

## Malabar, FL

# Planning and Zoning Board Meeting

Wednesday, October 9, 2019 at 7:00 pm

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. CONSENT AGENDA

#### APPROVAL OF MINUTES

**a. Approval of Minutes - Planning and Zoning Board Meeting of 09/11/2019**

Exhibit : Agenda Report Number 4a

Recommendation : Request Approval

**Attachments:**

- Agenda Report Number 4a (PZ\_Agenda\_Item\_4\_a.pdf)

5. PUBLIC COMMENTS - None
6. ACTION ITEMS

**a. Review Preliminary Plat for "twin Lakes" Subdivision**

Vacant Parcel ID #29-37-02-00-253, Malabar Florida 32950 located in RR-65 Zoning (16 Lots) on 23.91-acres. Applicant: Malcom Kirshenbaum, Weber Woods LLC (owner), Represented by Mr. Bruce Moia, PE (MBV Engineering, Inc)

Exhibit : Agenda Report Number 6a

Recommendation : Action to Council

**Attachments:**

- Agenda Report Number 6a (PZ\_Agenda\_Item\_6a.pdf)

7. PUBLIC HEARING
8. DISCUSSION/POSSIBLE ACTION ITEMS
9. ADDITIONAL ITEMS FOR FUTURE MEETING
10. PUBLIC COMMENTS
11. OLD BUSINESS/NEW BUSINESS
  - a. Old Business
  - b. New Business

## Board Member Comments

Next regular Meeting - June 26th, 2019

### **12. ADJOURNMENT**

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Contact: Denine Sherear (dsherear@townofmalabar.org 13217277764) | Published on 10/04/2019 at  
3:36 PM

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

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 4.a.**  
**Meeting Date: October 9, 2019**

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 09/11/2019

**ACTION OPTIONS:**

Secretary requests approval of the minutes.

"The following draft minutes are subject to changes and/or revisions by the Planning and Zoning Board and shall not be considered the official minutes until approved by the P&Z Board."

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING  
SEPTEMBER 11, 2019 7:00 PM**

This meeting of the Malabar Planning and Zoning was held at Town Hall at 2725 Malabar Road.

**A. CALL TO ORDER, PRAYER AND PLEDGE:**

Meeting called to order at 7:00 P.M. Prayer and Pledge led by Chair Wayne Abare

**B. ROLL CALL:**

CHAIR:	WAYNE ABARE
VICE-CHAIR:	LIZ RITTER
BOARD MEMBERS:	GEORGE FOSTER
	DOUG DIAL
	MARY HOFMEISTER
ALTERNATE:	ALLEN RICE. EXCUSED
ALTERNATE:	SUSAN SHORTMAN
BOARD SECRETARY:	DENINE SHEREAR

ADDITIONAL ATTENDEES:

MAYOR  
COUNCIL MEMBER:

**C. ADDITIONS/DELETIONS/CHANGE: NONE**

**D. CONSENT AGENDA:**

1. **Approval of Minutes** Planning and Zoning Meeting – 08/28/2019

Exhibit:	Agenda Report No. 1
Recommendation:	Request Approval

**Motion: Ritter/Hofmeister Recommend Approval of Minutes of 08/28/2019 as corrected All  
Vote: Aye**

Correction, Abare

Page 2 of 08/28/2019 Minutes 4<sup>th</sup> sentence from the bottom: "...flag signs should not be...."

**E. PUBLIC: none**  
**F. ACTION: none**  
**G. DISCUSSION:**

2. **Rezoning Huggins Park located at 2540 Johnston Ave - Information only**  
Exhibit: Agenda Report No. 2  
Recommendation: Discussion / Information only

Abare explained to PZ Board there is no "Action" this is for discussion. Sherear explained that this item will come back before this Board later for "Action". The Board discussed the zoning of RS-10 and

Abare explained that the strategy is to change the zoning to be compatible with the properties in the area which are zoned RS-10.

The Board discussed different scenarios for the Huggins Park property. Ritter said you could possibly get two houses on parcel. Foster asked if there was a commercial interest in this parcel. Sherear said she did not believe there was a commercial interest.

The Board discussed different zoning areas throughout the Town and suggested inserting zoning designations along with the Land Use for the new maps.

Abare said that Council suggests changing Huggins Park zoning to RS-10, this is consistent with surrounding properties. Ritter said something about RS-21 may be good for two lots. The Board discussed different scenarios for the best zoning. Ritter suggested if the Town divides the vacant parcel (Huggins Park) this could generate more revenue for the Town instead of selling one large parcel.

Abare suggests dividing into four (4) lots in RS-10 and sell accordingly. Sherear explained about subdivision after three property splits.

The Board suggests dividing into three parcels, to generate more revenue. Some suggestions of the Board are the following:

- 1.) One parcel RS-10
- 2.) Three Parcels RS-10 and hold One parcel
- 3.) Two Parcels RS-10 and hold and sell separate

After much discussion a suggestion of the PZ Board was to divide the (3.4 +/- acre) parcel into four separate parcels to generate more revenue, instead of selling only one parcel.

There was no formal "Motion" made this was for discussion only. Abare and PZ Board suggested the following:

**The consensus of the P&Z Board is to sell separate parcels with the maximum number of four parcels for maximum revenue.**

- H. **ADDITIONAL ITEMS FOR FUTURE MEETING:**  
I. **PUBLIC:**  
J. **OLD BUSINESS/NEW BUSINESS:**

Old Business:

Abare discussed cancelling the PZ Meeting for September 25, 2019 if there was nothing for Agenda notify Board by email.

New Business:

- Board Member Comments
- Next Regular Meeting- September 25, 2019

**K. ADJOURN**

There being no further business to discuss

MOTION: Hofmeister/Dial adjourn this meeting. Vote: All Ayes. The meeting adjourned 8:15 P.M.

BY:

\_\_\_\_\_  
Wayne Abare Chair

\_\_\_\_\_  
Denine Sherear, Board Secretary

\_\_\_\_\_  
Date Approved: as presented/corrected:

# TOWN OF MALABAR AGENDA ITEM REPORT

**AGENDA ITEM NO: 6.a**  
**Meeting Date: October 9, 2019**

Prepared By: Denine Sherear, Planning & Zoning Board Secretary

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**SUBJECT: Review Preliminary Plat for "Twin Lakes" Subdivision: Vacant Parcel Id # 29-37-02-00-253, Malabar FL 32950 located in RR-65 Zoning (16 lots) on 23.91-acres**  
Applicant: Malcom Kirschenbaum, Weber Woods LLC (owner), Represented by Mr. Bruce Moia, PE (MBV Engineering, Inc).

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## **BACKGROUND/HISTORY:**

The Applicant Mr. Bruce Moia PE is representing the owner, who has applied for a Preliminary Plat review for the "Twin Lakes" Subdivision, which is in the RR-65 Zoning on Malabar Road east of Weber Road.

This process started back in 2018 to move forward with developing this vacant 23.91+ acres into a subdivision. There was a pre-site plan meeting held with Town Staff on November 21, 2018. This was to go over all required information to submit a formal Preliminary Plat for staff to review and comment and forward to this Board.

Historically, the last two subdivisions done in the Town were in 2006, Weber Woods with 14 homesites in RR-65 Zoning (Rural Residential) has city water and a paved private road. The other is Oakmont Preserve with 58 homesites, also in our RR-65 Zoning. This subdivision has well & septic with paved private roads.

Please review this material and be prepared to take action in the form of a "Motion" to approve/deny the Preliminary Plat. You may also make a motion to approve with conditions. The applicant would then have the option to modify his package before proceeding to Council.

## **ATTACHMENTS:**

- Application & Map of location
- Preliminary Plat Plan (24 x 36)
- Portion of Article III District Provisions
- Tree survey
- Declaration of Covenants
- Watermain Analysis (City of Palm Bay)
- Zoning Map & surrounding areas
- Article XVI Subdivision Procedures
- Town Staff Comments & MBV Engineering Response

**ACTION OPTIONS:** Action to Council

**TOWN OF MALABAR**  
**2725 Malabar Road, Malabar, Florida 32950 TOWN OF MALABAR**  
**(321) 727-7764 x 14 – Telephone**  
**(321) 727-9997 - Fax**

APR 29 2019  
RECEIVED

APPLICATION FOR SUBDIVISION

Before completing this application, please refer to the following sections of the Malabar Code, available online at [www.townofmalabar.org](http://www.townofmalabar.org) or [www.municode.com](http://www.municode.com):

- 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 XVI – Subdivision Administration and Procedures
- Article XVII – Required Improvements and Design Standards
- Article XVIII – Construction of Required Improvements
- Florida Statutes, Chapter 177

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

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

Name of Owner(s): Malcolm Kirschenbaum Telephone: 321-258-3076  
Mailing Address: same as applicant

Legal Description of Property covered by application: Attach proof  
Township: 29 Range: 37 Section: 02 Lot/Block: 26 / 25 Parcel: 253

Proposed Subdivision name: Twin Lakes No. of Lots: 16  
Present Zoning Classification: RR-65 Present Land Use Classification: RR  
Other Legal: Lots 26 and part of Lot 25 of Plat Book 1, Page 1, per ORB 5447, Pages 7116

Fees:

- Site Plan Pre-Application Conference ----- \$500.00\*  
 Preliminary Plat ----- \$500.00 or \$10.00 per lot, whichever is greater\*  
 Final Plat ----- \$500.00 or \$20.00 per lot, whichever is greater\*

*(\*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).  
 Application Fee of \$ 1500.00 in cash or check, payable to the Town of Malabar.  
 Hold Harmless, as required by Article XVI, Section 1-16.2(D).  
 Documentation as required in Article XVI, Section 1-16.4. **Every item must be addressed.**

Copies of all Federal, State, and Local agency permits. It shall be the applicant's responsibility to obtain such outside permits. Proof of submittal is required.

Upgraded Application fee in the amount of \$1500.00 for Subdivision Application and Preliminary Plat.



TOWN OF MALABAR  
APPLICATION FOR SUBDIVISION

APR 29 2019  
RECEIVED

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 subdivision approval.

Please complete only one of the following:

I, Malcolm Kirschenbaum, being first duly sworn, depose and say that  
I, Bruce A. Moia, P.E., 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  
[Signature]  
Applicant  
\_\_\_\_\_  
April 26, 2019  
Date  
4/26/19  
Date

Sworn and subscribed before me this 26th day of April, 2019.

NOTARY PUBLIC  
STATE OF FLORIDA  
Commission No.:  
  
Wanda Walker  
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  
[Signature]  
Applicant  
\_\_\_\_\_  
April 26, 2019  
Date  
4/26/19  
Date

Sworn and subscribed before me this 26th day of April, 2019.

NOTARY PUBLIC  
STATE OF FLORIDA  
Commission No.:  
  
Wanda Walker  
My Commission Expires: \_\_\_\_\_



# Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

## PROPERTY DETAILS

Account	2963199
Owners	Weber Woods LLC
Mailing Address	516 Delannoy Ave Cocoa FL 32922
Site Address	Not Assigned
Parcel ID	29-37-02-00-253
Property Use	9909 - Vacant Residential Land (Single-Family, Unplatted)
Exemptions	None
Taxing District	3420 - Malabar
Total Acres	23.91
Subdivision	--
Site Code	0381 - Malabar Rd (Sr514)
Plat Book/Page	--
Land Description	Lot 26 & Part Of Lot 25 Of Pb 1 Pg 165 As Desc IN Orb 8065 Pg 1488 Exc Orb 8313 Pg 1942



## VALUE SUMMARY

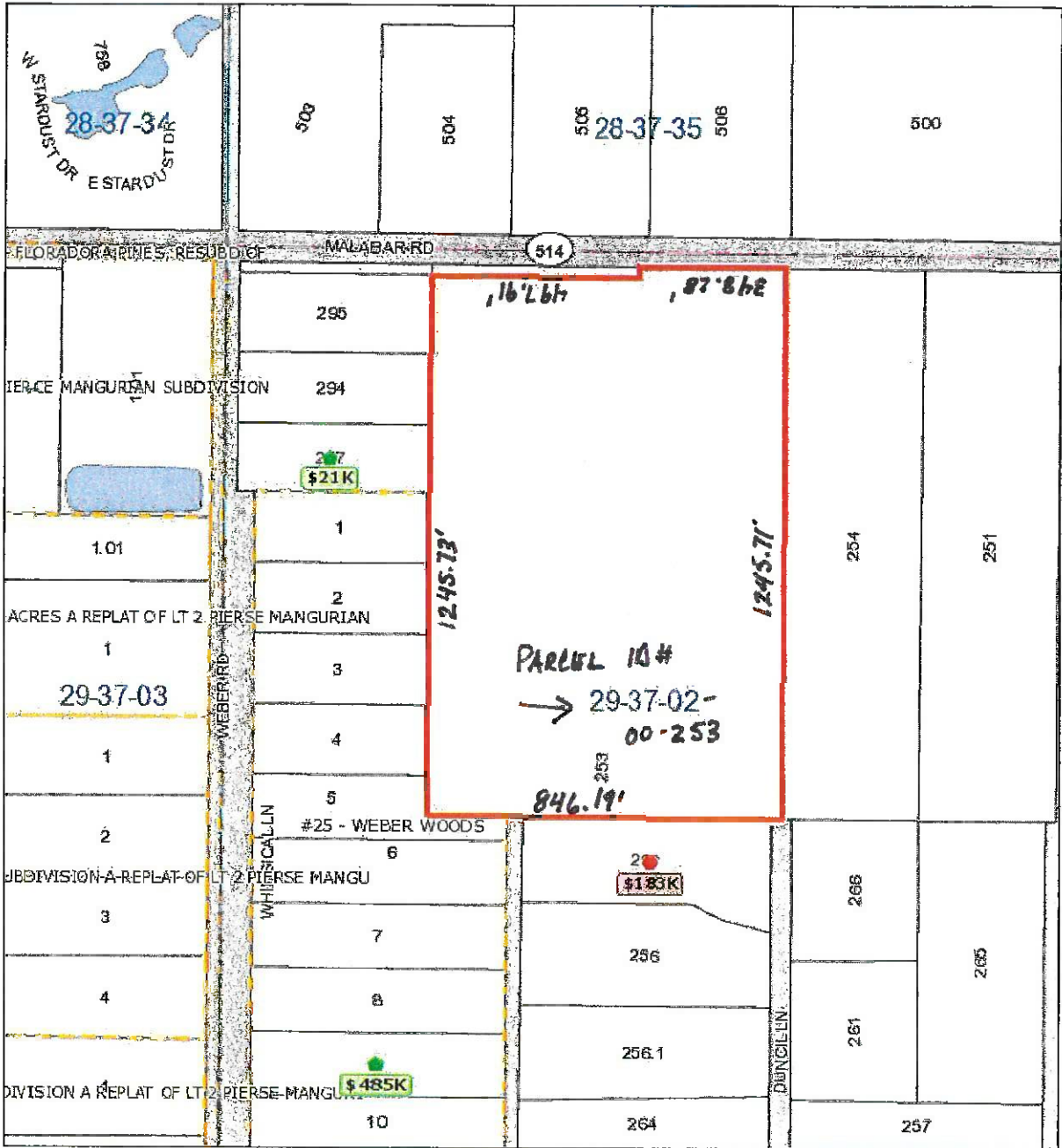
Category	2019	2018	2017
Market Value	\$370,610	\$338,800	\$314,600
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$368,210	\$338,800	\$314,600
Assessed Value School	\$370,610	\$338,800	\$314,600
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$368,210	\$338,800	\$314,600
Taxable Value School	\$370,610	\$338,800	\$314,600

## SALES/TRANSFERS

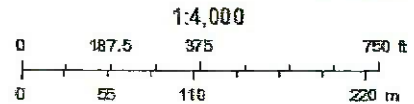
Date	Price	Type	Parcel	Deed
06/26/2006	--	QC	Vacant	5668/0077
04/06/2005	--	WD	Improved	5447/7116

No Data Found

# Brevard County Property Appraiser



October 2, 2019



2816320

For illustration only. Not a survey. Map type is may not precisely align.  
 © SCPAO 2015

**“TWIN LAKES”  
PRELIMINARY  
PLAT**

**24” X 36”**


**(ATTACHED TO PAPER PACKET)**

**TOWN OF MALABAR  
CODE**

**PORTION OF ARTICLE  
III  
DISTRICT PROVISIONS**

## Section 1-3.1. - Purpose and intent of districts.

This section presents the basic purpose and intent of each zoning district.

- 
- A. *CP "Coastal Preserve."* The CP district was originally established by the Town Council through Ordinance Number 7-1-76, § 5.12 and Ordinance Number 7-12-79 § 1. This district is intended to preserve a narrow strip of land east of highway US 1 directly abutting the Indian River Lagoon, a State designated Aquatic Preserve. The district provisions are intended to assist in implementing land use, coastal management, and conservation goals, objectives, and policies within the comprehensive plan. For instance, the district provisions reduce exposure to natural hazards to persons or property as a result of windstorms and high tides; preserve the marine resources of the Aquatic Preserve; and restrict usage to noncommercial piers, boat slips, and docks.
  - B. *RR-65 "Rural Residential."* The rural residential district is established to implement comprehensive plan policies for managing rural residential development at a density not to exceed one and one-half (1.5) acres per dwelling unit. The district is intended to protect and preserve existing agricultural and rural residential lands. These lands are generally developed for agricultural uses or for large lot rural residential home sites. The areas designated for rural residential development generally contain few urban services and the street system is generally incapable of carrying traffic generated by more intense urban development. The district is intended to accommodate and preserve a unique lifestyle which cannot be accommodated in more dense residential areas.
  - C. *RS-21 "Single-Family Low-Density Residential."* This district is established to implement comprehensive plan policies for managing low-density, single-family residential development at a density not to exceed two (2) single-family dwelling units per acre. The RS-21 district is established in order to protect the quality and character of existing and future conventional single-family low-density neighborhoods, preserve open space, and manage future densities in order to assure compatibility with existing developments, natural features of the land, as well as existing and projected public services and facilities within the area.
  - D. *RS-15 "Single-Family Medium-Density Residential."* The RS-15 district is designed to accommodate traditional single-family development on lots not less than 15,000 square feet. The district is established to preserve the stability of existing and future conventional single-family residential neighborhoods, preserve open space, and manage future densities in order to assure that future densities are compatible with existing developments, natural features of the land, as well as existing and projected public services and facilities within the area.
  - E. *RS-10 "Single-Family Medium-Density Residential."* The RS-10 district is established to implement comprehensive plan policies for managing traditional single-family residential development on lots not less than 10,000 square feet. This district is established to preserve the stability of existing and future single-family residential neighborhoods, preserve open space, and manage future densities in order to assure that they are compatible with existing developments, natural features of the land, as well as existing and projected public services and facilities within the area.
  - F. *R-MH "Residential Mobile Homes."* The R-MH district is established to implement comprehensive plan policies for managing high density mobile home residential development. The district is designed for managing mobile home development at a density not to exceed six units per acre. The district is intended to provide sites for mobile home development within existing established mobile home parks.
  - G. *RM-4 "Multiple-Family Medium-Density Residential."* The RM-4 district is established to implement comprehensive plan policies for managing medium-density residential development not to exceed four units per acre. The district is established to ensure sufficient land area for development of medium-density multiple-family residential developments which are fully serviced by adequate public facilities. Sites for medium-density multiple-family residential development shall be located so that they provide a smooth transition between low density residential development and areas developed and/or designated for more intense uses.
  - H. *RM-6 "Multiple-Family High-Density Residential Development."* The RM-6 district is established to implement comprehensive plan policies for managing high-density residential development at a density not to exceed six

Part of Art III

TABLE 1-3.3(A). SIZE AND DIMENSION REGULATIONS

Zoning District	Minimum Lot (L)			Maximum Height (ft. stories)	Minimum Living Area (sq. ft.)	Setback (ft.)				Maximum Impervious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Curbside Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (f)	Side (C)				
<b>Rural Residential Development</b>													
RR-63	65,340	150	250	35/3	1,500	40	30	30	30	20	N/A	30	0.66
<b>Traditional Single Family Residential Development</b>													
RS-21	21,780	120	150	35/3	1,800	35	20	15	15	35	N/A	65	2.00
RS-15	15,000	100	120	35/3	1,500	30	20	15	15	45	N/A	55	2.504
RS-10	10,000	75	100	35/3	1,200	25	20	10	10	50	N/A	50	4.00
<b>Multiple Family Residential Development</b>													
RM-4	5 Acres Minimum Site	200	200	35/3		60	40	40	40	50	N/A	50	4.00
RM-6	5 acres Minimum Site	200	200	35/3		25	20	10	10	50	n/a	50	6
<b>Mixed Use Development</b>													
M/LC	20,000	100	150	35/3		25	20	10	10	50	n/a	50	4
						50	25	10 <sup>4</sup>	20	65	n/a	35	6
<b>Mobile Home Residential Development</b>													
B-MH	Site: 5 Acres Lot: 7000					10	8	8	10	50	N/A	50	5.00
<b>Office Development</b>													

Zoning District	Minimum Lot (1)		Maximum Height (ft./stories)	Minimum Living Area (sq. ft.) Minimum Floor Area: 1000	Setback (ft.)(2)			Maximum Impervious Surface Ratio (ft <sup>2</sup> )	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater		
	Size (sq. ft.)	Width (ft.)			Depth (ft.)	Front	Rear					Side (1)	Side (C)
O1	20,000	100	150	35/3		35/60	25	20	25	65	20	35	N/A
<b>Commercial Development</b>													
CL	20,000	100	180	35/3		50	25	10' <sup>1</sup> 15' <sup>1</sup>	20	65	0.20	35	N/A
CC	20,000	100	150	35/3		50	25	20' <sup>1</sup> 15' <sup>1</sup>	30	65	0.20	35	N/A
<b>Industrial Development</b>													
IND	20,000	100	150	35/3		50 100 <sup>c</sup>	25 100 <sup>d</sup>	20 100 <sup>e</sup>	30 100 <sup>f</sup>	70	0.42	30	N/A
<b>Institutional Development</b>													
INS	20,000	100	150	35/3		50	25	20	30	60	0.20 0.10 <sup>g</sup>	40	N/A
<b>Coastal Preservation</b>													
CP	No Size or Dimension Standards Adopted												

<sup>1</sup> Minimum size sites and lots include one-half of adjacent public right-of-way.

<sup>2</sup> Minimum setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center of the right-of-way pursuant to Table 1-3.3(E) whichever is most restrictive.

<sup>3</sup> Setback where rear lot line abuts an alley.

<sup>4</sup> Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such case the more restrictive abutting setback shall apply.

<sup>5</sup> Where any yard of industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet.

<sup>6</sup> Recreation activities maximum FAR shall be .10.



B. *Area requirements for uses not served by central water and wastewater services.* All proposed development within areas not served by central water and wastewater services shall comply with the septic permitting requirements of Brevard County.

C. *Impervious Surface Requirements (ISR) for All Uses.* The term "impervious surface" is defined as that portion of the land which is covered by buildings, pavement, or other cover through which water cannot penetrate. The impervious surface ratio requirement controls the intensity of development, by restricting the amount of the land covered by any type of impervious surface.

1. *Calculation of ISR.* The impervious surface ratio (ISR) is calculated for the gross site by dividing the total impervious surface by the gross site area. Water bodies are impervious but shall not be included as such in the ISR calculation.

Cluster development or other site design alternatives may result in individual lots exceeding the ISR, while other lots may be devoted entirely to open space. The Town may require, as a condition of approval, deed restrictions or covenants which guarantee the maintenance of such open space in perpetuity. The ISR requirement shall not be bypassed or reduced. However, the intent is to allow maximum flexibility through calculating ISR on the gross site, and not on a lot-by-lot basis.

2. *Use of Porous Material.* Porous concrete, asphalt, porous turf block, or similar materials may be used subject to approval of the Town Engineer.
3. *Compliance with ISR Stipulated in Table 1-3.3(A).* All proposed development shall comply with the standards given in the table of impervious surface ratios in Table 1-3.3(A).

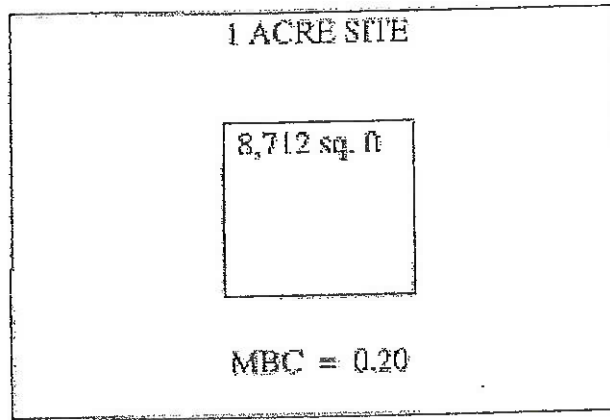
Where a proposed development is donating or dedicating land based on a plan approved by the Town, the gross site before dedication or donation shall be used to calculate ISR. This does not relieve the applicant from providing all required on-site buffers, landscaping, stormwater management areas, setbacks, and other required project amenities.

D. *Maximum Building Coverage.* The term "maximum building coverage" is defined as a measurement of the intensity of development on a site. For purposes of this Code, maximum building coverage (MBC) is used to regulate nonresidential development.

1. *Calculation of MBC.* The MBC is the relationship between the total building coverage on a site and the gross site area. The MBC is calculated by adding together the total building coverage of a site and dividing this total by the gross site area. See figure 1-3.3(D) for a graphic illustration of this concept.

All proposed nonresidential development shall comply with the MBC requirements stipulated in Table 1-3.3(A) for the zoning district in which the development is located.

FIGURE 1-3.3(D). MAXIMUM BUILDING COVERAGE ILLUSTRATION



Maximum building coverage for a MBC of 0.20 = 8,712 sq. ft.

$$\text{MBC} = \frac{\text{Total Building Coverage}}{\text{Total Lot Area}}$$

E. *Building Setbacks.* Table 1-3.3(A) provides building setbacks for conventional single family lots as well as for multiple family residential and nonresidential sites. In addition to these setbacks the following building setbacks from thoroughfares shall be enforced. The required minimum setback from the thoroughfare shall be measured from the centerline of the right-of-way. The thoroughfare system is illustrated on the Future Traffic Circulation System: 2010 Map located within the traffic circulation element of the Town of Malabar comprehensive plan. The below cited table identifies rights-of-way within the Town and stipulates minimum required building setbacks from these roadways.

TABLE 1-3.3(E). ADDITIONAL BUILDING SETBACKS FROM STREETS AND ROADS

<i>Transportation Facility</i>	<i>Building Setback (feet)</i>
Arterial Roadways (150 feet R/W)	100
US 1 Highway	
Malabar Road (SR 514)	
Babcock Street (SR 507)	
Major Collector Streets (100 feet R/W)	85
Corey Road	
Weber Road	
Marie Street	
Briar Creek	
Jordan Blvd.	
Local Streets (50—60 feet R/W)	65

Minor Collector Streets (<sup>70</sup>~~20~~ feet R/W)

75

Atz Blvd.  
Hall Road  
Old Mission Road  
Benjamin (Reese) Road

F. *Minimum Distance Between Principal Buildings.* The minimum distance between principal buildings shall be twenty (20) feet. The distance shall be measured at the narrowest space between buildings and shall not include roof overhang.

(Ord. No. 92-8, § 1(B), (D), (J), 8-18-92; Ord. No. 94-4, § 4, 4-3-95; Ord. No. 96-1, § 1, 3-4-96; Ord. No. 97-5, § 1, 3-17-97; Ord. No. 02-03, § 1, 8-5-02; Ord. No. 03-02, § 1, 2-24-03; Ord. No. 04-08, §§ 1, 2, 7-12-04; Ord. No. 06-05, § 1, 2-6-06; Ord. No. 06-16, §§ 1, 2, 10-2-06)

**TOWN OF MALABAR**  
 Brevard County, Florida  
 OFFICIAL ZONING MAP  
 1995 FINAL

This is to certify that this Official Zoning Map supercedes and replaces that Zoning Map adopted as part of Ordinance No. \_\_\_\_\_ of the Town of Malabar, Florida.

DATE \_\_\_\_\_

MAYOR \_\_\_\_\_



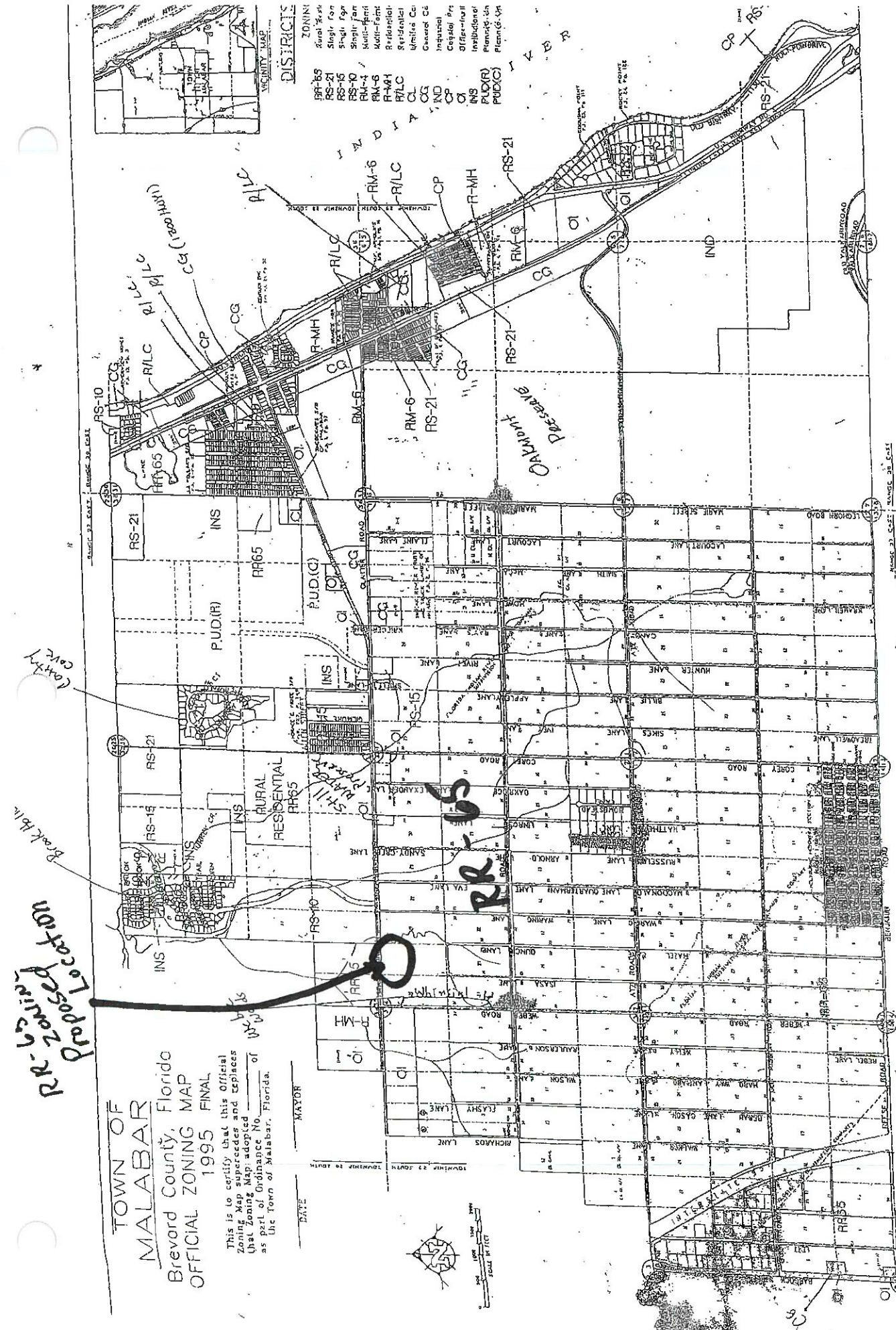
- ZONING DISTRICTS**
- RR-65 Rural Resort
  - RS-21 Single Cor
  - RS-15 Single Dup
  - RS-10 Single Fam
  - RM-4 Multi-Fam
  - RM-6 Multi-Fam
  - R-MH Residential Medium Density
  - R-ILC Residential Single-Fam
  - CL Commercial
  - CG General C2
  - IND Industrial
  - CP Community Center
  - CI Community Center
  - INS Institutional
  - PUD(R) Planned Unit Development
  - PUD(C) Planned Unit Development



*RR-65 zoning Proposed Location*

*Brak Hill*

*Country Cove*





Prepared by and return to:

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516 Delannoy Avenue  
Cocoa, Florida 32922

TOWN OF MALABAR

JUL 23 2019

RECEIVED

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

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TWIN LAKES ("Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 2019, by WEBER WOODS, 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.

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 \_\_\_\_\_, recorded in Plat Book \_\_\_\_\_, Pages \_\_\_\_\_ through \_\_\_\_\_, inclusive, of 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 Chapters 40D-4, 40D-40, or 40D-42, 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 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 Association's 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 shall be dug or drilled on the Property, including wells used to provide irrigation for the landscaping located on Lots. 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. THE OWNER OF A LOT LYING SUBJECT TO ANY SUCH DRAINAGE AREA SHALL 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, CONSTRUCTS ANY IMPROVEMENTS WITHIN ANY DRAINAGE AREA IN VIOLATION OF THIS SECTION 27, 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.**

**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 of the Common Area and the Common Maintenance Areas (including maintenance of adequate reserves), 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 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 \$~~XXXX~~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.

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 exercise of the rights granted to the Town or for failure of the Town to perform or in the performance with any rights granted to the Town herein or any virtue of applicable law ~~unless such failure to perform constitutes negligence of the Town, subject to Section 768.28, Florida Statutes.~~ 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. 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. 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 [REDACTED] Community Guidelines, dated \_\_\_\_\_, 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: \_\_\_\_\_  
Malcolm R. Kirschenbaum, Manager

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Malcolm R. Kirschenbaum, 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.]*

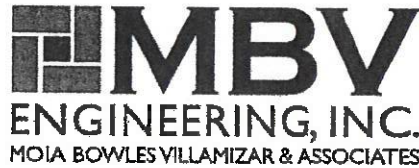
JUL 23 2019

RECEIVED

# TWIN LAKES SUBDIVISION WATERMAIN ANALYSIS CALCULATIONS

(City of Palm Bay)  
Brevard County, Florida

JULY, 2019



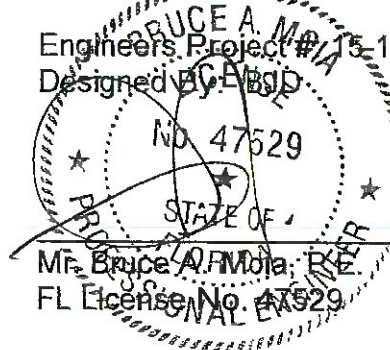
CIVIL ■ STRUCTURAL ■ SURVEYING ■ ENVIRONMENTAL

1250 W. Eau Gallie Blvd., Unit L  
Melbourne, Florida 32935  
321.253.1510 ■ Fax: 321.253.0911  
www.mbveng.com

CA#3728

Prepared by: MBV Engineering, Inc.  
1250 West Eau Gallie Blvd.  
Unit L  
Melbourne, Florida 32935  
(321) 253-1510  
Certificate of Authorization #: 3728

Engineers, Project # 15-1690  
Designed by: CA#3728



7-22-19

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### SUMMARY

The existing City of Palm Bay watermain distribution system provided data has been analyzed to show that the proposed Twin Lakes 16-Unit Subdivision water distribution and fire protection system meets the City of Palm Bay flow and pressure criteria.

### SITE DESCRIPTION

Twin Lakes Subdivision is located 470 feet east of the intersection of Malabar Road and Weber Road in the Town of Malabar. The proposed water distribution and fire protection system will connect to the existing 12" diameter watermain at the southwest corner of the intersection of Malabar Road and Webber Road. Twin Lakes will construct approximately 955 feet of 12" diameter PVC watermain along the southern right of way of Malabar Road. Twin Lakes will construct approximately 1,000 feet of 8" diameter PVC watermain along the center of the proposed private roadway, Indira Lane, with 514 feet of 4" diameter PVC watermain looped at the proposed cul-de-sac.

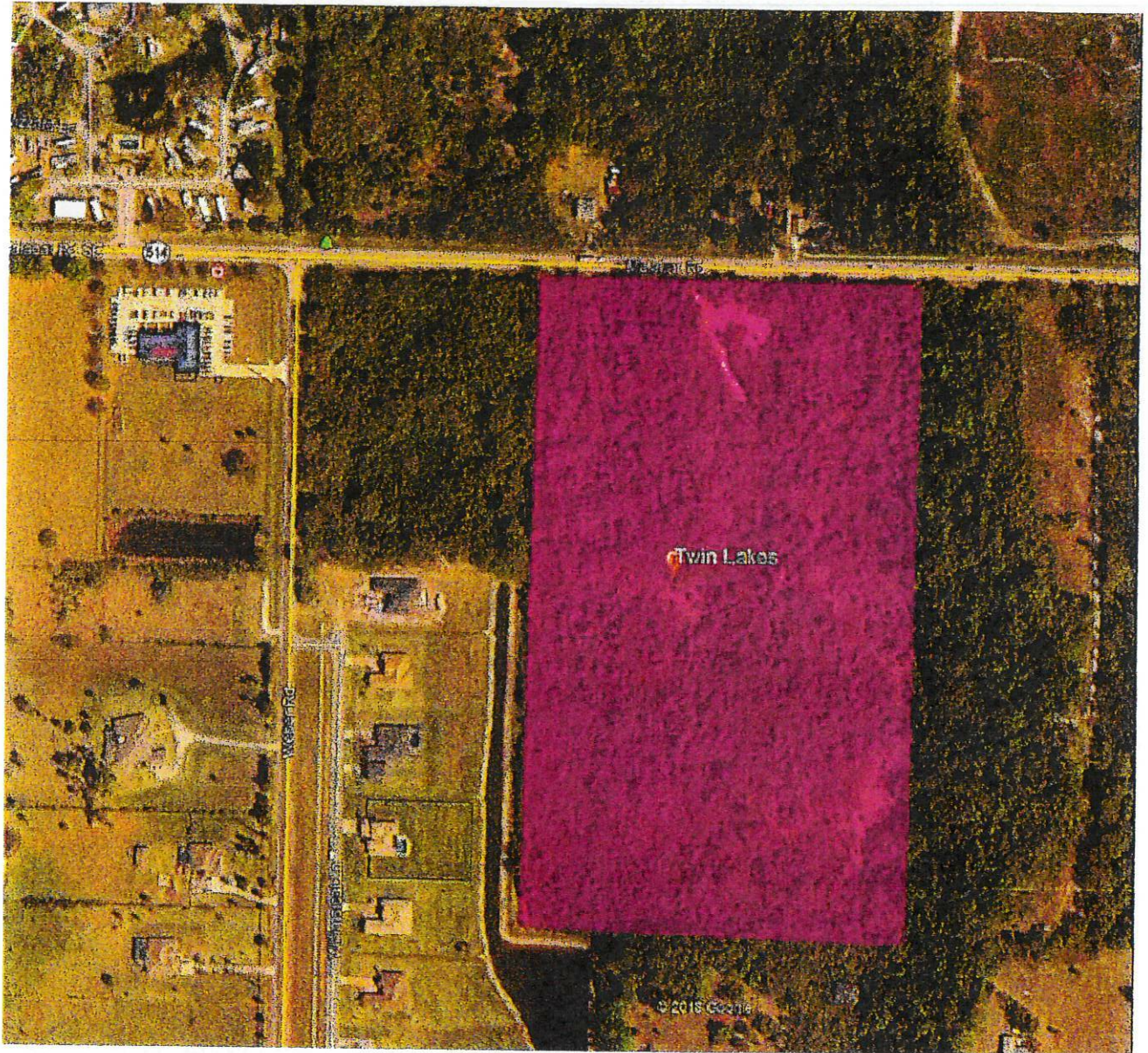
### EXISTING CONDITIONS

The project site is not currently serviced, and there are no watermains adjacent to the project site. We are utilizing the City of Palm Bay existing watermain pressure data at Malabar Road and Weber Road provided by the fire flow tests dated: January 25<sup>th</sup>, 2019 being 58 psi static, 48 psi residual, and 44 psi open fire hydrant flow at 1,113 gpm.

### PROPOSED SYSTEM

The proposed fire protection and potable water system consists of 955 feet of 12" diameter PVC watermain extension and 1,000 LF 8" PVC watermain that will connect two (2) new service fire hydrants and provide service to SIXTEEN (16) new residential lots within the 24.53-acre site.

PROJECT LOCATION MAP



HYDRAULIC CALCULATION ASSUMPTIONS

The hydraulic calculations were performed using the Hazen Williams formula for head elevation based on static pressure  $z = 2.31\rho$ . The Hazen Williams friction coefficient, "C", used for PVC pipe is 130. It was assumed that each lot would require a demand of 300 GPD = 0.208 GPM and a peaking factor of 4.0 was used in the analysis as well as a fire flow for each fire hydrant of 1000 GPM. For the purposes of including minor losses for fittings the loss coefficients were built into each segment of pipe based on the table below;

**Table 3.3 Minor Loss Coefficients for Selected Fittings**

<i>FITTING</i>	<i>LOSS COEFFICIENT</i>
Globe valve, fully open	10.0
Angle valve, fully open	5.0
Swing check valve, fully open	2.5
Gate valve, fully open	0.2
Short-radius elbow	0.9
Medium-radius elbow	0.8
Long-radius elbow	0.6
45 degree elbow	0.4
Closed return bend	2.2
Standard tee - flow through run	0.6
Standard tee - flow through branch	1.8
Square entrance	0.5
Exit	1.0

## Twin Lakes Watermain Hydraulic Justification

### Head Losses in Pipe (Hazen-Williams Equation)

$$f = 0.2083 \left( \frac{100}{C} \right)^{1.852} \frac{Q^{1.852}}{D_h^{4.8655}}$$

- $f$  = Frictional head loss per 100 ft of pipe,  $ft_{h2O}/100$  ft pipe
- $Q$  = Volumetric flow rate, gal/min
- $C$  = Roughness coefficient, 130 for PVC
- $D_h$  = Inside hydraulic diameter, inches
- $P_d$  = Pressure drop (psi/ft pipe)

### Pressure Drop in Pipe (Hazen-Williams Equation)

$$P_d = 4.52 \frac{Q^{1.852}}{C^{1.852} D_h^{4.8655}}$$

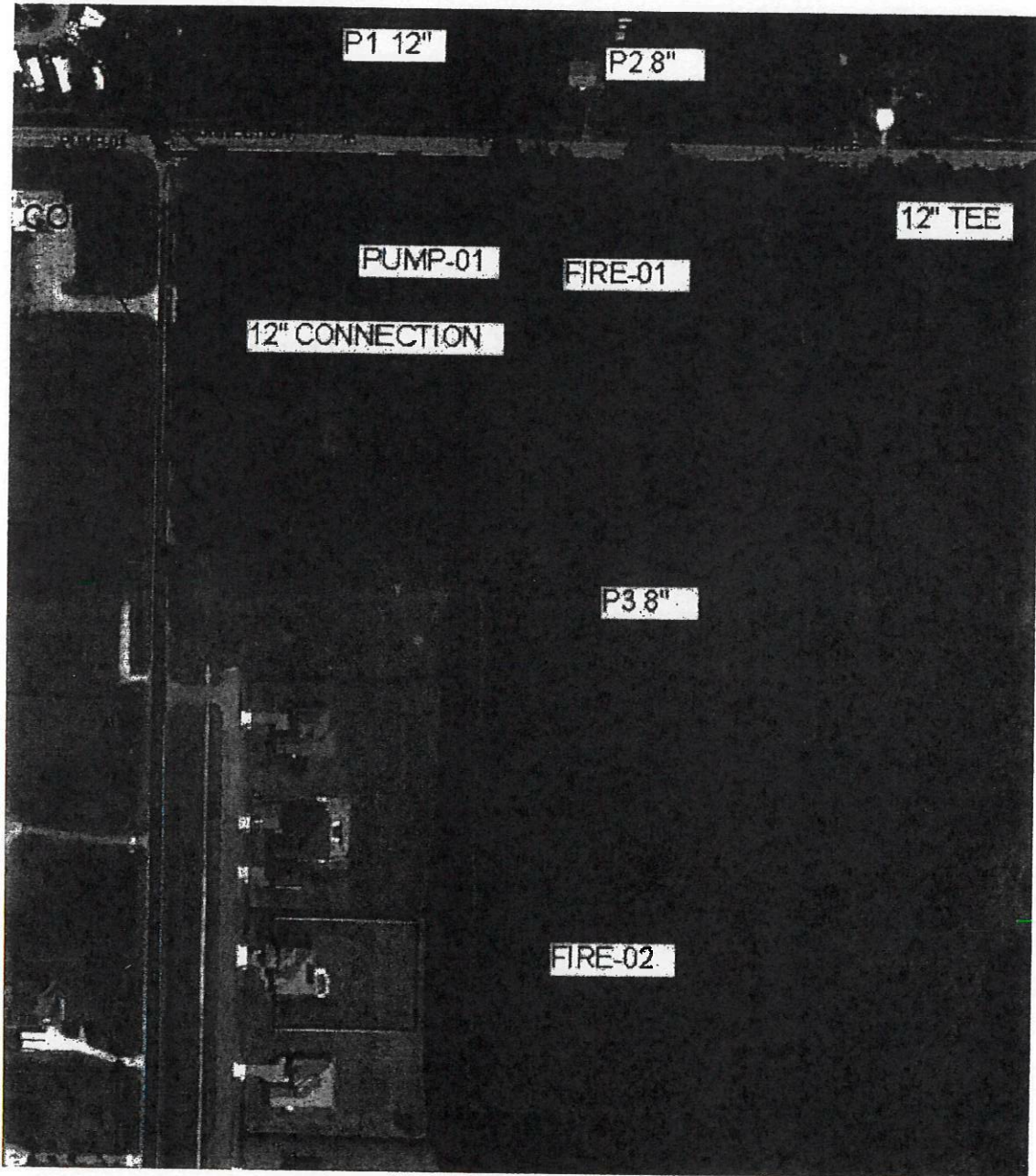
#### Demand - Fire Hydrant 1

Segment #1	Quantity	Q (gpd) per Unit	Q (gpm) per Unit	Peak (4X)	Q (gpm) Utilized
Indria Lane	16	300	0.208	0.833	13.3
Fire Flow	0				0
<b>Total</b>	<b>16</b>				<b>13.3</b>

#### Demand - Fire Hydrant 2

Segment #1	Quantity	Q (gpd) per Unit	Q (gpm) per Unit	Peak (4X)	Q (gpm) Utilized
Indria Lane	8	300	0.208	0.833	6.7
Fire Flow					1000
<b>Total</b>	<b>8</b>				<b>1006.7</b>
<b>GRAND TOTAL</b>	<b>24</b>				<b>1020.0</b>

## EPANET NODAL MAP





## EPANET JUNCTION REPORT

### TWIN LAKES WATER MODEL

Network Table - Nodes

Node ID	Elevation ft	Demand GPM	Head ft	Pressure psi
Junc 12-TEE	18	0.00	122.15	45.13
Junc FIRE-1	26	0.00	120.41	40.91
Junc FIRE-2	26	1000.00	101.95	32.91
Junc 12-CONNECTION	18	0.00	124.46	46.13
Resvr PALM-BAY-SUPPLY	18	-1000.00	18.00	0.00

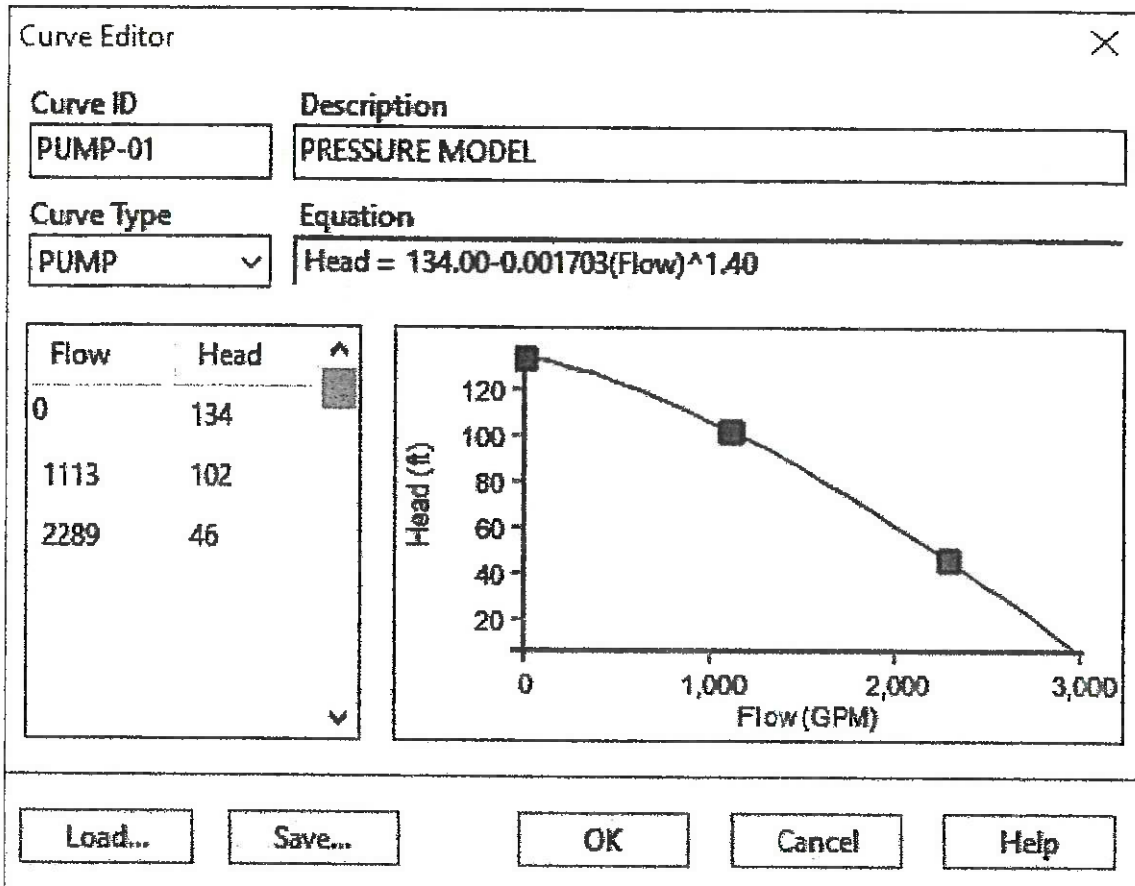
# EPANET PIPE REPORT

## TWIN LAKES WATER MODEL

Network Table - Links

Link ID	Length ft	Diameter in	Roughness	Flow GPM	Velocity fps	Unit Headloss ft/Kft
Pipe P2	32.70	8	130	1000.00	6.38	53.08
Pipe P3	948.34	8	130	1000.00	6.38	19.47
Pipe P1	912.92	12	130	1000.00	2.84	2.53
Pump PUMP-01	#N/A	#N/A	#N/A	1000.00	0.00	-106.46

## EPANET PUMP CURVE REPORT



# CITY OF PALM BAY FIRE FLOW REPORT

## Hydrant Flow Test

HYDRANT #: \_\_\_\_\_ LOCATION: WEBER ROAD & MALABAR ROAD

TEST BY: RA / JG JR DATE: Friday, January 25, 2019 MINUTES OF FLOW: 2

### DATA

#### FLOW HYDRANT

SIZE OPENING (in.): 2.5  
COEFFICIENT: 0.9  
Pressure (PSI): 44  
Flow (GPM): 1113

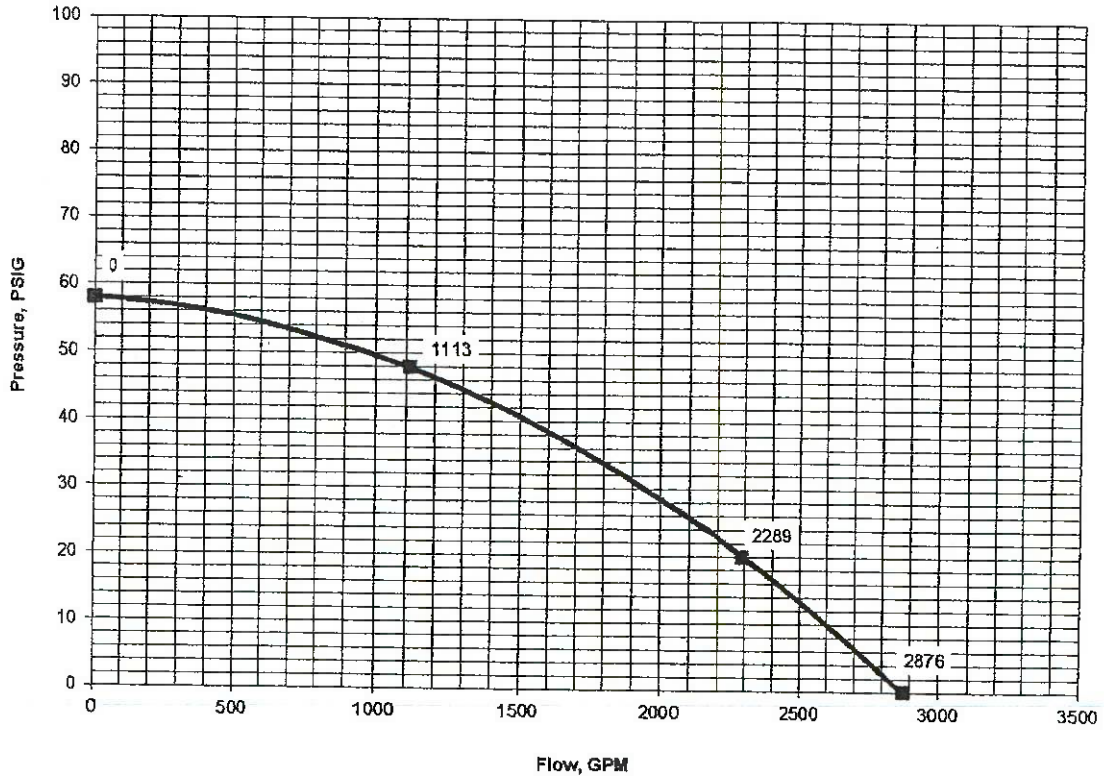
#### RESIDUAL HYDRANT

Static (PSI): 58  
Residual (PSI): 48

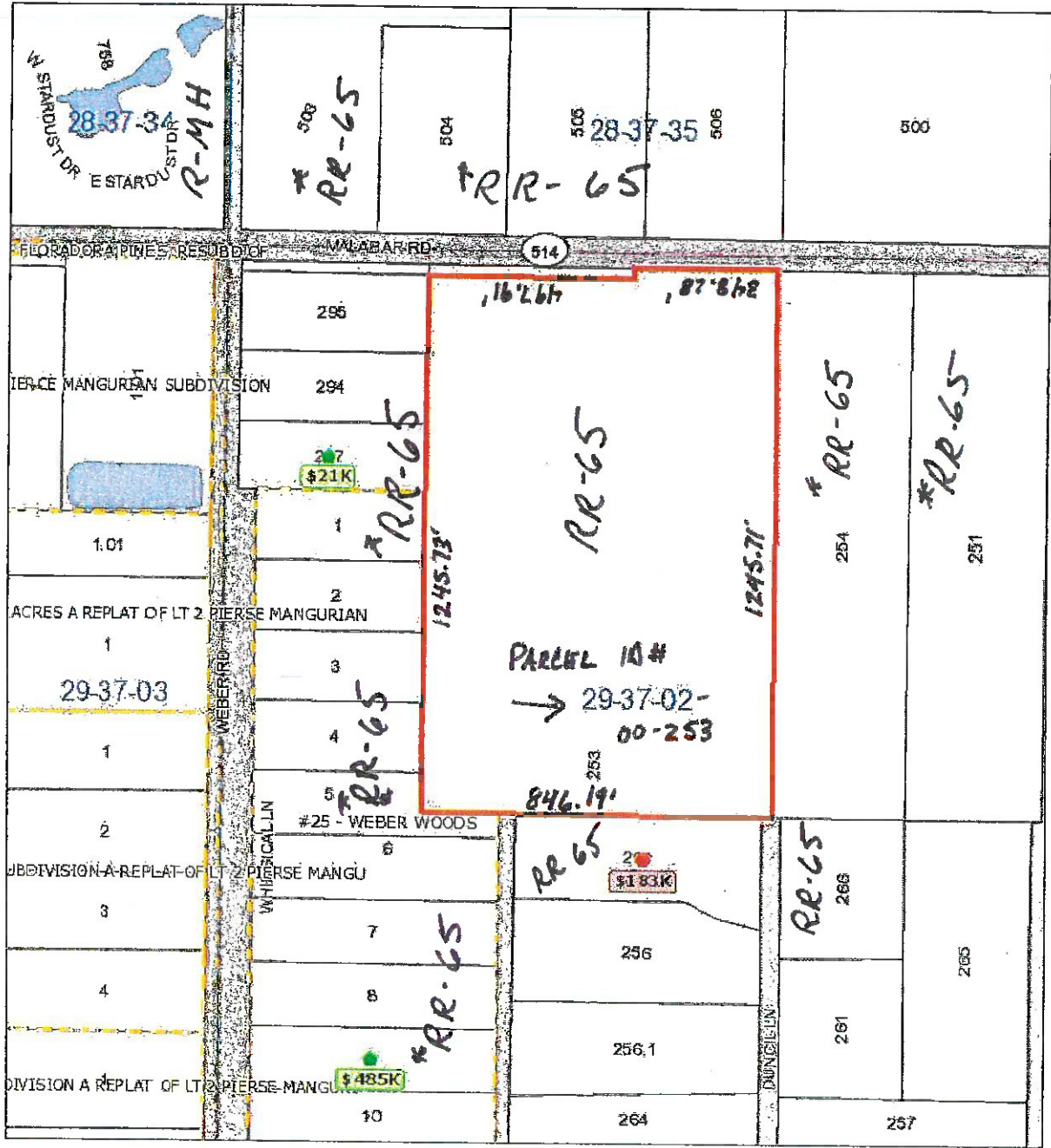
RESULTS: AT 20 PSI RESIDUAL: 2289 GPM AT 0 PSI: 2876 GPM

ESTIMATED CONSUMPTION: 2226 GAL.

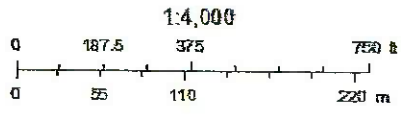
REMARKS:



# Brevard County Property Appraiser



October 2, 2019



**\*See ZONING IN AREA**

For illustration only. Not a survey. Map layers may not precisely align.  
 © BCPAO 2015

**TOWN OF MALABAR**

**CODE**

**FOR**

**ARTICLE XVI**

**SUBDIVISION**

**ADMINISTRATION &**

**PROCEDURES**


Section 1-16.2. - General administration.

- A. *Staff Administrative Review Responsibility.* The Town Clerk, Town Building Official and other designated staff or consulting professional acting under the direction of the Town Council shall administer the provisions of this Ordinance.
- B. *General Responsibility of Planning and Zoning Board and Mandated Compliance with Comprehensive Plan and Zoning.* Prior to the approval of any proposed subdivision, the area to be subdivided shall be determined by the Planning and Zoning Board to be consistent and in compliance with the Comprehensive Plan and zoning policy applicable to the land and use under consideration.
- C. *Burden of Proof and Other General Responsibilities of Applicant.* The burden of proof of all applications, plans, plats, reports, tests, compliances, dedications, existence of agreements, liens, mortgages, surety, and other pertinent documents and instruments shall rest with and be the responsibility of the applicant or his duly authorized agent as prescribed in these regulations.
- D. *Hold Harmless Provision.* The owner and/or developer shall furnish to the Town Council a waiver, release and hold harmless from all liability 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.
- E. *Town Council to Hear Appeals of Recommendations and Decisions of Town Staff.* Land development regulations and interpretations or decisions of the Town staff may be appealed to the Town Council. If the Town Council determines that the specific regulations or decisions in question create an unusual, exceptional or unnecessary hardship or injustice upon the applicant, the Town Council may grant an exception to these regulations.
- F. *Appeals of Town Council Action.* Any applicant, person, firm or corporation claiming to be injured or aggrieved by a final action of the Town Council may present to the Circuit Court of Brevard County a petition for a writ of certiorari to review such final action as provided by the Florida appellant rules. Such petition shall be presented to such Court within thirty (30) days after the date of such final action by the Town Council. The recommendations and decisions of staff as well as Boards, Commissions and Committees shall not be deemed to be a part of this final action of the Town Council.

(Ord. No. 06-06, § 1, 3-6-06)

preliminary plat as determined by the Town staff shall be submitted to the Town staff at the time of application.

2. A fee as determined by resolution of the Town Council shall accompany each application for preliminary plat review.
3. All preliminary plats shall be prepared by a land surveyor registered and licensed in the state. All engineering exhibits shall be prepared by a professional engineer registered and licensed in the state.
4. Each sheet of the preliminary plat shall be the same size and shall be no larger than twenty-four (24) inches by thirty-six (36) inches. The sheets of the preliminary plat shall be numbered consecutively, attached together, and folded.
5. Two (2) signed and sealed certified surveys, not more than one (1) year old, by a land surveyor registered and licensed in the state shall be submitted for the property which is the subject of the preliminary plat application and, if applicable, any area encompassing off-site improvements. The survey shall be at a scale of one (1) inch equals not more than one hundred (100) feet and shall be submitted on sheets not more than twenty-four (24) inches by thirty-six (36) inches.
6. For those sites which have existing trees, the applicant shall provide a tree survey in accordance with Article XV.
7. An affidavit or other document approved by the Town shall be submitted by the owner of the subject property or by the owner's agent making application for preliminary plat approval. The affidavit shall state the applicant is the owner or the owner's agent of the land which is the subject of the application and that all land shown on the preliminary plat will be committed and dedicated to the use for which the preliminary plat application is being made. The affidavit or other document approved by the Town shall be witnessed by two persons and acknowledged by a notary public so as to be recordable with the Clerk of the Circuit Court of the County. When the affidavit is submitted by the owner's agent, a notarized letter authorizing the agent to represent the owner shall be required.
8. An eight and one-half (8½) inch by eleven (11) inch transparency of the preliminary plat shall be submitted.
9. Failure by an applicant to submit a preliminary plat meeting all submittal requirements as set forth in this chapter shall be grounds for the Town staff to reject the preliminary plat application.

 C. *Preliminary Plat Procedures.* The purpose of the preliminary plat is to present the proposed subdivision in an exact and precise manner in order that it may be evaluated pursuant to this Code. The preliminary plat shall be completed and approved by Town Council prior to construction of the improvements required by these regulations.

1. *Preparation of Preliminary Plat.* The applicant shall retain the services of a civil engineer and/or land surveyor registered in Florida to prepare a preliminary plat of the proposed subdivision. The plat shall be clearly and legibly drawn or reproduced at a scale no smaller than one (1) inch equals two hundred (200) feet (1" = 200') and shall include the following information:
  - a. Name of subdivision or identifying title which shall not duplicate or closely approximate the name of any other subdivision in the incorporated area of the Town.
  - b. A vicinity sketch at a scale no smaller than one inch = two thousand feet (1" = 2,000 ft.), showing the location of the boundary lines and distance of the land proposed for subdivision in reference to other areas of the Town. The section, township, and range of the site and the legal description of the site shall also be included. Total project acreage and current zoning shall be included.
  - c. North arrow graphic scale, and date of preparation. The scale shall be approved by the Town, but in no case shall such scale be smaller than one (1) inch to two hundred (200) feet.
  - d. Name, address and telephone number of the applicant, owner of record, mortgage holder or any other person having a legal equitable or beneficial interest in the land together with a statement from such owners, or others having an interest in the land that they will join in the dedication of the proposed subdivision.
  - e. The name, business address, and registration number of the engineer and/or surveyor responsible for the plan, plat and supporting data.
  - f. The names of adjacent subdivisions, if any, and plat book and page reference, together with the names of owners of record having an interest in such adjacent acreage.
  - g. A contour map showing ground elevations at intervals of not more than one (1) foot, based on United States Coastal and Geodetic Survey datum, of the area to be subdivided and of a perimeter strip at least fifty (50) feet



## Section 1-16.4. - Subdivision procedures.

- A. *Pre-Application Conference.* There shall be a pre-application conference held for all projects requiring subdivision plat approval. The applicant for subdivision approval meet with the Town staff and/or designated Town consultants (collectively hereinafter referred to as staff) to discuss, informally, preliminary studies and sketches and their relationship to these regulations. This procedure is mandatory.
1. Following the scheduling of the pre-application conference the Town shall provide the applicant the subdivision plat requirements to assist the applicant in preparing a conceptual subdivision plat for the conference.
  2. A fee as determined by resolution of the Town Council shall be remitted by the applicant to the Town prior to the pre-application conference.
  3. The purpose of the pre-application conference is to discuss basic concepts, the layout of the project, location of utilities, traffic considerations, any potential problems with the site, tree preservation and landscaping, wetlands and plans for preservation or mitigation, habitat of endangered and threatened vegetative and/or wildlife species, and any questions the applicant may have concerning the site, the requirements for subdivision plat submittal, or the preliminary plat requirements. Following the conference, the applicant should be sufficiently prepared to submit a detailed preliminary plat which will be functional, adequately address all issues and requirements of the pre-application conference, and comply with the preliminary plat requirements.
  4. The applicant shall have available five copies of the proposed subdivision plat at the pre-application conference. The proposed plat shall be legible and shall contain sufficient detail for the Town staff to provide input to the applicant. The sheets comprising the subdivision plat are not required to be signed and sealed for the pre-application conference. At a minimum, the following exhibits shall be required at the pre-application conference:
    - a. A location map showing the relationship of the proposed subdivision to existing and proposed streets and other community facilities and the total ownership of the subdivider in that vicinity.
    - b. General information on existing site conditions and physical characteristics, adjacent community facilities and public utilities, and surrounding property conditions.
    - c. A general description of the proposed subdivision, including proposed number of lots and lot widths and depths.
    - d. A drawing showing the proposed pattern of streets, lots, and stormwater conveyance, retention/detention and treatment facilities in relation to existing conditions of the site and its surroundings.
    - e. The general type of vegetation existing on the site, including major trees and tree clusters, soil types, and the location and characteristics of wetlands, if present.
  5. After the pre-application conference has occurred, the plans for the proposed subdivision concept shall be submitted to the Planning and Zoning Board for conceptual review, the Planning and Zoning Board shall recommend to the Town Council approval or denial of the proposed subdivision. This process shall not be construed as a substitute for preliminary or final plat approval.
  6. After review and recommendation of the plans for the proposed subdivision concept by the Planning and Zoning Board the plans for the proposed subdivision shall be reviewed by the Town Council for conceptual approval or denial only. Conceptual approval of the Town Council shall in no way be construed as preliminary or final plat approval of the subdivision and it is not a substitute for submitting a preliminary and final plat. If the Town Council rejects the plans for the proposed subdivision concept, such rejection shall be with out prejudice to the applicant and the applicant may proceed with submission of a preliminary plat pursuant to subsection B.
  7. Formal submittal of the preliminary subdivision plat is required within ninety (90) days following the conceptual determination of the Town Council. Failure to submit within this timeframe may require an additional pre-application conference with repayment of fees.
- B. *Preliminary Plat Submittal Requirements.*
1. An application for preliminary plat review of a subdivision shall be filed with the Town no later than the last Friday of any month preceding a regularly scheduled planning and zoning meeting. The number of required copies of the

- and up to one hundred and fifty (150) feet in width around the area as required by the Town. Topographical conditions on the subject subdivision including all the existing water courses, drainage ditches and bodies of water, marshes and other significant, natural or man-made features.
- h. The name, alignment, and width of all existing and proposed streets, alleys, rights-of-way, or easements, adjacent to, or within three hundred (300) feet of the tract including name, right-of-way width, street or pavement width and established centerline elevation. Existing streets shall be dimensioned to the tract boundary.
  - i. All existing and proposed property lines, easements and rights-of-way, their purpose, their effect on the property to be subdivided, and the proposed layout of lots and blocks.
  - j. Access points to collector and arterial streets showing their compliance to the access requirements established by this Ordinance.
  - k. All existing drainage district facilities and their ultimate right-of-way requirements as they affect the property to be subdivided.
  - l. Utilities such as telephone, power, water, sewer, gas, etc., on or in the vicinity of adjacent to the tract including existing or proposed water treatment plants and sewerage treatment plants. The preliminary plat shall contain a statement that all utilities are available and have been coordinated with all required agencies utilities.
  - m. Sites proposed for parks, recreational areas, and schools.
  - n. The locations of all temporary structures or permanent structures having a temporary use. Permanent structures having a temporary use shall contain a statement outlining the temporary use.
  - o. If the property to be subdivided borders upon any public waters, then the applicant shall establish the mean high water line and so delineate it on the plat. The applicant shall provide a plan for stabilizing the shoreline with natural vegetative cover or other environmentally sensitive manner acceptable to the DER and the Town. The zone of transition along the shoreline shall also be designated together with plans for preserving native indigenous plant communities within the zone of transition.
  - p. The preliminary plat shall include a mathematically closed boundary. Permanent reference monuments shall be shown and subsequently installed at all block corners, and at all points of reverse or compound curvature, and at all points of tangency occurring within block limiting lines.
  - q. Block perimeters returns at block corners or other block line intersections shall be stated in terms of tangent distances of five (5) foot intervals, with a minimum tangent distance of twenty (20) feet.
2. *Required Supplemental Information.* The following information shall be submitted with the preliminary plat:
- a. *Existing Land Use Policy and Proposed Policy Changes.* Submit existing comprehensive plan designation and zoning classification of the property in question. Any proposed change in such classifications shall be made known to reviewing bodies by presenting proof indicating that any required applications and fees for attaining such policy changes have been submitted.
  - b. *On Site Wastewater Disposal Data.* When a public sewage disposal system is not available, the suitability of the soil to support on site disposal shall be determined by the Brevard County branch of the Florida State Division of Environmental Health and a report of its findings shall be submitted to all reviewing bodies. An adverse report by the Brevard County branch of the Florida State Division of Environmental Health shall be deemed as sufficient grounds for disapproval of the proposed subdivision or portion thereof. Any subdivision being denied on such grounds shall not be reconsidered until the requirements of the Florida State Board of Health are met.
  - c. *Surface Water Management Plan.* A master storm water management plan outlining the primary and secondary drainage facilities needed for the proper development of the subdivision, shall be submitted as part of the subdivision application. The master surface water management plan for the subdivision shall comply with all applicable requirements of the Surface Water Management performance criteria set forth in Article VIII of this Code.
  - d. *Traffic Impact Analysis.* A subdivision application shall contain a traffic impact analysis pursuant to Section 1-10.2(D) [1-7.2(D)] if the subdivision generates sufficient traffic on the threshold identified in Section 1-7.2(D). 3

- traffic impact analysis shall be prepared by a professional engineer and shall be used to determine the number of lanes and capacity of the street system proposed or affected by the development and the phasing of improvements.
- e. *Required Park Land and/or Facility Improvements.* All preliminary plats shall comply with the park land and recreation facility standards of Section 1-17.1(H).
  - f. *Required Potable Water Improvements.* All preliminary plats shall comply with the potable water supply and improvement requirements of Section 1-17.1(O) and 1-7.2(I) [1-7.2(H)].
  - g. *Required Wastewater Improvements.* All preliminary plats shall comply with the wastewater improvement requirements of Section 1-17.1(P) and 1-7.2(I).
  - h. *Required Wetlands Protection.* The preliminary plan shall comply with all requirements for wetlands protection in Section 1-7.2(G).
  - i. *Erosion and Sedimentation Control Improvements.* All preliminary plats shall comply with the erosion and sedimentation control requirements of Section 1-17.1 and standards contained in Section 1-7.2(K) [1-7.2(J)].
  - j. *Reference to Required Specifications.* Specifications for all required improvements, as they are to be incorporated, shall be submitted and shall be subject to the standards set forth in Section 1-17.2 herein.
  - k. *Schedule of Multiple Phases if Appropriate.* If the proposed subdivision is of such size that its development will be undertaken in increments, those increments and their order shall be indicated. Where increments of high elevations are undertaken before those of lower elevation, ultimate storm water disposal courses in the lower increments must be concurrently developed.
3. *Engineering exhibits.* Engineering exhibits shall contain the following:
- a. The location of existing and platted property lines, streets, buildings watercourses, transmission lines, sewers, bridges, culverts and stormwater facilities, water mains, Town boundary lines, and public utility easements.
  - b. Wooded areas, streams, lakes, marshes, and any other physical conditions affecting the site including individual trees as defined in Article XV.
  - c. If applicable, the location and characteristics of any wetlands present on the subject property and a proposed wetland preservation and/or mitigation plan to result in no net loss of wetlands.
  - d. Existing contours based on coast and geodetic data, with a contour interval of two feet, or one-foot intervals if deemed necessary by the Town.
  - e. Existing ground surface elevations and proposed street elevations. Calculation of the dirt balance showing excavated spoil and its disposition and/or the volume of imported fill dirt required.
4. *Filing Fee.* Upon filing the preliminary plat with the Town Clerk, the applicant shall submit a fee which shall be determined by the resolution of the Town Council, payable to the Town of Malabar. The fee is not reimbursable but is to help defray the cost of administering and processing the preliminary plat. If more than one resubmittal of a corrected or revised preliminary plat is required by the Town staff or reviewing entity an additional fee shall be charged for each resubmittal as shall be determined by resolution of the Town Council.
5. *Review Procedures.* The Town Building Official and/or designated Town consultants shall coordinate the review of the preliminary plat and supplemental information as to their completeness and specific conformance with this Ordinance and within a time period to be determined by resolution of the Town Council. The Town Staff shall inform the developer's engineer whether the plans and/or plat as submitted meet the general provisions of this Ordinance. The timing of review procedures and requirements governing the number of documents to be submitted and related fees, shall be determined by resolution of the Town Council.
- a. When the staff finds that the preliminary plat and required data do not meet provisions of this Ordinance, the applicant shall be so advised in writing as soon as practicable concerning what corrections or revisions are necessary to meet the provisions of this Ordinance. Upon receipt of such findings, the applicant shall make the corrections or revisions and resubmit the preliminary plat and required data to the Town for review of the

amended plan. If the applicant chooses not to provide the corrections, revisions, or other information requested by staff, the Town shall at the request of the applicant forward the application to the Planning and Zoning Board accompanied by the staff's comments, including documentation of unresolved issues.

- b. When the Staff determines that the preliminary plat and required data meet the provisions of this Ordinance, such written recommendations shall be submitted to the applicant and the subdivision application will be scheduled for the next step or steps in the review process.

Similarly, if the applicant fails to provide satisfactory response to issues identified by staff, the applicant shall be allowed to appear on the agenda of the Planning and Zoning Board. In such case, written comments of staff shall be provided to the Board and the applicant and the subdivision application shall be forwarded to the Board.

- c. Subsequent to receiving a staff recommendation, the applicant shall be scheduled for the next available regular public meeting of the Planning and Zoning Board. Prior to the Board's review, the applicant shall submit copies of the preliminary plat and required data to the Town. The number of copies to be submitted and the timing of the procedure shall be established by resolution of the Town Council. The Planning and Zoning Board may consider the physical characteristics of the property, the availability of community services, traffic impact, economic impacts, appropriateness of the type and intensity of the proposed development, existing and future development, existing and future development patterns, zoning, relationship of the project to the Town's capital improvements program, or other such factors as may relate to the Comprehensive Plan or elements thereof. The Planning and Zoning Board shall make a recommendation on the development which shall be included in the public record of the subdivision hearing.

d. *Review by the Town Council.*

1. Upon completion of the review by the Planning and Zoning Board, the preliminary plat of a subdivision shall be reviewed by the Town Council. As part of the review, the Town Council shall hold a public hearing at which time comments of the applicant, the staff and the public may be heard. A minimum of fourteen (14) days' written notice of the public hearing before the Town Council shall be given to the applicant, and public notice of the hearing shall be published in a newspaper of general circulation in the county not less than seven days prior to the date of such hearing.
2. The Town Council, as part of its review, shall ascertain that all requirements of this code and the requirements of any other relevant Town Ordinance have been met by the applicant with regard to the proposed preliminary plat. In addition, the Town Council shall also consider those specific standards, factors, and recommendations set forth for review by the Town staff and the Planning and Zoning Board.
3. Following such public hearing and consideration, the Town Council shall vote to approve, approve subject to changes, or disapprove the proposed preliminary plat. The decision shall be based on but not limited to the technical comments of the review staff, the functional aspects of the preliminary plat, the requirements of this code, and the council's determination as to whether the applicant has sufficiently addressed the requirements of the preliminary plat as set forth in this chapter.
4. If a preliminary plat is approved subject to changes, the Town Council may require the applicant to submit a revised preliminary plat to be reviewed at the next regularly scheduled council meeting or may direct the Town Administrator to ensure that all required changes are made to the preliminary plat. If the council chooses to review the revised preliminary plat, the council shall determine the date on which the applicant must submit the revised preliminary plat to the Town. In such case the applicant shall submit to the Town staff copies of the revised preliminary plat. The number of required copies shall be as determined by the Town Council. In addition to the revised preliminary plat, the applicant shall submit written responses to the Town staff's review comments.
5. If the council directs the Town Administrator to ensure that all required changes are made on the preliminary plat, the applicant shall have fourteen (14) days in which to submit the revised preliminary plat to the Town. In such case the applicant shall submit seven copies of the preliminary plat to the Town.

addition to the revised plat, the applicant shall submit written responses to the Town staff's review comments.

6. Failure to submit revised preliminary plats according to the time schedule set forth in this section shall be grounds for denial.
  7. If the preliminary plat is denied, the applicant shall have the option to resubmit an application pursuant to all requirements, including payment of fees, as set forth in this chapter.
- e. When a proposed development is a Development of Regional Impact (DRI) as defined by F.S. § 380.06, the additional public hearing requirements for a DRI shall be followed simultaneously. Copies of all plans, reports, maps and other documents required by the regional reviewing agency shall be submitted to the Town Clerk if the proposed development is a DRI. The number of copies shall be determined by resolution of the Town Council.
- f. *Use of Preliminary Plat Following Approval.*
1. Approval of the preliminary plat shall authorize the subdivider to exercise either of the following options prior to submitting the final plat:
    - a. *Construct Improvements Prior to Final Plat Recording:* Prepare engineering plans, detailed cost breakdowns, and specifications for all required improvements which meet the approval of the Town and install all required improvements in accordance with the approved plans and specifications. The subdivider shall also comply with section D.5.d. of this section. All work, as installed, shall be inspected and subject to the approval of the Town; or
    - b. *Record Final Plat Prior to Constructing Improvements:* Prepare engineering plans, detailed cost breakdowns, and specifications for all required improvements which meet the approval of the Town and provide a performance, material, and labor payment bond or escrow agreement acceptable to the Town. The subdivider shall also comply with section D.5.e. of this section.
  2. Approval of the preliminary plat shall not be construed as authority for filing or recording of the plat with the clerk of the circuit court of the county nor as authority for the sale of lots in reference thereto.
  3. Failure of the subdivider to obtain approval by the Town of all the requirements of the method chosen as provided for in subsection (a) of this section within one (1) year of preliminary plat approval shall cause the approval of the preliminary plat to become null and void.
- g. *[Review Time.]* The Town Council may by resolution shorten or extend the review time for development reviews generally, and direct such shortening or extension for any given application, if the Town Council determines that such action is necessary and proper to the orderly and efficient processing of land development applications.

6. *Engineering Plans.*

- a. Following approval of the preliminary plat and prior to construction and/or final platting of a subdivision, five sets of final engineering plans shall be submitted to the Town for review. Engineering plans shall be approved by the Town prior to the construction phase or prior to final plat approval of a bonded project.
- b. The engineering plans shall be prepared by a professional engineer registered and licensed in the state. Each sheet of the engineering plans shall be signed by and shall bear the seal of such engineer.
- c. Each sheet of the engineering plans shall be the same size and shall be no larger than twenty-four (24) inches by thirty-six (36) inches. The sheets of the engineering plans shall be numbered consecutively and attached together.
- d. The scale of the engineering plans shall be one (1) inch equals not more than sixty (60) feet.
- e. The engineering plans shall designate the location of all water, and sewer lines within existing easements or rights-of-way held by the Town or within proposed rights-of-way or easements as depicted on the preliminary plat. The Town specifically reserves the right to designate and approve the location of water and sewer lines within such easements or rights-of-way. All proposed improvements shall conform to the Town specifications as set forth in the Code.

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- f. The following are required to be shown on the final engineering drawings:
    1. The location of all proposed water and, sewer, facilities, both on site and off site, including size and grades, main and/or line routes, line sizes, manholes, fire hydrants, service connections, valves, laterals, force mains and lift stations. Standard details for the water and, sewer, systems, including type of pipe, service connections, manholes, fire hydrants, force mains and lift stations, shall be provided. The water system shall be sized so as to provide adequate fire protection in compliance with the recommendations of the National Fire Protection Association.
    2. A surface and stormwater drainage system, including location and elevation of all structures and culverts with sizes and grades and typical cross sections of drainage facilities, canals, and waterways.
    3. Sidewalks, including location, elevations, and typical cross sections.
    4. Streets, including plan and profile views, typical cross sections of proposed grading, and pavement and curbing details with compaction under pavement.
    5. Bulkheads, if applicable.
    6. If deemed necessary by the Town, subsurface conditions of the parcel, including the location and results of tests performed to ascertain the conditions of subsurface soil, rock, and groundwater, and the existing depth to groundwater.
    7. The location of stormwater retention/detention facilities with sizes, grades, and cross sections and stormwater retention/detention calculations utilizing the applicable permitting agency's requirements. The proposed facilities shall show the effect, if any on the Town's existing conveyance system and structures.
    8. Lot grading plan. Showing no runoff to abutting properties.
    9. Cross sections showing the proposed layout for all private utilities which hold franchise agreements with the Town, including electric, telephone, gas, and cable television.
    10. Location of all traffic control devices, markers, and required signs, including stop signs, traffic signals, crosswalks, street signs, and the like.
  - g. The Town staff shall review the engineering plans and shall provide written comments to the applicant regarding compliance with code requirements and the technical aspects of the plans.
  - h. If changes to the plans are required, five (5) sets of revised plans shall be submitted to the Town. In addition to the revised plans, the applicant shall submit written responses to the Town staff's review comments.
7. *Concurrency, Outside Agency Permits and Off-Site Easements.*
- a. Following approval of the preliminary plat and prior to construction or prior to bonding for the final plat, the subdivider shall submit proof of concurrency for capacity of all applicable facilities.
  - b. Following approval of the preliminary plat and prior to construction or prior to bonding for the final plat, the subdivider shall submit copies of all required outside agency permits and recorded copies of any off-site easements which may be required for construction.
  - 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.
- 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 substandard 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.

- i. *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 mortgagee 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 prepared shall be contained on the plat as required by F.S. Ch. 695.24, as amended. The name and address shall consist 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.
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. 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.
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.
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.
- 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.
  - (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)

**PRE-APPLICATION STAFF  
COMMENTS**

**FROM:**

**Karl Bohne,  
Town Attorney**

**FOR  
SITE PLAN  
“WEBER WOODS”**

**PARCEL ID #  
29-37-02-00-253**

**OR  
ACCT# 2963199**

## RE: Requested Pre-Application Site Plan Meeting

K

kbohne@fla-lawyers.com

Today, 4:07 PM

Denine Sherear

Reply all |

Inbox

I appreciate the staff comments submitted and as I read the information given this is a pre-application conference with staff and certainly is not intended to be a submittal of a preliminary plat. So while most of the staff comments will be incorporated into the preliminary plat submittal, the purpose of the pre-app is for the consideration and discussion of preliminary studies and sketches and their relationship to the subdivision regulations. The purpose of the pre-application conference is to discuss basic concepts, the layout of the project, location of utilities, traffic considerations, any potential problems with the site, tree preservation and landscaping, wetlands and plans for preservation or mitigation, habitat of endangered and threatened vegetative and/or wildlife species, and any questions the applicant may have concerning the site, the requirements for subdivision plat submittal, or the preliminary plat requirements. Following the conference, the applicant should be sufficiently prepared to submit a detailed preliminary plat which will be functional, adequately address all issues and requirements of the pre-application conference, and comply with the preliminary plat requirements.

The applicant does need to address the staff comments as they relate to those matters ripe for the pre-app. I will note the site data on the "sketch" appears to meet or exceed code. The same is true for the set-backs.

I will not that the code also requires that 5 copies of the proposed subdivision plat be available at the pre-app meeting. At a minimum, the following exhibits shall be required at the pre-application conference:

- a. A location map showing the relationship of the proposed subdivision to existing and proposed streets and other community facilities and the total ownership of the subdivider in that vicinity.
- B. General information on existing site conditions and physical characteristics, adjacent community facilities and public utilities, and surrounding property conditions.
- c. A general description of the proposed subdivision, including proposed number of lots and lot widths and depths.
- d. A drawing showing the proposed pattern of streets, lots, and stormwater conveyance, retention/detention and treatment facilities in relation to existing conditions of the site and its surroundings.
- e. The general type of vegetation existing on the site, including major trees and tree clusters, soil types, and the location and characteristics of wetlands, if present.

Karl W. Bohne, Jr.  
Schillinger & Coleman, P.A.  
1311 Bedford Drive  
Melbourne, FL 32940  
321-255-3737 Telephone  
321-255-3141 Facsimile  
Office Hours:

8:30 a.m. to 5:00 p.m. Monday thru Thursday

8:30 a.m. to 12 Noon on Friday

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**PRE-APPLICATION STAFF  
COMMENTS**

**FROM:**

**Bob Loring,  
Town Planner**

**FOR  
SITE PLAN  
“WEBER WOODS”**

**PARCEL ID #  
29-37-02-00-253**

**OR  
ACCT# 2963199**

# Re: Fw: Requested Pre-Application Site Plan Meeting (Weber Woods)

6/24/18

Bob Loring <bob.loring@gmail.com>

Sun 6/24/2018 9:23 AM

To: Denine Sherear <dsherear@townofmalabar.org>;

Greetings Denine-

Good Morning and I hope you had a nice weekend. I was able to go thru the documents for the proposed Weber Woods Subdivision and I have generated some preliminary comments for your use.

Weber Woods Preliminary Subdivision Comments - Robert Loring Assoc. APA/AIA APA#140130/ AIA FL#30301553

1. The Future Land Use element found in the Town of Malabar, Section 1-9 indicates a strong desire for corridor development and enhancement. However, the plan does not indicate any kind of improvements at this time. The Planning and Zoning Board, in concert with Town staff needs to agree with the developer early on what elements they will require prior to submission of a Final Subdivision application that will meet this requirement. The elements that Town staff may wish to consider would be enhanced landscaping/ buffering along SR514, preservation of existing exceptional specimen trees identified in the corridor, connectivity or construction of a future or proposed walking/bike path in the area of the proposed corridor, dedications or easements identified for future infrastructure, and a public transportation element that allows for future expansion of a bus-stop/shelter as needed.
2. No information was given regarding existing tree hammocks, exceptional specimen trees for the site. Section 4-3.1.1 has a buffer zone requirement that preservation of existing trees may help satisfy- However it does not appear that the developer has made any concession at this time to preserve any existing trees on site, which is contrary to the goals and objectives stated in the Town of Malabar Future Land use element. Staff would strongly suggest that the developer identify areas that could be preserved, and provide such information, along with a tree preservation detail, in the Final Subdivision submittal.
3. Existing Wetlands to be mitigated or preserved will require submission, permitting, and approval of SJWRMD prior to Final Subdivision, Mitigation efforts would meet the goals and objectives found in Future Land Use element 4-2.1 for the Town of Malabar.
4. Given the design speed along SR 514 (Malabar Road), the proposed entranceway will need to be reviewed by a consulting traffic engineer to ensure safety for ingress and egress to the Subdivision for the motoring public, as well as access for emergency service vehicles. It appears that the 15' buffer along Malabar Road may lend itself to a deceleration / acceleration taper if warranted, and should be considered for the overall subdivision plan.
5. Provide Roadway safety details (Stop signs, stop bars, striping) and any other traffic control devices as required on the plan as required.
6. A road detail, showing all subsurface material, finish material, compaction requirements, and top coat depth (thickness) needs to be submitted to the Engineer for approval. The road shall be dedicated to the Town of Malabar at the time of Final Subdivision approval.
7. The proposed Cul-de-Sac Radius at 45.00' does not appear to be adequate for maneuvering of Emergency service vehicles. Typically, most service vehicles will require a minimum of 57.00' of outside turning radius. The Brevard County Fire Department needs to carefully review and approve the proposed radius.   
*53'*
8. A road name for the Weber Woods Subdivision needs to be submitted to Brevard County E-911 services for approval. "Weber Woods Rd" as a suggestion, appears to meet the requirements for roadway name length, but may sound like, or be too similar to adjacent developed streets. Staff suggests creating a list of a dozen or so proposed street names for submittal to Brevard County for approval. The Roadway name should be on the Final Subdivision application submittal.
9. Provide dimensions and spot elevations as required for the proposed road on the Subdivision drawing package.
10. Provide spot elevations and cross-sectional slope information for water detention areas in the Final Subdivision package for review.
11. It appears that the Subdivision may want to include future subdivision signage along Malabar Road. As a suggestion, and in the interest of safety, it might be better to show an easement within the 100' setback along the northernmost properties to accommodate such signage- meeting town requirements, and provide ample room for site visibility for future residents. These easements would be required in the Final Subdivision package/ dedication.
12. There were no documents submitted for any type of covenants or restrictions for the proposed subdivision. Typically, these documents are necessary to convey responsibility from the developer to the homeowners after a specific percentage of lots are sold, or a defined period of time has occurred and

are required to define the scope of maintenance and responsibility for the surrounding land. Items to be addressed would be maintenance of any site signage, any required landscaping/buffering, maintenance of the proposed detention ponds, preservation of any required open spaces, as well as any architectural or design elements for the individual lots & buildings. This would be required for submittal and approval prior to Final Subdivision and recordation.

13. The applicant will be required to submit standard sized mylars for Town approval, and shall bear all costs of all required recordation fees & application or any other fees associated with the proposed subdivision with the Town of Malabar and Brevard County.

I am going out of the country on Friday, and will return in about a week. if you have questions on any of the above comments, please feel free to call or email,

Best Regards-  
Robert

321-208-1400

On Thu, Jun 21, 2018 at 4:50 PM, Denine Sherear <dsherear@townofmalabar.org> wrote:

Hello Bob,

I am attaching per our phone conversation the information referencing the pre-application review concerning the subdivision.

We look forward to working with you.

*Thank you,  
Denine*

Denine Sherear, Admin. Assist. to Building Official  
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:** Denine Sherear  
**Sent:** Friday, June 15, 2018 3:16 PM  
**To:** CHRISTOPHER BALTER  
**Subject:** Fw: Requested Pre-Application Site Plan Meeting (Weber Woods)

Good Afternoon Chris,

Please see attached prospective subdivision for "Weber Woods". I will forward you some of the Town staff's comments on Monday 6/18/2018. We are looking to schedule a pre application meeting out to June 28, 2018 about 3PM with MBV Engineering .

Please let me know of your availability to attend this meeting or possibly another date.

Look forward to hearing from you.

*Thank you,  
Denine*

**PRE-APPLICATION STAFF  
COMMENTS**

**FROM:**

**Debby Franklin,  
Town Clerk/Treasurer**

**FOR  
SITE PLAN  
“WEBER WOODS”**

**PARCEL ID #  
29-37-02-00-253**

**OR  
ACCT# 2963199**

**Staff Comments about submitted Pre-Application for subdivision:**  
**“Weber Woods”**

Comment's By Debby Franklin, Town Clerk/Treasurer (6/25/2018)

- 1.) Ask about 911 Name Duplicate of Subdivision “Weber Woods”
- 2.) 1.16.4B.4 Preliminary Plat size required plans 24” x 36” (no larger)
- 3.) SR 514 Malabar Road
  - Show's 100-foot setback from C/L (what about buffer from SR 514)
  - Is 16 sixteen lots too many
- 4.) Per Code 1-16.4A 3- No traffic consideration & Article VII 1-7.1.C & D
- 5.) Wetlands- need delineation from ST. John's River Water Management
- 6.) Significant trees- 1-16.4. B 6 & 7
- 7.) Protected wildlife- (Requires Agency Study)
- 8.) Per Code 1-16.4.C.1.h & J K L – also Art VII 9-7.1. C & D
  - 2: b water & wastewater
  - c water management
  - d traffic
  - e Park & Rec area
  - H Wetlands Protection
- 9.) 1-17.1 H Rec or Fee in lieu there of – Article VII 1-7.1.E
- 10.) 1-17.1 P, Q, & R- Water/Sewer Article VII 1-7.1.H & I
- 11.) Check Comp Plan

**PRE-APPLICATION STAFF  
COMMENTS**

**FROM:**

**Denine Sherear,  
Admin Assistant to Building  
Official**

**FOR  
SITE PLAN  
“WEBER WOODS”**

**PARCEL ID #  
29-37-02-00-253**

**OR  
ACCT# 2963199**

**Staff Comments about submitted Pre-Application for subdivision:**  
**“Weber Woods”**

Comment's By Denine Sherear, Admin. Assistant to Building Official  
(6/25/2018)

- 1) Water /Sewer hook-up (County view on individual well/septic/drain field)- water @ weber woods
- 2) FL State Statutes Ch. 177 concerning subdivisions – need to comply
- 3) Open space needed for subdivisions Article VII & XVI
- 4) Infrastructure, internal roads/sidewalks & possible rear entrance for fire/police access safety
- 5) Drainage issues/ water retention, location
- 6) Leaving natural buffer between properties will be required to preserve Town's unique aesthetic characteristics & qualities
- 7) Driveway ingress/egress FDOT Malabar Road (SR 514)
- 8) Weber Road distance to entrance- Show entire area
- 9) Individual Pad elevations determined and submitted on formal accepted site plan
- 10) Environmental Study will be required
- 11) Mail box or requirements- per USPS new regulations require centralized location to be shown on plot plan
- 12) HOA or just platted lots (gated or open) paved & gutter Chapter 13
- 13) Reminder of Rural Character
- 14) Show design of signage on plat w/ details & dimensions
- 15) Wetland containment between properties
- 16) Mitigation required- what kind? Required documentation in notes on plat

**INITIAL  
TOWN STAFF COMMENTS**

**MAY & JUNE**

**2019**



RE: Twin Lakes

TOWN OF MALABAR

MAY 09 2019

RECEIVED

kbohne@fla-lawyers.com

Thu 5/9/2019 5:53 AM

To: Debby Franklin <townclerk@townofmalabar.org>;

That requirement will be in there as part of the stormwater permit requirements for this project. SJ typically requires the covenants to have a stormwater requirement. I believe there will be an HOA. I suppose we can have the same language about the stormwater maintenance.

Karl W. Bohne, Jr.  
Schillinger & Coleman, P.A.  
1311 Bedford Drive  
Melbourne, FL 32940  
321-255-3737 Telephone  
321-255-3141 Facsimile

Office Hours:

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From: Debby Franklin [mailto:townclerk@townofmalabar.org]

Sent: Wednesday, May 8, 2019 4:19 PM

To: kbohne@fla-lawyers.com

Subject: Re: Twin Lakes

Karl, good comments but can you also include that the HOA is wholly responsible for the stormwater management and maintenance as required by St. Johns and FDOT. What happens if there is no HOA? Can we require a maintenance bond? The stormwater issues are going to be the biggest.

*Debby K. Franklin*

Certified Municipal Clerk

Town Clerk Treasurer

[townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)



Town of Malabar  
2725 Malabar Road  
Malabar, FL 32950

PLEASE RETURN ATTACHED SITE PLANS

PROJECT:	TWIN LAKES SUBDIVISIONS MALABAR ROAD MALABAR, FL 32950	DATE Routed:	05/06/2019
BP.:		DATE TO BE RETURNED*:	05/24/2019
APPLICANT	WEBER WOODS LLC (321-258-3076) MALCOLM KIRCHENBAUM 321-258-3076	DEPT.:	<input checked="" type="checkbox"/> TOD MOWERY, TOWN PLANNER <input checked="" type="checkbox"/> MORRIS SMITH, TOWN ENGINEER <input checked="" type="checkbox"/> CHIEF FOLEY, FIRE CHIEF CARL WEAVER, FIRE MARSHALL <input checked="" type="checkbox"/> DARYL MUNROE, BUILDING OFFICIAL

*X Anthony Bohne*  
 REVIEWER'S SIGNATURE: *[Signature]*

MARK IF NO COMMENTS:

PLEASE RETURN WITHIN 15 BUSINESS DAYS

TOTAL HOURS WORKED ON REVIEW:

Included: REVIEW FOR SUBDIVISION PRELIMINARY PLAT 16 LOTS

COMMENTS: A+B below are mandatory, C below is suggested, D mandatory  
 A, The final Plat shall refer, by ORB + page, to the recorded restrictive covenants for this subdivision  
 B, Such covenants need to be submitted for review  
 C, Such covenant need to contain a provision which reads: "The Town of Malabar shall have the right, but not have the obligation, to maintain and repair any subdivision streets + right of ways <sup>and improvements therein</sup>. The Town may use the special assessment powers provide for in the subdivision restrictive covenant; provided, however, the Town is not required to obtain any membership approval before instituting such special assessment. Any member/owner who does not pay their special assessment may have a lien placed upon their property, which said lien shall be superior to any other lien prescribed by such restrictive covenants and Chapter 720 of the Florida Statute and may be enforced as provided by law. Such provision may not be amended without the written approval of the Town council."

(continued on next page)

\*Due to the deadline requirements, if there is no response within allotted time frame it will be considered as No Comments.

COMMENTS:

D. The Covenants shall provide that the governing Association shall be responsible to maintain and repair the streets and right of ways, including any improvements therein

C- Continued

In the event the Town does undertake the task of maintaining and/or repairing said streets and/or right of ways, including any improvement therein, the Association does hereby assign to the Town any and all assessment rights to collect and retain such assessments as they become due and to exercise such rights as provided herein until the Town receives full reimbursement, including any costs, expenses and attorney fees incurred, ~~whether~~ for any such repair and/or maintenance, ~~whether~~ including such costs, expenses and attorney fees for enforcement of such rights herein. The Town shall not be responsible to the Association, to owner or any other person or entity as a consequence of the exercise of the rights granted to the Town or for the failure of the Town to perform or in the performance of any rights granted to the Town herein or by virtue of applicable law. No owner shall be discharged from any obligations herein without the written consent of the Town. "Nothing herein shall obligate the Town to perform"

JUN 06 2019

RECEIVED

Reply all |

# hydrant's located Twin Lakes subdivision



Mike Foley

Yesterday, 2:08 PM

Debby Franklin; Matt Stinnett; Denine Sherear; Blanca Joshnick

Inbox

Good afternoon,

After reviewing the location of the hydrants in the Twin Lakes subdivision I feel that hydrant in the center lot of 15 on the west side is an adequate location and the hydrant at the location between lot 6/7 on the east side is also adequate.

I would like to know if there is a possibility of putting a hydrant in the east corner on Malabar rd. ?

Thank you.

Michael Foley

Fire Chief

Malabar Fire Department

1840 Malabar Road

Malabar, Florida 32950

321-725-1030

321-505-6070



Twin Lakes  
Malabar Road, Malabar FL  
Fire Marshal Comments

TOWN OF MALABAR

MAY 16 2019

RECEIVED

Application of Subdivision

May 16, 2019

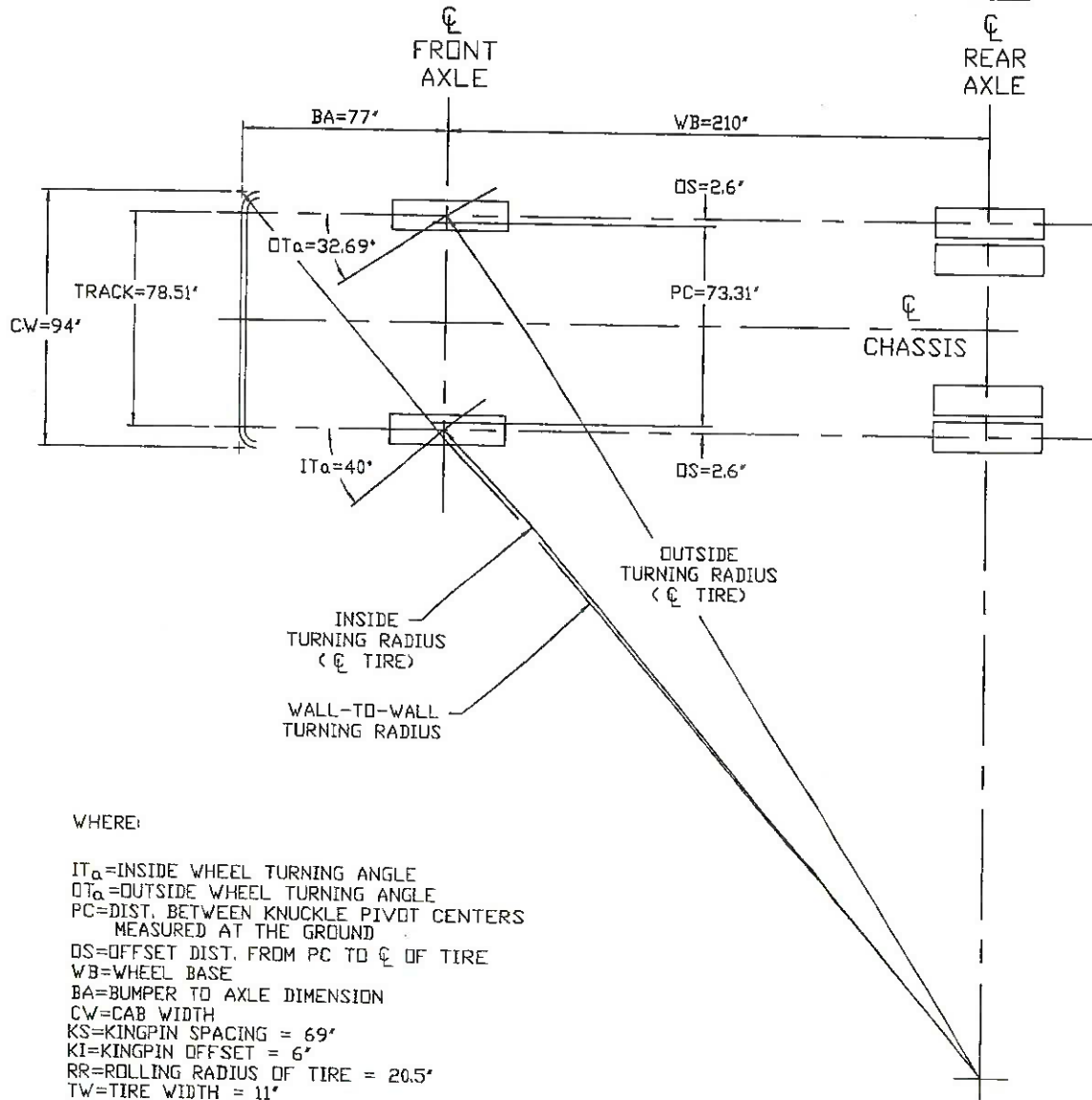
Site Plan

1. Cul-de-Sac shall have a minimum turning radius of 66.4' and not as shown on plans in order to accommodate the largest Malabar fire apparatus that may respond. NFPA 1, 18.2.3.4.3, 2015 edition
2. Fire hydrant located between lots 1 and 2 should be relocated to the entrance of the subdivision so the fire department can access the fire hydrant before any structures. NFPA 1, 18.5.2
3. All houses shall be located so that all first-floor exterior walls are within 150' of the access roadway as measured by an approved route around the exterior of the home. NFPA 1, 18.2.3.2.2
4. An entrance door of all homes shall be located within 50' of the access roadway. NFPA 1, 18.2.3.2.1
5. The proposed roadway shall maintain a minimum of 20' unobstructed width. If on-street parking is permitted the road shall be a minimum of 32' in width; otherwise no parking shall be permitted on the roadway. NFPA 1, 18. 2.3.4.1.1

Carl F Weaver, CFPS, EFO  
Principal and Certified Fire Inspector  
Coastal Fire Safety, LLC

TURNING PERFORMANCE OF A SUTPHEN 210" WB CUSTOM CHASSIS

OUTSIDE TURNING RADIUS: (MEASURED TO THE CENTERLINE OF THE OUTSIDE TIRE)	33'-10"
INSIDE TURNING RADIUS: (MEASURED TO THE CENTERLINE OF THE INSIDE TIRE)	28'-5"
CURB TO CURB TURNING RADIUS: (CALCULATED FOR A 9.00 INCH CURB HEIGHT)	34'-4"
WALL TO WALL TURNING RADIUS: (MEASURED USING AN AXLE TO BUMPER DIMENSION OF 77")	38'-1"
WALL TO WALL TURNING RADIUS: (MEASURED USING AN AXLE TO BUMPER DIMENSION OF 85")	38'-7"



WHERE:  
 IT<sub>a</sub> = INSIDE WHEEL TURNING ANGLE  
 OT<sub>a</sub> = OUTSIDE WHEEL TURNING ANGLE  
 PC = DIST. BETWEEN KNUCKLE PIVOT CENTERS  
 MEASURED AT THE GROUND  
 OS = OFFSET DIST. FROM PC TO  $\phi$  OF TIRE  
 WB = WHEEL BASE  
 BA = BUMPER TO AXLE DIMENSION  
 CW = CAB WIDTH  
 KS = KINGPIN SPACING = 69"  
 KI = KINGPIN OFFSET = 6"  
 RR = ROLLING RADIUS OF TIRE = 20.5"  
 TW = TIRE WIDTH = 11"  
 C = CURB CONTACT LENGTH = 36"

FRONT AXLE: ROCKWELL FG-941  
 FRONT BRAKES: DISC  
 FRONT TIRES: 11.00R20  
 CRAMP ANGLE: 40 DEGREES  
 FRONT AXLE TRACK: 78.51"

	<b>SUTPHEN CORPORATION</b> 7000 COLUMBUS-MARYSVILLE RD. AMLIN, OHIO 43002	
DRAWN BY CMH	TURNING RADIUS CALCULATIONS FOR A 210" WHEEL BASE SUTPHEN CUSTOM CHASSIS	
APPROVED BY RWA	NO. REQ'D	
DATE 8-29-89	MATERIAL	DWG. NO.
SCALE .0156	TOL.	210TR
	NEXT ASSEMBLY	A

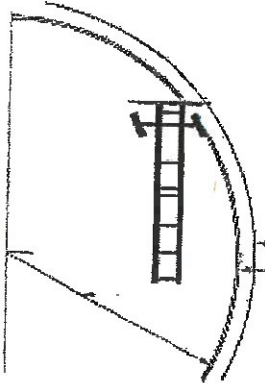
TOWN OF MALABAR  
 MAY 16 2019  
 RECEIVED

TOWN OF MALABAR

MAY 16 2019

RECEIVED

**TURNING RADIUS**



Turning radius graphic and data provided for general estimate purposes only. For specific figures regarding your configuration, please contact your CAE representative.

	Left Turn	Right Turn	Tolerance
Wall to Wall Diameter (ft)	66.4	68.4	+/- 3.0
Curb to Curb Diameter (ft)	64.7	66.5	+/- 3.0
Turning Radius (ft)	31.9	27.6	+/- 1.5

**VEHICLE SPECIFICATIONS SUMMARY - TURNING RADIUS**

Model	M2106
Cab Size (829)	106 INCH BBC FLAT ROOF ALUMINUM CONVENTIONAL CAB
Wheelbase (545)	6450MM (254 INCH) WHEELBASE
Front Tires (093)	BRIDGESTONE ECOPIA R268 11R22.5 14 PLY RADIAL FRONT TIRES
Width (in)	11.4
Front Axle (400)	DETROIT DA-F-12.0-3 12,000# FF1 71.5 KPI/3.74 DROP SINGLE FRONT AXLE
Kingpin Intersection (in)	71.5
Bumper (556)	THREE-PIECE 14 INCH CHROMED STEEL BUMPER WITH COLLAPSIBLE ENDS
Width (in)	93.5
Bumper Miter to Front Axle (in)	21.458
Primary Steering Location (003)	LH PRIMARY STEERING LOCATION
Steering Gear (536)	TRW THP-60 POWER STEERING
Dual Steering Gear	NONE
Ram	NONE
Rear Axle (420)	MS-17-14X 17,500# R-SERIES QUIET RIDE SINGLE REAR AXLE
Axle Spacing (624)	NO AXLE SPACING

Performance calculations are estimates only. If performance calculations are critical, please contact Customer Application Engineering.



**TOWN OF MALABAR  
MEMORANDUM**

JUN 21 2019

**RECEIVED**

Date: June 21st, 2019  
 To: Denine Sherear, Assistant Building Official  
 From: Morris Smith, Town Engineer  
 Ref: Twin Lakes – Proposed Subdivision – Review Comments

Memo: 19-CE-04  
 Project No.  
 Variance No.:

Subject Parcel: Brevard County Property Appraiser's Account: 2963199  
 Brevard County Property Appraiser's Parcel ID: 29-37-02-00-253

I have reviewed the proposed land development documents submitted for this 16 lot single family, residential subdivision and my comments are as follows:

**Per Article X – Section 1-15.8.D.2. - Replacement Trees shall be at a 1" for 1" of proposed trees to be removed.**

Developer will need to negotiate with the Town to identify a practical way to meet this requirement. There is a possibility of paying a direct fee or planting and maintaining new trees in the Town's parks, or a combination of both. This tree replacement fee shall be based upon the proposed trees to be removed on the land development plan. (See Table Below.)

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>



**TOWN OF MALABAR  
MEMORANDUM**

TOWN OF MALABAR

JUN 21 2019

**RECEIVED**

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

**Per Article X – Section 1-15.8.E.1. – Type I Tree Removal Permit Required.**

Developer to apply for a Type I - Tree Removal Permit.

**Article XVI – Section 1-16.3.1(b) – Identification of Endangered Species.**

Developer to identify the locations of Gopher Turtle Burrow(s) on this site. Locations identified shall be shown and labeled as active or in-active on the site development plans.

**Article XVII – Section 1-17.1.H.6.a. - Recreation Lands Payment for 0.168 Acres**

Developer to make financial payment to the Town placed into Recreational Lands funding account. Developer to provide evidence of the per acre original purchase price or a copy of a certified land values appraisal report.

Dedication Formula:

$$(2.46 \text{ Persons/Unit}) \times 5 \text{ Acres per } 1000 \text{ Persons} = 0.123 \text{ Acres per Unit}$$

$$16 \text{ Units} \times 0.123 \text{ Acres per Unit} = 0.168 \text{ Acres}$$

**Article XVII – Section 1-17.1.N - Streetlights Required**

As a minimum Developer to install three (3) streetlights. One (1) at the north end of the Cul-de-Sac, one (1) at the mid-point of the Cul-de-Sac and one (1) at the southern end of the Cul-de-Sac. Owner to select style of FPL decorative poles, if the owner desires.

**Article XVII – Section 1-17.2.I – Soil Borings marked on Plans**

Add soil boring locations to stormwater plan. Reference Soil Borings ID Numbers to link with Stormwater Calculations.

TOWN OF MALABAR  
MEMORANDUM

TOWN OF MALABAR

JUN 21 2019

The Town of Malabar prefers to allow the roadway to remain private. Change the label of Right-of-Way to "Private". No dedication of road Right-of-Way is desired by the town. RECEIVED

In the "General Notes:" on Page C-2:

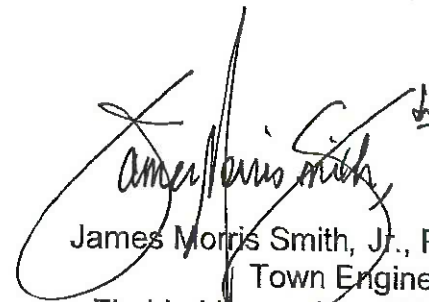
Please remove note 20 and note 23 they reference the City of West Melbourne Land Development Standards.

Based upon my creating a FEMA *FIRMette* study, I note that all proposed development, including stormwater POND "B" (East Pond), is outside of the Flood Hazzard Zone as shown in FEMA FIRM Map 12009C0680G – Map Revised March 17, 2014. Last Flood Elevation contour is annotated as elevation of 16.0 is shown north of Malabar Road. All proposed, occupiable, areas of this proposed development are in excess of elevation 18.0, two (2) feet above this elevation.

The stormwater management plan and calculations exceed the requirements if the Town's Land Development Code.

If you have any question, please do not hesitate to call or e-mail me.

Very Truly Yours,



James Morris Smith, Jr., PE  
Town Engineer  
Florida License No. 45392



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**TO:** Town of Malabar, Planning and Zoning Board  
**FROM:** Tod Mowery, AICP, Town Planner  
**RE:** Subdivision Application for Weber Woods LLC  
**DATE:** May 29, 2019

---

**APPLICANT:** Bruce Moia, PE  
MBV Engineering, Inc.

**OWNER:** Malcolm Kirschenbaum  
Weber Woods LLC  
PO Box 3767  
Cocoa, FL 32924

**LOCATION:** Parcel: 29-37-02-00-253

**LEGAL DESCRIPTION:**

Lot 26 and Part of Lot 25 of PB 1 PG 165 AS DESC IN ORB 8065 PG 1488 EXC ORB 8313 PG 1942

**SIZE:** 24.53 acres

**EXISTING ZONING / LAND USE:** RR-65/ RR and OI

**EXISTING USE:**

Vacant

**SURROUNDING ZONING / LAND USE**

South: RR65- Rural Residential /RR- Rural Residential

West: RR65- Rural Residential /RR- Rural Residential and OI

North: RR65- Rural Residential /OI

East: RR65- Rural Residential /RR- Rural Residential and R/LC



241 SW Fernleaf Trl  
Port St. Lucie, FL 34953  
c. - 561.262.6304  
todm@redtaildg.com

## **IMPACTS AND FINDINGS:**

### **Overview -**

The application for subdivision is for an approximately 24.5 acre parcel proposing to subdivide into sixteen 1.5 acre lots just south of Malabar Road and east of Weber Road.

### **Land Development and Code of Ordinances Consistency -**

The lots proposed meet the requirements of the Land Development Code as outlined in Sec. 1-3.3 and 1-3.3(a) for minimum lot size, setbacks, lot width and depth. Lots 10 and 13 will require variances for the side yard setbacks, based upon preserving existing trees on the site. Those may be applied for at the time of construction. In general, the Preliminary Plat proposed is consistent with the minimum requirements for subdivisions.

#### **Sec. 9-330. - Minimum requirements (Subdivisions)**

All proposed new development shall be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards; in zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

Article XVII, Section 1-17 outlines the required improvements and design standards. In coordination with the Town Engineer, we have reviewed the proposed plan. A note on the site plan (sheet C-5) indicates that all sidewalks, parking, landscaping, buffers and fencing will comply with Malabar Land Development Regulations. This Chapter requires dedication of Lands for Parks and Recreation (Sec. 1-17 E.) and approval will require either an equitable donation of land for public park purposes or fees in lieu. Please coordinate with the Town Engineer for the dedication of land OR the fees in lieu calculation prior to Final Plat.

It should be noted that the Site Plan indicates the road and drainage easements will be public facilities, prior to the Final Plat, please coordinate with the Town Engineer to determine if the City will accept the improvements or if the plans should be revised to indicate private facilities.

### **Land Use and Comprehensive Plan Consistency -**

The Town has recently adopted updates to the Comprehensive Plan amendment to the State of Florida Department of Economic Opportunity. The Comprehensive Plan Goals, Objectives and Policies include the examination of perils of flooding for new developments. The Flood Zones noted in the surveyor's documents are A and Z Flood Zones, with some wetlands delineated. The wetlands delineated (northeast and southeast corners) appear to remain untouched, and any construction activity located near or in the wetlands will require coordination with St. John's Water Management District and Florida Department of Environmental Protection (DEP). If the Wetlands are to be disturbed, the WMD will require additional permitting.

The Preliminary Subdivision proposed is consistent with the direction and policies of the Town's Comprehensive Plan. Please note that the Future Land Use for the parcels is a combination of OI – Office Institutional and RR Rural Residential, the table on sheet C-5 should be updated.

### **Traffic Impact Statement -**

Tipton Associates prepared a memorandum for the proposed Subdivision. Using the 10<sup>th</sup> Edition of the ITE

Trip Generation Manual the Subdivision proposes less than 200 daily trips, with 16 AM peak hour (generally 7 - 9 AM) trips and 18 PM peak hour (generally 4 - 6 PM) trips. While the Level of Service (LOS) on Malabar Road was not presented, with the proposed widening, the trip generation should be within acceptable Level of Service Standards. Prior to Final Plat, please provide the LOS information for Malabar Road showing the trip generation as de minimis or within acceptable standards.

#### **Environmental**

Florida Environmental Consulting Inc provided an environmental impacts report dated April 26, 2019. The report indicates the proposed subdivision is a former agricultural land with invasive species like Brazilian Pepper.

The study indicated that Gopher Tortoises are likely present and noted to be found on the site and will require coordination with FFWCC, Florida Fish and Wildlife Conservation Commission, but the location of gopher tortoise burrows have not yet been mapped. If the burrows cannot be avoided, then FFWCC will require a relocation permit. No other listed species, including Florida Scrub Jays, were identified as being present on the site.

Wetland soils, hydrology and hydrophytic indicators were present in several locations. The Applicant's Engineer has coordinated with Water Management District Staff to indicate the location of the wetlands.

A Tree Survey was included in the package indicating trees to be maintained and those to be removed. We reviewed jointly with the Town Engineer, and concur with his review and recommendations. While many trees are indicated to be preserved, there are a handful of trees to be removed. Please coordinate with the Town Engineer to ensure the Tree Protection codes outlined in Article XV, Sec. 1-15 are followed and a tree mitigation fee is established to offset the trees removed prior to Final Plat.

#### **STAFF RECOMMENDATION:**

In considering the proposed subdivision, the Town should carefully consider the implications on the subject site, the surrounding area and the impact upon the community. In addition, we like to look at what is called the 3 "C's." Consistency, Compatibility and Capability. Is the subject application request consistent with the Comprehensive Plan? Is the request Compatible with the neighborhood and are the subject parcels Capable of handling the permitted uses and consistent with land development regulations? Based upon a review of the application, the Comprehensive Plan and Town Ordinances, it would appear the application is Consistent with the Comprehensive Plan and the application is Compatible with the surrounding uses. Also, the subject parcels are Capable of handling the permitted uses within the RR-65 district.

We find the request to be consistent with the provisions and criteria of Section 1-3.3 and 1-3.3(a) "Size and Dimension Criteria" and with the direction and intent of the Town's Comprehensive Plan and recommend approval with the following revisions incorporated into the Final Plat application:

- Three different corporate names (Weber Woods LLC, Windover of Malabar LLC, and Twin Lakes LLC). noted on the survey, application and deed – please indicate which one is correct and ensure all documents are in unison.
- Please verify that the Statutory requirements for Platting as outlined in Sec. 177 of the Florida Statutes are fulfilled. For example, requirements include a block on the plat face for a title certification.

- Please identify the purpose of Tract L-1 and indicate if perpetual cross access agreements will be added to the Plat for stormwater conveyance prior to Final Plat.
- Please coordinate with the Town Engineer to ensure the Tree Protection codes outlined in Article XV, Sec. 1-15 are followed and a tree mitigation fee is established to offset the trees removed prior to Final Plat.
- Please coordinate with the Town Engineer to ensure the Required Lands for Parks and Recreation requirements outlined in Article XVII, Sec. 1-17.1 are completed prior to Final Plat,
- Prior to Final Plat, please provide the LOS information for Malabar Road showing the trip generation as de minimis or within acceptable level of service standards identified in the Comprehensive Plan.

**Planning and Zoning Board Action Options:**

- Motion to recommend approval to the Town Council of the Land Use with the revisions outlined.
- Motion to recommend denial to the Town Council of the Land Use

**APPLICANTS RESPONSE  
COMMENTS  
MBV ENGINEERING, INC**

**JULY  
2019**

JUL 23 2019

RECEIVED

July 22, 2019

Ms. Denine Sherear  
Town of Malabar, Admin Assist to Building Official  
2725 Malabar Road  
Malabar, FL 32950

*Via Hand Delivery*

Subject: Twin Lakes Subdivision  
Parcel 29-37-02-00-25.  
MBV Project Number: 15-1690

Dear Ms. Sherear:

We have received your comment letter dated June 5, 2019 and have the following responses.

**Tod Mowery – Town Planner**

Land Development and Code of Ordinances Consistency –

1. The lots proposed meet the requirements of the Land Development Code as outlined in Sec. 1-3.3 and 1- 3.3(a) for minimum lot size, setbacks, lot width and depth. Lots 10 and 13 will require variances for the side yard setbacks, based upon preserving existing trees on the site. Those may be applied for at the time of construction. In general, the Preliminary Plat proposed is consistent with the minimum requirements for subdivisions.  
***Response: Noted.***
2. Note on Site Plan Sheet C-5 indicates that all sidewalks, parking, landscaping, buffers and fencing will comply with Malabar Land Development Regulations. This Chapter requires dedication of Land of Parks and Recreation and approval will require either an equitable donation of Lands for public park purposes or fees in lieu. Please coordinate with Town Engineer for the dedication of land or the fee's in lieu calculation prior to Final Plat. ***Response: Noted, the applicant will provide the cost per acre of the lands associated with the proposed project site. The applicant agrees with the town engineer concerning the size of the required land dedication and will provide an equitable donation fee in lieu of actual lands. The required calculations and evaluation will be submitted under a separate cover.***
3. It should be noted that the Site Plan indicates the road and drainage easement will be public facilities, prior to the Final Plat, please coordinate with the Town Engineer to





Ms. Denine Sherear  
Twin Lakes Subdivision  
MBV #15-1690

JUL 23 2019

RECEIVED

determine if the City will accept the improvements or if the plans should be revised to indicate private facilities. **Response: The applicant will agree to keeping the roadway, right-of-way and drainage facilities private.**

Land Use and Comprehensive Plan Consistency -

1. The Flood Zones noted in the surveyor's documents are A and Z Flood Zones, with some wetlands delineated. The wetlands delineated (northeast and southeast corners) appear to remain untouched, and any construction activity located near or in the wetlands will require coordination with SJRWMD and FDEP. If the wetlands are to be disturbed the WMD will require additional permitting. **Response: The existing wetlands will not be disturbed; a buffer will be provided adjacent to the existing wetlands and a new conservation easement will be dedicated over the wetlands during the platting process.**
2. The Preliminary Subdivision proposed is consistent with the direction and policies of the Town's Comprehensive Plan. Please note that the Future Land Use for the parcels is a combination of OI-Office, Institutional and RR- Rural Residential. Please update table on Sheet C-5. **Response: Noted, the existing Future Land Use has not changed and is only RR-Rural Residential across the entire subject parcel. We have not updated the Plans.**

Traffic Impact Statement -

1. Trip Generation Manual the Subdivision proposes less than 200 daily trips, with 16 AM peak hour (generally 7 - 9 AM) trips and 18 PM peak hour (generally 4 - 6 PM) trips. While the Level of Service (LOS) on Malabar Road was not presented, with the proposed widening, the trip generation should be within acceptable Level of Service Standards. Prior to Final Plat, please provide the LOS information for Malabar Road showing the trip generation as de minimis or within acceptable standards. **Response: The traffic engineer has provided the following data:**

**Based upon the projected 2020 traffic volumes included in the 100 % Malabar Rd. plans (Financial Project ID 413761-1-52-01) and the project trip generation included in our Traffic Memo, the projected traffic volumes and levels of service for the year 2020 background and total traffic conditions are provided below.**



Ms. Denine Sherear  
Twin Lakes Subdivision  
MBV #15-1690

JUL 23 2019

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	2020 Two-Way Daily Volume	2020 PM Peak Hour / Peak Directional Volume	Required LOS	Required LOS Daily Capacity	Required LOS Peak Hour - Peak Direction Capacity	2020 Daily Projected LOS	2020 Peak Hour / Peak Direction LOS
Background Traffic	14,000	767	D	24,200	1,190	C	C
Total Traffic	14,193	778	D	24,200	1,190	C	C

Environmental -

1. Florida Environmental Consulting Inc provided an environmental impacts report dated April 26, 2019. The study indicated that Gopher Tortoises are likely present and noted to be found on the site and will require coordination with FFWCC, Florida Fish and Wildlife Conservation Commission, but the location of gopher tortoise burrows have not yet been mapped. If the burrows cannot be avoided, then FFWCC will require a relocation permit. **Response: A full Gopher Tortoise Survey will be performed and submitted under separate cover and a Tortoise relocation permit will also be submitted within 90 days prior to start of construction.**
2. A Tree Survey was included in the package indicating trees to be maintained and those to be removed. We reviewed jointly with the Town Engineer, and concur with his review and recommendations. While many trees are indicated to be preserved, there are a handful of trees to be removed. Please coordinate with the Town Engineer to ensure the Tree Protection codes outlined in Article XV, Sec. 1-15 are followed and a tree mitigation fee is established to offset the trees removed prior to Final Plat. **Response: The applicant agrees to make compensation for the trees remove. We have added the tree counts to the existing conditions and we have added a tree mitigation plan to the engineering plans. We believe that the submitted proposal meets the intent of the tree protection code of the Town of Malabar.**

Staff Recommendations -

We find the request to be consistent with the provisions and criteria of Section 1-3.3 and 1-3.3(a) "Size and Dimension Criteria" and with the direction and intent of the Town's Comprehensive Plan and recommend approval with the following revisions incorporated into the Final Plat application.

2. Three different corporate names (Weber Woods LLC, ~~Windover of Malabar LLC~~, and ~~Twin Lakes LLC~~). noted on the survey, application and deed - please indicate which



Ms. Denine Sherear  
Twin Lakes Subdivision  
MBV #15-1690

TOWN OF MALABAR

JUL 23 2019

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- one is correct and ensure all documents are in unison. *Response: The corporate names will be unison as updated documentation will be provided. Weber Woods, LLC.*
3. Please verify that the Statutory requirements for Platting as outlined in Sec. 177 of the Florida Statutes are fulfilled. For example, requirements include a block on the plat face for a title certification. *Response: The plan meets the requirements as requested.*
  4. Please identify the purpose of Tract L-1 and indicate if perpetual cross access agreements will be added to the Plat for stormwater conveyance prior to Final Plat. *Response: Tract L-1 is Simply for future right-of-way dedication. A perpetual cross access agreement will be added to the plat for stormwater conveyance prior to final plat.*
  5. Please coordinate with the Town Engineer to ensure the Tree Protection codes outlined in Article XV, Sec. 1-15 are followed and a tree mitigation fee is established to offset the trees removed prior to Final Plat. *Response: The applicant agrees to make compensation for the trees remove. We have added the tree counts to the existing conditions and we have added a tree mitigation plan to the engineering plans. We believe that the submitted proposal meets the intent of the tree protection code of the Town of Malabar.*
  6. Please coordinate with the Town Engineer to ensure the Required Lands for Parks and Recreation requirements outlined in Article XVII, Sec. 1-17.1 are completed prior to Final Plat. *Response: Noted, the applicant will provide the cost per acre of the lands associated with the proposed project site. The applicant agrees with the town engineer concerning the size of the required land dedication and will provide an equitable donation fee in lieu of actual lands. The required calculations and evaluation will be submitted under a separate cover.*
  7. Prior to Final Plat, please provide the LOS information for Malabar Road showing the trip generation as de minimis or within acceptable level of service standards identified in the Comprehensive Plan. *Response: The traffic engineer has provided the following data:*

*Based upon the projected 2020 traffic volumes included in the 100 % Malabar Rd. plans (Financial Project ID 413761-1-52-01) and the project trip generation included in our Traffic Memo, the projected traffic volumes and levels of service for the year*



Ms. Denine Sherear  
 Twin Lakes Subdivision  
 MBV #15-1690

TOWN OF MALABAR

JUL 23 2019

RECEIVED

*2020 background and total traffic conditions are provided below.*

	2020 Two-Way Daily Volume	2020 PM Peak Hour / Peak Directional Volume	Required LOS	Required LOS Daily Capacity	Required LOS Peak Hour - Peak Direction Capacity	2020 Daily Projected LOS	2020 Peak Hour / Peak Direction LOS
Background Traffic	14,000	767	D	24,200	1,190	C	C
Total Traffic	14,193	778	D	24,200	1,190	C	C

**Karl Bohne – Attorney**

1. The Final Plat shall refer, by ORB and Page, to the Recorded Restrictive Covenants for this subdivision. *Responses: The required data will be added to the plat for the final submittal. The required documents will be submitted under a separate cover letter.*
  
2. Such Covenants need to be submitted for review to the COM. *Response: The required documents will be submitted under a separate cover letter.*
  
3. Such Covenants need to contain a provision which reads: ‘The Town of Malabar shall have the right, but not the obligation, to maintain and repair any subdivision streets and right of ways, and improvements thereof. The Town may use the special assessment powers provided for in the subdivisions restrictive covenant. Provided however, the Town is not required to obtain any membership approval before instituting such special assessment. Any member/owner who does not pay their special assessment may have a lien placed upon their property, which said lien shall be superior to any other lien prescribed by such restrictive covenants and chapter 720 of the Florida Statutes and may be enforced as provided by law. Such provision may not be amended without the written approval of the Town Council. In the event the Town does undertake the task of maintaining and/or repairing said streets and/or right of ways, including any improvement there in, the Association does hereby assign to the Town any and all assessment rights to collect and retain such assessments as they become due and to exercise such right as provided herein until the Town receives full reimbursement, including any costs, expenses and attorney fees incurred for any such repair and/or maintenance, including such costs, expenses and attorney fees for enforcement of such rights herein. The Town shall not be responsible to the Association, lot owner, or any other person or entity as a consequence of the exercise of the rights granted to the Town or for failure of the Town to perform or in the performance with any rights granted to the Town herein or any virtue of applicable law. No owner shall be discharged from any obligations herein without the written consent of the Town.’ *Response: The required documents will be submitted under a separate cover letter.*



Ms. Denine Sherear  
Twin Lakes Subdivision  
MBV #15-1690

JUL 23 2019

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4. The covenants shall provide that the governing association shall be responsible to maintain and repair the streets and right of ways, including any improvements therein. ***Response: The required documents will be submitted under a separate cover letter.***

Mike Foley – Fire Chief

The hydrant in the center lot of 15 on the west side is an adequate location and the hydrant at the location between lot 6/7 on the east side is also adequate. Is there a possibility of putting a hydrant in the east corner on Malabar Road? ***Response: The proposed fire hydrant has been relocated.***

Carl Weaver – Fire Marshal

1. Cul-de-Sac shall have a minimum turning radius of 66.4' and not as shown on plans in order to accommodate the largest Malabar fire apparatus that may respond. NFPA 1, 18.2.3.4.3, 2015 edition. ***Response: The minimum outside turning diameter for the largest Malabar fire apparatus is 68.5 feet according to the provided documentation. We have provided an outside turning diameter of 114.0 feet which greatly exceeds the minimum requirement. Please refer to sheet C-7 for details. The plans reflect the largest Malabar fire apparatus.***
2. Fire hydrant located between lots 1 and 2 should be relocated to the entrance of the subdivision so the fire department can access the fire hydrant before any structures. NFPA 1, 18.5.2. ***Response: The proposed fire hydrant has been relocated.***
3. All houses shall be located so that all first-floor exterior walls are within 150' of the access roadways as measured by an approved route around the exterior of the home. NFPA 1, 18.2.3.2.2. ***Response: Noted.***
4. An entrance door of all homes shall be located within 50' of the access roadways. NFPA 1, 18.2.3.2.1. ***Response: Noted.***
5. The proposed roadway shall maintain a minimum of 20' unobstructed width. If on-street parking is permitted the road shall be a minimum of 32' in width; otherwise no parking shall be permitted on the roadway. NFPA 1, 18.2.3.4.1.1. ***Response: No on-street parking is permitted.***

The following items are attached for your review and as requested:



Ms. Denine Sherear  
Twin Lakes Subdivision  
MBV #15-1690

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- Revised Engineering Plans
- Revised Stormwater Report
- Revised Survey
- Revised Plat
- Geotechnical Report
- Environmental Report

Copies of this letter and all attachments listed have been provided electronically in PDF format via email and/or on the attached CD.

Should you have any questions regarding the above subject, please feel free to contact our office at any time.

Sincerely,

Brian Daigle  
Project Manager

TC/ww

All RAI Items  
Addressed appropriately  
Rec. & Town Engineer  
08.28.2019

TOWN OF MALABAR

JUL 23 2019

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July 22, 2019

Ms. Denine Sherear and Mr. Morris Smith  
Town of Malabar  
2725 Malabar Road  
Malabar, FL 32950

Via Hand Delivery

Subject: Twin Lakes Subdivision  
Tax Account # 2963199 / Parcel ID: 29-37-02-00-253  
MBV Project #: 15-1690

Dear Ms. Sherear and Mr. Smith:

We have received your comment letter dated June 21, 2019 and have the following responses.

- ✓ **Per Article X - Section 1-15.8.D.2. - Replacement Trees shall be at a 1" for 1" of proposed trees to be removed.**

Developer will need to negotiate with the Town to identify a practical way to meet this requirement. There is a possibility of paying a direct fee or planting and maintaining new trees in the Town's parks, or a combination of both. This tree replacement fee shall be based upon the proposed trees to be removed on the land development plan. (See Table Below.)

*Response: The applicant agrees to make compensation for the trees removed. We have added the tree counts to the existing conditions and we have added a tree mitigation plan to the engineering plans. We believe that the submitted proposal meets the intent of the tree protection code of the Town of Malabar.*

- ✓ **Per Article X - Section 1-15.8.E.1. - Type I Tree Removal Permit Required.**

Developer to apply for a Type I - Tree Removal Permit.

*Response: Noted, a tree removal permit application is attached to this re-submittal or will be submitted prior to construction.*

- ✓ **Article XVI - Section 1-16.3.1(b)- Identification of Endangered Species.**

Developer to identify the locations of Gopher Turtle Burrow(s) on this site. Locations identified shall be shown and labeled as active or in-active on the site development plans.

*Response: A full Gopher Tortoise Survey will be performed and submitted under*



Ms. Denine Sherear and Mr. Morris Smith  
Twin Lakes Subdivision  
MBV #15-1690

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*separate cover and a Tortoise relocation permit will also be submitted within 90 days prior to start of construction.*

✓ **Article XVII - Section 1-17.1.H.6.a. - Recreation Lands Payment for 0.168 Acres**

Developer to make financial payment to the Town placed into Recreational Lands funding account. Developer to provide evidence of the per acre original purchase price or a copy of a certified land values appraisal report.

Dedication Formula:

$(2.46 \text{ Persons/Unit}) \times 5 \text{ Acres per } 1000 \text{ Persons} = 0.123 \text{ Acres per Unit}$

$16 \text{ Units} \times 0.123 \text{ Acres per Unit} = 0.1968 \text{ Acres}$

0.0123

0.1968

0.0123

*Response: Noted, the applicant will provide the cost per acre of the lands associated with the proposed project site. The applicant agrees with the town engineer concerning the size of the required land dedication and will provide an equitable donation fee in lieu of actual lands. The required calculations and evaluation will be submitted under a separate cover.*

✓ **Article XVII -Section 1-17.1.N - Streetlights Required**

As a minimum Developer to install three (3) streetlights. One (1) at the north end of the Cul-de-Sac, one (1) at the mid-point of the Cul-de-Sac and one (1) at the southern end of the Cul-de-Sac. Owner to select style of FPL decorative poles, if the owner desires.

*Response: Street lights have been added to the plan set. Sheet C-16*

✓ **Article XVII- Section 1-17.2.1- Soil Borings marked on Plans**

Add soil boring locations to stormwater plan. Reference Soil Borings ID Numbers to link with Stormwater Calculations. *Response: Soil borings have been added to the existing conditions plan. Sheet C-3*

✓ The Town of Malabar prefers to allow the roadway to remain private. Change the label of Right-of-Way to "Private". No dedication of road Right-of-Way is desired by the town.

*Response: The applicant will agree to keeping the roadway, right-of-way and drainage facilities private*

✓ **In the "General Notes:" on Page C-2:**

Please remove note 20 and note 23 they reference the City of West Melbourne Land Development Standards. *Response: Revised Notes as requested.*





Ms. Denine Sherear and Mr. Morris Smith  
Twin Lakes Subdivision  
MBV #15-1690

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✓ Based upon my creating a FEMA *FIRMette* study, I note that all proposed development, including stormwater POND "B" (East Pond), is outside of the Flood Hazzard Zone as shown in FEMA FIRM Map 12009C0680G- Map Revised March 17, 2014. Last Flood Elevation contour is annotated as elevation of 16.0 is shown north of Malabar Road. All proposed, occupiable, areas of this proposed development are in excess of elevation 18.0, two (2) feet above this elevation. *Response: Noted.*

✓ The stormwater management plan and calculations exceed the requirements if the Town's Land Development Code. *Response: Noted.*

The following items are attached for your review and as requested:

- Revised Engineering Plans
- Revised Stormwater Report
- Watermain Analysis Report
- Revised Survey
- Revised Plat
- Geotechnical Report
- Environmental Report

Copies of this letter and all attachments listed have been provided electronically in PDF format via the attached CD and hard copies couriered to your office.

Should you have any questions regarding the above subject, please feel free to contact our office at any time.

Sincerely,

Brian Daigle  
Project Manager  
BD/ww

**STAFF  
COMMENTS**

**SEPTEMBER  
2019**



SEP 20 2019

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**TO:** Town of Malabar, Planning and Zoning Board  
**FROM:** Tod Mowery, Planning and Local Government Consultant  
**RE:** Subdivision Application for Weber Woods LLC  
**DATE:** September 20, 2019

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**APPLICANT:** Bruce Moia, PE  
MBV Engineering, Inc.

**OWNER:** Malcolm Kirschenbaum  
Weber Woods LLC  
PO Box 3767  
Cocoa, FL 32924

**LOCATION:** Parcel: 29-37-02-00-253

**LEGAL DESCRIPTION:**

Lot 26 and Part of Lot 25 of PB 1 PG 165 AS DESC IN ORB 8065 PG 1488 EXC ORB 8313 PG 1942

**SIZE:** 24.53 acres

**EXISTING ZONING / LAND USE:** RR-65/ RR

**EXISTING USE:**

Vacant

**SURROUNDING ZONING / LAND USE**

South: RR65- Rural Residential /RR- Rural Residential

West: RR65- Rural Residential /RR- Rural Residential

North: RR65- Rural Residential /OI (mostly vacant/undeveloped at this time)

East: RR65- Rural Residential /RR- Rural Residential and R/LC (mostly vacant/undeveloped at this time)



241 SW Fernleaf Trl  
Port St. Lucie, FL 34953  
c. - 561.262.6304  
todm@redtaildg.com

OCT 6 1 2019

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**IMPACTS AND FINDINGS:****OVERVIEW:**

The application for subdivision is for an approximately 24.5 acre parcel proposing to subdivide into sixteen 1.5 acre lots just south of Malabar Road, and east of Weber Road. Redtail DG provided comments to the applicant in May, the Engineer of Record (MBV Engineering) has provided an update and response to the Planning Comments. The application received was reviewed for consistency with the Land Development Code of Section 1-3.3 and 1-3.3(a) "Size and Dimension Criteria". Comments initially were generated in conjunction with the Town Engineer for review of the application for consistency with Section 1-15, Article XV Tree Protection and Restoration. The Building Official has final jurisdiction over the granting of land clearing permit if the Tree Protection regulations are addressed at the time of permit. Redtail also reviewed with the Applicant that the Town Engineer will require dedication of Lands for Parks and Recreation (Sec. 1-17 E.) for the subdivision. The approval will require either an equitable donation of land for public park purposes or fees in lieu, and the applicant has indicated that will coordinate with the Town Engineer in accordance with the regulations.

This development is immediately adjacent on to the west and south is existing 1.5 acre lot/subdivision of Weber Woods. Property to the north and east, is for the most part still vacant and undeveloped but has the same assigned land use and zoning. This parcel contains some wetlands which will be avoided, and the home sites created around them, as part of the development. As noted in the first staff report, two of the lots will need to seek variances (reductions to side yard setbacks) to preserve existing large caliper specimen trees. While no variance is being applied for at this time, typically, to preserve trees of that quality there is a good basis for considering approval. In general, the Preliminary Plat proposed is consistent with the minimum requirements for subdivisions.

**Sec. 9-330. - Minimum requirements (Subdivisions)**

All proposed new development shall be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards; in zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

In reviewing the response from MBV, the Planning comments were addressed and the applicant provided the requested clarifications. In reviewing their responses, including the traffic impact calculation, the Level of Service (LOS) of Malabar will remain at a Level C. The is above the LOS standard outlined in the Comprehensive Plan to maintain roadways at a LOS D. All other comments and requests for clarifications were satisfactorily addressed.

**RECOMMENDATION:**

In considering the proposed subdivision, the Town should carefully consider the implications on the subject site, the surrounding area and the impact upon the community. In addition, we like to look at what is called the 3 "C's." Consistency, Compatibility and Capability. Is the subject application request consistent with the Comprehensive Plan? Is the request Compatible with the neighborhood and are the subject parcels Capable of handling the permitted uses and consistent with land development regulations? Based upon a review of the application, the Comprehensive Plan and Town Ordinances, it would appear the application is Consistent with the Comprehensive Plan and the application is Compatible with the surrounding uses. Also, the subject parcels are Capable of handling the permitted uses within the RR-65 district.

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Based upon the additional information provided by the Applicant, we find the request to be consistent with the provisions and criteria of Section 1-3.3 and 1-3.3(a) "Size and Dimension Criteria" and with the direction and intent of the Town's Comprehensive Plan and recommend approval.

**PLANNING BOARD ACTION OPTIONS:**

Application for Weber Woods Subdivision Plat:

•Motion to recommend approval

I move that the Subdivision Plat for Weber Woods be recommended for approval to the Town Council based upon the fact that the request is consistent with the Town's Land Development regulations and the Town's Comprehensive Plan requirements; the use proposed is compatible with the adjacent area; and the site is capable of handling the use residential use proposed.

•Motion to recommend denial

I move that the Subdivision Plat for Weber Woods be recommended for denial to the Town Council based upon the fact that the request is found to be not consistent with the Town's Land Development regulations and the Town's Comprehensive Plan requirements; the use proposed is not compatible with the adjacent area; and the site is not capable of handling the use residential use proposed.

Re: Town of Malabar- Twin Lakes Subdivision



Carl Weaver <cweaver3@cfl.rr.com> *FIRE MARSHAL*

Fri 9/6/2019 4:21 PM



Denine Sherear; J. Morris Smith, Jr. <morris@morrissmitheng.com>; todm@redtaildg.com +5 others

Good afternoon. The response to my comment about widening the street to accommodate on street parking and still maintain proper clearance for fire apparatus states there is no on street parking. However, article III, section 3 states on street parking is not permitted during 0200-0500. There either needs to be no on street permitted or they need to widen the roadway to accommodate the parking. Thank you

Sent from my iPhone

On Sep 6, 2019, at 15:24, Denine Sherear <[dsherear@townofmalabar.org](mailto:dsherear@townofmalabar.org)> wrote:

To ALL,  
Please see attached staff memo's from site plan review.

*Thank you,  
Denine*

Denine Sherear, Admin. Assist. to Building Official  
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

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<Twin Lakes Subd Covenants 0723 2019.pdf>

<Twin Lakes Morris Smith Town Engineer 0723 2019 response from MVB Engineering.pdf>

<Twin Lakes response to Tod M planner.pdf>