vote of Members in good standing who are entitled to vote.

## ARTICLE V

### COVENANTS FOR ASSESSMENTS

1. Creation of the Lien and Personal Obligation for the Assessments. Each Owner of a Lot by acceptance of title to such Lot, whether or not it shall be so expressed in any deed or other conveyance, including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any assessments and other charges established and levied pursuant to the terms of this Declaration, including, without limitation, the Annual Maintenance Assessment, and the Initial Contribution Assessment, as applicable. Assessments shall be fixed, established and collected from time to time as hereinafter provided. All such assessments, together with interest thereon from the date due, at the highest lawful rate and costs of collection thereof, including reasonable attorneys' fees, shall be the personal obligation of the Owner of the Lot at the time the assessment was made. In addition, the assessments against Lots shall be secured by a lien in favor of the Association as set forth herein. No Owner of a Lot may waive, avoid or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or common services, or abandonment of his or her Lot.

2. Exempt Property. The following property shall be exempt from the assessments, charges and liens created herein: (a) Common Area; (b) lands dedicated to the County or other governmental authority, any utility company or the public; (c) Lots owned by Developer prior to Turnover; provided Developer has elected to assume the obligation to pay any operating expenses incurred by the Association that exceed the assessments receivable from other Members and other income of the Association ("**Deficit Fund**"); and (d) Lots owned by any designated Builder which are intended to be sold to third-party homebuyers ("**Builder Lots**") during the period of time that Developer is exempt from payment of Assessments pursuant to subsection (c) of this Section 2. No other land or improvements in the Property shall be exempt from these assessments, charges or liens. No Owner may waive, avoid or otherwise escape liability for the assessments by non-use of the Common Area or common services, or abandonment of his or her Lot.

3. Annual Maintenance Assessments.

a. General. The Annual Maintenance Assessments levied by the Association must be used exclusively to promote the recreation, health, safety, and welfare of the Lot Owners, residents, and occupants of the Property, and for the operation, management, maintenance, repair, renewal and replacement (including maintenance of adequate reserves) of the Common Area, the Common Maintenance Areas, and the Surface Water Management System, the payment of any cost sharing, lease, or other agreements to which the Association is a party, and for the performance of the Association's duties under the Governing Documents. The Annual Maintenance Assessment shall be used to fund all general activities and expenses of the Association incurred in the administration of the powers and duties granted under the Governing Documents and pursuant to Law, including the maintenance of adequate maintenance reserve accounts.

b. Amount. The Developer shall establish the initial Annual Maintenance Assessment in effect upon the recording of this Declaration. At least sixty (60) days prior to the end of each fiscal year, commencing with the fiscal year beginning January 1 immediately following the recording date of this Declaration, the Board shall prepare a budget of the estimated common expenses of the Association for the following fiscal year, which may include (without limitation), insurance, utilities, taxes, professional fees, repairs, reserves, maintenance, other operating expenses and capital improvement budget items approved by the Board. The Board shall establish the amount of the Annual Maintenance Assessment for the following fiscal year to meet



the projected financial needs of the Association as set forth in the budget for said fiscal year. The Board shall send a copy of the applicable budget, together with notice of the amount of the Annual Maintenance Assessments to be levied pursuant to such budget, to each Lot Owner at least thirty (30) days before the fiscal year begins. The Board shall determine the date of commencement, the amount of the assessments, and any payment schedule for each fiscal year. Unless later changed by the Board of Directors, the Annual Maintenance Assessments shall be paid in advance in four (4) equal quarterly installments. The Board of Directors' determination as to the amount of the Annual Maintenance Assessment and manner of collection shall be dispositive; provided, however, that the Annual Maintenance Assessment may not exceed the amount of Five Hundred Dollars (\$500.00) per year per Lot and may not be increased by more than fifteen percent (15%) above the Annual Maintenance Assessment for the previous year unless approved by at least two-thirds (2/3) of the votes of the Members, present in person or by proxy, at a meeting duly convened for such purpose, at which a quorum is present. If the Board fails for any reason to determine a budget for any fiscal year, or if the increase in any Annual Maintenance Assessment in excess of fifteen percent (15%) above the previous year is not approved as required above, then the budget and assessments most recently in effect shall continue in effect until a new budget is determined. The Board may revise the budget and adjust assessments subject to the same requirements set forth above for the initial adoption of each annual budget. The Board shall prepare or cause to be prepared a roster of the Owners and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member during normal business hours in accordance with Section 720.303, *Florida Statutes*.

c. Commencement of Annual Maintenance Assessment. The Annual Maintenance Assessment begins to accrue as to all Lots within the Property, excluding any portion of the Property expressly exempted in this Article, on the first day of the month following conveyance of the first Lot to an Owner other than Developer or a Builder. If the operation of this Declaration is extended to Additional Property as provided herein, then the Annual Maintenance Assessment begins to accrue against all Lots within such Additional Property, excluding any portion of the Property expressly exempted by this Article, on the first day of the first month following the recording in the Public Records of a supplement or amendment to this Declaration extending the operation of the Declaration to such Additional Property. The first Annual Maintenance Assessment against all Lots shall be prorated according to the number of months then remaining in the fiscal year. The first Annual Maintenance Assessment against any parcel shall be prorated according to the number of months then remaining in the fiscal year.

4. Initial Contribution Assessment. At the closing of each sale (other than by Developer to a Builder) and each resale of a Lot within the Property, the homebuyer shall pay to the Association an initial contribution in the amount of \$300.00 (the "**Initial Contribution Assessment**"). The Initial Contribution Assessment shall be in addition to, not in lieu of, the Annual Maintenance Assessment, any Special Assessment or Specific Assessment, levied on the Residential Unit, and shall not be considered an advance payment of such assessments. The Developer shall have no obligation to fund or pay the Initial Contribution Assessment. The Initial Contribution Assessment may be used by the Association to fund all general activities and expenses of the Association incurred in the administration of the powers and duties granted under the Governing Documents and pursuant to Law, including, without limitation, the maintenance of reserve accounts, and ongoing operating expenses and other expenses incurred by the Association, whether incurred prior to or after Turnover.

5. Special Assessments. The Association may levy special assessments in accordance with this section, payable in one or more installments, for the purpose of defraying, in whole or in part, any expense that is not reasonably expected to be incurred on a regular basis, including the cost of any purchase of additional real property for the use and benefit of Owners, or construction, reconstruction, renewal, repair, or replacement of a capital improvement upon the Common Area or Common Maintenance Areas ("**Special Assessments**"). Prior to Turnover, any Special Assessment shall require approval by the Developer, and at least a majority of the Members, other than Developer, present in person or by proxy, at a special meeting duly convened for such purpose, at which a quorum is present. After Turnover, any Special Assessment shall require approval by a majority of the votes of the Members, present in person or by proxy, at a duly convened special meeting of the Members, at which a quorum is present.

6. Property Taxes. The Association shall timely pay all real estate taxes, special assessments and other taxes, if any, levied on the Common Area, and shall assess each Lot Owner for his or her proportionate amount thereof (in the same proportion as Annual Maintenance Assessments are assessed). At the Board's discretion, such assessment may be payable in a lump sum within thirty (30) days after notice or all or any portion thereof may be assessed as a part of the Annual Maintenance Assessment described above. Each year the Board shall determine after receiving notice of the amount of taxes due, whether such assessment shall be levied, and its amount.

7. Specific Assessments. Any indebtedness of an Owner to the Association arising under any provision of the Governing Documents may be assessed by the Association against the Owner's Lot and enforced as an assessment (a "Specific Assessment"), including, without limitation, any indemnity obligation, any obligation by contract express or implied, and any financial obligation arising because of any act or omission of the Owner or any occupant of such Owner's Lot, including costs and expenses incurred by the Association by reason of any Owner's failure to properly maintain the exterior of his or her Lot and Residential Unit as herein provided.

8. Uniformity of Assessments; Deficit Funding. The Annual Maintenance Assessment and any Special Assessments assessed against all Lots within the Property shall be assessed uniformly in the amount determined in accordance with this Article, except as to any Lots owned by Developer and any Builder Lots during the period when such Lots are exempt from assessments as provided in Section 2.c., of this Article V. All Lots owned by Developer and all Lots owned by Builder shall be exempt from assessments during any period of time that Developer has elected to Deficit Fund. If Developer elects to Deficit Fund, Developer shall be obligated to fund such deficits only as they are actually incurred by the Association, and Developer shall be under no obligation to initially fund any reserves. From and after Turnover, or prior to Turnover in the event that Developer elects not to be exempt from assessments pursuant to Section 2.c., of this Article V, Developer and Builder shall pay the Annual Maintenance Assessment amount attributable to any Lots then owned by Developer or Builders, as applicable, provided, in any event, that Developer shall have no obligation to fund or pay the assessments described in Section 4 of this Article V. This provision is not and shall not be construed as a guaranty or representation as to the level of assessments imposed under the provisions of this Article.

9. Certificate of Payment. The Association or any management company engaged by the Association to handle the day-to-day operations of the Association, shall furnish to any interested Person a certificate signed by an officer of the Association, or representative of the management company, setting forth whether assessments against specific lands have been paid and, if not, its unpaid balance. To defray its costs, the Association may impose a reasonable, uniform charge for issuing such certificates. A properly executed certificate of the Association or the management company, as applicable, as to the status of assessments is binding on the Association as of the date of issuance.

10. Lien for Assessments. All sums assessed to any Lot, together with interest, late charges, and all costs and expenses of collection, including reasonable attorneys' fees, are secured by a lien against such Lot which is hereby reserved for the benefit of the Association and which shall be enforceable through appropriate legal proceedings.

11. Remedies of the Association.

a. Personal Obligation. Any assessment not paid within thirty (30) days after its due date shall be delinquent and shall bear interest from the due date, at the rate established from time to time by the Board of Directors, not to exceed the maximum lawful rate from time to time permitted under the laws of the State of Florida. The Board of Directors shall also have the right to impose a late fee against any Owner who is more than fifteen (15) days delinquent in the payment of any assessment, in an amount determined by the Board not to exceed the greater of: (i) Twenty-Five Dollars (\$25.00), or (ii) five percent (5%) of the amount past due. The Association

may bring an action at law against any Owner personally obligated to pay such assessment and/or may foreclose the lien against the Lot and any Residential Unit located thereon in accordance with subsection 11.c. below. No Owner may waive, avoid or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or common services, or abandonment of his or her Lot, or for any other reason except as determined by a court of competent jurisdiction. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing, waiving, or otherwise impairing the Association's lien, or its priority.

b. Lien for Assessments. When any sums assessed to any Lot are delinquent, the Association may record a claim of lien against such Lot signed by an officer of the Association, in accordance with and subject to the provisions of Section 720.3085, *Florida Statutes* or any successor provision. Each such assessment, together with interest, late charges and all costs and expenses of collection, including reasonable attorneys' fees, also is the personal obligation of the Person who was the Owner of such Lot when the assessment fell due. The personal obligation for delinquent assessments does not pass to an Owner's successors in title unless assumed expressly in writing.

c. Foreclosure. The Association's lien against Lots may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property from time to time may be foreclosed in the State of Florida. In any such foreclosure, the Owner is required to pay all costs and expenses of foreclosure, including reasonable attorneys' fees, and any assessments against his or her property that become due during the period of foreclosure. All such costs and expenses and assessments are secured by the lien foreclosed. The Association has the right to bid at the legal sale to acquire the property foreclosed, or to acquire such property by deed or other proceeding or conveyance in lieu of foreclosure, and thereafter to hold, convey, lease, encumber, and otherwise deal with such property as an owner, but for purposes of resale only.

12. Homesteads. By acceptance of title to a Lot, the Owner of each Lot is deemed to acknowledge that the assessments established by this Article are for the direct benefit of any homestead thereon and that the Association's lien has priority over any such homestead.

13. Subordination of Lien. The lien for the assessments provided in this Article is subordinate to the lien of any First Mortgage, unless the Association's lien was recorded prior to the recording of the Mortgage. Sale or transfer of any portion of the Property does not affect the assessment lien, except that the sale or transfer pursuant to a First Mortgage foreclosure or any proceeding or conveyance in lieu thereof, extinguishes the assessment lien as to payment that became due before such sale or transfer, unless such assessment was secured by a claim of lien for assessments that is recorded prior to recording of said First Mortgage. Any assessment extinguished by the foreclosure of a First Mortgage or conveyance in lieu thereof, shall be deemed to be an expense of the Association collectible from all Owners (including the foreclosing First Mortgagee) in accordance with the Association's normal assessment procedures. No such sale or transfer relieves such portion of the Property from liability for assessments thereafter becoming due, or from the Association's lien. The Association shall report to any First Mortgagee any assessments remaining unpaid for more than thirty (30) days and shall give such First Mortgagee thirty (30) days in which to cure such delinquency before instituting foreclosure proceedings, provided the First Mortgagee has given the Association written notice of its mortgage, designating by a proper legal description the portion of the Property encumbered and stating the address to which notices shall be given. Nothing herein shall be construed to impose on the First Mortgagee any duty to collect assessments.

## ARTICLE VI

### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

1. Common Area and Common Maintenance Areas.

a. General. Subject to the rights of the Developer and the Owners, as set forth in this Declaration, the Association has exclusive management and control of the Common Area, and all of its improvements, fixtures, furnishings, equipment, and other related personal property. The Association shall maintain the Common Area in a safe, clean, attractive, sanitary and serviceable condition, and in good order and repair. The Association's duties with respect to the Common Area commence upon substantial completion of each facility, whether or not title has been conveyed to the Association, and include the management, operation, maintenance, repair, replacement, and renewal of all improvements, equipment, and tangible personal property installed in the Common Area (including, without limitation, as part of the Work), and any replacements or additions thereto made in accordance with the provisions of the Governing Documents. The cost of maintaining, repairing, and replacing any Common Area shall be a common expense of the Association to be collected, and paid by the Lot Owners, in the manner prescribed by this Declaration. The Association shall maintain the Common Maintenance Areas designated as such by the Developer, the Association or this Declaration in a safe, clean, attractive, sanitary, and serviceable condition, and in good order and repair. The Association's duties with respect to each Common Maintenance Area commences upon designation of same as a Common Maintenance Area, and includes the management, operation, maintenance, repair, replacement, and renewal of all improvements to, and equipment and tangible personal property installed in, the Common Maintenance Areas, and any replacements or additions thereto made in accordance with the provisions of the Governing Documents. The cost of maintaining, repairing or replacing any Common Maintenance Areas shall be a common expense of the Association to be collected, and paid by the Lot Owners, in the manner prescribed by this Declaration.

b. Roadways and Entry Gate Facilities. All roadways and entry gate facilities associated therewith, if constructed, within the Property are intended to be private and owned and maintained by the Association as Common Area. Neither the Developer nor the Association shall have any obligation to install or maintain a gate. The Association shall maintain and repair any private roadways and rights-of-way within the Property- at common expense.

c. Surface Water Management System. The Association shall operate and maintain the Surface Water Management System in accordance with the permits issued by the Florida Department of Environmental Protection, the SJRWMD, and the ACOE and all regulations or conditions applicable thereto, including all lakes, ponds, streams, ditches, culverts, upland preserves, dry detention and/or wetlands located within the Property which serve as part of the Surface Water Management System, but excluding those portions located on a Lot and to be maintained by the Owner of such Lot in accordance with Article VII of this Declaration, including, without limitation, associated improvements and equipment, any other wetland, but not including any such areas, improvements, or equipment maintained by the County. All maintenance obligations of the Surface Water Management System of the Association, if any, shall be performed as ordered by the Board of Directors of the Association, and the cost of such maintenance incurred by the Association pursuant to this subsection, shall be a common expense of the Association to be collected, and paid by the Lot Owners, in the manner prescribed by this Declaration. Any modification of the Common Area that would adversely affect the Surface Water Management System must have the prior written approval of the SJRWMD. The provisions of this subsection do not supersede the provisions of Article VII hereof that require Owners of Lots bordering on or encompassing ponds, lakes, marshes or wetlands to maintain the shoreline thereof adjacent to their Lots.

d. Landscaped and Grassed Areas.

i. Unless conveyed or dedicated to the County or other governmental entity, the Association shall maintain, repair and replace all landscaping and grassed areas within Common Area, Common Maintenance Area or Association easement areas, except such portions of the aforesaid areas to be maintained by Lot Owners under the provisions of Article VII hereof. The foregoing shall include all sprinkler systems, pumps and other related improvements installed by Developer in such areas.

ii. For so long as Developer owns any ground wells within the Property, Developer grants to the Association a revocable license to use the water drawn from the ponds, lakes or ground wells within

the Property and supplied to the Association for the purpose of irrigating the above described landscaped areas, subject to applicable permits and the rights of the Developer. The Developer shall have the sole right to allocate the usage of the water among itself, the Association and others.

e. Fences and Walls. The Association shall maintain any fences and walls designated as Common Maintenance Areas by the Developer or the Association.

f. Signage. The Association shall maintain signage within the Property identifying the community developed therein.

g. Street Lights. Developer, the County or the Town may but are not obligated to establish a municipal service taxing unit, municipal service benefit unit, or similar mechanism (sometimes referred to in this Declaration as "MSTU/MSBU"), to provide for construction, operation or maintenance of street lighting or any other service or benefit to or for the Property authorized under the terms of this Declaration or the MSTU/MSBU, or by the applicable governmental authority. In such event, the costs incurred by the MSTU/MSBU may be billed directly to the Owners or to the Association for subsequent assessment to the Owners and Lots. Unless a MSTU/MSBU is established for the purpose of maintaining and paying for street lights within the rights-of-way within the Property, the Association shall either (i) maintain, repair and replace such street lights installed by Developer as part of the Work, and pay the electric charges for same, or (ii) contract with the County or Town for the installation, maintenance, repair and replacement of such street lights, and pay the electric charges for same, and in either of such events, all costs and expenses incurred by the Association in connection therewith shall be a common expense of the Association to be collected, and paid by the Lot Owners, in the manner prescribed by this Declaration.

h. Insurance. The Association shall keep any insurable improvements located on the Common Area or Common Maintenance Areas if the improvements are owned by the Association and/or if the Association has responsibility for repair or replacement of same, including fixtures and personal property of the Association, insured to the maximum insurable replacement value, as determined by the Board of Directors. The insurance shall provide coverage against loss or damage by fire or other hazards covered by a standard extended coverage endorsement and such other risks as from time to time are customarily covered with respect to improvements similar in construction, location and use, including vandalism and malicious mischief, and flood and water damage, if the Common Areas are at any time located in a federally designated flood area and flood insurance is available under the National Flood Insurance Program. The Association shall carry public liability insurance in amounts and with coverage as determined by the Board of Directors, but not less than \$1,000,000.00 for bodily injury and property damage for any single occurrence. To the extent available, the Association's insurance must provide for waiver of subrogation by the Association's insurer against any Owner because of unintentional acts or omissions. The Association may also carry such other types of insurance as the Board may deem appropriate, with such insureds, deductibles provisions and coverage types and amounts as shall be determined by the Board. Premiums for insurance carried by the Association shall be a common expense of the Association to be collected, and paid by the Lot Owners, in the manner prescribed by this Declaration. The Association may self-insure against any risk.

i. Right to Repair Private Roadways and Street Lights. The Town of Malabar shall have the right, but not the obligation, to maintain and repair any private roadways within the Property and associated rights of way, and improvements thereon. The Town may use the Special Assessment powers provided for in this Declaration to pay for such maintenance; provided, however, that the Town shall not be required to obtain any approval of the Members before instituting such Special Assessment. Any Owner who does not pay a special assessment assessed against such Owner's Lot pursuant to this subsection may have a lien placed upon their property, which lien shall be superior to any other lien prescribed by this Declaration and Chapter 720, *Florida Statutes*, and may be enforced as provided by law. In the event the Town does undertake the task of maintaining and/or repairing said private roadways and/or rights of way, including any improvement thereon, the Association does hereby assign to the Town any and all assessment rights to collect and retain Special Assessments instituted

pursuant to this subsection as they become due and to exercise such right as provided herein until the Town receives full reimbursement, including any costs, expenses and attorney's fees incurred for any such repair and/or maintenance, including such costs, expenses and attorney's fees incurred in enforcing the Town's rights as provided herein. The Town shall not be responsible to the Association, Owner, or any other person or entity as a consequence of the determination not to exercise or of the determination to exercise any of the rights granted to the Town or for failure of the Town to perform any rights granted to the Town herein or by virtue of applicable law. No Owner shall be discharged from any obligations provided herein without the written consent of the Town. This subsection may not be amended without the written approval of the Town Council.

2. Services. The Association may obtain and pay for the services of any Person, including the Developer or an affiliated entity of Developer, to manage its affairs to the extent it deems advisable and may contract for such other personnel as the Association determines are necessary, convenient, or desirable for the proper operation of the Common Area, the Common Maintenance Areas, or the performance of the Association's responsibilities hereunder, whether such personnel are furnished or employed directly by the Association or by any Person with whom it contracts. The Association may obtain and pay for legal and accounting services necessary, convenient, or desirable in connection with the operation of the Property or the enforcement of the Governing Documents or the Association's Rules

3. Rules. The Association may from time to time adopt, alter, amend, rescind, and enforce reasonable Rules governing the use of the Property including, without limitation, the Lots, the Residential Units and the Common Area, so long as such Rules are consistent with the rights and duties established by the Governing Documents. The validity of the Association's Rules and their enforcement shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of the Property as a residential community. The Rules shall be promulgated, and may be amended from time to time, by a majority vote of the Board of Directors. For so long as Developer owns any portion of the Property, no regulation, decision, amendment or other action that reasonably may have the effect of waiving, lessening, or otherwise interfering with the scope or enforcement of any Rules or restriction imposed on the Property by this Declaration will be valid without the prior written approval of the Developer. No Owner or other Person occupying any portion of the Property, or any invitee, shall violate the Association's Rules for the use of the Property, and all such Owners or other Persons shall at all times do all things reasonably necessary to comply with the Rules. Wherever any provisions of this Article prohibit any activity, condition, or structure within the Property, such restriction or prohibition is self-executing unless and until the Association issues Rules expressly permitting the same.

4. Implied Rights. The Association may exercise any right, power, or privilege given to it expressly by the Governing Documents and every other right, power, or privilege so granted or reasonably necessary, convenient, or desirable to effectuate the exercise of any right, power, or privilege so granted.

5. Access by Association. The Association has a right of entry on to all portions of the Property to the extent reasonably necessary to exercise any right granted or to discharge any duty imposed by the Governing Documents, or for any other purpose reasonably related to the Association's performance of any duty imposed, or exercise of any right granted, by the Governing Documents. Such right of entry must be exercised in a peaceful and reasonable manner at reasonable times and upon reasonable notice whenever circumstances permit, except in the event of an emergency and only then to the extent necessary to prevent personal injury or property damage. No Owner shall arbitrarily withhold consent to entry by the Association for the purpose of discharging any duty or right if such entry is upon reasonable notice, at a reasonable time, and in a peaceful and reasonable manner. The Association's right of entry may be exercised by its agents, employees, contractors, and managers.

6. Maintenance Reserves. The Board may annually prepare a maintenance reserve budget which shall take into account the number and nature of replaceable assets, the useful life of each asset and the anticipated repair and replacement cost. If a maintenance reserve budget is established, the Board shall set the required maintenance reserve contribution, in an amount sufficient to permit meeting the projected needs of the Association, as shown on the maintenance reserve budget, with respect both to amount and timing of Annual

Maintenance Assessments over the period of the budget. Any maintenance reserve contribution required shall be fixed by the Board and included within and distributed with the budget, as provided in Article V, Section 3 of this Declaration.

IF MAINTENANCE RESERVES ARE ESTABLISHED, DEVELOPER SHALL BE UNDER NO OBLIGATION TO FUND OR PAY THE MAINTENANCE RESERVE CONTRIBUTIONS. UNLESS OTHERWISE REQUIRED BY LAW. NOTHING IN THIS SECTION OR THIS DECLARATION SHALL REQUIRE THE ASSOCIATION TO COLLECT OR ASSESS FOR CAPITAL RESERVES. IF MAINTENANCE RESERVES ARE COLLECTED, NO REPRESENTATION IS MADE THAT THE AMOUNTS COLLECTED WILL BE SUFFICIENT FOR CAPITAL REPLACEMENTS OR REPAIRS.

## ARTICLE VII

### OBLIGATIONS OF OWNERS

1. Maintenance. In addition to any other express maintenance obligation of the Owners under this Declaration, each Owner at such Owner's expense, shall maintain in good order and repair and keep in a safe, clean, attractive, and sanitary condition, all portions of his or her Lot, and the improvements located thereon, or adjacent thereto, including, without limitation, any Surface Water Management System areas located within the Lot and not designated as Common Maintenance Area. Each Owner of a Lot on which improvements have been constructed shall maintain the lawn and other landscaped areas located within private right-of-way or adjacent Common Area, if any, between such Owner's Lot boundary and the paved portion of the street in a neat and attractive condition. Landscape maintenance shall include regular lawn mowing, fertilizing, pest control, irrigation, edging, replacement of street trees, and repair and replacement of sidewalks abutting such Owner's Lot. Each Owner of a Lot on which a pond, lake, marsh or wetland is located shall have the following obligations with respect to the shoreline of the pond, lake, marsh or wetland, from the rear boundary of such Owner's Lot to the water line of such pond, lake marsh or wetland, as applicable: (i) to clean and keep such area free of litter and debris, (ii) to exercise and maintain appropriate erosion control methods (including rip-rap and plantings, if necessary, or as required by the SJRWMD Permit, the Association's Rules or the Design Guidelines, as applicable), and (iii) to maintain, irrigate, mow, weed, fertilize and conduct such other routine maintenance of the lawn, landscaping and landscape materials, in accordance with the SJRWMD Permit, the Rules of the Association or the Design Guidelines, as applicable, from time to time. If the area between the rear of an Owner's Lot and the water line of any pond, lake, marsh or wetland is required to be maintained in its natural condition with native plant material, then such Owner shall not plant any non-native landscaping or landscape materials in such area or remove or alter any native plant material from such area, unless permitted by the Association, the SJRWMD Permit, and any applicable County requirements and criteria. All cleaning and maintenance by Owners, required by this section, shall be conducted in accordance with and subject to the requirements and limitations set forth in the Design Guidelines, the Association's Rules, the SJRWMD Permit, and any applicable County requirements and criteria.

2. Casualty Damage. In the event of damage or destruction by fire or other casualty to the improvements on any portion of the Property, unless the improvements are completely destroyed, the Owner shall repair or rebuild such damaged or destroyed improvements in a good and workmanlike manner, within a reasonable time not to exceed one year. In all cases, all debris must be removed and the parcel restored to an orderly condition as soon as possible, but not to exceed one hundred twenty (120) days after such damage or destruction.

## ARTICLE VIII

## ARCHITECTURAL CONTROL

The Property is subject to the Twin Rivers of Malabar Community Guidelines, as may be amended and supplemented from time to time (“**Design Guidelines**”). All architectural design, construction and improvements, whether the initial construction on a Lot or any modifications thereto, are subject to review and approval in accordance with the Design Guidelines, which may be enforced pursuant to the terms of this Declaration.

### ARTICLE IX

#### AMENDMENTS

1. By Developer. Prior to Turnover, Developer shall have the right to unilaterally amend this Declaration for any reasonable purpose, except as prohibited by applicable Law. Any amendment made by Developer pursuant to this section shall not require the joinder or consent of any other Person.

2. By Association. This Declaration may be amended by the Association, from time to time, with the approval of at least two-thirds (2/3) of the votes of the Members, present in person or by proxy, at a meeting duly convened for such purpose, at which a quorum is present; provided, that prior to Turnover, any amendment of this Declaration by the Association shall require the prior written consent of Developer.

3. Relating to Surface Water Management System. Any amendment to this Declaration which affects the Surface Water Management System or the operation or maintenance thereof shall require the prior written approval of the SJRWMD.

4. Validity of Amendments. No amendment may remove, revoke, or modify any right or privilege of the Developer without the written consent of the Developer (or the assignee of any right or privilege of Developer affected by such amendment). If an Owner consents to any amendment to this Declaration, the Articles or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment to this Declaration will become effective upon recording unless a later effective date is specified in the amendment. A copy of any amendment to this Declaration shall be provided to the Owners within thirty (30) days after recording. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

5. Mortgagee Consent. Except to the extent specifically required by Section 720.306(1)(d)1, *Florida Statutes*, amendments to this Declaration shall not require the consent of any Mortgagee, and all amendments shall be valid against all Mortgagees regardless of their consent. Any Mortgagee that receives written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Board does not receive a written response from the Mortgagee within sixty (60) days of the date of the Board’s request, provided such request is delivered to the Mortgagee in a manner permitted under Section 720.306(4), *Florida Statutes*.

### ARTICLE X

#### COMPLIANCE AND ENFORCEMENT

1. Compliance. Every Owner, occupant, and visitor to a Lot shall comply with the Governing Documents and the Rules, and shall be subject to sanctions for violations as described in this Article. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents or



Rules, whether by such Owner or the occupants or visitors to such Owner's Lot, and for any damage to the Common Area or Common Maintenance Areas that such Owner, its occupants or visitors may cause.

2. Enforcement; Remedies for Non-Compliance. The Developer, the Association, and any affected Owner shall have the right to enforce the Governing Documents and the Rules by any appropriate proceeding at law or in equity. In addition, the Board may impose sanctions for violation of the Governing Documents or Rules, including, without limitation, those listed below and any others described elsewhere in the Governing Documents, the Rules, or applicable Law.

a. Sanctions Requiring Prior Notice and Hearing. After written notice and an opportunity for a hearing in accordance with procedures adopted by the Board, pursuant to Article VI Section 1(c) of the Bylaws, the Board may:

i. impose reasonable monetary fines, not to exceed \$100.00 for a single violation or \$100.00 per day in the case of a continuing violation; provided, in the case of a continuing violation, only a single notice and opportunity for hearing is required. The Board may adopt a schedule of fines establishing a range of fines for particular types of violations, which range may vary depending on the nature of the violation. There is no limit on the aggregate amount of any fine for a continuing violation;

ii. suspend the right of any Owner and occupants of a Lot to use any Common Area (other than as required to provide vehicular and pedestrian access and utilities to the Lot which they own or occupy) for a reasonable period of time;

iii. suspend services the Association provides to the Lot if the Owner is more than ninety (90) days delinquent in paying any assessment or other charge owed the Association, which suspension may continue until such assessments or other charges have been paid in full; provided, nothing herein shall authorize the Board to suspend essential utilities (*i.e.*, electricity, natural gas, or water);

iv. exercise self-help or take action to abate any violation of the Governing Documents or Rules in a non-emergency situation (including removing personal property that violates the Governing Documents or Rules), except as to Common Area as to which Section 2.b.ii. below shall control;

v. without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who causes damage to any property within the Property owned by others, or fails to comply with the terms and provisions of Article VII and the Design Guidelines, from continuing or performing any further activities in the Property;

vi. levy Specific Assessments to cover costs the Association incurs in bringing a Lot into compliance with the requirements of the Governing Documents or Rules, or in repairing damage to any portion of the Common Area or Common Maintenance Area resulting from actions of any Owner or occupant of a Lot, their contractors, subcontractors, agents, employees, visitors or invitees; and

vii. record a notice of violation with respect to any Lot on which a violation exists.

If, after notice and an opportunity for a hearing, the violation continues or recurs within twelve (12) months after the date of such notice, the Board may impose any of the above sanctions without further notice or opportunity for another hearing.

b. Other Sanctions. The Board may take the following actions to obtain compliance with the Governing Documents or Rules without prior notice or a hearing, provided they are approved at a properly

noticed Board meeting and, upon approval, the Owner (and occupant, if applicable) is notified by mail or hand delivery:

- i. suspend the vote allocated to any Lot if the Owner is more than ninety (90) days delinquent in paying any monetary obligation to the Association pursuant to Article V, which suspension may continue until all of such Owner's monetary obligations to the Association are paid in full;
- ii. suspend the right of any Owners and occupants of a Lot to use any Common Area (other than as required to provide vehicular and pedestrian access and utilities to the Lot which they own or occupy) if the Owner is more than ninety (90) days delinquent in paying any monetary obligation to the Association, which suspension may continue until all of such Owner's monetary obligations to the Association are paid in full;
- iii. exercise self-help or take action to abate a violation on a Lot in any situation that requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);
- iv. exercise self-help or take action to abate a violation on the Common Area under any circumstances;
- v. require an Owner, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Lot that is in violation of any requirements of the Governing Documents or Rules and to restore the property to its previous condition;
- vi. enter the property and exercise self-help to remove or cure a violating condition if an Owner fails to take action pursuant to subsection 2.b.v. above within ten (10) days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or
- vii. bring suit at law for monetary damages or in equity to stop or prevent any violation, or both.

3. The Developer's Right to Impose Sanctions. In the event that the Association fails or refuses to take action or impose sanctions under this Article after notice from the Developer of a violation of the Governing Documents or Rules, the Developer shall have the right to levy monetary fines on behalf of the Association after notice and hearing (if required) in the same manner as the Association under Section 2 above. In addition, the Developer may exercise self-help or take action to abate a violation or bring suit at law or in equity in the same manner as the Association under this Section 3.

4. Attorneys' Fees. In any action to enforce the Governing Documents or any Rules against any Owner, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees and court costs, reasonably incurred in such action. Notwithstanding the foregoing, in no event may such costs and expenses be recovered against the Association or Developer, unless otherwise required by Law. If the Association (or Developer, on behalf of the Association) is the prevailing party against any Owner, such costs and expenses, including reasonable attorneys' fees, may be assessed against the Owner's Lot, as provided in Article V.

5. No Waiver. Failure by the Developer, the Association or any Owner to enforce any covenant, condition or restriction contained herein, in the other Governing Documents or in the Rules, or any delay in such enforcement, will not constitute a waiver of the right to do so at any time, nor shall such failure to enforce or delay in enforcement create any liability for the Developer or the Association to any Owner or any other Person.

6. Enforcement by SJRWMD or ACOE. Notwithstanding any other provisions contained elsewhere in this Declaration, SJRWMD and the ACOE shall have the rights and powers enumerated in this section. SJRWMD and the ACOE shall have the right to enforce, by a proceeding at law or in equity (including, without limitation, bringing a civil action for injunction and/or penalties), the provisions contained in this Declaration which relate to the maintenance, operation, and repair of the Surface Water Management System and/or jurisdictional lands subject to the regulation of SJRWMD and/or the ACOE. Any repair or reconstruction of the Surface Water Management System shall be as permitted, or if modified, as approved by SJRWMD and/or the ACOE, as applicable.

## ARTICLE XI

### GENERAL PROVISIONS

1. Term and Renewal. The provisions of this Declaration shall run with and be binding on the Property, and all other lands to which it may hereafter be extended as provided herein, and shall be binding on all Persons having any right, title, or interest therein, their respective heirs, successors, and assigns and shall inure to the benefit of and be enforceable by the Developer, the Association or any Owner, their respective heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded, whereupon these provisions shall be extended automatically for successive renewal periods of ten (10) years each, unless Members representing at least two-thirds (2/3) of the total votes of the Association elect not to reimpose this Declaration as evidenced by an instrument executed by such Owners and recorded in the Public Records during the six (6) month-period immediately preceding the beginning of any renewal period.

2. Interpretation. Unless the context expressly requires otherwise, the use of the singular includes the plural and vice versa; the use of one gender includes all genders; the use of the terms "including" or "include" is without limitation; and the use of the terms "will", "must", and "should" have the same effect as the use of the term "shall". Wherever any time period is measured in days, if any such time period expires on a Saturday, Sunday, or national bank holiday, it shall be extended to the next succeeding calendar day that is not a Saturday, Sunday, or national bank holiday. The terms "Lot" and "Property" mean all or any portion applicable to the context and include any and all improvements, fixtures, trees, vegetation and other property from time to time situated thereon, and the benefit of all appurtenant easements. This Declaration shall be construed liberally in favor of the party seeking to enforce its provisions to effectuate its purpose of protecting and enhancing the value, marketability, and desirability of the Property by providing a common plan for the development and enjoyment thereof. Headings and other textual divisions are for indexing purposes only and are not to be used to interpret, construe, apply or enforce any substantive provisions. The provisions of this Section apply to the interpretation, construction, application, and enforcement of all the Governing Documents.

3. Reservation of Right to Release Restrictions. Subject to applicable zoning requirements, in each instance where a structure has been erected, or the construction thereof is substantially advanced, in such a manner that some portion of the structure encroaches upon any set-back or easement area or the Common Area, or otherwise violates this Declaration, Developer reserves for itself the right to release the portion of the Property from the encroachment and to grant an exception to the requirements of this Declaration without the consent or joinder of any Person irrespective of who owns the affected lands, so long as Developer, in the exercise of its sole discretion, determines that the release or exception will not materially and adversely affect the health and safety of Owners, the value of adjacent Lots and the overall appearance of the Property. Upon granting of an exception to an Owner, the exception granted shall be binding upon all subsequent Owners of the affected Lots.

4. Rights of First Mortgagees. Any First Mortgagee and insurers or guarantors of First Mortgages have the following rights:

a. Inspection. During normal business hours, and upon reasonable notice and in a reasonable manner, to inspect current copies of the Governing Documents and Regulations and the books, records, and financial statements of the Association; and

b. Financial Statements. Upon written request to the Secretary of the Association, to receive copies of the annual financial statements for the immediately preceding fiscal year of the Association, provided, however, the Association may make a reasonable, uniform charge to defray its cost incurred in providing such copies; and

c. Meetings. To designate a representative to attend all meetings of the membership of the Association, who is entitled to a reasonable opportunity to be heard in connection with any business brought before such meeting but in no event entitled to vote thereon.

d. Notices. By written notice to the Secretary of the Association, and upon payment to the Association of any reasonable, uniform annual fee that the Association from time to time may establish for the purpose of defraying its costs, any First Mortgagee, insurer, or guarantor of a First Mortgage shall be entitled to receive any notice that is required to be given to the Class A members of this Association under any provision of the Governing Documents. Additionally, any such First Mortgagee, insurer, or guarantor of a First Mortgage giving written notice to the Association shall be entitled to written notice of: (i) any condemnation or casualty loss affecting a material portion of the Property or any Lot encumbered by its First Mortgage; (ii) any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Lot encumbered by its First Mortgage; (iii) lapse, cancellation or material modification of any insurance coverage or fidelity bond maintained by the Association; and (iv) any proposed action requiring the consent of a specified percentage of mortgage holders.

5. Provisions Inoperative as to Initial Construction. Nothing contained in this Declaration shall be interpreted, or enforced to prevent Developer, or Developer's contractors, subcontractors, agents, employees, successors or assigns from doing or performing on all or any part of the Property owned or controlled by Developer whatever it or they determine to be necessary, convenient, or desirable to complete the Work. The foregoing includes the right for Developer and any Person designated by Developer in writing to construct and use signs, construction trailers, or buildings, model units, design centers, and offices for sales and resales of Lots.

6. Assignment. Developer may assign to any Person, including persons engaged in the business of constructing improvements on Lots for resale purposes, all or some of the rights, privileges and exemptions granted herein to Developer in connection with the ownership, use, or development of a portion of the Property. Any such assignment shall be non-exclusive unless otherwise noted, and shall be effective only for so long as such right, privilege or exemption would inure to the benefit of Developer.

7. Severability. Invalidation of any provision of the Governing Documents by judgment or court order will not affect any other provision, all of which will remain in full force and effect; provided, however, any court of competent jurisdiction is hereby empowered, to the extent practicable, to reform any otherwise invalid provision contained in the Governing Documents when necessary to avoid a finding of invalidity while effectuating Developer's intent of providing a comprehensive plan for the use, development, sale, and beneficial enjoyment of the Property.

8. Notices. Any notice required to be sent to any Owner, occupant or tenant of any Residential Unit, the Developer or the Association under the provisions of this Declaration shall be delivered by such means as required or permitted by the Bylaws, or applicable law.

*[Signatures on following pages]*



IN WITNESS WHEREOF, Developer has executed this Declaration as of the date first stated above.

**WITNESSES:**

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Signature of Witness #1

\_\_\_\_\_  
Typed/Printed Name of Witness #1

\_\_\_\_\_  
Signature of Witness #2

\_\_\_\_\_  
Typed/Printed Name of Witness #2

**DEVELOPER:**

**WEBER WOODS, LLC,**  
a Florida limited liability company

By: EKS, Inc., a Florida corporation  
Its: Manager

By: \_\_\_\_\_  
Malcolm R. Kirschenbaum, President

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me, by means of \_\_\_ physical presence or \_\_\_ online notarization, this \_\_\_ day of \_\_\_\_\_, 2020, by Malcolm R. Kirschenbaum, President of EKS, Inc., a Florida corporation, Manager of Weber Woods, LLC, a Florida limited liability company. He / \_\_\_ / is personally known to me or / \_\_\_ / produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

EXHIBIT A

**The Property**

**EXHIBIT B**

**Articles**

*[Attached on the following pages.]*



**EXHIBIT C**

**Bylaws**

*[Attached on the following pages.]*

**EXHIBIT D**

**Copy of SJRWMD Permit**

*[Attached on the following pages.]*

TOWN OF MALABAR

OCT 08 2020

RECEIVED

Executed  
Bond:  
Cost Est  
May June 2020

2020 8:43

**TOWN OF MALABAR SUBDIVISION IMPROVEMENT**

**KNOWN ALL MEN BY THESE PRESENTS:**

That Weber Woods LLC hereinafter called "Developer" and Philadelphia Indemnity Insurance Corporation hereinafter called "Surety," are held and firmly bound unto the Town of Malabar, 2725 Malabar Road, Malabar, Florida 32950, as obligee, hereinafter called "Town", in the amount of \$996,806.25 (Insert cost of Subdivision Improvements plus 25%), hereinafter referred to as the "Penal Sum", for payment whereof the Developer and Surety bind themselves, their heirs, executors, administrators, successors and assign, jointly and severally, firmly by these parents.

WHEREAS, Developer is obligated pursuant to the ordinances of the Town, and that certain subdivision Preliminary plat approved on November 4, 2019, to the Town for the installation and construction of subdivision improvements as required for the Twin Lakes Subdivision which ordinances, development permits and subdivision approval are by reference made a part thereof and are hereinafter collectively referred to as the "Approval".

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Developer shall promptly and faithfully perform said Approval, by May 4, 2021 (one year from approval date plus six months per EO 20-52) then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time or amendment of the Developer's subdivision approval made by the Town.

Whenever Developer shall be, and declared by the Town to be, in default under the Approval, the Surety, within 30 days of written demand to the Surety by the Town shall promptly remedy the default by obtaining a bid or bids for completing the Approval in accordance with the terms and conditions of the Town Code of Ordinances and the preliminary plat, and upon determination and approval by the Town and the Surety jointly of the lowest responsible bidder, arranging for a contract between such bidder and Town, and making available as work progresses sufficient funds to pay the cost of completion but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth herein. Should the Surety fail to make arrangements satisfactory to the Town to complete the Approval within the time herein, the Town shall have the right to complete the Approval and the Developer and Surety, jointly and severally, shall be liable to the Town for the cost of completion and all costs, expenses and fees, including attorney fees associated with such completion; provided, however, that the Surety's obligation, if any, shall not exceed the Penal Sum of this Bond.

No right or action shall accrue on this bond to or for the use of any person or corporation other than the Town named herein or the successors of the Town.

JUN 2 2020 8:43

Signed and sealed this 28th day of May, 2020

Attest  
Dorothy K. Frankel  
Town Clerk

Town of Malabar

By Dorothy Carmel

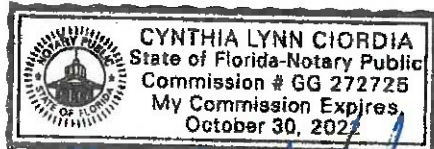
Developer Weber Woods, LLC.

By: [Signature] Jim Swann

STATE OF Florida  
COUNTY OF Broward

BEFORE ME, personally appeared Jim Swann, [who is personally known to me or who produced as identification, and who executed the foregoing **TOWN OF MALABAR SUBDIVISION IMPROVEMENTS PERFORMANCE BOND**, and acknowledged to and before me that she executed such instrument for the purpose therein expressed.

WITNESS my hand and official seal, this 29th day of May, 2020.



Cynthia Lynn Ciordia  
NOTARY PUBLIC

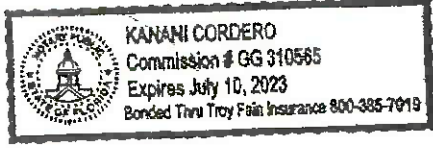
Surety: Philadelphia Indemnity Insurance Corporation

By: [Signature]  
Brett A. Ragland, Attorney-in-Fact

STATE OF Florida  
COUNTY OF Orange

BEFORE ME, personally appeared Brett A. Ragland, [who is personally known to me or who produced as identification, and who executed the foregoing **TOWN OF MALABAR SUBDIVISION IMPROVEMENTS PERFORMANCE BOND**, and acknowledged to and before me that she executed such instrument for the purpose therein expressed.

WITNESS my hand and official seal, this 28th day of May, 2020



Kanani Cordero  
NOTARY PUBLIC  
Kanani Cordero

JUN 22 2020 8:43

PHILADELPHIA INDEMNITY INSURANCE COMPANY  
One Bala Plaza, Suite 100  
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That PHILADELPHIA INDEMNITY INSURANCE COMPANY (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint Brett A. Ragland and Tyler Ragland of Joseph D. Johnson & Company its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, and any and all consents required by the Department of Transportation, State of Florida, including consents for the release of retained percentages and/or final estimates on engineering and construction contracts, provided that no bond or undertaking or contract of suretyship executed under this authority exceed \$50,000,000.

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14<sup>th</sup> of November, 2016.

**RESOLVED:** That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

**FURTHER RESOLVED:** That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 27<sup>TH</sup> DAY OF OCTOBER, 2017.



(Seal)

Robert D. O'Leary Jr., President & CEO  
Philadelphia Indemnity Insurance Company

On this 27<sup>th</sup> day of October, 2017, before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the PHILADELPHIA INDEMNITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate seal of said Company, that the said Corporate Seal and his signature were duly affixed.



(Notary Seal)

Notary Public: Morgan Knapp  
residing at: Bala Cynwyd, PA  
My commission expires: September 25, 2021

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 27<sup>th</sup> day of October, 2017 are true and correct and are still in full force and effect. I do further certify that Robert D. O'Leary Jr., who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 28th day of May, 20 20



Edward Sayago, Corporate Secretary  
PHILADELPHIA INDEMNITY INSURANCE COMPANY



Project: Twin Lakes Subdivision  
 Applicant: Weber Woods, LLC (Malcolm Kirschenbaum)  
 516 Delannoy Avenue, Cocoa, FL

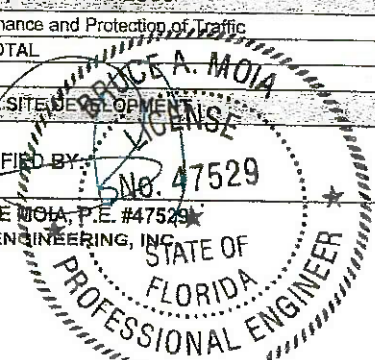
MBV Project No.: 15-1690

Description: Engineering Cost Estimate - Town of Malabar Services  
 Prepared on: May 2020

CONSTRUCTION ESTIMATE				
ITEM	QUANTITY	UNIT	UNIT COST	COST
<b>PART 1) EARTHWORK, DRAINAGE, PAVEMENT AND SIGNAGE</b>				
Construction Entrance	1	EA	\$2,750.00	\$2,750
Silt Fence	3,750	LF	\$2.50	\$9,375
Sedimentation & Soil Erosion Control	1	LS	\$5,000.00	\$5,000
Demolition & Debris Removal	1	LS	\$1,500.00	\$1,500
Clearing	14	AC	\$3,500.00	\$50,575
Tree Removal	67	EA	\$125.00	\$8,375
Cut/Place	20,000	CY	\$5.00	\$100,000
Construct Ponds/Dewatering	1	LS	\$8,000.00	\$8,000
General Site Grading	1	LS	\$10,000.00	\$10,000
Sodding of Lake Slopes	11,000	SY	\$1.50	\$16,500
SOD (Swales)	3,000	SY	\$2.50	\$7,500
8" Subbase	3,500	SY	\$4.50	\$15,750
8" Limerock or Coquina Base	3,500	SY	\$12.50	\$43,750
1.5" SP 9.5 Asphalt	3,500	SY	\$9.00	\$31,500
Prime Coat	3,500	SY	\$0.70	\$2,450
Saw Cut and Remove Asphalt	200	LF	\$5.00	\$1,000
Remove and Replace Asphaltic Concrete Top Course	100	SY	\$16.50	\$1,650
ReflectORIZED Pavement Markings-White Thermoplastic	225	LF	\$7.00	\$1,575
ReflectORIZED Pavement Markings-Yellow Paint	200	LF	\$8.00	\$1,600
ReflectORIZED Stop Bar-White Thermoplastic	1	EA	\$650.00	\$650
Signage new	3	EA	\$750.00	\$2,250
Furnish & Install Overflow Weir	1	EA	\$4,000.00	\$4,000
Furnish & Install 4' Diameter Manholes	4	EA	\$3,000.00	\$12,000
Furnish & Install 10' Weirs	6	EA	\$3,000.00	\$18,000
Furnish & Install Control Structures	1	EA	\$6,500.00	\$6,500
Furnish & Install 12" RCP	33	LF	\$25.00	\$825
Furnish & Install 18" RCP	105	LF	\$30.00	\$3,150
Furnish & Install 15" HDPE	1,181	LF	\$25.00	\$29,025
Furnish & Install 18" RCP w/MES	2	EA	\$3,000.00	\$6,000
Furnish & Install 15" HDPE w/MES	2	EA	\$2,000.00	\$4,000
<b>SUBTOTAL</b>				<b>\$405,250</b>
<b>PART 5) LANDSCAPE AND RESTORATION</b>				
Furnish & Install Landscaping / Streetscaping	1	LS	\$16,500.00	\$16,500
Furnish & Install Required Trees	120	EA	\$500.00	\$60,000
<b>SUBTOTAL</b>				<b>\$76,500</b>
<b>PART 6) MISCELLANEOUS</b>				
Maintenance and Protection of Traffic	1	LS	\$7,500.00	\$7,500
<b>SUBTOTAL</b>				<b>\$7,500</b>
<b>TOTAL SITE DEVELOPMENT</b>				<b>\$489,250.00</b>

CERTIFIED BY:

BRUCE MOIA, P.E. #47529  
 MBV ENGINEERING, INC.



MAY 20 2020

DATE

TOWN OF MALABAR

01/14/2020  
RECEIVED

THIS INSTRUMENT PREPARED UNDER THE DIRECTION OF AND SHOULD BE RETURNED TO

Palm Bay Utilities Director  
City of Palm Bay  
250 Osmosis Drive SE  
Palm Bay, FL 32909  
321 952 3410

CFN 2020009539 OR BK 8637 PAGE 1114  
Recorded 01/14/2020 at 02:10 PM Scott Ellis, Clerk of Courts, Brevard County  
# Pgs:17

For Recording Purposes Only

### CITY OF PALM BAY WATER SYSTEM AGREEMENT

THIS AGREEMENT made and entered into this 31 day of December 2019 by and between WEBER WOODS, LLC FEI/EIN 20 2752834 authorized to do business in the State of Florida (hereafter "DEVELOPER") and CITY OF PALM BAY, FLORIDA a municipal corporation created under the laws of the State of Florida (hereafter the "CITY")

Project Twin Lakes Subdivision, 16 Single Family Units, Parcel ID# 29-37-02-00-253

### RECITALS

1 The DEVELOPER has or is about to develop real property more particularly described in Exhibit "A" attached to and incorporated herein by reference (hereinafter "the Property")

2 The DEVELOPER is desirous of prompting the modification, replacement, construction and/or maintenance of central water facilities so as to receive adequate service

3 The CITY is willing to provide in accordance with the provisions and stipulations hereinafter set out and in accordance with all applicable laws water service through central water facilities to accept and operate water distribution collection systems and to thereafter operate such facilities so the occupants of the improvements constructed on the Property will receive adequate retail water service from the CITY

CITY OF PALM BAY  
Office of the City Clerk  
120 Malabar Road, SE  
Palm Bay Florida 32907



ACCORDINGLY, for and in consideration of the Recitals, the mutual undertakings and agreements herein contained and assumed and for other good and valuable consideration the receipt and sufficiency of which are acknowledged by the parties, the DEVELOPER and the CITY hereby covenant and agree as follows

**SECTION 1 RECITALS** The above Recitals are true and correct, and form a material part of this Agreement

**SECTION 2 DEFINITIONS** The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning

(1) "Service" the readiness and ability on the part of the CITY to furnish water service to the Property

(2) "Point of Delivery or Distribution" the point where the pipes of utility are connected with the pipes of the customer Unless otherwise indicated, the point of delivery shall be at a point on the customer's lot line

(3) "Contribution in-aid-of Construction" - The sum of money and/or property represented by the value of the water distribution systems constructed by DEVELOPER, which DEVELOPER covenants and agrees to pay and/or transfer to the CITY as a contribution in aid-of-construction to induce the CITY to continuously provide water service to the Property

**SECTION 3. EASEMENT AND RIGHT OF ACCESS** DEVELOPER hereby grants and gives the CITY the exclusive right or privilege to construct own maintain and operate the water facilities in under over and across the present and future streets, roads, easements, reserved utility sites and public places on the Property as provided and dedicated to public use in the record plats or as provided for in agreements, dedications or grants made otherwise and independent of said record plats DEVELOPER further agrees that the foregoing grants include the necessary right of ingress and egress to any part of the Property and that the foregoing grants shall be perpetual The CITY covenants that it will use due diligence in ascertaining all easement locations however, should the CITY install any of its facilities outside a dedicated easement area DEVELOPER its successors and assigns covenant and agree that the CITY will not be required to move or relocate any facilities lying outside a dedicated easement area so long as the facilities do not interfere with the then or proposed use of the area in which the facilities have been installed The CITY hereby agrees that all easement grants will be utilized in accordance with the established and generally accepted practices of the wastewater industry with respect to the installation of all its water and wastewater facilities in any of the easement areas The DEVELOPER in granting easement herein or pursuant to the terms of this instrument, shall have the right to grant exclusive or non-exclusive rights, privileges and easement to other entities to provide to the Property any utility services other than water and wastewater service The route of the lines from the DEVELOPER's Property to the CITY's Facilities shall be as determined by the CITY, and the DEVELOPER shall obtain at



its own expense, upon direction by the CITY, any and all easements necessary which easements shall be in favor of the City of Palm Bay. The DEVELOPER agrees to dedicate to the CITY an easement as to be determined by the CITY so as to allow the CITY to enter the Property and make such alterations, repairs, or other work, as CITY shall deem necessary to achieve efficient service in the sewer system. Any easement shall be dedicated to the CITY and recorded in the Public Records of Brevard County, Florida within ten days of the signing of this Agreement, at DEVELOPER's expense.

#### **SECTION 4 CONDITIONS TO AND PROVISION OF SERVICE, PAYMENT OF RATES, BILLINGS**

**4.1** Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by the DEVELOPER, the CITY covenants and agrees that it will allow the connection of the water distribution facilities installed by DEVELOPER to the central water of the CITY in accordance with the terms and intent of this Agreement. Such connection shall be in accordance with rules and regulations of the Department of Health and Rehabilitative Services and the Florida Department of Environmental Protection. The CITY agrees that once it provides water service to the Property and DEVELOPER, its successors and assigns have connected customer installations to its system that thereafter, the CITY will continuously provide, in accordance with the other provisions of this Agreement, and of applicable laws including rules and regulations and rate schedules water service to the Property in a manner to conform with all requirements of all governmental agencies having jurisdiction over the water systems of the CITY. The DEVELOPER its successors and assigns agree to timely and fully pay all applicable monthly rates, fees, and charges to the CITY and otherwise fully comply with the CITY's rules regulations and ordinances applicable to the provision of water service.

**4.2** The DEVELOPER its successors and assigns agree to pay to the CITY for monthly service within thirty (30) days after statement is rendered by the CITY all sums due and payable as set forth in such statement. Upon failure or refusal to pay the amounts due on statements as rendered, the CITY may, in its sole discretion, terminate service.

**4.3** The DEVELOPER warrants and represents that it is either the owner of the Property or has the complete authority to act on behalf of the owner in executing this Agreement and that the capacity purchased pursuant to Section 6 shall run with the land. It is acknowledged that this Agreement is for the purpose of providing a volume and rate of service to the property described and that charges to be paid to the CITY for use of the system shall be charged to the ultimate user. Any increase in volume or rate of flow shall make this Agreement void or voidable in the discretion of the CITY, after providing DEVELOPER notice pursuant to this Agreement. The CITY reserves the right to collect additional fees if the volume or rate of flow increases.

**4.4** For the use of the CITY's Facilities, the Customer shall pay a user rate established by the City Council of the City of Palm Bay, the billing to be issued by the CITY and paid by the DEVELOPER on a basis as the CITY customarily bills. The Customer shall, immediately upon demand, pay to the CITY a non-interest bearing deposit as determined

by the CITY. Upon failure of the Customer to pay the periodic charges for service, the deposit shall immediately forfeit to the CITY. The CITY shall have a right to adjust its service rates to reflect current or future costs, and the Customer agrees to pay all such lawfully imposed rates. The CITY reserves all rights it may have pursuant to Chapter 193, Florida Statutes. In addition to the user rate, a surcharge may be imposed in accordance with Chapter 180, Florida Statutes, if the Property is located outside the incorporated boundaries of the CITY.

**4.5** If sewer service is covered by this Agreement, the DEVELOPER agrees to follow the CITY's Code of Ordinances, Chapter 201 Sewer Use, and that it shall not discharge or cause to be discharged into the sewer lines any of the following described waters or waste:

- (A) General Prohibitions. No User shall introduce or cause to be introduced into the Publicly Owned Treatment Works (POTW) any pollutant or wastewater which causes Pass Through or Interference. These general prohibitions apply to all Users of the POTW whether or not they are subject to categorical Pretreatment Standards or any other national, state, or local pretreatment standards or requirements.
- (B) Specific Prohibitions. No User shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
  - (1) Pollutants which create a fire or explosive hazard in the POTW, including but not limited to wastestreams with a closed-cup flashpoint of less than one hundred forty degrees Fahrenheit (140°F) (sixty degrees Centigrade (60°C)) using the test methods specified in 40 CFR 261.21.
  - (2) Wastewater having a pH less than 5.0 or more than 9.0 or otherwise causing corrosive structural damage to the POTW or equipment;
  - (3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in Interference, but in no case solids greater than one-half inch (1/2") or 1.27 centimeters in any dimension,
  - (4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause Interference with the POTW.
  - (5) Wastewater having a temperature greater than one hundred fifty degrees Fahrenheit (150°F) (fifty five degrees Centigrade (55°C)), or which will inhibit biological activity in the treatment plant resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed one hundred four degrees Fahrenheit (104°F) (forty degrees Centigrade (40°C)),
  - (6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause Interference or Pass Through.

- (7) Pollutants which result in the presence of toxic gases vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems,
  - (8) Trucked or hauled pollutants, except at discharge points designated by the Utilities Director in accordance with Chapter 201 of the City's Code of Ordinances,
  - (9) Noxious or malodorous liquids gases solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life or to prevent entry into the sewers for maintenance or repair;
  - (10) Wastewater which imparts color which cannot be removed by the treatment process, such as but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent thereby violating the City's NPDES permit
  - (11) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations,
  - (12) Storm Water, surface water, ground water, artesian well water, roof runoff subsurface drainage, swimming pool drainage condensate deionized water, Noncontact Cooling Water, and unpolluted wastewater, unless specifically authorized by the Utilities Director,
  - (13) Sludges, screenings, or other residues from the pretreatment of industrial wastes
  - (14) Medical Wastes except as specifically authorized by the Utilities Director in an individual wastewater discharge permit,
  - (15) Wastewater causing, alone or in conjunction with other sources the treatment plant's effluent to fail toxicity test
  - (16) Detergents, surface-active agents, or other substances which that might cause excessive foaming in the POTW
  - (17) Fats, oils, or greases of animal or vegetable origin in concentrations greater than one hundred (100) mg/l,
  - (18) Wastewater causing two readings on an explosion hazard meter at the point of discharge into the POTW or at any point in the POTW, of more than five percent (5%) or any single reading over ten percent (10%) of the Lower Explosive Limit of the meter
- (C) Pollutants substances or wastewater prohibited by Chapter 201 of City's Code of Ordinances shall not be processed or stored in such a manner that they could be discharged to the POTW

**4.6 PRETREATMENT FACILITIES** The DEVELOPER shall provide wastewater treatment as necessary to comply with the CITY's Code of Ordinance Chapter 201-Sewer Use and comply with all categorical Pretreatment Standards, Local Limits, and the prohibitions within the time limitations specified by EPA, the State, or the Utilities Director whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the DEVELOPER's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Utilities Director for review and shall be acceptable to the Utilities Director before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the DEVELOPER from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the City under the provisions of the Chapter 201-Sewer Use of the Code of Ordinances.

**4.7 ADDITIONAL MEASURES** The CITY may require the DEVELOPER to implement additional pretreatment measures whenever deemed necessary in accordance with Chapter 201 of the CITY's Code of Ordinances.

**SECTION 5 DESIGN, REVIEW, CONSTRUCTION, INSPECTION, AND CONVEYANCE OF FACILITIES.**

**5.1** To induce the CITY to provide water service, and to continuously provide customers located on the Property with water services, DEVELOPER hereby covenants and agrees to pay for the construction and to transfer ownership and control to the CITY as a contribution-in-aid-of-construction the on site and off site water distribution facilities referred to herein. All design and construction shall be in accordance with CITY rules regulations and utility standards.

**5.2** DEVELOPER shall pay a reasonable fee to the CITY as outlined in its rate resolutions and ordinances, as amended from time to time to review engineering plans and specifications of the type and in the form as prescribed by the CITY, showing the on site and off-site water distribution facilities proposed to be installed to provide service to the subject Property. The CITY will advise DEVELOPER's engineer of any sizing requirements as mandated by the CITY's system extension policy and utility standards for the preparation of plans and specifications for facilities within the Property. If applicable such detailed plans may be limited to a phase of the Property, and subsequent phases may be furnished from time to time. However, each such phase, if applicable, shall conform to a master plan for the development of the Property and such master plan shall be submitted to the CITY concurrent with or prior to submission of plans for the first phase. All such plans and specifications shall be submitted to the CITY and no construction shall commence until CITY has approved such plans and specifications in writing. The complete plans and specifications, as to be approved by the CITY's Utilities Director or designee, for Improvements to Facilities for Utility Service to service the Property and the connection to the CITY's system shall be prepared by the DEVELOPER's Professional Engineer, who shall be registered in the State of Florida. All construction shall be in strict conformity with the final plans and specifications as approved by the CITY. The CITY, its Utilities Director, or other representative shall have the right to inspect any and all portions of the Improvements to Facilities whether in public

rights-of way or on private property and upon notification of any deviation from the approved plans and specifications the DEVELOPER shall immediately make modifications as directed by the CITY. No construction shall be commenced without final approval of the plans and specifications by the CITY's Utilities Department Director. After approval DEVELOPER shall cause to be constructed, at DEVELOPER's expense, the water distribution facilities as shown on all plans and specifications.

**5.3** During the construction of the water distribution collection facilities by DEVELOPER the CITY shall have the right to inspect such installation to determine compliance with the plans and specifications, adequacy of the quality of the installation and further shall be entitled to perform standard tests for pressure filtration, line and grade, and all other normal engineering tests required by specifications and/or good engineering practices. Complete as-built plans shall be submitted to the CITY upon completion of construction. CITY inspections of the off site and on-site facilities will not delay the construction schedule.

**5.4** Fees will be levied by the CITY to cover the cost of plan review and inspection as set forth in rate resolutions and ordinances as amended from time to time.

**5.5.** By these presents upon completion and approval by the CITY, the DEVELOPER shall transfer to the CITY, all right, title, and interest, free and clear of any encumbrances whatsoever to the on-site and off-site water distribution collection facilities installed by DEVELOPER's contractor, pursuant to the provisions of this Agreement. Such conveyance is to take effect without further action upon the acceptance by the CITY of said installation. As further evidence of said transfer to title, and upon the completion of the installation and prior to the rendering of service by the CITY DEVELOPER shall convey to the CITY, by bill of sale, or other appropriate documents, in form satisfactory to the CITY's counsel the complete on-site and off-site water distribution collection facilities as constructed by DEVELOPER and approved by the CITY. DEVELOPER shall further cause to be conveyed to the CITY, all easements and/or rights-of-way covering areas in which off-site water distribution collection facilities are installed by recordable document in form satisfactory to the CITY's counsel. All conveyance of easements and/or rights-of-way shall be accompanied by a title policy or other evidence of title (including letter from attorney), satisfactory to the CITY, establishing DEVELOPER's rights to convey such continuous enjoyment of such easements or rights-of-way for those purposes set forth in this Agreement to the exclusion of any other person in interest. The use of easements granted by DEVELOPER shall include the use by other utilities so long as such uses by electric telephone or gas utilities, or cable television, etc., that do not interfere with use by the CITY. The CITY agrees that the acceptance of the water distribution facilities installed by DEVELOPER, for service, or by acceptance of the bill of sale, shall constitute that assumption of responsibility by the CITY for the continuous operation and maintenance of such systems from that date forward.

**5.6** All installations by DEVELOPER or its contractors shall be warranted for one (1) year from the date of acceptance by the CITY. Mortgagee(s) if any holding prior liens on such properties shall be required to release such liens, subordinate their position and

join in the grant or dedication of the easements or rights-of way. The water distribution and facilities shall be covered by easements if not located within platted or dedicated rights-of-way. CITY will allow DEVELOPER to assign warranty to CITY with written approval from DEVELOPER's contractors that such assignment meets their approval and they will fulfill the terms and conditions of the warranty.

**5.7** Payment of the contributions in-aid of-construction does not and will not result in the CITY waiving any of its rates, rate schedules or rules and regulations and their enforcement shall not be affected in any manner whatsoever by DEVELOPER making the contribution. The CITY shall not be obligated for any reason whatsoever nor shall the CITY pay any interest or rate of interest upon the contribution. Neither DEVELOPER nor any person or other entity holding any of the Property by, through or under DEVELOPER, or otherwise, shall have any present or future right, title claim or interest in and to the contributions or to any of the water facilities and properties of the CITY, and all prohibitions applicable to DEVELOPER with respect to refund of contributions interest payment on said contributions and otherwise are applicable to all persons or entities. No user or customer of water service shall be entitled to offset any bill or bills rendered by the CITY for such service or services against the contributions. DEVELOPER shall not be entitled to offset the contributions against any claim(s) of the CITY.

**5.8** DEVELOPER specifically assumes all liability in any way arising from this Agreement and will defend, indemnify and hold the CITY harmless from any judgment, decree, order, demand, or claim (including costs or attorney's fees), which in any way arise from this Agreement including the design and construction of the system or from the act or omission of any DEVELOPER or its agents. Should the DEVELOPER fail for any reason to indemnify, defend and hold harmless the CITY, the CITY shall have the right to enforce the terms of this Agreement by placing a lien against the Property upon which this Agreement runs. The CITY shall be entitled to (1) foreclose upon said lien and recover any and all costs incurred, attorney's fees expended and both pre-judgment and post-judgment interest on this lien pursuant to Chapter 55, Florida Statutes at the highest lawful rate as then established by the Chief Financial Officer of the Florida Department of Financial Services or (2) enforce this Agreement in any other manner allowed by law, including termination of service, said election being wholly within the discretion of the CITY. The parties hereto acknowledge receipt of other and additional good and valuable consideration for this provision.

**5.9** All costs relating to the Improvements to Facilities including but not limited to labor, overhead taxes, licenses, application fees, easement acquisitions, lift stations, pumps, pipes, materials, and any other direct or indirect costs related to installation of the Improvements to Facilities shall be borne by the DEVELOPER and shall be fully paid by the DEVELOPER. All of the CITY's costs in connection with the Improvements to Facilities including but not limited to charges by the CITY's Utilities Director, inspections, maintenance, administrative expenses, and any other costs incurred by the CITY in connection with this matter shall be paid by the DEVELOPER. In addition to such costs, the DEVELOPER shall pay to the CITY fees described in Section 6. The CITY's fees and costs shall be paid by the DEVELOPER within three (3) days of the effective date of this

Agreement unless other payment arrangements have been established in Section 6 of this Agreement Any such billing by the CITY to the DEVELOPER shall be for items specified in Section 6 and may not necessarily cover all of the CITY's expenses which shall be billed to the DEVELOPER separately It is agreed that no reservation of capacity will be made by the CITY until all fees set forth in Section 6 have been paid Payment of these fees shall in no way be construed as to relieve the DEVELOPER of its obligation to pay any further sums due in accordance with this Agreement that are charged subsequent to the completion of such connection The DEVELOPER shall install, at the DEVELOPER's own expense a backflow control device in accordance with the CITY's specifications

**SECTION 6 SPECIAL CONDITIONS** Notwithstanding any other section in this Agreement, the following Special Conditions are mutually agreed between DEVELOPER and the CITY In the event of a conflict between this Section 6 and the rest of the Agreement, Section 6 shall control

- (1) The Developer to pay the CITY water connection charges in the amount of **\$36,709.50** which are itemized as follows
  - a A water capital (plant capacity) charge at a rate of **\$2,151.39** per Equivalent Residential Connection (ERC) or 225 Gallons Per Day (GPD) for a total of **\$34,422.24** based on the agreed-upon and stipulated flow rate of 3,600 gallons per day equal to 16 ERC
  - b A water main extension charges of **\$N/A** based upon **N/A** feet at a rate of **\$18.80** per front foot Developer to install infratstructure
  - c A water meter installation fee and deposit at the prevailing rate will be collect upon application of service
  - d Recording Fee of **\$153.00.**
  - e Utilities Plan Review and Inspection Fee of **\$2,134.31**
- (2) That the payments for the items in subsection (1) above will be made within three (3) days of the Effective Date of this Agreement
- (3) The DEVELOPER will pay an Annual Guaranteed Revenue / Reserve Capacity charge equal to (12) times the monthly residential base facility charge per equivalent residential connection The DEVELOPER will be billed in arrears on an annual basis (12) months after the effective date of this Agreement in the amount of **\$3,121.92** for the previous (12) months and continuing until the reserved facilities are utilized This charge is subject to change from time to time as approved by the City Council
- (4) That the above charges are based upon the actual current approved connection charges DEVELOPER agrees that if charges change or if new charges are approved

and in effect at the time of connection. DEVELOPER will pay the difference between the current charges and those in effect at the time of connection as well as any new charges required at the time of connection.

(5) That the charges contained in this Agreement are based upon the estimated gallons of usage to be supplied to DEVELOPER. The CITY reserves the right to revise such figures to conform to the actual usage, which figures may be computed at any time by averaging any consecutive three (3) month period during any calendar year during the life of this Agreement. DEVELOPER agrees to pay additional capital charges for all gallons in excess of the allotted gallons per day.

(6) That any line extensions or other facilities required to be installed by the CITY to supply the services set forth above may be constructed by the CITY prior to the dates when payments may be due from DEVELOPER, and DEVELOPER shall still be obligated for such payments as are required in this Agreement.

(7) That the CITY is not obligated to provide plant capacity or service in excess of the amounts estimated to be supplied in this Agreement, and only as permitted by the appropriate federal, state and local regulatory agencies. All charges have been based upon estimated usage supplied by the DEVELOPER, but DEVELOPER acknowledges, understands and agrees that the CITY may require DEVELOPER to curtail use that exceeds such estimated requirements.

(8) That all rates and charges made by the CITY to DEVELOPER, and to the future customers who will be serviced by the CITY, shall be made in accordance with rules and regulations as may from time to time be amended, adopted and approved by the City of Palm Bay in accordance with its regulatory authority contained in applicable statutes, ordinances, rules and regulations.

(9) That DEVELOPER will notify the CITY in writing not less than sixty (60) days prior to estimated date of completion of construction of facilities requiring water service, and the date on which DEVELOPER will require initial connection to water mains.

(10) That the provisions of this Agreement shall not be construed as establishing a precedent as to the amount or basis of contributions to be made by DEVELOPER or other customers, or the acceptance thereof on the part of the CITY, for other CITY system extensions that may be required hereafter by DEVELOPER and which are not presently covered by this Agreement.

(11) To pay all sums due and payable to the CITY for the Guaranteed Revenue / Reserve Capacity within fifteen (15) days after the billing statement has been mailed or presented by the CITY to the DEVELOPER as set forth in such statement. Upon failure or refusal to pay the amounts due on statements as rendered, the CITY may, after ten (10) days advance written notice in its sole discretion, discontinue service. A discontinuance of service will mean that all previous fees paid by the DEVELOPER as stated in this Agreement will be forfeited. Service may be continued again upon payment.



of all unpaid Guaranteed Revenue / Reserve Capacity Charges and payment of current or new and additional connection charges. A credit of previous fees paid for connection charges will be applied.

**SECTION 7 EVIDENCE OF TITLE** At least thirty (30) days prior to the CITY's acceptance of the water distribution facilities at the expense of the DEVELOPER, DEVELOPER agrees to either deliver to the CITY an Abstract of Title, brought up to date, which abstract shall be retained by the CITY and remain the property of the CITY, or to furnish the CITY with respect to the Property an opinion of title from a qualified attorney at law or a title commitment from a qualified title insurance company, which opinion or commitment shall include a current report on the status of the title setting out the name of the legal title holders, the outstanding mortgages, taxes, liens, and covenants. The provisions of this Section are for the exclusive rights of service contained in this Agreement. Any mortgage or lien holder having an interest in the Property shall be required to join in the grant of exclusive service rights set forth in this Agreement. Title standards shall be the same as those applicable to real estate generally adopted by the Florida Bar and in accordance with Florida law.

**SECTION 8 OWNERSHIP OF FACILITIES** DEVELOPER agrees with the CITY that the water distribution facilities conveyed to the CITY for use in connection with providing water services to the Property, shall at all times remain in the complete and exclusive ownership of the CITY and any entity owning any part of the Property or any residence or building constructed or located thereon, shall not have the right, title, claim or interest in and to such facilities or any part of them for any purpose including the furnishing of water services to other persons or entities located within or beyond the limits of the Property. Such parts of the Facilities that are on the Customer's property shall at all times be maintained and repaired by the Customer; however, the CITY shall have the right, at any time and without notice to the Customer to inspect such Facilities and the Customer upon the CITY's direction shall make such repairs and maintenance as the CITY directs.

**SECTION 9 APPLICATION OF RULES, REGULATIONS, AND RATES** The CITY may establish, revise, modify and enforce rules, regulations and rates covering the provision of water service to the property owners on the Property. Such rules, regulations and rates are subject to the approval of the City Council of the City of Palm Bay, Florida. Such rules and regulations shall at all times be reasonable and subject to regulation as may be provided by law or under contract. Rates charged to DEVELOPER or customers located upon the Property shall be identical to rates charged for the same classification of service. All rules, regulations, and rates in effect, or placed into effect in accordance with the preceding shall be binding upon DEVELOPER upon any other entity holding by through or under DEVELOPER and upon any customer of the wastewater service provided to the Property by the CITY.

**SECTION 10 PERMISSION TO CONNECT REQUIRED** DEVELOPER or any owner of any parcel of the Property, or any occupant of any residences or buildings located thereon shall not have the right to and shall not connect to any customer installation to the water facilities of the CITY until payment is received for such connection and approval.

for such connection has been granted by the CITY such approval not to be unreasonably withheld

**SECTION 11 BINDING AGREEMENT, ASSIGNMENTS BY DEVELOPER** This Agreement shall be binding upon and shall inure to the benefit of DEVELOPER, the CITY and their respective assigns and successors by merger consolidation or conveyance This Agreement shall not be sold, conveyed, assigned or otherwise disposed of by DEVELOPER without the written consent of the CITY first having been obtained The CITY agrees not to unreasonably withhold such consent.

**SECTION 12 NOTICES, PROPER FORM** Until further written notice by either party to the other all notices provided for herein shall be in writing and transmitted by messenger, or by mail to

CITY                      City of Palm Bay  
120 Malabar Road, Southeast  
Palm Bay, FL 32907  
Attention. CITY MANAGER

DEVELOPER              Weber Woods, LLC  
516 Delannoy Avenue  
Cocoa, FL 32922

**SECTION 13 SURVIVAL OF COVENANTS** The rights privileges, obligations and covenants of DEVELOPER and the CITY shall survive the completion of the work of DEVELOPER with respect to completing the water facilities and services to any phase area and to the Property as a whole

**SECTION 14 ENTIRE AGREEMENT, AMENDMENTS, APPLICABLE LAW, ATTORNEY'S FEES** This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between DEVELOPER and the CITY made with respect to the matters herein contained Upon execution this Agreement shall constitute the entire agreement between DEVELOPER and the CITY Any additions alterations or variations of the terms of this Agreement shall be void *ab-initio*, and no provisions of this Agreement may be waived by either party unless such additions, alterations, variations or waivers are set forth expressly in writing and duly signed by both DEVELOPER and the CITY This Agreement shall be governed by the laws of the State of Florida, as well as all ordinances of the CITY and it shall be and become effective immediately upon execution by both parties hereto

**SECTION 15 DISCLAIMERS, LIMITATIONS ON LIABILITY**

**15.1 STATUS** The parties deem each other to be independent contractors, and not agents of the other

**15.2. INDEMNIFICATION** Up until the date of conveyance to the CITY of all on-site water facilities, DEVELOPER will indemnify, save and hold harmless the CITY against all liability losses damage or other expenses including reasonable attorney's fees which may be imposed upon, incurred by or asserted against the CITY by reason of any negligence on the part of the DEVELOPER or its employees agents contractors, licensees or invitees, any personal injury or property damage occurring on or about the property or any part thereof or any failure on the part of the DEVELOPER to perform or comply with any covenant required to be performed or complied with against the CITY by reason of any such occurrences DEVELOPER will at DEVELOPER's expense resist or defend any such action or proceeding Provided further, however, DEVELOPER shall have no obligation with respect to claims arising out of the intentional or negligent conduct of the CITY or its employees, agents, contractors, licensees or invitees or of third parties not included in the definitions above The liability and immunity of the CITY is governed by the provisions of §768.28, Florida Statutes and nothing in this agreement is intended to extend the liability of CITY or to waive any immunity enjoyed by CITY under that statute Any provisions of this Agreement determined to be contrary to §768.28 or to create any liability or waive any immunity except as specifically provided in §768.28, shall be considered void *ab initio*

**15.3 FORCE MAJEURE** The CITY shall not be liable or responsible to the DEVELOPER by reason of the failure or inability of the CITY to take any action it is required to take or to comply with the requirements imposed hereby or any injury to the DEVELOPER or by those claiming by or through the DEVELOPER, which failure, inability or injury is caused directly or indirectly by *force majeure* (as hereinafter set forth) The term *force majeure* as employed herein shall mean acts of God, strikes, lock-outs, or other industrial disturbance acts of public enemies war blockades riots acts of armed forces, militia, or public authority, epidemics, breakdown of or damage to machinery, pumps or pipe lines, landslides earthquakes fires storms floods or washouts arrests title disputes, or other litigation, governmental restraints of any nature whether federal, state, county, municipal or otherwise civil or military civil disturbances explosions failure or inability to obtain necessary materials, supplies, labor or permits or governmental approvals whether resulting from or pursuant to existing or future rules, regulations, orders laws or proclamations whether federal state county municipal or otherwise civil or military, or by any other causes, whether or not of the same kind as enumerated herein, not within the sole control of the CITY and which by exercise of due diligence the CITY is unable to overcome

**15.4 DISCLAIMER OF THIRD PARTY BENEFICIARIES** This agreement is solely for the benefit of and shall be binding upon the formal parties hereto and their respective authorized successors and assigns, and no right or cause of action shall accrue upon or by reason hereof to or for the benefit of any third party not a party to this agreement or an authorized successor or assignee thereof

**15.5 DISCLAIMER OF SECURITY** Notwithstanding any other provision of this agreement, the DEVELOPER expressly acknowledges (1) that it has no pledge of or lien upon any real property (including, specifically, the CITY's system), any personal property,

or any existing or future revenue source of the CITY (including specifically any revenues or rates, fees, or charges collected by the CITY in connection with the CITY's system) as security for any amounts of money payable by the CITY under this agreement, and (2) that its rights to any payments or credits under this agreement are subordinate to the rights of all holders of any stocks, bonds, or notes of the CITY, whether currently outstanding or hereafter issued

**15.6 LIMITATION OF CITY LIABILITY.** Nothing contained in this paragraph or elsewhere in this agreement is in any way intended either to be a waiver of the limitation placed upon the CITY's liability as set forth in section 768.28, Florida Statutes, or to extend the CITY's liability beyond the limits established in said section 768.28 and no claim or award against the CITY shall include attorney's fees, investigative costs, expert fees, suit costs or pre judgment interest

**SECTION 16 COVENANT NOT TO ENGAGE IN UTILITY BUSINESS** The DEVELOPER, as a further consideration for this Agreement, agrees that it shall not engage in the business of providing water service to the Property during the period of time the CITY its successors and assigns, provide water service to the Property it being the intention of the parties hereto that the foregoing provision shall be a covenant running with the land and under said provision and also under other provisions of this Agreement the CITY shall have the sole and exclusive right and privilege to provide water service to the Property and to the occupants of each residence, building or unit constructed thereon

**SECTION 17 RECORDATION** The parties hereto agree that an executed copy of this Agreement and Exhibits attached hereto shall be recorded in the Public Records of Brevard County Florida at the expense of the DEVELOPER

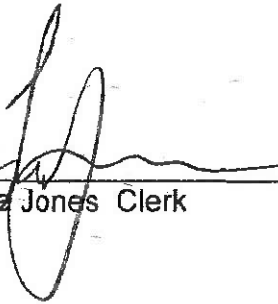
**SECTION 18 SEVERABILITY** If any part of this Agreement is found invalid or unenforceable by any court such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced, and if the intentions of the parties can continue to be effected To that end this Agreement is declared severable

**SECTION 19 AUTHORITY TO EXECUTE AGREEMENT** The signature by any person to this Agreement shall be deemed a personal warranty by that person that he has the full power and authority to bind the entity for which that person is signing


**SECTION 20 ARMS LENGTH TRANSACTION** Both parties have contributed to the preparation drafting and negotiation of this document and neither has had undue influence or control thereof Both parties agree that in construing this Agreement it shall not be construed in favor of either party by virtue of the preparation, drafting, or negotiation of this Agreement

IN WITNESS WHEREOF, DEVELOPER and the CITY have executed or have caused this Agreement with the named Exhibits attached if any to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement

ATTEST

  
\_\_\_\_\_  
Teresa Jones Clerk

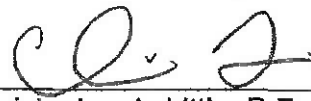
CITY OF PALM BAY, FLORIDA, a  
municipal corporation created under  
the laws of the State of Florida

By   
\_\_\_\_\_  
Lisa Morrell City Manager

Date. December 31, 2019

FOR THE USE AND RELIANCE  
OF PALM BAY ONLY  
APPROVED AS TO FORM

Dated 12/23/2019

  
\_\_\_\_\_  
Christopher A Little, P E  
Utilities Director

Signed sealed and delivered

DEVELOPER

In the presence of

Weber Woods LLC

[Signature]  
Print Name Mandy Mason

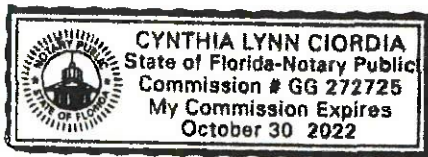
By: [Signature]  
Print Name Malcolm Kuschenbaum  
Title: Member  
Date 9/12/19

[Signature]  
Print Name Devon Kernan

[CORPORATE SEAL]

STATE OF FLORIDA  
COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of September 2019 by Malcolm Kuschenbaum, member of Weber Woods, a Company authorized to do business in the State of Florida on behalf of the organization (He/she is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath



[Signature]  
Signature of Person Taking Acknowledgment

Cynthia L Ciordia  
Name of Acknowledger Typed, Printed or Stamped

Notary  
Title or Rank

Serial Number if any.

**EXHIBIT "A"**

**Lot 26 and a portion of Lot 25 Florida Indian River Land Company Subdivision Section 2 Township 29S Range 37E being more particularly described as follows**

**Commencing at a point marking the northwest corner of Section 2 Township 29S Range 37E, thence run S 89 degrees 59 minutes 54 seconds E along the north line of said Section 2, Township 29 S, Range 37, a distance of 471 36 feet to a point thence run S 00 degrees 07 minutes 32 seconds E a distance of 33 feet to a point, said point being on the south right of way line of State Route 514 and also being the Point of Beginning of the herein described parcel, Thence run S 89 degrees 59 minutes 54 seconds E along the south right of way line of said State Route 514 a distance of 846.26 feet to a point on the east line of Lot 25 Florida Indian River Land Company subdivision of Said Section 2, Thence run S 00 degrees 07 minutes 21 seconds E along the east line of said Lot 26 a distance of 1287 71 feet to a point, thence run N 89 degrees 59 minutes 58 seconds W along the south line of said lot 26 a distance of 846 19 feet to a point thence run N 00 degrees 07 minutes 32 seconds W a distance of 1287 73 feet to the Point of Beginning**

**Lot 26 – 25.02 acres (R/W not Included) 25.665 ac (R/W Included)**



UTILITIES DEPARTMENT

MEMO TO LISA MORRELL  
CITY MANAGER

FROM CHRISTOPHER A LITTLE P E *CL*  
UTILITIES DIRECTOR

DATE December 19, 2019

SUBJECT UTILITIES AGREEMENT Weber Woods, LLC FE/EIN 20 2752834

The attached Utilities Agreement is for Twin Lakes Subdivision, 16 Single Family Units located on Parcel ID#29-37-02 00 253.

Connection Charges of \$ \$36,709 50 have been paid and are as follows

<u>Water Capital Charge</u>	
16 ERC's @ \$2 151 39 per ERC =	\$ 34,422.24
<u>Water Main Line Extension Fee</u>	
N/A feet @ \$18 80 per foot =	\$ N/A
<u>Recording Fee</u>	\$ 153.00
<u>Utilities Plan Review and Inspection Fee</u>	\$ 2,134.31
<b>TOTAL CONNECTION CHARGES</b>	<b>\$ 36,709 50</b>
<u>Annual Guaranteed Revenue Charge</u>	\$ 3,121 92

Should you have any questions or need additional information please advise

/jb



FROM

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Postage  
Required  
Post Office  
not deliver  
without proper  
postage.

Batch date 12-19-19 Batch type OC29 Cashier ETA  
Total 36,862.55 Currency 0 Coin 0  
verified by supervisor \_\_\_\_\_  
Attention Bank teller Please return this slip noted with any discrepancy in deposit amt

DEPOSIT TICKET  
 FOR CLEAR COPY PRESS FIRMLY WITH BALL POINT PEN.  
 WA 29  
 CHASE  
 JPMorgan Chase Bank, N.A.  
 www.Chase.com

DATE 12-19-19

CURRENCY	DOLLARS	CENTS
COIN		
LISTED CHECK	36,862	55
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
\$	36,862	55

83-8413/2670

TOTAL ITEMS 3

PLEASE BE SURE ALL ITEMS ARE PROPERLY ENDORSED.  
 DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL.

PLEASE ENTER TOTAL

36862.55

CITY OF PALM BAY  
 CONCENTRATION ACCOUNT  
 LOC. #4218011

⑈4218011⑈ ⑆502101025⑆ ⑆26176336⑆

CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE PROVISIONS OF THE U.S. FEDERAL RESERVE SYSTEM'S APPLICABLE COLLECTION AGREEMENT.

THIS CHECK IS VOID WITHOUT A COLORED BORDER AND BACKGROUND PLUS A KNIGHT & FINGERPRINT WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

WEBER WOOD, LLC  
 516 Delannoy Ave.  
 Cocoa, FL 32922  
 321-632-4141

CenterState  
 Bank, N.A.

2059  
 83-1403  
 631

9/13/2019

PAY TO THE ORDER OF City of Palm Bay

\$ \*\*34,422.24

Thirty-Four Thousand Four Hundred Twenty-Two and 24/100\*\*\*\*\* DOLLARS

City of Palm Bay

*[Handwritten Signature]*

AUTHORIZED SIGNATURE

MEMO Plant Capacity Fee - Twin Lakes

⑈002059⑈ ⑆063114030⑆ ⑆11488038⑆

THIS CHECK IS VOID WITHOUT A COLORED BORDER AND BACKGROUND PLUS A KNIGHT & FINGERPRINT WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

WEBER WOOD, LLC  
516 Delannoy Ave.  
Cocoa, FL 32922  
321-632-4141



2060  
63-1403  
631

9/13/2019

PAY TO THE ORDER OF City of Palm Bay \$ \*\*153.00

One Hundred Fifty-Three and 00/100 \*\*\*\*\* DOLLARS

City of Palm Bay

AUTHORIZED SIGNATURE

MEMO Recording fee - Twin Lakes

⑈00 2060⑈ ⑆063 1 14030⑆ 11488038⑈

THIS CHECK IS VOID WITHOUT A COLORED BORDER AND BACKGROUND PLUS A KNIGHT & FINGERPRINT WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

WEBER WOOD, LLC  
516 Delannoy Ave.  
Cocoa, FL 32922  
321-632-4141



2070  
63-1403  
631

12/16/2019

PAY TO THE ORDER OF City of Palm Bay \$ \*\*2,287.31

Two Thousand Two Hundred Eighty-Seven and 31/100 \*\*\*\*\* DOLLARS

City of Palm Bay

AUTHORIZED SIGNATURE

MEMO Plan review and inspection fee - Twin Lakes

⑈00 2070⑈ ⑆063 1 14030⑆ 11488038⑈

EN 12 19-19  
OC 29

CASH POST LISTING  
DEPOSIT CONTROL HOWARE 12/19/19 29

PREPARED 12/19/19 11:42 51  
PROGRAM CR490L  
CITY OF PALM BEACH

BATCH ID - HOWARE 12/19/19 29 OVER THE-COUNTER MONIES DRAWER # 1

DETAIL TOTALS

PYMT TYPE	DESCRIPTION	COUNT	AMOUNT	ZERO/VOID COUNT	TENDERED AMOUNT	NON-CASH AMOUNT
UA	UTILITY AGREEMENTS	3	36 862.55	0	36 862 55	36 862 55
CK	CHECK PAYMENTS	3			36 862 55	36 862 55
	TENDERED TOTAL				36 862 55	36 862 55
	CHANGE				00	00
	GRAND TOTAL				36 862 55	36 862 55

ENDORSEMENT CODES	DESCRIPTION	COUNT	AMOUNT
CF	CONCENTRATION CASH FLOW	3	36,862 55

BANK CODE	TOTALS	AMOUNT
00	DEFAULT BANK CODE	36,862 55

VOIDED OR ZERO RECEIPTS	ENTERED TOTAL	COMPUTED NON-ZERO RCPTS
0	1	1
	36 862 55	36,862.55

\* BATCH POSTED \*

EN 1214-19  
0029

CASH POST LISTING  
DEPOSIT CONTROL HOWARE 12/19/19 29

PREPARED 12/19/19 11 42 51  
PROGRAM CR400L  
CITY OF PALM BAY

BATCH ID - HOWARE 12/19/19 29 OVER THE-COUNTER MONIES DRAWER #. 1

RECEIPT	TOTAL RECEIPT	CUSTOMER	LOCATION NAME/ADDRESS	CUST TP	DETAIL FVMT AMOUNT TYPE	SUB TYPE SV TM	CHECK#	TOTAL TENDERED
0085154	36862 55		UTILITY AGREEMENTS		2287 31 UA	*		36862 55
CR=42100002201014			SPECIAL PURPOSE DEPOSITS / UTILITY		BANK ACCOUNT / MAIN ACCOUNT			UA TWIN LAKES SUB
DR=42100001041001			UTILITY AGREEMENTS		153 00 UA			
CR=42100002201014			SPECIAL PURPOSE DEPOSITS / UTILITY		BANK ACCOUNT / MAIN ACCOUNT			UA TWIN LAKES SUB
DR=42100001041001			UTILITY AGREEMENTS		34422 24 UA			
CR 42100002201014			SPECIAL PURPOSE DEPOSITS / UTILITY		BANK ACCOUNT / MAIN ACCOUNT			UA TWIN LAKES SUB
DR 42100001041001			UTILITY AGREEMENTS					

TENDER DETAIL: CK 2070 2387 31  
CK 2060 153 00  
CK 2059 34422 24

WEBER WOODS TWIN LAKES SUB

EN 12-19-19  
OCA9

DEPOSIT FOR CONTROL    HOWARE    12/19/19 29    36 862 55

EA 0C229  
12/19/19

PREPARED 12/19/19 11:42:51  
PROGRAM CR498U  
CITY OF PALM BAY

G/L BATCH GENERATION  
\* DETAIL POSTING \*

PAGE 1

DATE	TYPE	ACCOUNT NUMBER	PROJECT NUMBER	BANK CODE	RECEIPT	DEBIT AMT	CREDIT AMT
12/19/19	ADJUSTMT	42100001041001		00	0085154	2 287 31	00
		42100001041001		00	0085154	153 00	00
		42100001041001		00	0085154	34 422 24	00
		42100002201014		00	0085154	00	2 287 31
		42100002201014		00	0085154	00	153 00
		42100002201014		00	0085154	00	34 422 24
GROUP TOTAL						36 862 55	36 862 55

G/L BATCH CREATED: BATCH-01698      2020/03      USERID-MCLAUN      AJ HELD

REPORT TOTAL      36 862 55      36 862 55

Return to:  
Terese Jones, City Clerk  
City of Palm Bay  
120 Malabar Road SE  
Palm Bay, Florida 32907

CFN 2020196832, OR BK 8851 PAGE 1805,  
Recorded 09/10/2020 at 04:29 PM, Scott Ellis, Clerk of  
Courts, Brevard County  
# Pgs:3

TOWN OF MALABAR

09 OCT 2020

RECEIVED

#### UTILITY EASEMENT

THIS UTILITY EASEMENT ("Easement") is made this 4<sup>th</sup> day of SEPTEMBER, 2020, by **DON ADAMS and LINDA ADAMS**, husband and wife (collectively, "Grantor"), whose address is 6183 Anchor Lane, Rockledge, Florida 32955, to **CITY OF PALM BAY**, a Florida municipal corporation, whose mailing address is 120 Malabar Road S.E., Palm Bay, Florida 32907 (hereinafter "Grantee"), its successors and assigns.

(Wherever used herein, the terms "Grantor" and "Grantee" shall include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations, partnerships (including joint ventures), public bodies and quasi-public bodies.)

WITNESSETH: That the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, hereby grants unto the Grantee, its successors and assigns, a perpetual public easement for the construction, operation and maintenance of public utilities and related appurtenances including, without limitation, water mains and appurtenances, sanitary sewers and appurtenances and any other utility system permitted by Grantee (collectively, the "Facilities") upon, over, under and across the following described land (hereinafter "Property") situate, lying and being in Brevard County, Florida, to wit:

See Exhibit "A" attached hereto and made a part hereof.

The rights under this Easement specifically include: (a) the right of perpetual ingress and egress to patrol, inspect, alter, improve, install, construct, repair, maintain, rebuild, remove and provide access and service to the Facilities; (b) the right to decrease or increase, or to change the quantity and type of, the Facilities; (c) the right to clear the Property of the trees, limbs, undergrowth, and other physical objects (regardless of the location of such trees, limbs, undergrowth and other objects) which, in the opinion of Grantee, endanger or interfere with the safe and efficient installation, operation, or maintenance of the Facilities; (d) the right to permit any other person or entity to perform any of the foregoing in relation to the Facilities on behalf of the Grantee; and (e) all other rights and privileges reasonably necessary or convenient for the safe and efficient installation, operation and maintenance of the Facilities and for the enjoyment and use of the Property by the Grantee for the purposes described above. No buildings or structures will be located or constructed by Grantor within the Property. Grantee shall only use the Property for the purposes permitted herein. Grantor reserves unto itself, and its successors and assigns, the right to use the Property for any lawful purpose, whatsoever, which does not prevent Grantee from exercising the easement rights granted herein, impede Grantee's use of the easement granted herein, or interfere with the operation of or damage the Facilities installed within the Property.

TO HAVE AND TO HOLD the same unto said Grantee, its successors and assigns forever, and the Grantor will defend the title to the Property against all persons claiming by, through or under said Grantor.



This Easement was prepared without a review or examination of the title to the Property and no opinions or representations are being made either expressly or implied by Grantor.

IN WITNESS WHEREOF, the Grantor has signed and sealed these presents the day and year first above written.

GRANTOR:

WITNESSES:

[Signature]  
(Witness 1) Print Name: Andy Leyva

[Signature]  
DON ADAMS

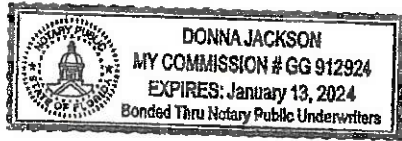
[Signature]  
(Witness 2) Print Name: Shivani Patel

[Signature]  
LINDA ADAMS

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of September, 2020 by Don Adams and Linda Adams, who are personally known to me or who produced personally known as identification.

[Signature]  
Notary Public



**Exhibit "A"**  
**(Legal Description)**

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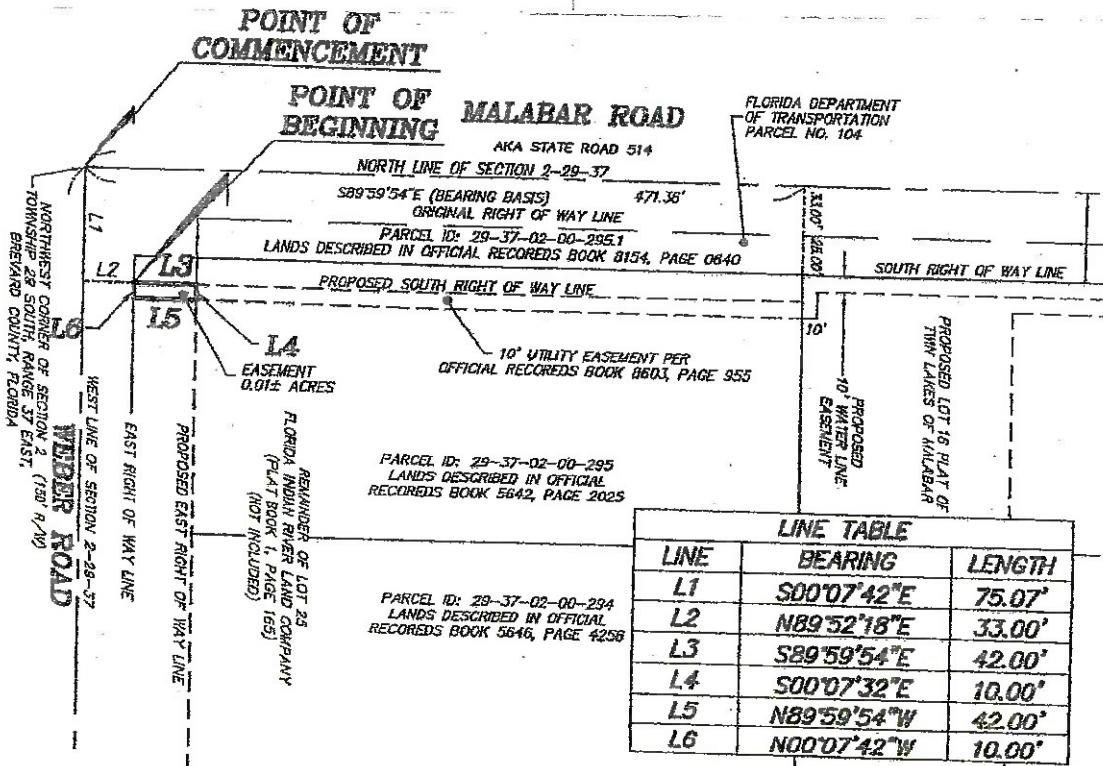
*Utility Easement*

3

**DESCRIPTION:**

A PORTION OF LOT 25, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION, SECTION 2, TOWNSHIP 29 SOUTH, RANGE 37 EAST, PLAT BOOK 1, PAGE 165, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 2, THENCE RUN SOUTH 00°07'42" EAST, ALONG THE WEST LINE OF SAID SECTION 2, A DISTANCE OF 75.07 FEET; THENCE NORTH 89°52'18" EAST, A DISTANCE OF 33.00 FEET THE POINT OF BEGINNING OF THE HEREIN DESCRIBED EASEMENT, SAID POINT BEING ON THE EAST RIGHT OF WAY LINE OF WEBER ROAD; THENCE SOUTH 89°59'54" EAST, A DISTANCE OF 42.00 FEET; THENCE SOUTH 00°07'32" WEST, A DISTANCE OF 10.00 FEET; THENCE NORTH 89°59'54" WEST, A DISTANCE OF 42.00 FEET; THENCE NORTH 00°07'42" WEST ALONG THE EAST RIGHT OF WAY LINE OF WEBER ROAD (A 66 FOOT RIGHT OF WAY), A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING. CONTAINING 0.01 ACRES, MORE OR LESS.



SKETCH OF DESCRIPTION ONLY! THIS IS NOT A SURVEY!

**AAL LAND SURVEYING SERVICES, INC.**

SKETCH OF DESCRIPTION JOB # 19086 OFF WAT-2 DATE: 08-31-20 SECTION 02, TOWNSHIP 29S, RANGE 37E L.B. #6623	1. THIS SKETCH AND DRAWING HAVE BEEN PREPARED TO CONFORM WITH APPLICABLE STANDARDS OF PRACTICE AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS BY CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES. 2. BEARINGS ARE BASED ON ASSUMED DATA AND ON THE LINE SHOWN AS BEING THE BASIS OF BEARINGS.	SHEET 1 OF 1
	DANIEL D. GARNER P.L.S. No. 6189 3970 MINTON ROAD WEST MELBOURNE, FL 32904 (321) 768-8110	SCALE: 1" = 100' 



# FLORIDA DEPARTMENT OF Environmental Protection

Bob Martinez Center  
2600 Blair Stone Road  
Tallahassee, FL 32399-2400

Ron DeSantis  
Governor

Jeanette Nuñez  
Lt. Governor

Noah Valenstein  
Secretary

July 15, 2019

TOWN OF MALABAR

007 00 2019

RECEIVED

Malcolm Kirschenbaum  
Weber Woods, LLC  
576 Delannoy Ave  
Cocoa, FL 32922

RE: **Facility ID: FLR10SW37**  
Twin Lakes Subdivision  
County: Brevard

Dear Permittee:

The Florida Department of Environmental Protection has received and processed your *Notice of Intent to Use Generic Permit for Stormwater Discharge from Large and Small Construction Activities* (NOI) and the accompanying processing fee. This letter acknowledges that:

- your NOI is complete;
- your processing fee is paid-in-full; and
- you are covered under the *Generic Permit for Stormwater Discharge from Large and Small Construction Activities* (CGP), DEP Document No. 62-621.300(4)(a).

Your project identification number is **FLR10SW37**. Please include this number on all future correspondence to the Department regarding this permit.

This letter is **not** your permit; however, this letter does serve as **verification of permit coverage**. A copy of the [permit language](#) is available online or by contacting the NPDES Stormwater Notices Center.

Your permit coverage becomes effective 7/18/2019 and will expire 7/17/2024. To terminate your coverage prior to this expiration date, you must file a *National Pollutant Discharge Elimination System (NPDES) Stormwater Notice of Termination*, DEP Form 62-621.300(6) (NOT). An NOT must be filed within 14 days of either (a) your final stabilization of the site or (b) your relinquishment of control of the construction activities to a new operator. To renew your coverage beyond the expiration date, you must submit a new NOI and processing fee to the Department no later than two days before coverage expires.

Until your permit coverage is terminated, modified, or revoked, you are authorized to discharge stormwater from the construction site referenced in your NOI to surface waters in accordance with the terms and conditions of the CGP. Some key conditions of the CGP are:

- implementation of your stormwater pollution prevention plan (SWPPP);
- implementation of appropriate construction best management practices (BMPs);
- conducting and documenting routine inspections; and
- retaining the records required by the permit (including your SWPPP) at the construction site or the alternate location specified in your NOI.

If you have any questions concerning this acknowledgment letter, please contact the NPDES Stormwater Notices Center at (866) 336-6312 (toll-free).

Sincerely,



Krishna Baral  
NPDES Stormwater Program  
Florida Department of Environmental Protection

## NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

### Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rules 28-106.201 and 28-106.301, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at [Agency\\_Clerk@dep.state.fl.us](mailto:Agency_Clerk@dep.state.fl.us). Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

### Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant and persons entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first. The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to

intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

#### Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at Agency\_Clerk@dep.state.fl.us, before the deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

#### Mediation

Mediation is not available in this proceeding.

#### Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000) and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within 30 days from the date this action is filed with the Clerk of the Department.

#### **EXECUTION AND CLERKING**

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Borja Crane-Amores

Environmental Administrator

#### **Attachment(s):**

1. Acknowledgement Letter
2. Construction Generic Permit
3. Notice of Termination

#### **CERTIFICATE OF SERVICE**

The undersigned duly designated deputy clerk hereby certifies that this document and all attachments were sent on the filing date below to the following listed persons:

Robin Babin, Florida Department of Environmental Protection,  
[Robin.Babin@floridadep.gov](mailto:Robin.Babin@floridadep.gov)

**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to Section 120.52, F. S., with the designated Department Clerk, receipt of which is hereby acknowledged.



**Clerk**

July 15, 2019

**Date**





# FLORIDA DEPARTMENT OF Environmental Protection

Ron DeSantis  
Governor

Jeanette Nuñez  
Lt. Governor

CENTRAL DISTRICT OFFICE  
3319 MAGUIRE BLVD., SUITE 232  
ORLANDO, FLORIDA 32803

TOWN OF MALABAR  
Noah Valenstein  
Secretary

OCT 08 2020

RECEIVED

## Notification of Acceptance of Use of a General Permit

**Permittee:**  
Malcolm Kirschenbaum, Owner  
Weber Woods, LLC  
576 Delannoy Avenue  
Cocoa, FL 32922  
[malcolm@eksdevelopment.com](mailto:malcolm@eksdevelopment.com)

**Permit Number:** 0032426-375-DSGP  
**Issue date:** December 11, 2019  
**Expiration Date:** December 10, 2024  
**County:** Brevard  
**Project Name:** Twin Lakes Subdivision  
**Water Supplier:** City of Palm Bay  
**PWS ID:** 3050442  
**PWS Type:** Community

Dear Mr. Kirschenbaum:

On December 11, 2019 the Florida Department of Environmental Protection received a “*Notice of Intent to Use the General Permit for Construction of Water Main Extensions for PWSs*” [DEP Form No. [62-555.900\(7\)](#)], under the provisions of Rule [62-4.530](#) and Chapter [62-555](#), Florida Administrative Code (F.A.C.). The proposed project includes the construction of approximately 955 linear feet of 12-inch PVC watermain and 1,000 linear feet of 8-inch PVC watermain with fittings, valves and appurtenances to serve 16 lots. The project is located at the south side of Malabar Florida with Corey Road on east side and Weber Road on west side.

Based upon the submitted Notice and accompanying documentation, this correspondence is being sent to advise that the Department does not object to the use of such general permit at this time. Please be advised that the permittee is required to abide by Rule [62-555.405, F.A.C.](#), all applicable rules in Chapters [62-4](#), [62-550](#), [62-555](#), F.A.C., and the General Conditions for All General Drinking Water Permits (found in [62-4.540, F.A.C.](#)).

The permittee shall comply with all sampling requirements specific to this project. These requirements are attached for review and implementation.

Pursuant to Rule [62-555.345, F.A.C.](#), the permittee shall submit a certification of construction completion [DEP Form No. [62-555.900\(9\)](#)] to the Department and obtain approval, or clearance, from the Department before placing any water main extension constructed under this general permit into operation for any purpose other than disinfection or testing for leaks.

Within 30 days after the sale or legal transfer of ownership of the permitted project that has not been cleared for service in total by the Department, both the permittee and the proposed permittee shall sign and submit an application for transfer of the permit using Form [62-](#)

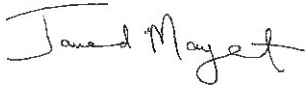
Permittee:  
Weber Woods, LLC  
Malcolm Kirschenbaum, Owner  
Page 2 of 3

DEP File No.:  
0032426-375-DSGP  
December 11, 2019

555.900(8), F.A.C., with the appropriate fee. The permitted construction is not authorized past the 30-day period unless the permit has been transferred.

This permit will expire five years from the date of issuance. If the project has been started and not completed by that time, a new permit must be obtained before the expiration date in order to continue work on the project, per Rule 62-4.030, F.A.C.

Sincerely,



Javed Mayet, P.E.  
Engineering Specialist II  
Florida Department of Environmental Protection

cc: Christopher Little, P.E., City of Palm Bay [Christopher.little@palmbayflorida.org]  
Bruce A. Moia, P.E., MBV Engineering, Inc [brucem@mbveng.com]  
Javed Mayet, Reggie Phillips, FDEP

## CLEARANCE REQUIREMENTS

Requirements for clearance upon completion of projects are as follows:

### 1) Clearance Form

Submission of a fully completed Department of Environmental Protection (DEP) Form [62-555.900\(9\) Certification of Construction Completion and Request for Clearance to Place Permitted PWS Components into Operation](#) and a copy of this general permit notification.

### 2) Record Drawings, if deviations were made

Submission of the portion of record drawings showing deviations from the DEP construction permit, including preliminary design report or drawings and specifications, if there are any deviations from said permit (Note that it is necessary to submit a copy of only the portion of record drawings showing deviations and not a complete set of record drawings.).

### 3) Bacteriological Results

Copies of satisfactory bacteriological analysis (a.k.a. Main Clearance), taken within sixty (60) days of completion of construction, from locations within the distribution system or water main extension to be cleared, in accordance with Rules [62-555.315\(6\)](#), [62-555.340](#), and [62-555.330](#), F.A.C. and American Water Works Association (AWWA) Standard C 651-92, as follows:

- The proposed main at the point of connection with the existing main.
- At or near lot number 7.
- Per AWWA C651, no hydrants shall be used for sampling.

Each location shall be sampled on two consecutive days, with sample points and chlorine residual readings clearly indicated on the report. **A sketch or description of all bacteriological sampling locations must also be provided.**

**Please submit the entire clearance document package in electronic format to [DEP\\_CD@dep.state.fl.us](mailto:DEP_CD@dep.state.fl.us).** If the file is very large, you may post it to the Water Electronic Submittal folder on the Central District's ftp site at:

[ftp://ftp.dep.state.fl.us/pub/incoming/Central\\_District/Water%20Electronic%20Applications](ftp://ftp.dep.state.fl.us/pub/incoming/Central_District/Water%20Electronic%20Applications).

After posting the document, send an e-mail to [DEP\\_CD@dep.state.fl.us](mailto:DEP_CD@dep.state.fl.us), alerting the Department that it has been posted.

Any submitted drawings (should be sized 11" x 17") and the engineer of record's signed seal and dates on the required document must be legible for acceptance.

Forms: <http://www.dep.state.fl.us/water/drinkingwater/forms.htm>

**For further clarification contact:** Javed Mayet,  
Suite 232  
3319 Maguire Boulevard,  
Orlando, Florida 32803-3767  
(407) 897-4128

OCT 03 2019

<b>To be completed by DOT</b>		<b>RECEIVED</b>
Drainage Connection Permit No. <u>2019-D-590-00008</u>	Date <u>7/17/2019</u>	
Received By <u>One-Stop Permitting System</u>	Maintenance Unit <u>Brevard Operations</u>	
State Road No. <u>514</u>	Work Program Project No. <u>/</u>	
Section No. <u>180</u>	Construction Project No. <u>/</u>	
Milepost <u>4.240</u>	Station <u>/</u>	

**Instructions for Drainage Connection Permit**

**Pursuant to 14-86.004(6), F.A.C. "The Drainage Connection Permit form serves as the application. Once approved by the Department, the form and supporting documents become the Drainage Connection Permit."**

The applicant shall submit four completed permit packages with original signatures. Each package shall include all required attachments. All required signed and sealed plans and supporting documentation shall be submitted on no larger than (11" X 17") multipurpose paper, unless larger plan sheets are requested by the reviewer. The package will include the following items. If an item does not apply to your project, indicate "Not Applicable" or "N/A."

Included	Part	Title	Completed by:	Special Instructions
✓	1	Permit Information Sheet	Applicant	
✓	2	Certification by a Licensed Professional	Licensed Professional	Signed and Sealed
✓	3	Certification	Applicant	Signature
✓	4	Owner's Authorization of a Representative	Owner	Signature
✓	5	Affidavit of Ownership or Control and Statement of Contiguous Interest	Owner	Signature
	6	Permit General Conditions	FDOT	
	7	Permit Special Conditions	FDOT	
	8	As-Built Certification	Licensed Professional	Signed and Sealed – Submit within 15 working days of completion of construction
✓	Attachment	Legal Description		
✓	Attachment	Photographs of Existing Conditions		
✓	Attachment	Location Map		
✓	Attachment	Grading Plan		
✓	Attachment	Soil Borings	Licensed Professional	Signed and Sealed
✓	Attachment	Water Table / Percolation		
✓	Attachment	Calculations		
	Attachment	CD with Electronic Files of all Submittal Items		Scanned Images in pdf format

Note: Different Licensed Professionals may complete parts of the permit package. For example the Licensed Professional signing and sealing the as-built certification may be different from the Licensed Professional who signed and sealed the calculations for the permit package.

**EXCEPTIONS:** Activities that qualify for an Exception are listed in Rule 14-86, F.A.C. A permit application to the Department is NOT required. However, if you desire verification whether the work qualifies for an exception, send a completed copy of this permit package with its requested information to the applicable FDOT District Office.

Approved:  
 2019-D-590-00008  
 William Rickard  
 3/10/2020

**PART 1 – Permit Information Sheet**

Select one:  Permit  Exception

Pursuant to 14-86.002(2), F.A.C. "Applicant means the owner of the adjacent property or the owner's authorized representative."

**Applicant**

Select one:  Property Owner  Owner's Representative (Complete Part 4)

Name: BRUCE MOIA

Title and Company: President, MBV ENGINEERING, INC

Address: 1250 W. Eau Gallie Blvd Unit L

City: Melbourne State: Florida Zip: 32935

Telephone: (321) 253-1510 ext. \_\_\_\_\_ FAX: \_\_\_\_\_ Email: brucem@mbveng.com

**Property Owner (If not applicant)**

Name: Malcolm Kirschenbaum

Title and Company: Weber Woods, LLC

Address: 516 Delannoy Avenue

City: Cocoa State: Florida Zip: 32922

Telephone: (321) 256-3076 ext. \_\_\_\_\_ FAX: \_\_\_\_\_ Email: malcolm@eksdevelopment.com

**Applicant's Licensed Professional**

Name: Bruce Moia Florida License Number: 47529

Title and Company: Principal, MBV Engineering, Inc.

Address: 1250 W Eau Gallie Blvd

City: Melbourne State: Florida Zip: 32935

Telephone: (321) 253-1510 ext. \_\_\_\_\_ FAX: (321) 253-0911 ext. \_\_\_\_\_ Email: brucem@mbveng.com

**Project Information:**

Project Name: Twin Lakes - Malabar Road

Location: SR 514

STREET SR. NO. US HWY NO. CITY

Brevard 180

COUNTY SECTION(S) TOWNSHIP(S) RANGE(S)

\*Geographic Coordinates: Latitude (DMS.SSS): 27.9982329493578 Longitude (DMS.SSS): -80.6046450245713

Horizontal Datum: (NAD 83 / \_\_\_\_\_ Adj.)

\* State Plane Coordinates: Northing 0 Easting: 0

Projection Zone:  Florida North  Florida East  Florida West

Coordinate shall be the center of the driveway intersection with FDOT R/W, or, if there is no driveway connection, near the center of the property line nearest the state highway.

\*Check with the FDOT Office for requirement.

Approved  
3015-D-580-0010  
3/9/2020

Brief description of facility and proposed connection:  
16 Unit SFR Subdivision in the Town of Malabar, Brevard County, FL  
Outfall connection from west lake via pipe and MES.

Briefly describe why this activity requires a Drainage Connection Permit (Include where the stormwater will discharge to FDOT right of way):

Portion of property currently drains to the existing roadside swail. Proposed to outfall to eastern roadside swail in the post development condition.

APPROVED  
850-040-06  
WALTER RICKERS  
3/19/2007

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**DRAINAGE CONNECTION PERMIT**

**PART 2 – Certification by a Licensed Professional**

In accordance with Rule 14-86, Florida Administrative Code (F.A.C.), I hereby certify that the following requirements are and/or will be met.

This project has been designed in compliance with all applicable water quality design standards as required by state governmental agencies.

14-86.004(3)(f) (F.A.C.): Certification by a Licensed Professional that the complete set of plans and computations complies with one of the following Rules Sections:

14-86.003(2)(a) (F.A.C.), or  14-86.003(2)(b) (F.A.C). (check one)

I further certify that a National Pollutant Discharge Elimination System (NPDES) permit for stormwater discharges associated with industrial activity from construction sites

is required  is not required. (check one)

I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

This certification shall remain valid for any subsequent revision or submittal of plans, computation or other project documents by me.

Name of Licensed Professional: Bruce Moia, P.E.

Florida License Number: 47529

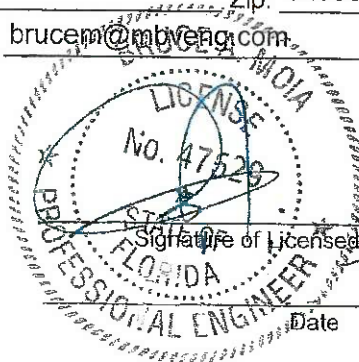
Company Name (if applicable): MBV Engineering, Inc.

Certificate of Authorization Number (if applicable): \_\_\_\_\_

Address: 1250 W. Eau Gallie Blvd., Suite L

City: Melbourne State: FL Zip: 32935

Telephone: 321-253-1510 Fax: 321-253-0911 Email: bruce@mbveng.com



Signature of Licensed Professional

7-17-19

Date

(Affix Seal)

Approved  
2019-08-08 05:03 AM  
134

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**DRAINAGE CONNECTION PERMIT**

**PART 3 – Certification by Applicant**

I hereby certify that the information in this submittal is complete and accurate to the best of my knowledge.

Applicant's Signature: [Signature] Date: 07/17/2019  
Name (Printed): Malcolm Kirschenbaum  
Title and Company: Weber Woods, LLC  
Address: 516 Delaney Avenue, Cocoa Florida 32922  
Phone Number: 321-256-3076 E-mail address: malcolm@eksdevelopment.com

**PART 4 – Owner's Authorization of a Representative**

I (we), the owner, Malcolm Kirschenbaum, do hereby authorize the following person, or entity, as my representative:

Name (Printed): Bruce A Moia  
Title and Company: President, MBV Engineering Inc.  
Address: 1250 W Eau Gallie Blvd, Melbourne 32935  
Phone Number: 321-753-1510 E-mail address: bruce.m@mbveng.com

**Part 5 – Affidavit of Property Ownership or Control and Statement of Contiguous Interest**

I, Malcolm Kirschenbaum, certify that I own or lawfully control the following described property: Lot 26 and part of lot 25 of plat book 1, page 165 AS DESC IN ORB 5447, Page 7116 of Brevard County, FL.

Does the property owner own or have any interests in any adjacent property?  
 No  Yes If yes, please describe.

**Owner's Signature required for Parts 4 and/or 5**

We will not begin on the drainage connection until I receive the Permit and I understand all the conditions of the Permit. When work begins on the connection, I am accepting all conditions listed in the Permit.

Name (Printed): Malcolm Kirschenbaum  
Address: 516 Delaney Avenue, Cocoa FL 32922  
Phone Number: 321-256-3076  
Signature: [Signature] Date: 07/17/19

Approved  
2019-0-550-00008  
William Rickard  
3/10/2020 135



**PART 6 – Permit General Conditions**

1. This permit is a license for permissive use only and does not convey any property rights either in real estate or material, or any exclusive privilege and it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State or local laws, rules or regulations; nor does it obviate the necessity of obtaining any required state or local approvals.
2. The drainage connection as authorized herein shall be constructed and thereafter maintained in accordance with the documents attached hereto and incorporated by reference herein. All work performed in the Department's right of way shall be done in accordance with the most current Department standards, specifications and the permit provisions. Such construction shall be subject to the inspection and approval of the Department, and the Department may at any time make such inspections as it deems necessary to assure that the drainage connection is in compliance with this permit.
3. The entire expense of construction within the Department right of way, including replacement of existing pavement or other existing features, shall be borne by the permittee.
4. The permittee shall maintain that portion of the drainage connection authorized herein located on permittee's property in good condition. The Department shall maintain that portion of the drainage connection authorized herein located within its right of way.
5. If the drainage connection is not constructed, operated or maintained in accordance with this permit, the permit may be suspended or revoked. In this event modification or removal of any portion of the drainage connection from the Department's right of way shall be at the permittee's expense.
6. The Department reserves the right to modify or remove the drainage connection to prevent damage or in conjunction with road improvements.
7. It is understood and agreed that the rights and privileges herein set out are granted only to the extent of the Department's right, title, and interest in the land to be entered upon and used by the permittee, and the permittee will, at all times, assume all risk of and indemnify, defend and save harmless the Department from and against any and all loss, damage, cost or expense arising in any manner on account of the exercise or attempted exercises by said permittee of these rights and privileges, regardless of the respective degrees of fault of the parties.
8. Utilities, including gas lines, may exist within the right of way. Prior to beginning work the permittee shall contact Sunshine State One Call of Florida, Inc at 811 or 800-432-4770, who will notify all utility owners near the scheduled project. The utility owners have two (2) full business days to provide locations of their respective facilities. The permittee shall be solely responsible for any damage to or conflicts with gas lines, utilities and/or third persons.
9. The permittee shall notify the Department of Transportation Maintenance Office located at Brevard Operations Phone (321) 634-6100 ext. \_\_\_\_\_ 48 hours in advance of starting any work on the drainage connection authorized by this permit and also 24 hours prior to any work within the Department's right of way. Construction of any work on the right of way shall be completed within 365 days after such notification. If such construction is not completed within 30 days after such notification, the permittee shall notify the Department of the anticipated completion date.
10. This permit shall expire if construction on the drainage connection is not begun within one year from the date of approval and if construction on the drainage connection is not completed by (Date) 3/10/2021.
11. A permittee may request an extension of the Drainage Connection Permit expiration date by filing a written request for a permit time extension. All requests for time extensions must be received by the Department 15 working days prior to the expiration date.
12. All the provisions of this permit shall be binding on any assignee or successor in interest of the permittee.

**PART 7 – Permit Special Conditions – To be completed by FDOT**

The above request has been reviewed and has been found to meet the regulations as prescribed in Rule 14-86, F.A.C., and is hereby approved, subject to the following special conditions:

Department of Transportation:

Signature William Rickard

Title MAINTENANCE MANAGER/PERMITS

Date 3/10/2020

Approved  
2020-03-10 09:00 AM  
William Rickard  
3-10-2020

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**DRIVEWAY CONNECTION PERMIT  
 FOR ALL CATEGORIES**

TOWN OF MALABAR

03T 00 2020

RECEIVED

**PART 1: PERMIT INFORMATION**

APPLICATION NUMBER: 2019-A-590-00026

Permit Category: B - 21 to 600 VTPD Access Classification: 3

Project: Twin Lakes Subdivision

Permittee: BRUCE MOIA

Section/Mile Post: 180 / 4.087 State Road: 514

Section/Mile Post: / State Road:

**PART 2: PERMITTEE INFORMATION**

Permittee Name: BRUCE MOIA

Permittee Mailing Address: 1250 W. Eau Gallie Blvd, Unit L

City, State, Zip: Melbourne, Florida 32935

Telephone: (321) 253-1510 ext. \_\_\_\_\_

Engineer/Consultant/or Project Manager: \_\_\_\_\_

Engineer responsible for construction inspection: \_\_\_\_\_

NAME P.E. #

Mailing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX, Mobile Phone, etc. Fax: / Mobile: \_\_\_\_\_

**PART 3: PERMIT APPROVAL**

The above application has been reviewed and is hereby approved subject to all Provisions as attached.

Permit Number: 2019-A-590-00026  
 Department of Transportation

Signature: William Rickard Title: MAINTENANCE MANAGER/PERMITS

Department Representative's Printed Name William Rickard

Temporary Permit  YES  NO (If temporary, this permit is only valid for 6 months)

Special provisions attached  YES  NO

Date of Issuance: 3/26/2020

If this is a normal (non-temporary) permit it authorizes construction for one year from the date of issuance. This can only be extended by the Department as specified in 14-96.007(6).

See following pages for General and Special Provisions

**PART 4: GENERAL PROVISIONS**

1. Notify the Department of Transportation Maintenance Office at least 48 hours in advance of starting proposed work.  
Phone: 3216346075, Attention: Shady Elsanhoury
2. A copy of the approved permit must be displayed in a prominent location in the immediate vicinity of the connection construction.
3. Comply with Rule 14-96.008(1), F.A.C., Disruption of Traffic.
4. Comply with Rule 14-96.008(7), F.A.C., on Utility Notification Requirements.
5. All work performed in the Department's right of way shall be done in accordance with the most current Department standards, specifications and the permit provisions.
6. The permittee shall not commence use of the connection prior to a final inspection and acceptance by the Department.
7. Comply with Rule 14-96.003(3)(a), F.A.C., Cost of Construction.
8. If a Significant Change of the permittee's land use, as defined in Section 335.182, Florida Statutes, occurs, the Permittee must contact the Department.
9. Medians may be added and median openings may be changed by the Department as part of a Construction Project or Safety Project. The provision for a median might change the operation of the connection to be for right turns only.
10. All conditions in NOTICE OF INTENT WILL APPLY unless specifically changed by the Department.
11. All approved connection(s) and turning movements are subject to the Department's continuing authority to modify such connection(s) or turning movements in order to protect safety and traffic operations on the state highway or State Highway System.
12. **Transportation Control Features and Devices in the State Right of Way.** Transportation control features and devices in the Department's right of way, including, but not limited to, traffic signals, medians, median openings, or any other transportation control features or devices in the state right of way, are operational and safety characteristics of the State Highway and are not means of access. The Department may install, remove or modify any present or future transportation control feature or device in the state right of way to make changes to promote safety in the right of way or efficient traffic operations on the highway.
13. The Permittee for him/herself, his/her heirs, his/her assigns and successors in interest, binds and is bound and obligated to save and hold the State of Florida, and the Department, its agents and employees harmless from any and all damages, claims, expense, or injuries arising out of any act, neglect, or omission by the applicant, his/her heirs, assigns and successors in interest that may occur by reason of this facility design, construction, maintenance, or continuing existence of the connection facility, except that the applicant shall not be liable under this provision for damages arising from the sole negligence of the Department.
14. The Permittee shall be responsible for determining and notify all other users of the right of way.
15. Starting work on the State Right of Way means that I am accepting all conditions on the Permit.

County  
 State of Florida  
 Department of Transportation  
 10-1-2006

**PART 5: SPECIAL PROVISIONS**

NON-CONFORMING CONNECTIONS:     YES     NO

If this is a non-conforming connection permit, as defined in Rule Chapters 14-96 and 14-97, then the following shall be a part of this permit.

1. The non-conforming connection(s) described in this permit is (are) not permitted for traffic volumes exceeding the Permit Category on page 1 of this permit, or as specified in "Other Special Provisions" below.
2. All non-conforming connections will be subject to closure or relocation when reasonable access becomes available in the future.

OTHER SPECIAL PROVISIONS:

1. Following Lane Closure Restrictions in the Project Area at MP. 4.087:  
**NO LANE CLOSURES 6:00 AM TO 7:00 PM DIRECTION : EASTBOUND AND WESTBOUND**
2. Ensure that all utilities are contacted and FDOT facilities such as ITS, Drainage, etc., are identified in the proposed work area prior to start of the work.
3. This permit authorizes work only in FDOT Right of Way.

**PART 6: APPEAL PROCEDURES**

You may petition for an administrative hearing pursuant to sections 120.569 and 120.57, Florida Statutes. If you dispute the facts stated in the foregoing Notice of Intended Department Action (hereinafter Notice), you may petition for a formal administrative hearing pursuant to section 120.57 (1), Florida Statutes. If you agree with the facts stated in the Notice, you may petition for an informal administrative hearing pursuant to section 120.57(2), Florida Statutes. You must file the petition with:

Clerk of Agency Proceedings  
 Department of Transportation  
 Haydon Burns Building  
 605 Suwannee Street, M.S. 58  
 Tallahassee, Florida 32399-0458

The petition for an administrative hearing must conform to the requirements of Rule 28-106.201(2) or Rule 28-106.301(2), Florida Administrative Code, and be filed with the Clerk of Agency Proceedings by 5:00 p.m. no later than 21 days after you received the Notice. The petition must include a copy of the Notice, be legible, on 8 1/2 by 11 inch white paper, and contain:

1. Your name, address, telephone number, any Department of Transportation identifying number on the Notice, if known, the name and identification number of each agency affected, if known, and the name, address, and telephone number of your representative, if any, which shall be the address for service purposes during the course of the proceeding.
2. An explanation of how your substantial interests will be affected by the action described in the Notice;
3. A statement of when and how you received the Notice;
4. A statement of all disputed issues of material fact. If there are none, you must so indicate;
5. A concise statement of the ultimate facts alleged, including the specific facts you contend warrant reversal or modification of the agency's proposed action, as well as an explanation of how the alleged facts relate to the specific rules and statutes you contend require reversal or modification of the agency's proposed action;
6. A statement of the relief sought, stating precisely the desired action you wish the agency to take in respect to the agency's proposed action.

If there are disputed issues of material fact a formal hearing will be held, where you may present evidence and argument on all issues involved and conduct cross-examination. If there are no disputed issues of material fact an informal hearing will be held, where you may present evidence or a written statement for consideration by the Department.

Mediation, pursuant to section 120.573, Florida Statutes, may be available if agreed to by all parties, and on such terms as may be agreed upon by all parties. The right to an administrative hearing is not affected when mediation does not result in a settlement.

Your petition for an administrative hearing shall be dismissed if it is not in substantial compliance with the above requirements of Rule 28-106.201(2) or Rule 28-106.301(2), Florida Administrative Code. If you fail to timely file your petition in accordance with the above requirements, you will have waived your right to have the intended action reviewed pursuant to chapter 120, Florida Statutes, and the action set forth in the Notice shall be conclusive and final.

APPROVED  
 WILLIAM RICKARD  
 11/23/2020



# St. Johns River Water Management District

Ann B. Shortelle, Ph.D., 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).

TOWN OF MALABAR

OCT 08 2020

RECEIVED

January 30, 2020

Malcolm Kirschenbaum  
Weber Woods, LLC  
516 Delannoy Ave  
Cocoa, FL 32922-7814

SUBJECT: Permit Number: 158374-1  
Project Name: Twin Lakes Subdivision

Dear Mr. Kirschenbaum:

Enclosed is your individual permit issued by the St. Johns River Water Management District on January 30, 2020. This permit is a legal document and should be kept with your other important documents. Permit issuance does not relieve you from the responsibility of obtaining any necessary permits from any federal, state, or local agencies for your project.

**Technical Staff Report:**

If you wish to review a copy of the Technical Staff Report (TSR) that provides the District's staff analysis of your permit application, you may view the TSR by going to the Permitting section of the District's website at [www.sjrwmd.com/permitting](http://www.sjrwmd.com/permitting). Using the "search applications and permits" feature, you can use your permit number or project name to find information about the permit. When you see the results of your search, click on the permit number and then on the TSR folder.

**Noticing Your Permit:**

For noticing instructions, please refer to the noticing materials in this package regarding closing the point of entry for someone to challenge the issuance of your permit. Please note that if a timely petition for administrative hearing is filed, your permit will become non-final and any activities that you choose to undertake pursuant to your permit will be at your own risk. Please refer to the attached Notice of Rights to determine any legal rights you may have concerning the District's agency action.

**Compliance with Permit Conditions:**

To submit your required permit compliance information, go to the District's website at [www.sjrwmd.com/permitting](http://www.sjrwmd.com/permitting). Under the "Apply for a permit or submit compliance data" section, click to sign-in to your existing account or to create a new account. Select the "Compliance Submittal" tab, enter your permit number, and select "No Specific Date" for the Compliance Due Date Range. You will then be able to view all the compliance submittal requirements for your project. Select the compliance item that you are ready to submit and then attach the appropriate information or form. The forms to comply with your permit conditions are available at [www.sjrwmd.com/permitting](http://www.sjrwmd.com/permitting) under the section "Handbooks, forms, fees, final orders". Click on forms to view all permit compliance forms, then scroll to the ERP application forms section and select the applicable compliance forms. Alternatively, if you have difficulty finding forms or need

**GOVERNING BOARD**

Douglas Burnett, CHAIRMAN  
ST. AUGUSTINE

Ron Howse, TREASURER  
COCOA

Douglas C. Bourrique  
VERO BEACH

Daniel Davis  
JACKSONVILLE

Susan Dolan  
SANFORD

copies of the appropriate forms, please contact the Bureau of Regulatory Support at (386) 329-4570.

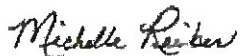
**Transferring Your Permit:**

Your permit requires you to notify the District within 30 days of any change in ownership or control of the project or activity covered by the permit, or within 30 days of any change in ownership or control of the real property on which the permitted project or activity is located or occurs. You will need to provide the District with the information specified in rule 62-330.340, Florida Administrative Code (F.A.C.). Generally, this will require you to complete and submit Form 62-330.340(1), "Request to Transfer Permit," available at <http://www.sjrwmd.com/permitting/permitforms.html>.

Please note that a permittee is liable for compliance with the permit before the permit is transferred. The District, therefore, recommends that you request a permit transfer in advance in accordance with the applicable rules. You are encouraged to contact District staff for assistance with this process.

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,



Michelle Reiber, Bureau Chief  
Division of Regulatory Services  
St. Johns River Water Management District  
525 Community College Parkway, S.E.  
Palm Bay, FL 32909  
(321) 409-2129

Enclosures: Permit  
Notice of Rights  
List of Newspapers for Publication

cc: District Permit File  
Registered Professional Consultant: Bruce Moia  
MBV Engineering, Inc  
1250 W Eau Gallie Blvd Ste L  
Melbourne, FL 32935-5334

**ST. JOHNS RIVER WATER MANAGEMENT DISTRICT**  
**Post Office Box 1429**  
**Palatka, Florida 32178-1429**

**PERMIT NO:** 158374-1

**DATE ISSUED:** January 30, 2020

**PROJECT NAME:** Twin Lakes Subdivision

**A PERMIT AUTHORIZING:**

Construction and operation of a Stormwater Management System for a 24.2-acre project known as Twin Lakes Subdivision as per plans received by the District on January 7, 2020.

**LOCATION:**

Section(s): 2                      Township(s): 29S                      Range(s): 37E  
Brevard County

**Receiving Water Body:**

Name	Class
Indian River Lagoon	III Marine, OFW, AP, IW

**ISSUED TO:**

Weber Woods, LLC  
516 Delannoy Ave  
Cocoa, FL 32922-7814

The 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 the 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 January 30, 2020

**AUTHORIZED BY:** St. Johns River Water Management District  
Division of Regulatory Services

By: 

\_\_\_\_\_  
Marjorie Cook  
Supervising Professional Engineer



**"EXHIBIT A"**  
**CONDITIONS FOR ISSUANCE OF PERMIT NUMBER 158374-1**  
**Twin Lakes Subdivision**  
**DATED: January 30, 2020**

1. All activities shall be implemented following the plans, specifications and performance criteria approved by this permit. Any deviations must be authorized in a permit modification in accordance with Rule 62-330.315, F.A.C. Any deviations that are not so authorized may subject the permittee to enforcement action and revocation of the permit under Chapter 373, F.S.
2. A complete copy of this permit shall be kept at the work site of the permitted activity during the construction phase, and shall be available for review at the work site upon request by the District staff. The permittee shall require the contractor to review the complete permit prior to beginning construction.
3. Activities shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management practices shall be installed immediately prior to, and be maintained during and after construction as needed, to prevent adverse impacts to the water resources and adjacent lands. Such practices shall be in accordance with the State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Environmental Protection and Florida Department of Transportation June 2007), and the Florida Stormwater Erosion and Sedimentation Control Inspector's Manual (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008), which are both incorporated by reference in subparagraph 62-330.050(9)(b)5, F.A.C., unless a project-specific erosion and sediment control plan is approved or other water quality control measures are required as part of the permit.
4. At least 48 hours prior to beginning the authorized activities, the permittee shall submit to the District a fully executed Form 62-330.350(1), "Construction Commencement Notice," (October 1, 2013) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-02505>), incorporated by reference herein, indicating the expected start and completion dates. A copy of this form may be obtained from the District, as described in subsection 62-330.010(5), F.A.C., and shall be submitted electronically or by mail to the Agency. However, for activities involving more than one acre of construction that also require a NPDES stormwater construction general permit, submittal of the Notice of Intent to Use Generic Permit for Stormwater Discharge from Large and Small Construction Activities, DEP Form 62-621.300(4)(b), shall also serve as notice of commencement of construction under this chapter and, in such a case, submittal of Form 62-330.350(1) is not required.
5. Unless the permit is transferred under Rule 62-330.340, F.A.C., or transferred to an operating entity under Rule 62-330.310, F.A.C., the permittee is liable to comply with the plans, terms and conditions of the permit for the life of the project or activity.
6. Within 30 days after completing construction of the entire project, or any independent portion of the project, the permittee shall provide the following to the Agency, as applicable:
  - a. For an individual, private single-family residential dwelling unit, duplex, triplex, or quadruplex — "Construction Completion and Inspection Certification for Activities Associated with a Private Single-Family Dwelling Unit" [Form 62-330.310(3)]; or
  - b. For all other activities — "As-Built Certification and Request for Conversion to

Operation Phase" [Form 62-330.310(1)].

c. If available, an Agency website that fulfills this certification requirement may be used in lieu of the form.

7. If the final operation and maintenance entity is a third party:

a. Prior to sales of any lot or unit served by the activity and within one year of permit issuance, or within 30 days of as-built certification, whichever comes first, the permittee shall submit, as applicable, a copy of the operation and maintenance documents (see sections 12.3 thru 12.3.4 of Volume I) as filed with the Florida Department of State, Division of Corporations and a copy of any easement, plat, or deed restriction needed to operate or maintain the project, as recorded with the Clerk of the Court in the County in which the activity is located.

b. Within 30 days of submittal of the as- built certification, the permittee shall submit "Request for Transfer of Environmental Resource Permit to the Perpetual Operation and Maintenance Entity" [Form 62-330.310(2)] to transfer the permit to the operation and maintenance entity, along with the documentation requested in the form. If available, an Agency website that fulfills this transfer requirement may be used in lieu of the form.

8. The permittee shall notify the District in writing of changes required by any other regulatory District that require changes to the permitted activity, and any required modification of this permit must be obtained prior to implementing the changes.

9. This permit does not:

a. Convey to the permittee any property rights or privileges, or any other rights or privileges other than those specified herein or in Chapter 62-330, F.A.C.;

b. Convey to the permittee or create in the permittee any interest in real property;

c. Relieve the permittee from the need to obtain and comply with any other required federal, state, and local authorization, law, rule, or ordinance; or

d. Authorize any entrance upon or work on property that is not owned, held in easement, or controlled by the permittee.

10. Prior to conducting any activities on state-owned submerged lands or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund, the permittee must receive all necessary approvals and authorizations under Chapters 253 and 258, F.S. Written authorization that requires formal execution by the Board of Trustees of the Internal Improvement Trust Fund shall not be considered received until it has been fully executed.

11. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities that may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any project authorized by the permit.

12. The permittee shall notify the District in writing:

a. Immediately if any previously submitted information is discovered to be inaccurate; and

- b. Within 30 days of any conveyance or division of ownership or control of the property or the system, other than conveyance via a long-term lease, and the new owner shall request transfer of the permit in accordance with Rule 62-330.340, F.A.C. This does not apply to the sale of lots or units in residential or commercial subdivisions or condominiums where the stormwater management system has been completed and converted to the operation phase.
13. Upon reasonable notice to the permittee, District staff with proper identification shall have permission to enter, inspect, sample and test the project or activities to ensure conformity with the plans and specifications authorized in the permit.
  14. If prehistoric or historic artifacts, such as pottery or ceramics, projectile points, stone tools, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the permitted project shall cease all activities involving subsurface disturbance in the vicinity of the discovery. The permittee or other designee shall contact the Florida Department of State, Division of Historical Resources, Compliance Review Section (DHR), at (850) 245-6333, as well as the appropriate permitting agency office. Project activities shall not resume without verbal or written authorization from the Division of Historical Resources. If unmarked human remains are encountered, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, F.S. For project activities subject to prior consultation with the DHR and as an alternative to the above requirements, the permittee may follow procedures for unanticipated discoveries as set forth within a cultural resources assessment survey determined complete and sufficient by DHR and included as a specific permit condition herein.
  15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under Rule 62-330.201, F.A.C., provides otherwise.
  16. The permittee shall provide routine maintenance of all components of the stormwater management system to remove trapped sediments and debris. Removed materials shall be disposed of in a landfill or other uplands in a manner that does not require a permit under Chapter 62-330, F.A.C., or cause violations of state water quality standards.
  17. This permit is issued based on the applicant's submitted information that reasonably demonstrates that adverse water resource-related impacts will not be caused by the completed permit activity. If any adverse impacts result, the District will require the permittee to eliminate the cause, obtain any necessary permit modification, and take any necessary corrective actions to resolve the adverse impacts.
  18. A Recorded Notice of Environmental Resource Permit may be recorded in the county public records in accordance with Rule 62-330.090(7), F.A.C. Such notice is not an encumbrance upon the property.
  19. This permit for construction will expire five years from the date of issuance.
  20. 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.

21. 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.
22. 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 and contact information 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 30 days the entity shall submit a report electronically or in writing to the District using Form 62-330.311(1), "Operation and Maintenance Inspection Certification," describing the remedial actions taken to resolve the failure or deviation.
23. This permit does not authorize the permittee to cause any adverse impact to or "take" of state listed species and other regulated species of fish and wildlife. Compliance with state laws regulating the take of fish and wildlife is the responsibility of the owner or applicant associated with this project. Please refer to Chapter 68A-27 of the Florida Administrative Code for definitions of "take" and a list of fish and wildlife species. If listed species are observed onsite, FWC staff are available to provide decision support information or assist in obtaining the appropriate FWC permits. Most marine endangered and threatened species are statutorily protected and a "take" permit cannot be issued. Requests for further information or review can be sent to [FWCConservationPlanningServices@MyFWC.com](mailto:FWCConservationPlanningServices@MyFWC.com).
24. The proposed project must be constructed and operated as per plans and calculations received by the District on January 7, 2020.
25. Prior to the sale of any lot or parcel, or use of the infrastructure for its intended use, whichever comes first, the permittee must erect signs on the landward side of the areas bound by the conservation easement (as depicted on Sheet C-5.1 & C-18, received by the District that state:

"CONSERVATION AREA: No dumping, land clearing, or other disturbance to soils or vegetation permitted beyond this point".

## 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 the 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 the 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. 4 below.
2. Please be advised that if you wish to dispute this District decision, mediation may be available and that choosing mediation does not affect your right to an administrative hearing. If you wish to request mediation, you must do so in a timely-filed petition. If all parties, including the District, agree to the details of the mediation procedure, in writing, within 10 days after the time period stated in the announcement for election of an administrative remedy under Sections 120.569 and 120.57, Florida Statutes, the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, shall be tolled to allow mediation of the disputed District decision. The mediation must be concluded within 60 days of the date of the parties' written agreement, or such other timeframe agreed to by the parties in writing. Any mediation agreement must include provisions for selecting a mediator, a statement that each party shall be responsible for paying its pro-rata share of the costs and fees associated with mediation, and the mediating parties' understanding regarding the confidentiality of discussions and documents introduced during mediation. If mediation results in settlement of the administrative dispute, the District will enter a final order consistent with the settlement agreement. If mediation terminates without settlement of the dispute, the District will notify all the parties in writing that the administrative hearing process under Sections 120.569 and 120.57, Florida Statutes, is resumed. Even if a party chooses not to engage in formal mediation, or if formal mediation does not result in a settlement agreement, the District will remain willing to engage in informal settlement discussions.
3. 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

4. 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 during the District's regular business hours. The District's regular business hours are 8:00 a.m. – 5:00 p.m., excluding weekends and District holidays. Petitions received by the District Clerk after the District's regular business hours shall be deemed filed as of 8:00 a.m. on the District's next regular 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 [sjrwmd.com](http://sjrwmd.com). These conditions include, but are not limited to, the petition being in the form of a PDF or TIFF 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.
5. Failure to file a petition for an administrative hearing within the requisite timeframe shall constitute a waiver of the right to an administrative hearing. (Rule 28-106.111, Florida Administrative Code).
6. 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.
7. 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.
8. A District action is considered rendered, as referred to in paragraph no. 7 above, after it is signed on behalf of the District and filed by the District Clerk.
9. Failure to observe the relevant timeframes for filing a petition for judicial review as described in paragraph no. 7 above will result in waiver of that right to review.

NOR.Decision.DOC.001  
Revised 12.7.11

## NOTICING INFORMATION

Please be advised that the St. Johns River Water Management District will not publish a notice in the newspaper advising the public that it has issued a permit for this project.

Newspaper publication, using the District's notice form, notifies members of the public of their right to challenge the issuance of the permit. If proper notice is given by newspaper publication, then there is a 21-day time limit for someone to file a petition for an administrative hearing to challenge the issuance of the permit.

To close the point of entry for filing a petition, you may publish (at your own expense) a one-time notice of the District's decision in a newspaper of general circulation within the affected area as defined in Section 50.011 of the Florida Statutes. If you do not publish a newspaper notice to close the point of entry, the time to challenge the issuance of your permit will not expire and someone could file a petition even after your project is constructed.

A copy of the notice form and a partial list of newspapers of general circulation are attached for your convenience. However, you are not limited to those listed newspapers. If you choose to close the point of entry and the notice is published, the newspaper will return to you an affidavit of publication. In that event, it is important that you either submit a scanned copy of the affidavit by emailing it to [compliancesupport@sjrwmd.com](mailto:compliancesupport@sjrwmd.com) (preferred method) or send a copy of the original affidavit to:

Office of Business and Administrative Services  
4049 Reid Street  
Palatka, FL 32177

If you have any questions, please contact the Office of Business and Administrative Services at (386) 329-4570.

NOTICE OF AGENCY ACTION TAKEN BY THE  
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

Notice is given that the following permit was issued on \_\_\_\_\_:

(Name and address of applicant) \_\_\_\_\_  
permit# \_\_\_\_\_. The project is located in \_\_\_\_\_ County, Section  
\_\_\_\_\_, Township \_\_\_\_\_ South, Range \_\_\_\_\_ East. The permit authorizes a surface  
water management system on \_\_\_\_\_ acres for \_\_\_\_\_ known as  
\_\_\_\_\_. The receiving water body is \_\_\_\_\_.

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 (F.A.C.), the petition must be filed (received) either by delivery at the office of the District Clerk at District Headquarters, P.O. Box 1429, Palatka FL 32178-1429 (4049 Reid St, Palatka, FL 32177) or by e-mail with the District Clerk at Clerk@sjrwmd.com, 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 (F.S.), and Chapter 28-106, F.A.C. The District will not accept a petition sent by facsimile (fax). Mediation pursuant to Section 120.573, F.S., may be available and choosing mediation does not affect your right to an administrative hearing.

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 during the District's regular business hours. The District's regular business hours are 8 a.m. – 5 p.m., excluding weekends and District holidays. Petitions received by the District Clerk after the District's regular business hours shall be deemed filed as of 8 a.m. on the District's next regular 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 or TIFF 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 (fax) is prohibited and shall not constitute filing.

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If you wish to do so, please visit [http://www.sjrwmd.com/nor\\_dec/](http://www.sjrwmd.com/nor_dec/) to read the complete Notice of Rights to determine any legal rights you may have concerning the District's decision(s) on the permit application(s) described above. You can also request the Notice of Rights by contacting the Director of Business and Administrative Services, 4049 Reid St., Palatka, FL 32177-2529, tele. no. (386)329-4570.



## **NEWSPAPER ADVERTISING**

### **ALACHUA**

The Alachua County Record, Legal Advertising  
P. O. Box 806  
Gainesville, FL 32602  
352-377-2444/ fax 352-338-1986

### **BRAFORD**

Bradford County Telegraph, Legal Advertising  
P. O. Drawer A  
Starke, FL 32901  
904-964-6305/ fax 904-964-8628

### **CLAY**

Clay Today, Legal Advertising  
1560 Kinsley Ave., Suite 1  
Orange Park, FL 32073  
904-264-3200/ fax 904-264-3285

### **FLAGLER**

Flagler Tribune, c/o News Journal  
P. O. Box 2831  
Daytona Beach, FL 32120-2831  
386- 681-2322

### **LAKE**

Daily Commercial, Legal Advertising  
P. O. Drawer 490007  
Leesburg, FL 34749  
352-365-8235/fax 352-365-1951

### **NASSAU**

News-Leader, Legal Advertising  
P. O. Box 766  
Fernandina Beach, FL 32035  
904-261-3696/fax 904-261-3698

### **ORANGE**

Sentinel Communications, Legal Advertising  
633 N. Orange Avenue  
Orlando, FL 32801  
407-420-5160/ fax 407-420-5011

### **PUTNAM**

Palatka Daily News, Legal Advertising  
P. O. Box 777  
Palatka, FL 32178  
386-312-5200/ fax 386-312-5209

### **SEMINOLE**

Seminole Herald, Legal Advertising  
300 North French Avenue  
Sanford, FL 32771  
407-323-9408

### **BAKER**

Baker County Press, Legal Advertising  
P. O. Box 598  
MacLennny, FL 32063  
904-259-2400/ fax 904-259-6502

### **BREVARD**

Florida Today, Legal Advertising  
P. O. Box 419000  
Melbourne, FL 32941-9000  
321-242-3832/ fax 321-242-6618

### **DUVAL**

Daily Record, Legal Advertising  
P. O. Box 1769  
Jacksonville, FL 32201  
904-356-2466 / fax 904-353-2628

### **INDIAN RIVER**

Vero Beach Press Journal, Legal Advertising  
P. O. Box 1268  
Vero Beach, FL 32961-1268  
772-221-4282/ fax 772-978-2340

### **MARION**

Ocala Star Banner, Legal Advertising  
2121 SW 19th Avenue Road  
Ocala, FL 34474  
352-867-4010/fax 352-867-4126

### **OKEECHOBEE**

Okeechobee News, Legal Advertising  
P. O. Box 639  
Okeechobee, FL 34973-0639  
863-763-3134/fax 863-763-5901

### **OSCEOLA**

Little Sentinel, Legal Advertising  
633 N. Orange Avenue  
Orlando, FL 32801  
407-420-5160/ fax 407-420-5011

### **ST. JOHNS**

St. Augustine Record, Legal Advertising  
P. O. Box 1630  
St. Augustine, FL 32085  
904-819-3439

### **VOLUSIA**

News Journal Corporation, Legal Advertising  
P. O. Box 2831  
Daytona Beach, FL 32120-2831  
(386) 681-2322

# School Board of Brevard County

2700 Judge Fran Jamieson Way • Viera, FL 32940-6699  
Mark W. Mullins, Ed.D., Superintendent



TOWN OF MALABAR

OCT 08 2020

RECEIVED

December 17, 2019

Mr. Matthew Stinnett  
Town Manager  
Town of Malabar  
2725 Malabar Road  
Malabar, Florida 32950

**RE: Proposed Twin Lakes Subdivision Development  
School Impact Analysis – Capacity Determination CD-2019-21**

Dear Mr. Stinnett,

We received a completed *School Facility Planning & Concurrency Application* for the referenced development. The subject property is Tax Account 2963199 (Parcel ID: 29-37-02-00-253) containing approximately 24.2 acres in the Town of Malabar, Brevard County, Florida. The proposed single-family development includes 16 homes. The School Impact Analysis of this proposed development has been undertaken and the following information is provided for your use.

The calculations used to analyze the prospective student impact are consistent with the methodology outlined in Section 13.2 of the *Interlocal Agreement for Public School Facility Planning & School Concurrency (ILA-2014)*. The following capacity analysis is performed using capacities/projected students as shown in years 2018-19 to 2023-24 of the *Brevard County Public Schools Financially Feasible Plan for School Years 2018-2019 to 2023-24* which is attached for reference.

Single-Family Homes		16	
Students Generated	Student Generation Rates	Calculated Students Generated	Rounded Number of Students
Elementary	0.28	4.48	4
Middle	0.08	1.28	1
High	0.16	2.56	3
<b>Total</b>	<b>0.52</b>		<b>8</b>

Planning & Project Management  
Facilities Services  
Phone: (321) 633-1000 x450 • FAX: (321) 633-4646



An Equal Opportunity Employer

**FISH Capacity (including relocatables) from the  
Financially Feasible Plan Data and Analysis for School Years 2018-19 to 2023-24**

School	2019-20	2020-21	2021-22	2022-23	2023-24
Port Malabar	852	852	852	852	852
Stone	1,024	1,044	1,044	1,044	1,044
Palm Bay	2,613	2,613	2,613	2,613	2,613

**Projected Student Membership**

School	2019-20	2020-21	2021-22	2022-23	2023-24
Port Malabar	682	632	607	613	604
Stone	824	961	1,041	975	985
Palm Bay	1,583	1,706	1,796	2,011	2,134

**Students Generated by Previously Issued SCADL Reservations**

School	2019-20	2020-21	2021-22	2022-23	2023-24
Port Malabar	3	3	3	3	3
Stone	46	53	53	53	53
Palm Bay	135	204	256	256	256

**Cumulative Students Generated by  
Proposed Development**

School	2019-20	2020-21	2021-22	2022-23	2023-24
Port Malabar	-	4	4	4	4
Stone	-	1	1	1	1
Palm Bay	-	3	3	3	3

**Total Projected Student Membership (includes  
Cumulative Impact of Proposed Development)**

School	2019-20	2020-21	2021-22	2022-23	2023-24
Port Malabar	685	639	614	620	611
Stone	870	1,015	1,095	1,029	1,039
Palm Bay	1,718	1,913	2,055	2,270	2,393

**Projected Available Capacity =  
FISH Capacity - Total Projected Student Membership**

School	2019-20	2020-21	2021-22	2022-23	2023-24
Port Malabar	167	213	238	232	241
Stone	154	29	(51)	15	5
Palm Bay	895	700	558	343	220

At this time, Stone Magnet Middle School is not projected to have enough capacity for the total of projected and potential students from the Twin Lakes Subdivision development. Because there is a shortfall of available capacity in the concurrency service areas of the Twin Lakes Subdivision development, the capacity of adjacent concurrency service areas must be considered.

The adjacent middle school concurrency service areas are Central Middle School, Hoover Middle School and Southwest Middle School. A table of capacities of the *Adjacent Schools Concurrency Service Areas* that could accommodate the impacts of the Twin Lakes Subdivision development is shown:

**FISH Capacity (including relocatables) from the  
Financially Feasible Plan Data and Analysis for School Years 2018-19 to 2023-24**

School	2019-20	2020-21	2021-22	2022-23	2023-24
Southwest	1,177	1,177	1,177	1,177	1,177

**Projected Student Membership**

School	2019-20	2020-21	2021-22	2022-23	2023-24
Southwest	838	944	957	930	929

**Students Generated by Previously Issued SCADL Reservations**

School	2019-20	2020-21	2021-22	2022-23	2023-24
Southwest	82	127	171	176	176

**Cumulative Students Generated by  
Proposed Development**

School	2019-20	2020-21	2021-22	2022-23	2023-24
Southwest	-	1	1	1	1

**Total Projected Student Membership (includes  
Cumulative Impact of Proposed Development)**

School	2019-20	2020-21	2021-22	2022-23	2023-24
Southwest	920	1,072	1,129	1,107	1,106

**Projected Available Capacity =  
FISH Capacity - Total Projected Student Membership**

School	2019-20	2020-21	2021-22	2022-23	2023-24
Southwest	257	105	48	70	71

Considering the adjacent middle school concurrency service areas, there is sufficient capacity for the total projected student membership to accommodate the Twin Lakes Subdivision development.

This is a **non-binding** review; a *Concurrency Determination* must to be performed by the School District prior to a Final Development Order and the issuance of a Concurrency Evaluation Finding of Nondeficiency by the Local Government.

We appreciate the opportunity to review this proposed project. Please let us know if you require additional information.

Sincerely,



David G. Lindemann, AICP  
Director – Facilities Planning & Intergovernmental Coordination  
Planning & Project Management, Facilities Services

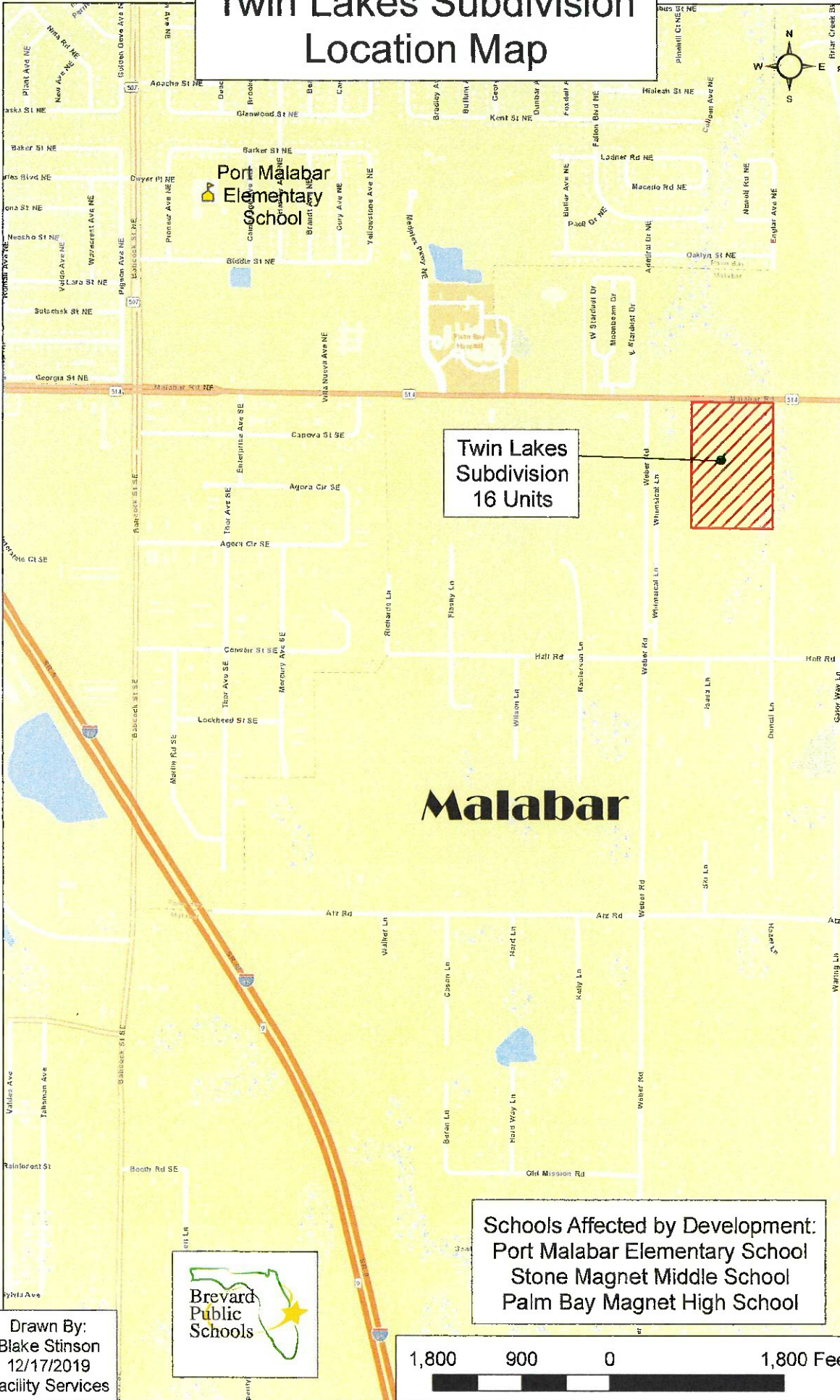
Enclosure: *Brevard County Public Schools Financially Feasible Plan for School Years 2018-2019 to 2023-24*

Copy: Susan Hann, Assistant Superintendent of Facility Services  
File CD-2019-21





# Twin Lakes Subdivision Location Map



# Twin Lakes Subdivision Location Map

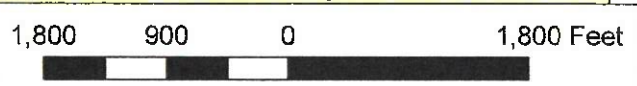
Port Malabar  
Elementary  
School

Twin Lakes  
Subdivision  
16 Units

**Malabar**

Schools Affected by Development:  
Port Malabar Elementary School  
Stone Magnet Middle School  
Palm Bay Magnet High School

Drawn By:  
Blake Stinson  
12/17/2019  
Facility Services







TOWN OF MALABAR

OCT 03 2018

RECEIVED

9-1-1 Administration/Address Assignment

2725 Judge Fran Jamieson Way  
Building A, Room 120  
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS  
Emergency Management

November 30, 2018

Denine M. Sherear  
Administrative Asst. to Building Official  
Town of Malabar  
2725 Malabar Road  
Malabar, FL 32950

Dear Ms. Sherear:

RE: Street Name Request: Weber Estates (T28-R36-S24)

Our office was contacted regarding street name approval for the above referenced property located within your Town limits. The below listed street name is approved and will be held in reserve status for a period of two years. If this name is not implemented within this time frame and another customer requests the name, it will be released for their use. Therefore, if the applicant still wants to utilize the street name, they need to contact this office to re-reserve the name.

Indria

**NOTE:** The Town has final authority regarding street name approval and street suffix (i.e.: Ct. Dr., etc.).

Upon recording of the Plat, the Town needs to provide one copy of the recorded document with assigned addresses indicated to our office for 9-1-1 purposes. Upon processing of the recorded document, our office will input the new street name and address ranges into the Enhanced 9-1-1 Database and Mapping System.

If this development will not be recorded, your Town Council needs to complete (and record with the clerk's office) a resolution or ordinance to assure placement of the new street name on the official maps of record. Please forward a copy of the recorded document to our office for processing and we will input the new street name and address range into the Enhanced 9-1-1 Database and Mapping System.

Your continued cooperation is appreciated. If you need any further assistance you may reach our office at (321) 690-6846 or by email at [address.assign@brevardfl.gov](mailto:address.assign@brevardfl.gov).

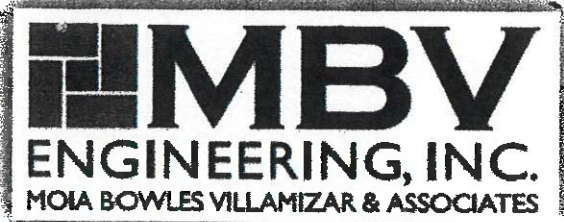
Sincerely,

Penny L. Christian  
9-1-1 Addressing Specialist  
Brevard County E9-1-1 Administration

:PLC

cc: Bruce A. Moia, President, MBV Engineering, Inc. (by email)





# LETTER OF SUBMISSION

Date: 7/25/2019

MBV Project No.: 15-1690 SD

MBV Project Name: Twin Lakes Subdivision

Municipality: Town of Malabar

Attention To: Denine Shearer

Submittal Description: Land Cost

Municipality Control No.: n/a

HAND DELIVERY  PICK-UP   
 FED EX  OVERNIGHT   
 ELECTRONIC  OTHER:

Submittal For:  Permitting  Compliance  RAI  Revision

# of Copies	Detailed Description						
1	<p>Closing Documents from land purchase.</p> <p>Land Cost 575,000.00 for 24 acres = \$23,958.33 per acre ✓ = \$4715.00</p> <p>Documentation for RAI received from Town of Malabar regarding Article XVII - Section 1-17.1.H. Recreational Land Payment</p> <p><b>** PLEASE LOOK AT FORMULA GIVEN ON RAI - NOT SURE IT IS CORRECT. - PLEASE ADVISE</b></p> <table border="0"> <tr> <td><b>Corrected Formula</b></td> <td><b>Existing Formula</b></td> </tr> <tr> <td>2.46 X 5 / 1000 = .0123 ✓</td> <td>2.46 x 5 / 1000 = .123 (wrong)</td> </tr> <tr> <td>16 X .0123 = .1968 ✓</td> <td>16 x .123 = .168 (also wrong)</td> </tr> </table> <p>I concur...</p> <p><i>JAW</i> 08.28.19</p> <p style="text-align: right;">TOWN OF MALABAR JUL 29 2019 RECEIVED</p> <p style="text-align: right;"><i>Pol ck # 2082 8/14/2020</i></p>	<b>Corrected Formula</b>	<b>Existing Formula</b>	2.46 X 5 / 1000 = .0123 ✓	2.46 x 5 / 1000 = .123 (wrong)	16 X .0123 = .1968 ✓	16 x .123 = .168 (also wrong)
<b>Corrected Formula</b>	<b>Existing Formula</b>						
2.46 X 5 / 1000 = .0123 ✓	2.46 x 5 / 1000 = .123 (wrong)						
16 X .0123 = .1968 ✓	16 x .123 = .168 (also wrong)						

Submitted By: Wanda Walker  
 Permitting Coordinator, MBV Engineering, Inc.

Received By: *Melba Howell* Date: 7/29/19

CIVIL ■ STRUCTURAL ■ SURVEYING ■ ENVIRONMENTAL

1250 W. Eau Gallie Blvd., Unit L Melbourne, Florida 32935  
 321.253.1510 / Fax: 321-253-0911  
 www.mbveng.com

WEBER WOOD, LLC  
516 Delannoy Ave.  
Cocoa, FL 32922  
321-632-4141



2082  
63-1403  
631

4/16/2020

PAY TO THE  
ORDER OF Town of Malabar

\$ \*\*80.00

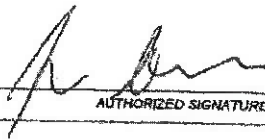
Eighty and 00/100\*\*\*\*\*

DOLLARS

Town of Malabar

MEMO

Twin Lakes: Land clearing fee

  
AUTHORIZED SIGNATURE

⑈002082⑈ ⑆063114030⑆ 11488038⑈

THIS CHECK IS VOID WITHOUT A COLORED BORDER AND BACKGROUND PLUS A KNIGHT & FINGERPRINT WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

WEBER WOOD, LLC  
516 Delannoy Ave.  
Cocoa, FL 32922  
321-632-4141



2081  
63-1403  
631

4/16/2020

PAY TO THE  
ORDER OF Town of Malabar

\$ \*\*4,715.00

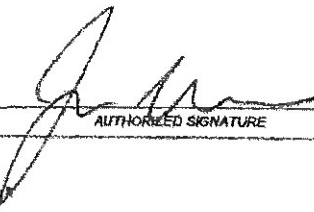
Four Thousand Seven Hundred Fifteen and 00/100\*\*\*\*\*

DOLLARS

Town of Malabar

MEMO

Twin Lakes: Recreational Fee

  
AUTHORIZED SIGNATURE

⑈002081⑈ ⑆063114030⑆ 11488038⑈



# LETTER OF SUBMISSION

Date: 7/25/2019

**TOWN OF MALABAR**

MBV Project No.: 15-1690

JUL 25 2019

MBV Project Name: Twin Lakes Subdivision

RECEIVED

Municipality: Town of Malabar

Attention To: Denine Shearer

HAND DELIVERY  PICK-UP

Submittal Description: Land Cost

FED EX  OVERNIGHT

Municipality Control No.: n/a

ELECTRONIC  OTHER:

Submittal For:  Permitting  Compliance  RAI  Revision

# of Copies	Detailed Description						
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16 X .0123 = .1968 ✓	16 x .123 = .168 (also wrong)						

Submitted By: Wanda Walker  
 Permitting Coordinator, MBV Engineering, Inc.

Received By: \_\_\_\_\_ Date: \_\_\_\_\_

CIVIL ■ STRUCTURAL ■ SURVEYING ■ ENVIRONMENTAL

1250 W. Eau Gallie Blvd., Unit L Melbourne, Florida 32935  
 321.253.1510 / Fax: 321-253-0911  
 www.mbveng.com

**A. Settlement Statement**

U.S. Department of Housing and Urban Development **TOWN OF MALABAR**



OMB No. 2502-0265

JUL 23 2019

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**B. Type of Loan**

1  FHA 2  FmHA 3  Conv. Unins 4  VA 5  Conv. Ins. 6. File Number **KWINDOVE** 7. Loan Number 8. Mortgage Insurance Case Number

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME OF BORROWER: **KWINDOVE OF MALABAR LLC**

ADDRESS OF BORROWER:

E. NAME OF SELLER: **EMILIA GUZZY DE GALVEZ**

ADDRESS OF SELLER:

NAME OF LENDER:

ADDRESS OF LENDER:

G. PROPERTY LOCATION: **925 MALABAR RD. Malabar, FL 32950**

H. SETTLEMENT AGENT: **MOSES S. WALDIS, P.A.**

1029 REEF NEW HAVEN AVENUE MELBOURNE FL 32901

I. PLACE OF SETTLEMENT: **1029 REEF NEW HAVEN AVENUE MELBOURNE FL 32901**

J. SETTLEMENT DATE: **1/27/2005**

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER		400. GROSS AMOUNT DUE TO SELLER	
101. Contract sales price	1,250,000.00	401. Contract sales price	1,250,000.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	27.00	403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments 1/27/2005 to 10/1/2005	92.61	408. Assessments 1/27/2005 to 10/1/2005	92.6
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	1,250,119.61	420. GROSS AMOUNT DUE TO SELLER	1,250,092.6
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT DUE TO SELLER	
201. Deposit or earnest money	20,000.00	501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	239,967.0
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206. Principal amount of seller financing		506. Principal amount of seller financing	
207.		507.	
208.		508.	
209.		509.	
209a		509a	
209b		509b. Deposit Directly to Seller	10,000.0
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes 1/1/2005 to 1/27/2005	101.49	511. County taxes 1/1/2005 to 1/27/2005	101.4
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER	20,101.49	520. TOTAL REDUCTIONS IN AMOUNT DUE SELLER	250,068.4
300. CASH AT SETTLEMENT FROM/TO BORROWER		600. CASH AT SETTLEMENT TO/FROM SELLER	
301. Gross amount due from borrower (line 120)	1,250,119.61	601. Gross amount due to seller (line 420)	1,250,092.6
302. Less amounts paid by/for borrower (line 220)	20,101.49	602. Less reductions in amount due seller (line 520)	250,068.4
303. CASH <input checked="" type="checkbox"/> From <input type="checkbox"/> To BORROWER	1,230,018.12	603. CASH <input checked="" type="checkbox"/> To <input type="checkbox"/> From SELLER	1,000,024.1

Twin Lakes Property

Wm LLC  
DBA  
WEBER RD  
5476

Wm LLC  
DBA  
MALABAR RD  
4076  
24/02/05

625,000  
14.58

575,000  
12.42

50.00

42.61

10,800

9,200

54.80

44.69

Jan 25  
565,808.34

664,209.78

3145  
3445  
2.0

24.8  
24.2  
2.0

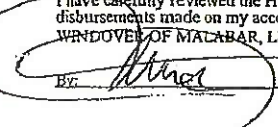
Actual Estimated  
Actual Actual

165

L. Settlement Charges				Paid From Borrower's Funds At Settlement	Paid From Seller's Funds At Settlement
700. TOTAL SALES/BROKER'S COM. based on price	1,250,000.00 @ 8.00 % =	100,000.00			
Division of Commission (line 700) as follows:					
701.	50,000.00	to COLDWELL BANKER/ED SCHLITZ			
702.	50,000.00	to PRUITT REAL ESTATE, INC.			
703. Commission paid at Settlement					100,000.00
704.		to			
800. Items Payable In Connection With Loan					
801. Loan Origination Fee	%	to			
802. Loan Discount	%	to			
803. Appraisal Fee		to			
804. Credit Report		to			
805. Lender's Inspection Fee		to			
806. Mortgage Insurance Application Fee		to			
807.		to			
808.		to			
809.		to			
810.		to			
811.		to			
812.		to			
813.		to			
814.		to			
815.		to			
900. Items Required By Lender To Be Paid In Advance					
901. Interest from 1/27/2005 to 2/1/2005 @	/day	for 5 days			
902. Mortgage Insurance Premium for	months	to			
903. Hazard Insurance Premium for	years	to			
904.	years	to			
905.	years	to			
1000. Reserves Deposited With Lender					
1001. Hazard insurance	months@	per month			
1002. Mortgage insurance	months@	per month			
1003. City property taxes	months@	per month			
1004. County property taxes	months@	per month			
1005. Annual assessments	months@	per month			
1006.	months@	per month			
1007.	months@	per month			
1008.	months@	per month			
1009.					
1100. Title Charges					
1101. Settlement or closing fee		to MOSLEY & WALLIS, P.A.			150.00
1102. Abstract or title search		to STEWART TITLE			140.00
1103. Title examination		to MOSLEY & WALLIS, P.A.			100.00
1104. Title insurance binder		to			
1105. Document preparation		to			
1106. Notary fees		to			
1107. Attorney's fees		to			
(includes above items numbers:)					
1108. Title insurance		to MOSLEY & WALLIS, P.A.			5,700.00
(includes above items numbers:)					
1109. Lender's coverage: Risk Premium		INS AMT:			
1110. Owner's coverage: Risk Premium	5,700.00	INS AMT: 1,250,000.00			
1110a					
1111. Courier fees		to MOSLEY & WALLIS, P.A.			100.00
1112.		to			
1113.		to			
1200. Government Recording and Transfer Charges					
1201. Recording Fees: Deed \$27.00; L-Mortgage(s) ; S-Mortgage(s) ; Releases			27.00		
1202. City/county tax/stamps: Deed ; L-Mortgage(s) ; S-Mortgage(s)					
1203. State tax/stamps: Deed \$8,750.00; L-Mortgage(s) ; S-Mortgage(s)				8,750.00	
1204. TRUST AFFIDAVIT		Clerk of Court			27.00
1205.					
1300. Additional Settlement Charges					
1301. Survey		to			
1302. Pest Inspection		to			
1303. Roof Inspection		to			
1304. 2004 REAL ESTATE TAXES		to ROD NORTHCUTT, TAX COLLECT <\$1,561.62>			*P.O.C.*
1305. 10% Withholding		to INTERNAL REVENUE SERVICE			125,000.00
1306.		to			
1307.		to			
1308.		to			
1309.		to			
1400. Total Settlement Charges (enter on lines 103, Section J and 502, SectionK)			27.00		239,967.00

TOWN OF MALABAR

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**CERTIFICATION** DATE: 1/27/2005  
I have carefully reviewed the HUD - 1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD - 1 Settlement Statement.  
BY:  Borrower \_\_\_\_\_ Seller  
EMILIA GUZZY DE GALVEZ, TRUSTEE

BY: \_\_\_\_\_ Borrower \_\_\_\_\_ Seller  
EMILIA GUZZY DE GALVEZ, INDIVIDUALLY  
MOSLEY & WALLIS, P.A.  
Settlement Agent

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement.

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

1/27/2005 Date  
KWINDOVE

**STORMWATER  
CALCULATIONS FOR  
TWIN LAKES  
SUBDIVISION**

**AVAILABLE FOR REVIEW  
AT TOWN HALL  
(LARGE PACKET)**