

4087003

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

MARSH LANDING VILLAS

199.50

DR2776 PG3681

THIS DECLARATION made as of the 30th day of December, 1996, by Rottlund Homes of Florida, Inc. a Minnesota corporation, hereinafter called "Developer".

WITNESSETH:

WHEREAS, Developer is the owner of the real property described on attached Exhibit "A" to this Declaration and desires to create thereon a development containing 98 units being a mix of duplex type units and patio home units and patio/zero lot line type units, and

WHEREAS, the property is subject to the coverage, benefits and burdens provided for under the Marsh Landing Community Association of Estero, Inc. including the Declaration of Covenants and Restrictions for Marsh Landing properties recorded in O.R. Book 2725 at page 0664, Public Records of Lee County, Florida as amended from time to time, and

WHEREAS, Developer desires to provide for the preservation and enhancement of the property values, for the maintenance of the common structures and facilities which are not a part of any existing condominium development within the Marsh Landing properties, and

WHEREAS, to that end Developer deems it appropriate to have covenants, restrictions, easements, charges and liens created in order to accomplish the above described goals, and

WHEREAS, Developer has deemed it desirable for the purposes stated to create a Marsh Landing Villa Owner's Association.

NOW, THEREFORE, the Developer declares that the real property described in attached Exhibit "A" shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I  
Definitions

1. "Declaration" shall mean the covenants, conditions

RECORD VERIFIED - CHARLIE GREEN, CLERK  
By: J. Miller, D.C.

Prepared by: Peter J. Giacina  
Pawese, Garner et al.  
1533 Hendry St.  
H. Myers, FL 33901

DR2776 PG3682

and restrictions and all other provisions hereinafter set forth together with any amendments which may be made to this instrument.

2. "Association" shall mean Marsh Landing Villas Owner's Association, Inc., its successors and assigns.

3. "Master Association" shall mean the Marsh Landing Community Association of Estero, Inc.

4. "Developer" shall mean the Rottlund Homes of Florida, a Minnesota corporation.

5. "Properties" and "The Property" shall mean the property described in attached Exhibit "A" and any additional lands submitted pursuant to Article II.

6. "Common Areas" shall mean and refer to those areas of land shown on attached Exhibit "B" and delineated thereon to be common areas, and which properties are intended to be devoted to the common use and enjoyment of the owners of any part of the property described in attached Exhibit "A".

7. "Unit" shall mean and refer to any portion of a structure situated upon the property designed and intended for use and occupancy as a residence by a single family, together with the surrounding lot, unless the context dictates otherwise.

8. "Lot" shall mean and refer to the real estate underlying and surrounding any unit not submitted to this Declaration as common areas and so designated as such.

9. "Owner" shall mean and refer to the record owner of any unit or units described herein, whether one or more persons or entities.

ARTICLE II  
Property Subject to this Declaration

The real property which is described on attached Exhibit "A" as Lots 1-46, Block E, according to the plat of Marsh Landing recorded in Plat Book 58, at Pages 42-49, Public Records of Lee County, Florida, is hereby subject to this Declaration. Developer, with the Joinder and Consent of Land Mortgagee, reserves the right to add Tract E of the above-mentioned Plat by amendment to this Declaration at any time. Such amendment need only be signed by Developer and Land Mortgagee.

ARTICLE III  
Marsh Landing Villas Owner's Association, Inc.

Section 1. Enforcement Entity. The Developer has caused to be created Marsh Landing Villas Owner's Association, Inc., a Florida non-profit corporation, which corporation has the obligation, along with those powers and obligations set forth in its Articles of Incorporation and Bylaws, to enforce these Covenants and Restrictions. A copy of the Articles of Incorporation and Bylaws are appended hereto as Exhibits "C" and "D" respectively and incorporated herein by reference. The Association shall have the responsibility to maintain the landscaping and property within any lot owned by an owner whose maintenance is the owner's responsibility if the owner fails to maintain the appearance of same using a standard of uniformity.

ARTICLE IV  
Common Areas

Section 1. Obligation of the Association. The Association, subject to the rights of the owners set forth in this Declaration, shall be responsible for the exclusive management and control of the common areas and all improvements thereon and shall keep the same in good, clean, attractive and sanitary condition, order and repair, and shall assess the owner for the cost of such maintenance and repair as is necessary to discharge such obligations.

Section 2. Easement of Enjoyment. Each and every member of the Association shall, subject to the provisions herein, have a right and easement of enjoyment in and to the common areas which shall be appurtenant and shall pass with title to every unit and lot and every member shall have the right of enjoyment in the common areas.

Section 3. Roadway Easement. Access to this property is in part provided by a private easement which is maintained and controlled by the Marsh Landing Community Association of Estero, Inc. as depicted on the plat of Marsh Landing as recorded in the Public Records of Lee County, Florida in Plat Book Book 58, Page 42 through 49, a copy of which is attached hereto as Exhibit "B". Each and every member shall together with their families,

OR2776 PG3683

guests, and invitees, have and be entitled to the use of this easement for ingress and egress to their units subject to the Master Association's authority to reasonably regulate same for the welfare of the entire community. The maintenance for this roadway shall be the responsibility of the Master Association and it shall be empowered to levy necessary assessments, which assessments shall be secured by a lien upon each and every individual unit and lot.

Additionally, the roadway within the Villas development is a private roadway which shall be maintained for the benefit of the owner, their guests and invitees, by the Association.

Section 4. Easement for Utilities. Developer reserves the right to grant easements, temporary or permanent, to all public authorities and utility companies over any part of the common area described herein, or along any lot line, but only to the extent necessary in order to provide adequate utility services. Easements are hereby created for public utilities along the lot boundary of the Property as depicted on Exhibit "B" and for the access as depicted on Exhibit "B". Developer reserves the right to grant these easement corridors to the servicing utilities as they may require.

Section 5. Easements for Encroachment. Each unit and lot and the property included in the common areas shall be subject to an easement for encroachment created by construction settling and overhanging of all buildings constructed by Developer. A valid easement for said encroachment as well as the maintenance of same shall exist so long as said encroachments stand. In the event that any structure containing two or more units is partially or totally destroyed, then rebuilt, the owners so affected agree that minor encroachments on parts of the adjacent unit or lots or on common areas due to construction shall be permitted and that a valid easement for such encroachment and the maintenance thereof shall exist.

Section 6. Additionally, the Association shall have the responsibility for the maintenance of any private easements for utility, drainage or other purposes over and across the property.

ARTICLE V  
Party Walls

Section 1. Definition. "Party Walls". Each wall that is built as part of the original construction of the units built upon the properties, or replacement of same, and placed on the dividing line between the underlying lot shall constitute a party wall.

Section 2. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and the liability for property damage due to negligence or willful neglect or omission shall apply thereto.

Section 3. Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the owners who make use of the wall unless such repair or maintenance is necessitated by the negligence or deliberate conduct of one or more of the owners, in which case that unit owner or those unit owners shall be responsible for the cost of repair.

Section 4. Destruction by Fire or Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it and if the other owners thereafter make use of the wall they shall contribute to the cost of restoration therefore in proportion to such use without prejudice, however, to the rights of any such owners to call for a larger contribution from others based on any rule of law regarding liability for negligence or for willful acts or omission.

Section 5. Right to Contribution. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the unit as real estate and shall pass to such owner's successor in title.

ARTICLE VI  
Exterior Maintenance

Exterior Maintenance. In addition to maintenance upon the common areas, the Association shall provide exterior maintenance,

including landscaping and lawn care, upon each unit which is subject to assessment hereunder, excepting from such maintenance requirement glass surfaces, doors, screen doors, exterior doors and window fixtures and patios. The cost of such maintenance shall be added and become a part of the assessment to the appropriate unit holders and in the event that the need for maintenance or repairs is caused through the willful or negligent act of one of the owners in said structure, his family, guests or invitees, then cost of repairs or maintenance shall be borne by that owner.

ARTICLE VII  
WATER MANAGEMENT MAINTENANCE

For the purpose of the uniform maintenance of the water management system for the development known as Marsh Landing, the owners of units within Marsh Landing Villas shall be subject to assessment by Marsh Landing Community Association of Estero, Inc. for their proportionate share of the cost of said maintenance and management, and with regard to said assessments, they shall have the same rights as other members of Marsh Landing Community Association of Estero, Inc. to participate in the determination of any assessment. Representation in the Association shall be through the Association's designated representative who shall vote on behalf of all owners within the development as instructed by the Board of Directors of the Association.

ARTICLE VIII  
Title to Common Area

Title to Common Area. The Developer may retain legal title to the common areas or a portion thereof until such time as it has completed improvements on The Property. Notwithstanding any provisions hereto, the Developer hereby covenants that it shall convey the common areas to the Association free and clear of all liens and financial encumbrances not later than the sale of the last unit in the development.

ARTICLE IX  
Development Scheme

The Marsh Landing Villas form a portion of the overall Marsh Landing Development. The overall Marsh Landing Development may consists of 406 units comprised of single family homes, condominium

OR2776 PG3687

units and the 98 units proposed to be built as Villas under this Declaration. Developer reserves the right to build more or less units outside of the Villas development as well as inside the Villas development. The overall maintenance costs and assessment of unit owners within the Villa will be affected by those decisions.

ARTICLE X  
Maintenance Assessments

Section 1. Lien Rights of Association. Each owner of any unit by acceptance of a deed thereof is deemed to covenant and agree to pay the Association periodic general assessments or charges, special assessments for capital improvements and annual or special parcel assessments or charges, which assessments may be established and collected as determined by the Association. All such assessments, together with interest thereon and the cost of collection thereof, shall be a charge on the land and shall be a continuing lien upon the property against which each said assessment is made. Additionally, each such assessment, together with interest and cost of collection thereon, shall also be the personal obligation of the owner of the property at the time that the assessment falls due. The Association shall be entitled to its reasonable attorney's fees and costs in any litigation to collect such assessment, including any appeal, and those amounts shall also be so secured.

Section 2. Purpose of Assessments. Assessments may be made to promote the recreation, health, safety and welfare of the residents of the property and for improvement, maintenance and operation of the common areas and facilities, as well as all other purposes stated or implied in this document in order to carry out the functions of the Association.

Section 3. Recording of Notice of Lien. In order to perfect the lien against any unit owner for any assessment provided for herein, the Association shall record a notice of lien in the public records in and for Lee County, Florida, which states sufficiently the legal description of the unit and lot, the last known record owner of the unit and the amount of the lien and otherwise

completely states the claims of the Association. The notice shall be executed by the President of the Association, or in his absence, the Vice President, or as otherwise may be permissible for the execution of deeds by a corporation under Florida law.

Section 4. Method of Assessments. Assessments shall be implemented by way of a two-thirds vote of the directors of the Board of the Association. The Board may provide for the collection of assessments in periods no more frequently than monthly.

Section 5. Non-Payment of Assessments. Any assessment not paid within 30 days after the due date may, upon resolution of the Board, bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate legally chargeable to such accounts. The Association may at any time after the running of that 30-day period, bring an action at law against that person personally obligated to pay the assessment and foreclose the Association's lien against the affected property. The Association may elect to pursue either of the above remedies without, until entry of a judgment, waiving its rights to pursue the other remedy. All owners shall be liable for the assessments regardless of their use or non-use of the common areas or their unit.

Section 6. Subordination of Assessment Lien to First Mortgage Liens to Institutional Lenders. The lien or liens of the assessments provided for herein shall be subordinate to the lien of any first mortgage to any commercial bank, be it chartered state or federally, any savings and loan association, any insurance company or investment arm thereof or any other independent and recognizable financial institution in the business of making real estate loans and the Land Mortgagee. Land Mortgagee is defined as Kraus-Anderson, Incorporated, a Minnesota corporation, and its successors and assigns, and any replacement lender, Kraus-Anderson, Incorporated having loaned funds to Rottlund Homes of Florida, Inc., a Minnesota corporation ("Developer") for Developer's acquisition and/or development of the Marsh Landing development, as long as there shall remain outstanding any indebtedness of Developer or its



successors secured by a mortgage in favor of Kraus-Anderson, Incorporated or its successors or assigns on all or a portion of the property comprising the Marsh Landing development; provided, however, that notwithstanding anything in this Paragraph or elsewhere in this Declaration to the contrary, the acquisition by such lender of any or all of Developer's rights under the Declaration of Covenants, Conditions and Restrictions for Marsh Landing (by virtue of assignment, pledge, succession or otherwise) shall not alter, waiver or impair by reason of "merger" or otherwise, any other rights granted to the Land Mortgagee herein or in any other document (even if the Land Mortgagee becomes the Developer). Land Mortgagee shall enjoy all rights as an institutional mortgagee, provided that the foregoing shall not limit any other rights specifically granted to Land Mortgagee herein or any other documents pertaining to any part of the Marsh Landing development.

Section 7. Sale or Transfer of Unit. The sale or transfer of any unit shall not affect the assessment lien, except, however, the sale or transfer of any unit pursuant to foreclosure of a lien described in Section 6 above, shall extinguish the lien as to any such assessment and as to payments which became due prior to such sale or transfer, but that sale or transfer shall not release such unit from liability for any assessments thereafter becoming due or from the lien for such subsequent assessments.

ARTICLE XI  
Exterior of Units

Section 1. Improvements and Alterations. No improvements, alterations, repair, change of paint color, excavation, change in grade or other work which in any way alters the exterior of any property or improvements located thereon or in any way defaces or changes the color of the exterior of a unit shall be permitted; provided, however, this provision shall not apply to Developer in his initial construction of the contemplated improvements on the property. Also provided further that the exterior wall, roof and fencing around the courtyard are to be maintained by each unit owner in quality condition at all times consistent with the provisions of this paragraph. Failure to maintain the unit in such

a manner will result in a 30-day notice to the unit owner from the Association setting forth the items to be corrected. In the event the notice is not heeded, the Association shall have the right to perform, or contract to perform, the necessary work or correct the deficiency and the owner shall be responsible for these costs and the Association shall have a lien against the unit as provided herein.

ARTICLE XII  
Residential Use

Section 1. Use. All units located within the development as described on attached Exhibit "A" shall be used, improved and devoted exclusively to single family residential use; provided, however, nothing shall be deemed to prevent the owner from leasing a unit to a single family for a minimum rental period of one month subject to all the provisions of this Declaration. Single family means one natural person or group of two or more natural persons, each of whom is related to each of the others by blood, marriage, or adoption, (exclusive of household employees); or not more than two persons not so related, who reside together as a single non-profit household. These use restrictions shall not be construed in such a manner as to prohibit a unit owner from maintaining his personal professional library, keeping his personal, business or professional records or accounts or handling his personal, business or professional telephone calls or correspondence in and from his dwelling. Such uses are expressly declared customarily incident to the principal residential use. No other commercial or business uses are permitted whatsoever.

Section 2. No Nuisances. No nuisances shall be permitted to exist or operate upon any property so that it would be a detriment or a hinderance to the enjoyment of any other unit owner's use of his own property.

Section 3. Maintenance of the Property. To the extent that the exterior maintenance is not provided for herein by the Association, each owner shall keep all lots owned by him and all improvements thereon in good order and repair, free of debris, including but not limited to the seeding and watering of all lawns,

DR2776 PG3691

the pruning and cutting of all trees and shrubbery, and the painting of all buildings and other improvements, all in a manner and with such frequency as is consistent with property management. The Association shall have the right to enforce this provision and in the event that the owner does not comply to remedy any deficiency, and to perform the necessary work or correct the deficiency, the owner shall be responsible for these costs and the Association shall have a lien against the unit as provided herein.

Section 4. Utility Easement. There is hereby created a blanket easement, upon, across, over, through and under The Property, for ingress, egress, installation, replacement and repair or maintenance of all utility and service lines and systems included but not limited to water, sewer, gas, telephone, electricity, television, cablevision or communication lines and systems. By virtue of this easement it shall be expressly permissible for the Developer or the providing utility or service company to install and maintain facilities or equipment on said property, to excavate for such purposes and to affix and maintain wire circuits and conduits on, in and under the roofs and exterior walls of said residences, provided such company restores such disturbed areas to the condition in which they were found, and provided further that any location of such utilities shall be approved by the Developer prior to their installation. This grant of easement shall be in no way construed as a limitation on any other easements which may be granted on the properties by the Developer.

Section 5. Vehicles. Abandoned or inoperable vehicles or oversized vehicles of any kind shall not be stored or parked on any portion of the property. 'Abandoned' and/or 'inoperable vehicles' shall be defined as any vehicle which has not been driven under its own propulsion for a period of three (3) weeks or longer; provided, however, this shall not include vehicles parked or operable vehicles registered with the Association and parked in driveways by their owners. A written notice requesting the 'abandoned and inoperable vehicle' and requesting removal thereof may be personally served upon the owner or posted on the unused vehicle;

DR2776 PG3692

and if said vehicle has not been removed within seventy-two (72) hours thereafter, the Association shall have the right to remove same without liability to it and the expense thereof shall be charged against the owner. 'Oversized' vehicles, for the purposes of this Section shall be considered vehicles which are too high to clear the entrance of a standard residential garage.

No commercial vehicles or campers, mobile homes, motor homes, motorcycles, house trailers or trailer of every other description, recreational vehicles, boats, boats with trailers, house trailers or vans shall be permitted to be parked or stored on any property without the express written consent and approval by the Association, in its sole and unbridled discretion. For the purpose of this Section 'commercial vehicles' shall mean those of which are not designed and used for customary personal/family purposes. The absence of commercial type letters or graphics on a vehicle shall not be dispositive as to whether or not it is a commercial vehicle. Passenger vans and other vehicles situated on a truck chassis such as Suburbans, Explorers and Jeeps shall be considered noncommercial unless used as a commercial vehicle. The prohibitions of parking contained above in this Section shall not apply to temporary parking of a commercial vehicle, such as, construction use or providing pick-up and delivery and other commercial services. No parking on areas other than pavement shall be permitted.

Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations promulgated by the Board, may be towed by the Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or theft, nor guilty of any criminal act, by reason of such towing; and, once the notice is posted, neither its removal nor failure of the owner to receive it for any reasons, shall be grounds for relief of any kind.

ARTICLE XIII  
Insurance

Property and Casualty Insurance. Property, liability, and casualty insurance on common areas and facilities to the extent appropriate shall be maintained through the Association. Each owner shall be assessed annually or such other regular period as is convenient to service the insurance preference for the referenced coverage. Additionally, the Association is empowered to purchase such other insurance as may be necessary on the common areas or otherwise to protect the Association and its members and any premium for such insurance shall be handled as set forth herein. In the event of any casualty, loss or other consequence leading to the payment of insurance proceeds, the Association shall be agent of all owners and shall adjust such loss on their behalf.

ARTICLE XIV  
Enforcement of the Covenant of this Instrument

The Association, along with each and every unit owner, shall have the right, by action against any person or persons violating or attempting to violate any covenants contained herein, to bring an action to enjoin or restrain the violation or to recover damages or pursue any other remedies as might be provided by law. The party bringing the action shall be entitled, if successful, to recover in addition to costs and disbursements allowed by law, a reasonable attorney's fee, including any cost or attorney's fee incident to an appeal.

ARTICLE XV  
Signs

No owner shall be permitted to place upon, adjacent, or in its unit any sign or writing indicating that the premises are for sale, rent, or otherwise indicating any item or property for sale or rent in any display, whether located within the unit or on the exterior of the unit, or affixed or placed upon adjacent property including common area property. All signs and writing are prohibited.

ARTICLE XVI  
Miscellaneous

Section 1. Invalidation of Provisions Hereof. If any provision of these covenants shall be determined to be invalid by

OR2776 PG3693

OR2776 PG36914

court order or otherwise, that invalidity shall in no way affect any other provisions of this document which shall remain in full force and effect.


Section 2. Duration. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date of their recording and shall automatically be extended for successive periods of ten (10) years unless a majority of the owners at the expiration of any prior period elects to terminate their force and effect; provided, however, that termination will cause the then unit owners to become tenants in common of an undivided equal interest in the common area in the development as an appurtenance to their ownership of any unit and the limitations contained herein as to structural components and party walls shall remain binding covenants running with the land.


Section 3. Captions. The captions of any paragraphs or subparagraphs herein are for convenience only; they are not to be construed as in any way altering the substance of this document or to interpret the intent of any provision.

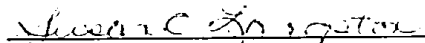
Section 4. Legal Interpretation. This document is executed and shall be interpreted under the laws of the State of Florida.

IN WITNESS WHEREOF, the parties have hereunto executed this Declaration of Covenants and Restrictions this 20<sup>th</sup> day of December, 1996.

ROSSLUND HOMES OF FLORIDA, INC.  
a Minnesota corporation

  
Witness

By:   
J. Wes McMillin, Vice President

  
Witness

STATE OF FLORIDA

COUNTY OF Ala.

The foregoing instrument was acknowledged before me this 23rd day of December, 1996, by J. WES McMILLIN, as Vice President of ROTTLUND HOMES OF FLORIDA, INC., a Minnesota corporation, who is ~~personally known to me~~ or who has produced \_\_\_\_\_ as identification and who did not take an oath.

(Notary Seal)

[Signature]  
Signature of Notary Public

OFFICIAL NOTARY SEAL  
PETER J GRAVINA  
NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION NO. CC405741  
MY COMMISSION EXP. NOV. 1, 1998

(Print, type or stamp commissioned name of Notary Public)

Commission No: \_\_\_\_\_

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Rev. 12/18/96

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CONSENT AND JOINDER TO FILING OF  
DECLARATION OF COVENANTS AND RESTRICTIONS

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WHEREAS, Kraus-Anderson, Incorporated, a Minnesota corporation, is the owner and holder of a certain mortgage lien created by a Mortgage dated the 21st day of June, 1996, recorded among the Public Records of Lee County, Florida in Official Record Book 2719 at Page <sup>3924</sup>4029, in which Rottlund Homes of Florida, Inc. is a Mortgagor; and  
4136

WHEREAS, Kraus-Anderson, Incorporated desires to evidence its consent to the filing of the attached Declaration of Covenants and Restrictions for Marsh Landing Villas;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration to it in hand paid, Kraus-Anderson, Incorporated, by and through its authorized officer does consent to the Declaration of Covenants and Restrictions for Marsh Landing Villas, attached hereto, in accordance with the provisions of the aforementioned Declaration of Covenants and Restrictions in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, Kraus-Anderson, Incorporated has caused these presents to be duly executed by its duly authorized officer this 19th day of December, 1996.

WITNESS:

KRAUS-ANDERSON, INCORPORATED

Victoria J. Pease  
Victoria J. Pease  
Michelle M. Morgan  
Michelle M. Morgan

By Daniel Engelsma  
Its Vice President

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this 19th day of December, 1996, by Daniel Engelsma, as Vice President of Kraus-Anderson, Incorporated, who is personally known to me ~~or who has produced~~ his identification and who did not take an oath.

(Notary Seal)

Mary E. Doughman  
Notary Public  
Print Name: Mary E. Doughman

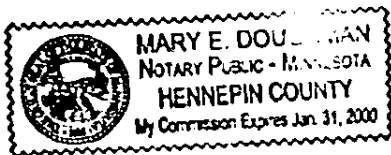


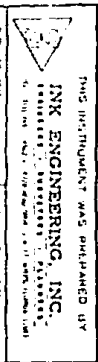


EXHIBIT A

Lots 1 thru 46, Block E, according to the plat of Marsh Landing, recorded in Plat Book 58, at Pages 42-49, Public Records of Lee County, Florida.

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**MARSH LANDING**  
A SUBDIVISION IN  
SECTIONS 4 & 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST,  
LEE COUNTY, FLORIDA

PLAT BOOK 57

PAGE 5

1. The purpose of this instrument is to subdivide the land described in the first paragraph hereof into lots and to create a plat for the same.

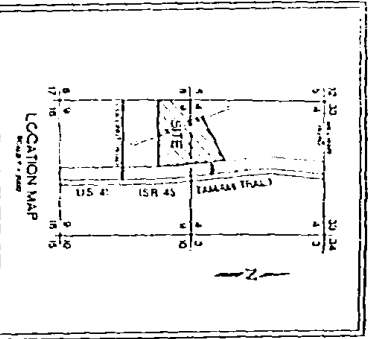
**WITNESSETH**  
That the within and foregoing conditions that are set forth herein are the true and correct intentions of the undersigned party herein.

**THE DEVELOPER**  
1. The land described in this instrument is owned by the State of Florida.

**CONTRACTS/AGREEMENTS**  
The undersigned hereby certifies that the lots created by this instrument are being conveyed to the public for the use and benefit of the State of Florida.

197 28 68  
[Seal of the State of Florida]

**NOTICE**  
LANDS DESCRIBED IN THIS PLAT ARE SUBDIVIDED BY THE DEVELOPER WITHOUT THE ROADS, DRAINAGE AND SEWER FACILITIES BEING ACCEPTED FOR MAINTENANCE BY LEE COUNTY. ANY PURCHASER OF A LOT IN THIS SUBDIVISION IS ADVISED THAT HE MAY BE SUBJECT TO ASSESSMENT OR CALLED UPON TO BEAR A PORTION OR ALL OF THE EXPENSE OF CONSTRUCTION, MAINTENANCE OR IMPROVEMENT OF ROADS, DRAINAGE AND SEWER FACILITIES.



- 1. The land described in this instrument is owned by the State of Florida.
- 2. The land described in this instrument is being conveyed to the public for the use and benefit of the State of Florida.

[Seal of the State of Florida]

[Seal of the State of Florida]

**WITNESSETH**  
That the within and foregoing conditions that are set forth herein are the true and correct intentions of the undersigned party herein.

**APPROVED AND AUTHORIZED**  
STATE OF FLORIDA  
COUNTY OF LEE  
I, \_\_\_\_\_  
County Clerk

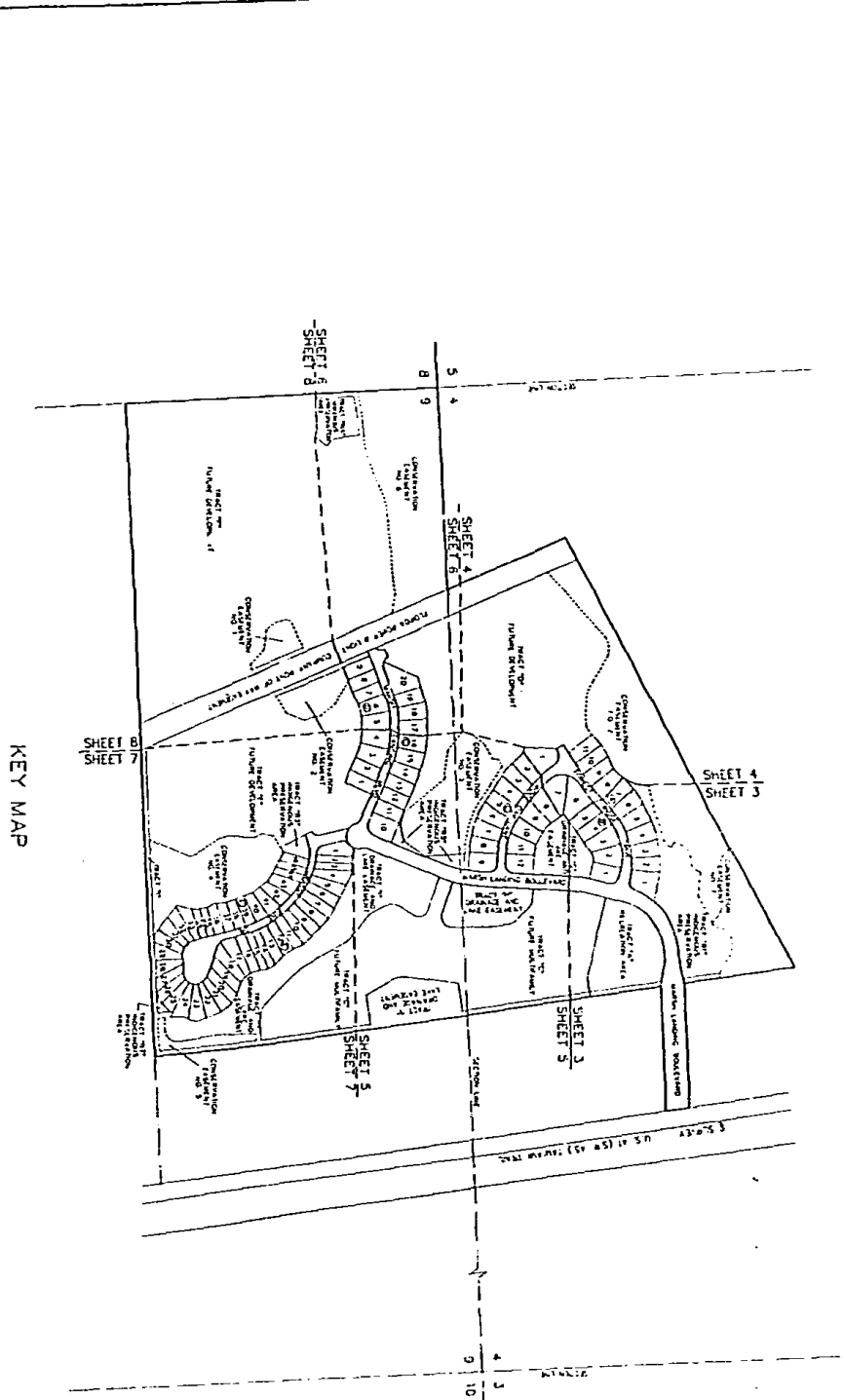
PB 5 8 PG 43

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THIS INSTRUMENT WAS PREPARED BY  
**INK ENGINEERING, INC.**  
 REGISTERED PROFESSIONAL ENGINEER  
 No. 000109 - State of Florida - License No. 11860 - Exp. 12/31/2011  
 2011 November 22/2011

**MARSH LANDING**  
 A SUBDIVISION IN  
 SECTIONS 4 & 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST,  
 LEE COUNTY, FLORIDA

PLAT BOOK 571 PAGE 43



KEY MAP



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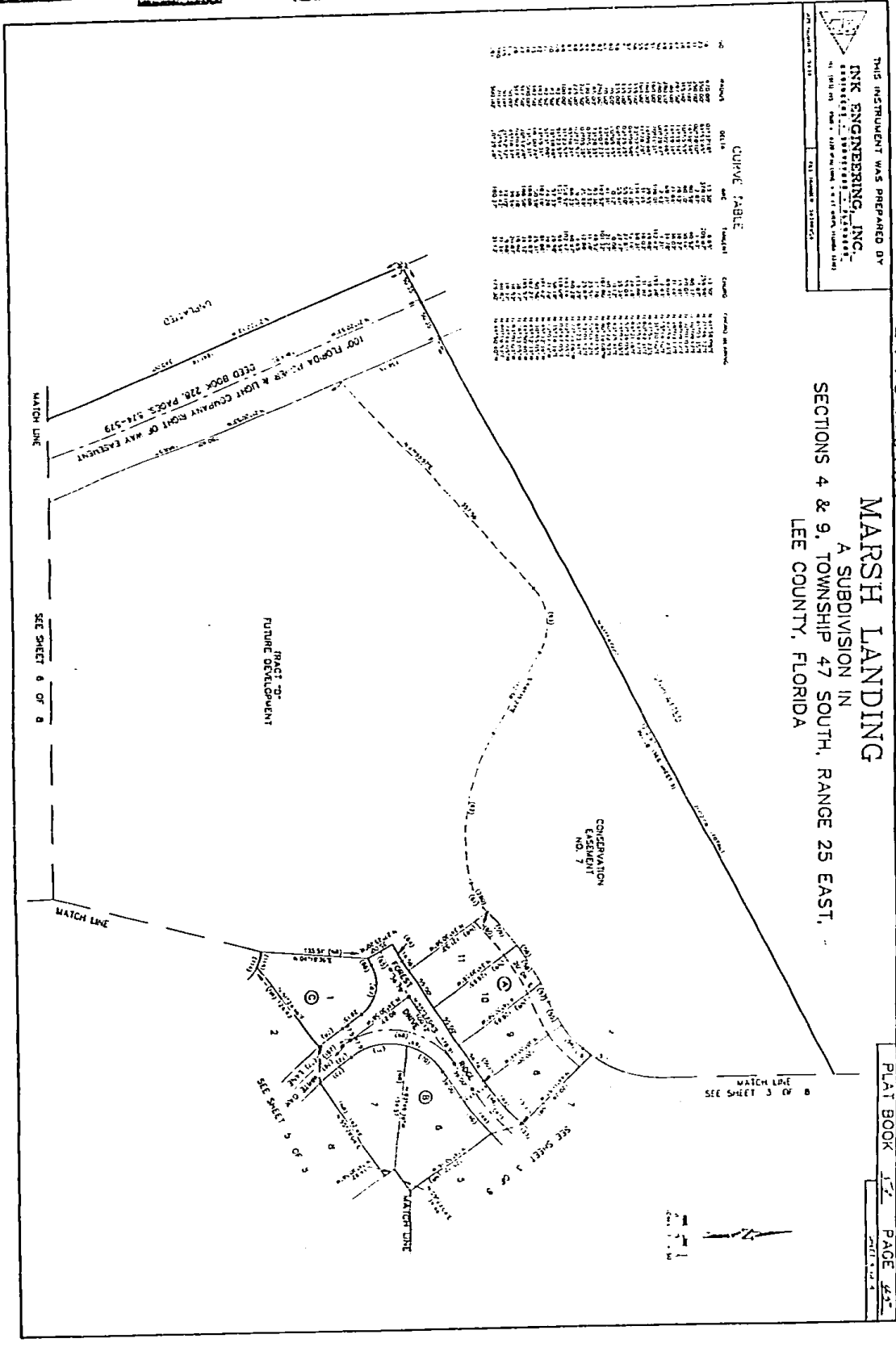
THIS INSTRUMENT WAS PREPARED BY  
**INK ENGINEERING, INC.**  
 A PROFESSIONAL ENGINEERING FIRM  
 4111 N. W. 11th St., Suite 100, Ft. Lauderdale, Florida 33309  
 TEL: (954) 555-1111 FAX: (954) 555-1112

**MARSH LANDING**  
 A SUBDIVISION IN  
 SECTIONS 4 & 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST,  
 LEE COUNTY, FLORIDA

PLAT BOOK **172** PAGE **44**  
 DATE 12-15-94

**CURVE TABLE**

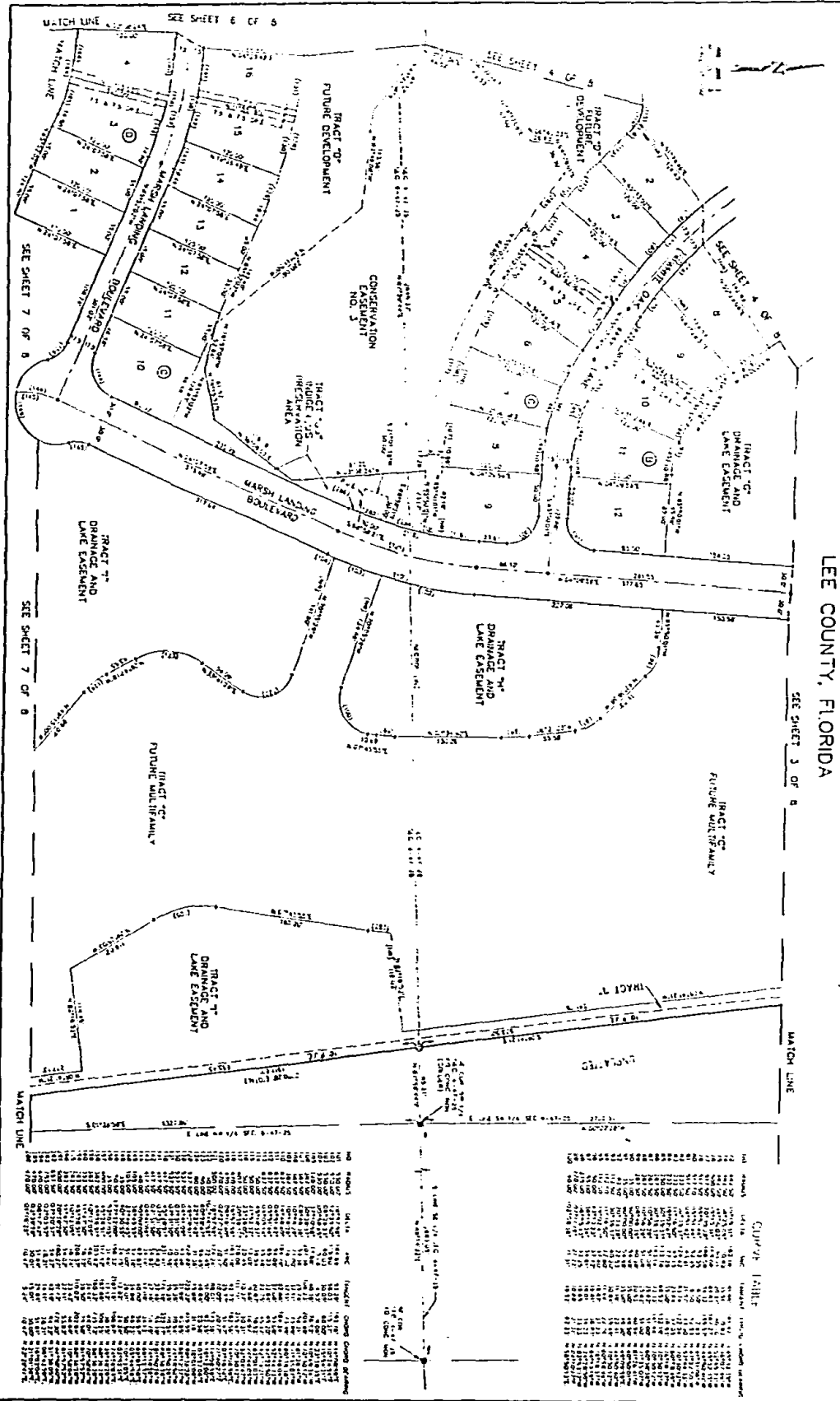
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ENGINEERS  
1000 W. WASHINGTON ST., SUITE 200  
TALLAHASSEE, FLORIDA 32301  
TEL: (904) 833-1111

**MARSH LANDING**  
A SUBDIVISION IN  
SECTIONS 4 & 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST,  
LEE COUNTY, FLORIDA

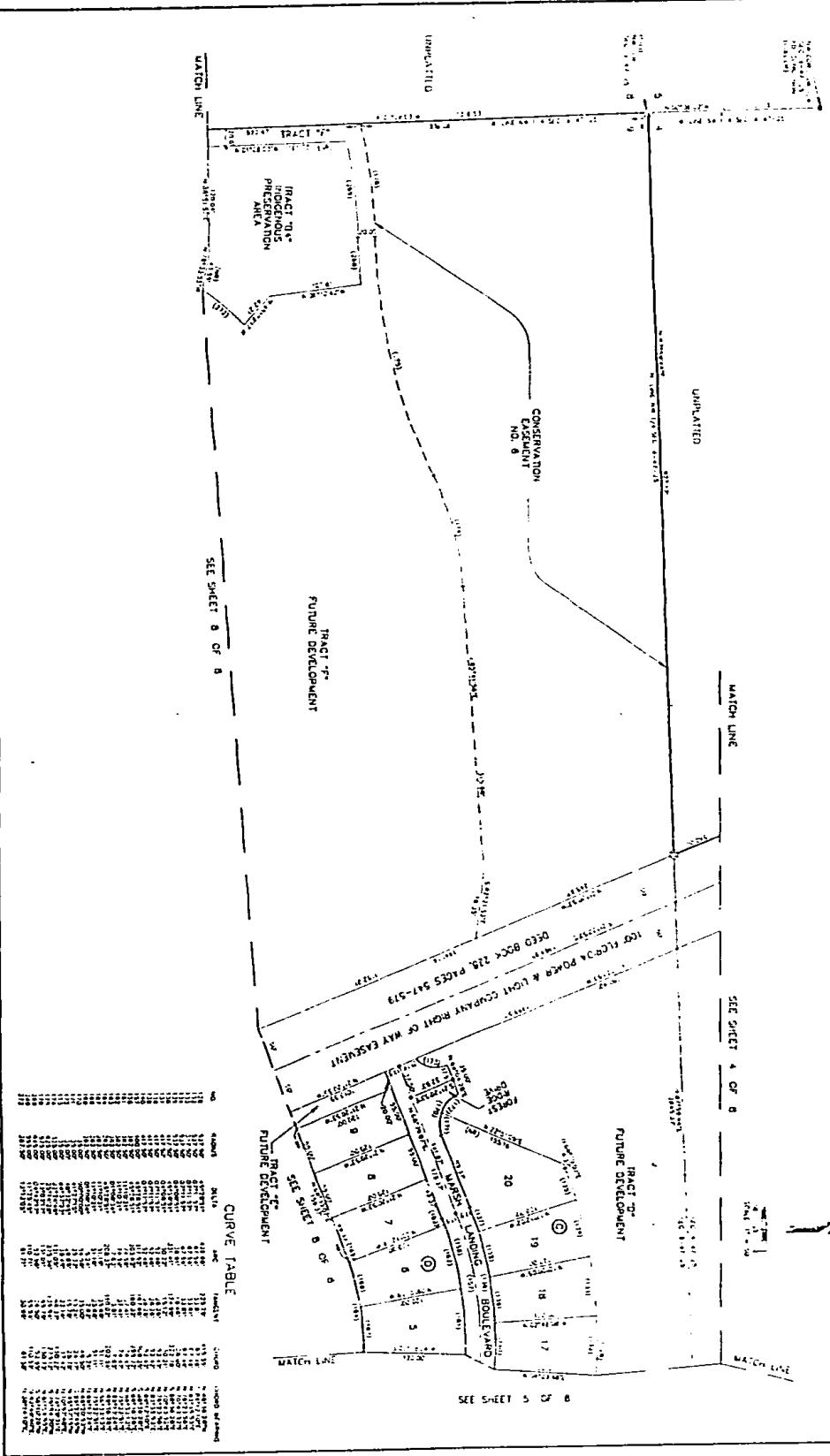
PLAT BOOK **17** PAGE **44**  
DATE 10/1/88



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**INK ENGINEERING, INC.**  
 REGISTERED PROFESSIONAL ENGINEER  
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**MARSH LANDING**  
 A SUBDIVISION IN  
 SECTIONS 4 & 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST,  
 LEE COUNTY, FLORIDA



PLAT BOOK 2-2 PAGE 42

**CURVE TABLE**

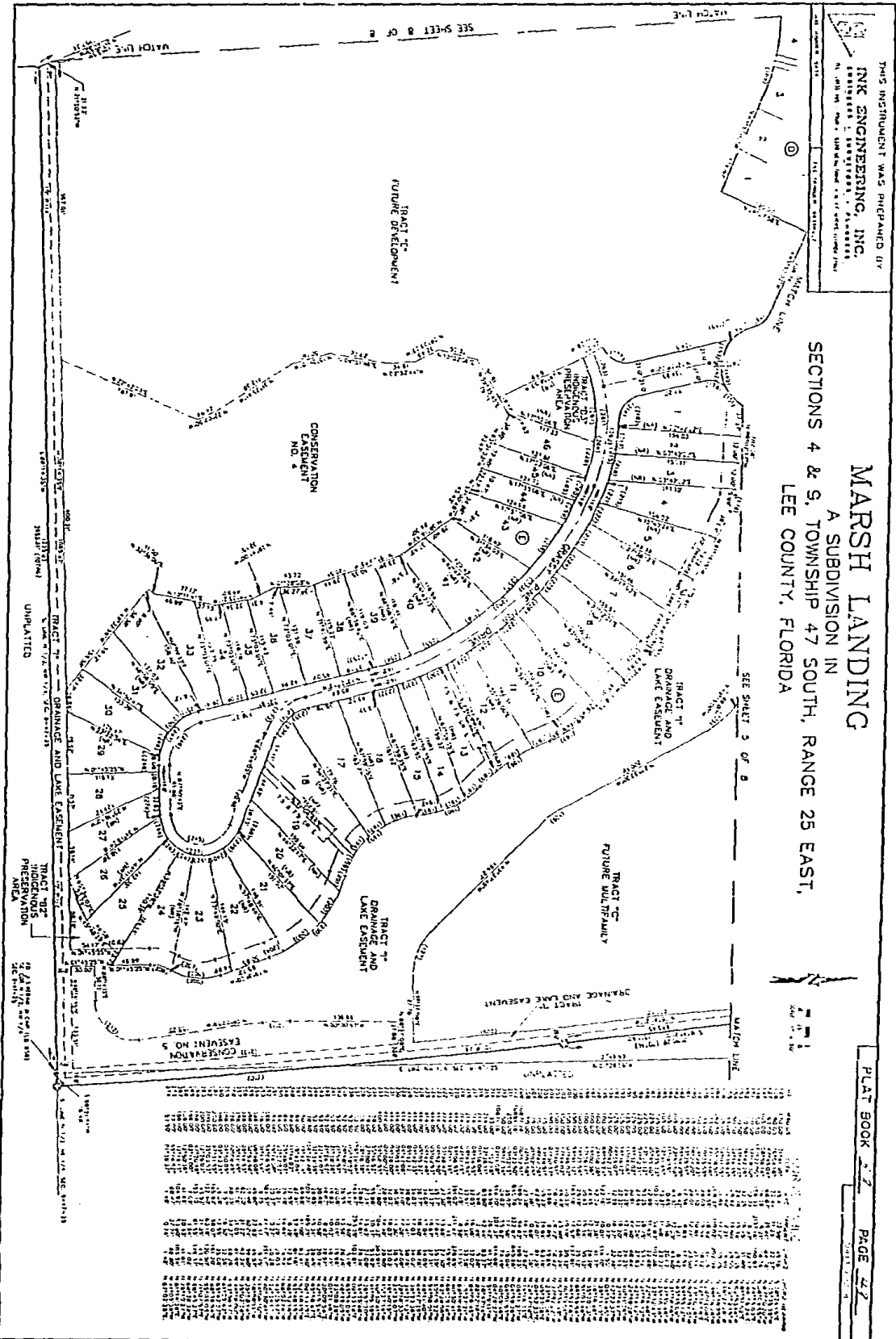
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SEE SHEET 5 OF 8

THIS INSTRUMENT WAS PREPARED BY  
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**MARSH LANDING**  
A SUBDIVISION IN  
SECTIONS 4 & 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST,  
LEE COUNTY, FLORIDA

PLAT BOOK 22 PAGE 42







# State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of MARSH LANDING VILLAS OWNER'S ASSOCIATION, INC., a Florida corporation, filed on December 11, 1996, as shown by the records of this office.

The document number of this corporation is N96000006310.

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capitol, this the  
Twelfth day of December, 1996



CR2EO22 (2-95)

*Sandra B. Northam*

Sandra B. Northam  
Secretary of State

DR2776 PG3706

ARTICLES OF INCORPORATION  
OF  
MARSH LANDING VILLAS OWNER'S ASSOCIATION, INC.

We, the undersigned acting as Directors, incorporators and as sole members of a non-profit corporation under Chapter 617 of the Florida Statutes do hereby adopt the following Articles of Incorporation for such corporation as an amendment approved unanimously by the Board and membership of the corporation.

ARTICLE I  
CORPORATE NAME

The name of this corporation (hereinafter called Association) is MARSH LANDING VILLAS OWNER'S ASSOCIATION, INC. The mailing address of the corporation shall be: 17595 South Tamiami Trail, #106, Fort Myers, Florida, 33908

ARTICLE II  
TERM OF EXISTENCE

The existence of the Association will commence upon the filing of these Articles with the Department of State of the State of Florida and shall continue thereafter in perpetuity.

ARTICLE III  
PRINCIPAL OFFICE

The principal office of the Association is located at 17595 South Tamiami Trail, #106, Fort Myers, Florida, 33908.

ARTICLE IV  
PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation, and architectural control of the single family dwelling unit sites ("Lots") and common elements, now and hereinafter included within that certain tract of real property located in Lee County, Florida, which is known as "MARSH LANDING VILLAS", and to promote the health, safety, and welfare of the residents within the above-described development, and such additions thereto as may hereafter be brought within the jurisdiction of the DECLARATION OF COVENANTS AND RESTRICTIONS FOR MARSH LANDING VILLAS ("DECLARATION") of the Development, primarily by means of the acquisition, construction, management, maintenance and care of real and personal property which is owned by either the Association or by Owners in common, made available for the common benefit of all members of the Association and is of a nature that tends to enhance the beneficial enjoyment of the private residences of the Owners, or, which is owned privately by an Owner, to the extent that the condition of such property affects the overall appearance or structure of Lots and Units included within the Development. In the furtherance of

DR2776 PG3707

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such purpose, but without limitation to the powers and authorities of the Association, the Association shall have the power:

(a) To exercise all of the powers and privileges, and to perform all of the duties and obligations, of the Association as set forth in that certain DECLARATION, applicable to the property and to be recorded in the Office of the Clerk of Circuit Court, Lee County, Florida, as the same may be amended from time to time as therein provided, said DECLARATION being incorporated herein as if set forth in full,

(b) To fix and make assessments against each Lot and Unit included in the Development as provided in the Declaration and collect the assessment made against a Lot or Unit, together with the costs of collection, including a reasonable attorney's fee, and interest thereon from the date due at the maximum rate then allowable by law, from the Owner or Owners thereof by any lawful means, including the foreclosure of the lien which the Association has against the Lot or Unit for the payment of assessments;

(c) To pay all expenses in connection therewith, and all office and other expenses incidental to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied on or imposed against the property of the Association;

(d) To acquire (by gift, purchase or otherwise), own, hold and improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real and personal property in connection with the affairs of the Association;

(e) Dedicate, sell, or transfer all or any part of the common areas to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication or transfer shall be effective unless an instrument has been signed by two-thirds (2/3) of each class of members, agreeing to such dedication, sale or transfer;

(f) To operate and maintain common property.

(g) To make, amend, impose and enforce by any lawful means, reasonable rules and regulations with respect to the use of the Common Areas and Association Property;

(h) To sue and be sued.

(i) To contract with others to do and perform any of the functions and obligations of the Association;

(j) To borrow money from such lenders and upon such terms as the Association may deem appropriate and, subject to the consent by vote or written instrument of two-thirds (2/3) of each class of members, mortgage, pledge, convey by deed of trust, or hypothecate any or all of the Association's real or personal property as security for money

borrowed or debts incurred; including the right of the Association to make and collect assessments, as security for the repayment thereof;

(k) To use and expend the proceeds of assessments and borrowings to pay the debts and obligations of the Association and otherwise in a manner consistent with the purposes for which this Association is formed;

(l) To review the plans and specifications of proposed improvements intended to be constructed on any Lot to determine whether they comply with the terms and provisions of the DECLARATION which have been or will hereafter be recorded among the public records of said County as the same may from time to time be amended, and, if they comply, approve them, and if they do not comply, disapprove them.

(m) To maintain, repair, replace and operate the areas within the Development intended for the common use and benefit of the Owners, to the extent not maintained by others, including, but without limitation, the lakes, ditches, canals and other water retention and drainage systems, preservation and conservation areas, the streets, curbs, gutters, medians, entryways, common sewers and storm sewers and the other common utilities, including common telephone, cable television and electric transmission cables;

(n) To purchase and maintain one or more insurance policies insuring Association property against loss, damage or destruction and insuring the Association against liability to others;

(o) To participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, or annex additional residential property or common elements, provided that any merger or consolidation shall have the assent by vote or written instrument of two-thirds (2/3) of each voting class of members, except as otherwise provided in Article II of the DECLARATION.

(p) To do and perform anything required by these Articles, the Bylaws or the DECLARATION to be done by an Owner, but not done timely by the Owner, at the cost and expense of the Owner;

(q) To do and perform any obligations imposed upon the Association by the DECLARATION and to enforce by any legal means the provisions of these Articles, Bylaws and the DECLARATION. To have and exercise any and all power, rights, and privileges that a non-profit corporation organized under Chapter 617 of the Florida Statutes by law may now or hereafter have or exercise. The Association is organized and shall be operated exclusively for the purposes set forth above. The activities of the Association will be financed by assessments against members as provided in the DECLARATION, and no part of any net earnings of the Association will inure to the benefit of any member.

The foregoing specific duties and responsibilities are not to be construed in any way as limiting the powers of the Association. Rather, the Association will have and exercise all of the powers conferred upon Associations so formed.

ARTICLE V  
MEMBERSHIP

Every record Owner of a Lot or Unit which is then part of the Properties, shall be a Member of the Association, provided that any such person or entity, including any mortgagee, who holds an interest merely as security for the performance of an obligation shall not be a Member.

ARTICLE VI  
VOTING

The Association shall have the following two classes of voting membership:

(a) Class A. Class "A" Members shall consist of all Owners of Lots and Units within the Properties. Class "A" Members shall be entitled to one (1) vote for each Lot or Unit in which they hold the interest required for membership by Article III, Section 1 of the DECLARATION. When more than one person holds an interest in any Unit, all such persons shall be Members. The vote of such Unit shall be exercised as they determine, but in no event shall the vote cast with respect to any such Unit exceed the number of votes determined for that Unit in accordance with these Articles and the DECLARATION.

(b) Class B. The Class "B" Members shall consist of the Developer, Rottlund Homes of Florida, Inc., a Minnesota corporation, or any assignee, successor, designee or nominee of the Developer to whom the Developer has assigned all or part of its rights. The Developer shall have the same number of votes at any meeting in which votes are to be taken as is held by all other Class A Members plus one vote. Class B membership shall terminate and be converted on a Lot and Unit basis to Class A members when the Developer no longer owns any property in Marsh Landing Development for sale in the ordinary course of business or on such earlier date as the Developer may elect to terminate its Class B membership.

(c) Any action which could be taken by Owners at a membership meeting may be taken without necessity of a meeting if approved in writing by Owners having the right to cast sufficient votes to approve the action if taken at a meeting.

ARTICLE VII  
BYLAWS AND AMENDMENT TO ARTICLES

The Bylaws will be adopted and may be amended by the Directors or the members, consistent with these Articles and the DECLARATION, except that those adopted by the members may only be altered, amended or repealed by the members. These articles may be

DR2776 PG3711

amended by the Board of Directors with the approval of members entitled to cast more than fifty percent (50%) of the votes at a meeting. Notwithstanding the foregoing, neither the Articles nor the Bylaws may be amended without the consent and approval of the Developer, as long as the Developer owns either a Lot or Unit, or other real property which is included in the Development and the consent of the "Land Mortgagee" Kraus-Anderson, Incorporated, a Minnesota corporation, and its successors and assigns, and any replacement lender, Kraus-Anderson, Incorporated having loaned funds to Rottlund Homes of Florida, Inc , a Minnesota corporation ("Developer") for Developer's acquisition and/or development of the Marsh Landing development, as long as there shall remain outstanding any indebtedness of Developer or its successors secured by a mortgage in favor of Kraus-Anderson, Incorporated or its successors or assigns on all or a portion of the property comprising the Marsh Landing development; provided, however, that notwithstanding anything in this Paragraph or elsewhere in these Articles to the contrary, the acquisition by such lender of any or all of Developer's rights under the Declaration of Covenants, Conditions and Restrictions for Marsh Landing (by virtue of assignment, pledge, succession or otherwise) shall not alter, waive or impair by reason of "merger" or otherwise, any other rights granted to the Land Mortgagee herein or in any other document (even if the Land Mortgagee becomes the Developer). Land Mortgagee shall enjoy all rights as an institutional mortgagee, provided that the foregoing shall not limit any other rights specifically granted to Land Mortgagee herein or any other documents pertaining to any part of the Marsh Landing development.

ARTICLE VIII  
DIRECTORS

The affairs of the Association will be managed by a Board of Directors consisting of three (3) members, initially. The number of members constituting the Board of Directors may, from time to time, be increased or decreased by the members, as may be provided in the Bylaws, but will never be less than three (3).

(a) TERMS OF OFFICE. Directors will generally serve a term of one (1) year each and shall be elected at the annual meeting of the membership. However, the members of the Board of Directors will serve until their successors are elected and qualify and may be re-elected for additional terms. In the case of a vacancy upon the Board of Directors, whether occasioned by the resignation or removal of a member or the creation of a new directorship, the vacancy will be filled by the person elected by the remaining Board of Directors and the newly appointed member will serve until the next election of Directors

(b) ELECTION BY MEMBERS Members of the Board of Directors will be elected by the membership (including the Developer, as an Owner and as a member of the Corporation, by reason of being an Owner). Every director elected will be either a member of the corporation, or, in the case of an entity member, an officer, general partner or trustee of that member, as the case may be. All elections will be by plurality of votes, and the member of the Board of Directors receiving the largest number of votes shall be the Chairman of the Board of Directors.

DR2776 PG3712

(c) INITIAL CONTROL BY DEVELOPERS. Notwithstanding the other provisions contained in these Articles to the contrary, Developer will determine the number of directors (which will not be less than three) and appoint the members of the Board of Directors, whether or not such appointees are Owners, until the Developer either relinquishes that right, or there ceases to be Class C members. The designated directors need not be members of the Master Association (Class A Members).

(d) The names and addresses of the persons who shall serve as Directors until the first election are:

<u>Name</u>	<u>Address</u>
J. Wes McMillin	17595 S. Tamiami Trail, Ste #106 Fort Myers, FL 33908
Robert Gleason	17595 S. Tamiami Trail, Ste #106 Fort Myers, FL 33908
Mark G. Harden	17595 S. Tamiami Trail, Ste #106 Fort Myers, FL 33908

ARTICLE IX  
OFFICERS

The Association will have a President, a Vice-President, who shall at all times be members of the Board of Directors, a Secretary and a Treasurer, and such other officers as the Board of Directors may from time to time by resolution create. Two or more offices may be held by the same person, except as may be prohibited by law. Officers will be elected by the Board of Directors for a term of one (1) year, at the first meeting of the Board of Directors following each annual meeting of the members, but may be removed with or without cause by the Directors at any time.

The names of the officers who are to serve until the first election are:

<u>Name</u>	<u>Address</u>
J. Wes McMillin/President	17595 S. Tamiami Trail, Ste #106 Fort Myers, FL 33908
Robert Gleason/Vice-President/ Secretary/Treasurer	17595 S. Tamiami Trail, Ste #106 Fort Myers, FL 33908

ARTICLE X  
INDEMNIFICATION OF OFFICERS AND DIRECTORS.



(a) The Association hereby indemnifies any Directors or officer made a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding:

(i) Whether civil, criminal, administrative, or investigative, other than one by or in the right of the Association, to procure a judgment in its favor, brought to impose a liability or penalty on such person for an act allowed to have been committed by such person in his capacity as director, officer, employee or agent of any other corporation, partnership, joint venture, trust or other enterprise which he served at the request of the Association against judgments, fines, amounts paid in settlement and reasonable expenses, including attorney's fees, actually and necessarily incurred as a result of such action, suit or proceeding or any appeal therein, if such person acted in good faith in the reasonable belief that such action was in the best interests of the Association and in criminal actions or proceedings, without reasonable ground for belief that such action was unlawful. The termination of any such action, suit or proceedings by judgment order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not in itself create a presumption that any such Director or officer did not act in good faith in the reasonable belief that such action was in the best interests of the Association or that he had reasonable grounds for belief that such action was unlawful.

(ii) By or in the right of the Association to procure a judgment in its favor by reason of his being or having been a Director or officer of the corporation or by reason of his being or having been a director, officer, employee or agent of any other corporation, partnership, joint venture, trust or other enterprise which he serves at the request of the Association, against the expenses, including attorney's fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein if such person acted in good faith in the reasonable belief that such action was in the best interests of the Association. Such person shall not be entitled to indemnification in relation to matters to which such person has been adjudged to have been guilty of negligence or misconduct in the performance of his duty to the Association unless, and only to the extent that, the court, administrative agency, or investigative body before which such action, suit or proceeding is held shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which such tribunal shall deem proper

(b) The Board of Directors shall determine whether amounts for which a Director or officer seeks indemnification were properly incurred and whether such Director or officer acted in good faith and in a manner he reasonably believed to be in the best interests of the Association, and whether, with respect to any criminal action or proceeding, he had no reasonable ground for belief that such action was unlawful. Such determination shall be made by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding

(c) The foregoing rights of indemnification shall not be deemed to limit in any way the powers of the Association to indemnify under applicable law.

ARTICLE XI  
TRANSACTION IN WHICH DIRECTORS OR OFFICERS ARE INTERESTED.

No contract or transaction between the Association and one or more of its Directors or officers, or between the Association and any other corporation, partnership, association or other organization in which one or more of its Directors or officers are directors or officers, have a financial interest, shall, be invalid, void or voidable solely for this reason, or solely because the Director or officer is present at or participated in the meeting of the Board or committee thereof which authorized the contract or transaction, or solely because his or their votes are counted for such purpose. No Director or officer of the Association shall incur liability by reason of the fact that he is or may be interested in any such contract or transaction. Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorized the contract of transaction

ARTICLE XII  
DISSOLUTION OF ASSOCIATION.

No portion of the net earnings of the Association will inure (upon dissolution of the Association or otherwise) to the benefit of any private person, other than as a direct result of the Association engaging in one or more of the activities which are consistent with and within the scope of its purpose. Subject to the foregoing, upon the dissolution of the Association, all of its assets remaining after adequate provision is made for the payment of its creditors and the costs and expenses of dissolution will be distributed in the following manner:

(a) SURFACE WATER MANAGEMENT SYSTEM. Property and interests in property, whether real, personal or mixed, which constitutes or is directly or indirectly related to the surface water management system, if any, will be dedicated to the appropriate governmental agency or contributed to a similar non-profit corporation or organization as required by the South Florida Water Management District, if any. This provision may not be amended without the consent and approval of South Florida Water Management District.

(b) OTHER PROPERTY. Property and interests in property, whether real, personal, or mixed, which do not constitute or which are neither directly or indirectly related to the surface water management system, if any, will be distributed in the following manner:

(i) DEVELOPER'S DESIGNEE. To the person, firm or corporation designated by the Developer.

(ii) OWNER'S DESIGNEE. If the Developer fails or refuses to make any such designation, then, to the person, firm or corporation designated by the largest number of owners entitled to cast votes on matters coming before the membership who actually cast votes.

ARTICLE XIII  
DECLARATION OF INTENTION.

The Incorporators and the Developer intend that the Association be eligible for treatment as a tax-exempt organization described in Section 528 of the Internal Revenue Code of 1954, as amended, or in the corresponding provisions of any subsequent legislation ("HOMEOWNERS ASSOCIATION").

(a) RESTRICTIONS ON ASSOCIATION'S ACTIVITIES. Notwithstanding any other provisions contained in these Articles, the Association may only engage in those activities, matters and things which Homeowners Associations so exempt from taxation are permitted to engage in.

(b) INTERPRETATION. The Articles of Incorporation of the Association will be construed and interpreted in a manner consistent with the requirements for Homeowners Associations to be tax-exempt. By way of illustration, Article XII will be construed and interpreted as prohibiting and not otherwise permitting any part of the net earnings of the Association to inure to the benefit of any private person other than as a direct result of the Association engaging in one or more exempt functions, as required by Treasury Regulation §1.528-7.

ARTICLE XIV  
SUBSCRIBERS

The name and address of the subscriber of these Articles of Incorporation is as follows:

<u>Name</u>	<u>Address</u>
J. Wes McMillin	17595 S. Tamiami Trail, Ste #106 Fort Myers, FL 33908

ARTICLE XV  
REGISTERED AGENT & OFFICE

The name of the Association's initial registered agent and its initial registered office is as follows:

J. Wes McMillin	17595 S. Tamiami Trail, Ste #106 Fort Myers, FL 33908
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IN WITNESS WHEREOF, the said subscriber has hereto set his hand and seal this 10<sup>th</sup>  
day of December, 1996.

Signed, Sealed and Delivered  
in the presence of:

[Signature]  
Patricia J. Barry  
PATRICIA J. BARRY  
(Print Name)

[Signature]  
Susan C. Langston  
(Print Name)

[Signature]  
J. Wes McMillin

OR2776 PG3716

STATE OF FLORIDA  
COUNTY OF LEE

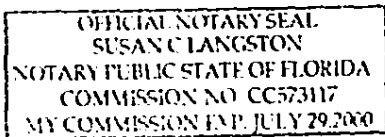
BEFORE ME, the undersigned authority personally appeared J. WES MCMILLIN, to me known to be the person described in and who executed the foregoing Articles of Incorporation, and who did not take an oath, and acknowledged before me, according to law, that he executed the same for the purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in the County and State above mentioned, this 10<sup>th</sup> day of December, 1996.

[Signature]  
NOTARY PUBLIC

My Commission Expires:

[Signature]  
Print Name



In pursuance of Chapter 48.091, Florida Statutes, the following is submitted, in compliance, with said Act:

First--That MARSH LANDING VILLAS OWNER'S ASSOCIATION, INC., desiring to organize under the laws of the State of Florida, with its principal office, as indicated in the Articles of Incorporation, at City of Fort Myers, County of Lee, State of Florida, has named J. WES MCMILLIN, located at 17595 So. Tamiami Trail, Suite #106, City of Fort Myers, County of Lee, State of Florida, as its agent to accept service of process within this State.

ACKNOWLEDGMENTS:

Having been named to accept service of process for the above-stated corporation, at place designated in this certificate, I hereby accept to act in this capacity, and agree to comply with the provision of said Act relative to keeping open said office.

BY: J. W. McMillin  
J. WES MCMILLIN, Registered Agent

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EXHIBIT "D"

**BY-LAWS OF  
MARSH LANDING VILLAS OWNER'S ASSOCIATION, INC.  
A Nonprofit Corporation**

**ARTICLE I  
NAME AND LOCATION**

The name of the corporation is **MARSH LANDING VILLAS OWNER'S ASSOCIATION, INC.** The principal office of the corporation shall be located at 17595 South Tamiami Trail, Ste. 106, Fort Myers, Florida, 33908, but meetings of members and directors may be held at such places within the State of Florida as may be designated by the Board of Directors.

**ARTICLE II  
DEFINITIONS**

**SECTION 1:** "Association" means Marsh Landing Villas Owner's Association, Inc., the purpose of which is to administer the Common Properties in accordance with the provisions of this Declaration and the governing documents of the Association.

**SECTION 2:** "Common Properties" means (i) those areas of land, together with improvements thereon, if any, either shown on the Development Plan or any Plat as such and intended to be devoted to the common use and enjoyment of the owners of the Properties, excluding any land and improvements which may have been dedicated to a governmental entity and accepted for maintenance by such governmental entity, and (ii) those areas of land, together with improvements thereon, as might be independently submitted as Common Properties by amendment to this Declaration by the Developer. The Surface Water Management System is hereby declared to be a part of the Common Properties and to the extent same lies outside the Properties, the Developer does hereby create easements for such purposes as are necessary or appropriate to the maintenance and use of the Surface Water Management System.

**SECTION 3:** "Developer" means, collectively, Rottlund Homes of Florida, Inc., a Minnesota corporation, and its successors and assigns in accordance with this Section 3. Developer may assign or pledge any or all of its rights reserved under the Land Use Documents upon and only upon a specific designation to such assignee in an instrument of conveyance or assignment. Unless otherwise agreed in such conveyance or assignment, such conveyance or assignment shall not be deemed to be an assignment of any of Developer's obligations, except from and after the date of actual exercise of such powers by the assignee, and then only as to such obligations that are incident to the exercise of such powers.

**SECTION 4:** "Declaration" shall mean and refer to the Declaration of Covenants and Restrictions for Marsh Landing Villas applicable to the planned development and recorded in the Public Records of Lee County, Florida.

DR2776 PG3718

DR2776 PG3719

SECTION 5: "Land Use Documents" includes all documents affecting the use of the property including all permits, plats, development orders and approvals, the Declaration, Bylaws and the Articles of Incorporation of the Association.

SECTION 6: "Lot" means any portion of the Properties (other than the Common Properties shown on the Development Plan as intended to be separately subdivided, provided that from and after recordation of a Plat with respect to any portion of the Properties, Lots for such portion of the Properties shall consist of those Lots set forth on the Plat.

SECTION 7: "Member" shall mean and refer to any person entitled to membership in the Association as provided in the Articles, Bylaws and Declaration.

SECTION 8: "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Unit but shall not mean or refer to a mortgagee of such Lot or Unit unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

SECTION 9: "The Properties" shall mean the real property subject to the Declaration and the development of the said property for residential use under a homeowners association for the purpose of enhancing and protecting the value, attractiveness and desirability of the lots comprising such development.

ARTICLE III.  
MEETINGS OF MEMBERS

SECTION 1: Annual Meetings. The first annual meeting of members shall be held within six (6) months after ninety percent (90%) of the lots have been sold and conveyed by Declarant. Subsequent annual meetings of members shall be held on the same day of the month of each year thereafter at the hour of seven o'clock p.m. If the day for the annual meeting of members is a legal holiday, the meeting will be held at the same hour on the next following day which is not a legal holiday.

SECTION 2: Special Meetings. Special meetings of members may be called at any time by the president or by two (2) members of the Board of Directors, or after seventy-five percent (75%) of the units have been sold and conveyed by the Developer, upon written request of members who are entitled to vote one-half (½) of all votes of the membership.

SECTION 3: Notice of Meetings. Written notice of each meeting of members shall be given by, or at the direction of, the secretary or other person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days, but not more than thirty (30) days before such meeting to each member entitled to vote there at, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for purpose of receiving notice. Such notice shall specify the day, hour and place of the meeting, and in the case of a special meeting the purpose of the meeting.

SECTION 4: Quorum. The presence at the meeting, in person or by proxy, of members entitled to cast a majority of the votes of the membership shall constitute a quorum for authorization of any action, except as may otherwise be provided in the Declaration, the Articles of Incorporation, or these By-Laws. If a quorum is not present at any meeting, the members entitled to vote there at shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

SECTION 5: Proxies. At all meeting of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Proxies shall be revocable, and the proxy of any owner shall automatically terminate on conveyance by him of his lot.

ARTICLE IV.  
BOARD OF DIRECTORS, TERM OF OFFICE, REMOVAL

SECTION 1: Number. The affairs of the Association shall be managed by not less than three (3) directors, who may be members of the Association.

SECTION 2: Term of Office. Directors shall serve one (1) year terms.

SECTION 3: Any director may be removed by the Board of Directors, whenever, in the judgment of the Board of Directors, the best interest of the corporation will be served thereby, by a vote of the Board of Directors.

ARTICLE V.  
BOARD OF DIRECTORS, POWER AND DUTIES

SECTION 1: Powers. The Board of Directors shall have the power to:

(a) Adopt and publish rules and regulations governing the use of the Common Properties and facilities including the personal conduct of the members and their guests thereon; and to establish penalties for infractions of such rules and regulations.

(b) Suspend the voting rights and right to use of the recreational facilities of any member during any period in which such member is in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed thirty (30) days for infraction of published rules and regulations.

(c) Exercise on behalf of the Association all powers, duties and authority vested in or delegated to the Association and not specifically reserved to the membership by the Declaration, Articles of Incorporation, or by other provisions of these By-Laws.

(d) Employ a manager, independent contractors, and such other employees as they may deem necessary, and to prescribe their duties.



**SECTION 2: Duties.** It shall be the duty of the Board of Directors to:

(a) Supervise all officers, agents, and employees of the Association and see to it that their duties are properly performed;

(b) As more fully provided in the Declaration, to:

(1) Fix the amount of the Periodic Assessment and any Special Assessments against each lot in advance of each annual assessment year.

(2) Send written notices of each assessment to every owner subject thereto in advance of each assessment year.

(3) Foreclose the lien against any property for which assessments are not paid as provided in the Declaration or to bring an action at law against the owner personally obligated to pay the same.

(c) Issue, or cause an appropriate officer to issue on demand by any person, a certificate setting forth whether or not any assessment has been paid. A statement in a certificate to the effect that an assessment has been paid shall constitute conclusive evidence of such payment. The Board may impose a reasonable charge for the issuance of these certificates.

(d) Procure and maintain liability and hazard insurance on all property owned by the Association.

(e) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.

(f) Cause the common properties to be maintained.

**ARTICLE VI**  
**OFFICERS AND THEIR DUTIES**

**SECTION 1: Enumeration of Offices.** The officers of the Association shall be a president and vice president, who shall at all times be members of the Board of Directors, and a secretary, treasurer, and such other officers as the Board may from time to time by resolution create.

**SECTION 2: Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of members.

**SECTION 3: Term.** The officers of the Association shall be elected annually by the Board. Each shall hold office for a term of one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

SECTION 4: Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time determine.

SECTION 5. Resignation and Removal. Any officer may be removed from office by the Board at any time with or without cause. Any officer may resign at any time by giving written notice to the Board, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 6: Vacancies. A vacancy in any office may be filled by appointment of the Board. The officer appointed to such vacancy shall serve for the unexpired term of the officer he replaces.

SECTION 7: Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 4 of this Article.

SECTION 8. Duties. The duties of the officers are as follows:

(a) President. The president shall preside at all meetings of the Board of Directors; shall sign all checks and promissory notes of the Association; shall see that orders and resolutions of the Board are carried out; and shall sign all leases, mortgages, deeds, and other instruments.

(b) Vice-President. The vice-president shall act in the place of the president in the event of his absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it to all papers so requiring; serve notice of meetings of the Board to members; keep appropriate current records showing the members of the Association together with their addresses; and perform such other duties as may be required by law.

(d) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all funds of the Association, and shall disburse such funds as directed by resolution of the Board of Directors; shall keep proper books of the accounts; shall cause an annual audit of the Association books to be made at the completion of each fiscal year; and shall prepare an annual budget and statement of income and expenditures, a copy of which documents shall be delivered to each member, and a report on which shall be given at the regular annual meeting of members.

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ARTICLE VII.  
COMMITTEES

The Directors shall appoint a New Construction Review Board (NCRB), as provided in the Declaration. In addition, the Board of Directors may appoint such other committees as it may deem appropriate in the performance of its duties.

ARTICLE VIII.  
ASSESSMENTS

As more fully provided in the Declaration, and except as provided in the Declaration with regard to the "Developer", as defined in the Articles of Incorporation, and "Land Mortgagee", as defined in the Articles of Incorporation, each member is obligated to pay to the Association Periodic and Special Assessments which are secured by a continuing lien on the property against which such assessments are made. All Periodic Assessments shall be paid as provided in the Declaration. Any assessments not paid when due are considered delinquent. If an assessment is not paid within ten (10) days after the due date, the assessment shall bear interest from the date when due at the rate established by the Board of Directors, not to exceed the maximum legal rate of interest, and the Association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against the Unit which is subject thereto. Interest, costs, and reasonable attorneys' fees of any such action shall be added to the amount of any assessment due. No owner may waive or otherwise escape liability for assessments by nonuse of the common properties or abandonment of the Unit.

ARTICLE IX.  
BOOKS AND RECORDS, INSPECTION

The books, records, and papers of the Association shall be subject to inspection by any member upon fifteen (15) days prior written notice. The Declaration, Articles of Incorporation, and By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies shall be made available for sale at a reasonable price.

ARTICLE X.  
CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: **MARSH LANDING VILLAS OWNER'S ASSOCIATION, INC.**

ARTICLE XI.  
AMENDMENTS

These By-Laws may be amended at a regular or special meeting of members, by vote of two-thirds (2/3) of a quorum of members present in person or by proxy. Notwithstanding, the Bylaws may not be amended without the consent of Developer, as long as the Developer owns either a Lot

or Unit, or other real property which is included in the Development and the written consent of the Land Mortgagee so long as a mortgage remains on the property subject to the Declaration.

ARTICLE XII.  
FISCAL YEAR

The fiscal year of the Association shall be the calendar year, except that the first fiscal period shall begin on the date of incorporation and shall end on December 31st of the year of incorporation.

ARTICLE XIII.  
CONFLICTS

In case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; in case of any conflict between the Declaration and the Articles, the Declaration shall control.

ATTEST:

MARSH LANDING VILLAS OWNER'S  
ASSOCIATION, INC.

\_\_\_\_\_

By: J. Wes McMillin  
J. Wes McMillin, President

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