

Prepared by and return to:  
Melissa S. Turra, Esq.  
Holland & Knight LLP  
50 N. Laura Street, Suite 3900  
Jacksonville, Florida 32202

**USE AND ACCESS AGREEMENT**  
**Kingfisher Drive and Royal Tern Road South**

THIS AGREEMENT is made this 21<sup>st</sup> day of August, 2003, by and between **MARSH LANDING AT SAWGRASS HOMEOWNERS ASSOCIATION VII, INC.**, a Florida not for profit corporation ("MLAS VII Association") and **MARSH LANDING AT SAWGRASS HOMEOWNERS ASSOCIATION VIII, INC.**, a Florida not for profit corporation ("North Island Association").

**RECITALS**

A. MLAS VII Association is the owner of roadways more fully described as:

Kingfisher Drive ("Kingfisher Drive") and Royal Tern Road South ("Royal Tern Road"), all as shown on the plat of Marsh Landing at Sawgrass Unit Twenty-Nine, recorded in Map Book 29, pages 29 through 37, of the public records of St. Johns County, Florida.

Kingfisher Drive and Royal Tern Road are sometimes jointly referred to herein as "Roadways".

B. MLAS VII Association is the not for profit corporation responsible for the operation and maintenance of the lands subject to the Declaration of Covenants, Restrictions, Conditions and Easements and Notice of Assessments – Marsh Landing at Sawgrass Owners Association VII, Inc., recorded in Official Records Book 1123, page 1691 of the public records of St. Johns County, Florida, as amended and supplemented ("MLAS VII Declaration").

- C. The Roadways are a part of the roadway system which provides ingress and egress access to the lands subject to the lands subject to the MLAS VII Declaration and also provides access, ingress and egress to the lands subject to the Declaration of Covenants, Restrictions, Conditions and Easements and Notice of Assessments – Marsh Landing at Sawgrass Owners Association VIII, Inc., (North Island) recorded in Official Records Book1300, page 1111 of the public records of St. Johns County, Florida ("North Island Declaration").
- D. MLAS VII Association has agreed to grant a perpetual non-exclusive easement to the North Island Association on the terms and conditions more fully set forth herein.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. MLAS VII Association hereby grants to North Island Association, all owners subject to the North Island Declaration, their successors, assigns and mortgagees, a perpetual, non-exclusive easement for ingress, egress over and through the Roadways.

2. In consideration of the foregoing grant of easement, North Island Association agrees to pay a pro-rata share of the cost of operation, repair and maintenance of the Roadways on the following terms and conditions:

a. For 2003 MLAS VII Association has established a budget and formula for the Roadways which includes the following:

	Kingfisher Drive	Royal Tern South
Annual Contribution to Repave (10 year life)	\$2,835.00	\$2,543.00
Cost of Street Lights And Electric	\$1,080.00 (30%)	\$960.00 (26.67%)
Insurance Allocation	\$300.00	\$200.00
Estimated Allowance For Repairs	\$200.00	200.00
Landscaping Contract	\$7,691.00 (25%)	\$7,694.00 (25%)
<b>TOTAL</b>	<b>\$12,106.00</b>	<b>\$11,694.</b>
Total North Island Lots	48 (38.71%)	48 (65.28%)
Total VII Lots Using Roadways	76 (61.29%)	25 (34.25%)
<b>NORTH ISLAND SHARE</b>	Annual/ Month \$4,686/\$390.50	Annual/Month \$7,689/\$640.76

b. Pursuant to the 2003 budget as set forth above the Annual amount to be paid by the North Island Association is \$12,375.00. The North Island Association shall remit to the MLAS VII Association one twelfth (1/12) of the annual amount of the budget for Roadways or \$1031.26, on or before the first day of each month during the year.

c. From and after January 1, 2004, the North Island Association shall pay an annual prorata share of the budgets for Kingfisher Drive and Royal Tern South which is based on the number of Owners within North Island, as of January 1 of each year, who use each roadway. The prorata share shall be calculated by multiplying each Roadway budget by a fraction, the numerator of which is the number of Lots subject to the North Island Declaration which use each respective Roadway and the denominator of which is the total number of Lots subject to the MLAS VII Declaration and North Island Declaration. In the event that the number of Lots subject to either Declaration changes, then the Board of Directors of the affected Association shall give notice to the other Board and parties may amend the fractional share by recording an amendment to this Agreement, executed by the President of each Association, without the consent of any Owner or Mortgagee of the Lots.

d. In the event that there is an unforeseen repair or maintenance required to the Roadways, or in the event that the budget is insufficient for the cost of the operation, maintenance and repair of the Roadways in any one year, the MLAS VII Association may submit to the Board of Directors of the North Island Association an amended budget to cover the actual costs of operation, maintenance and repair of Roadways. The Board of Directors of the North Island Association shall levy the pro-rata additional assessment on its members unless the Board of Directors of the North Island Association is able to determine that the MLAS VII Association amended budget is in error. Such special assessment shall be due within thirty (30) days of levy of the assessment in the same pro rata amounts as set forth above. In the event of a dispute between the Associations, then such dispute shall be submitted to the Marsh Landing At Sawgrass Master Association, Inc. ("Master Association"). The Master Association shall hold a hearing and each Association shall have the right to present its case. The decision of the Master Association shall be dispositive.

e. Within sixty (60) days of the close each calendar year, the MLAS VII Association shall submit to the Board of Directors of the North Island Association accounting for the income and expenses of the Roadways for the prior year. In the event that the Board of Directors of the North Island Association determines that there is an error in the calculation, the Board of Directors may request an audit of the budget. The audit shall be paid for jointly by the two associations.

f. In the event that the MLAS VII Association fails to properly operate, maintain, or repair the Roadways, then in such event the Board of Directors of the North Island Association may give written notice to the Board of

of Directors of the MLAS VII Association and if the MLAS VII Association fails to take corrective action within thirty (30) days then the North Island Association Board of Directors may submit the dispute to the Master Association. The Master Association shall give notice of a hearing and each Association shall have the right to present its case. The decision of the Master Association shall with respect to the maintenance of the Roadways shall be dispositive.

3. This Agreement shall be governed and construed under the laws of the State of Florida and shall inure to the benefit and be binding upon the parties hereto, their heirs, personal representatives, successors and permitted assigns.

4. In connection with any litigation arising out of this Agreement, the prevailing part shall be entitled to recover all costs incurred, including attorneys' fees for services rendered in connection therewith, including prior to and at the trial level and for appellate, post-judgment and bankruptcy proceedings.

5. Each provision of this Agreement shall be considered severable from the other provisions. If any provision herein is determined to be invalid or in conflict with any existing or future law or regulation, such determination shall not impair the operation or effect of the remaining provisions of this Agreement which will continue to be given full force and effect and shall bind the parties hereto.

6. The failure of either party to insist on strict performance of any covenant or obligation hereunder shall not be a waiver of such party's right to demand strict compliance herewith in the future.

IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the date first above written.

Signed sealed and delivered

in the presence of:

*Ann W. Canty*  
Print Name: Ann W. Canty

*Janet C. Fitchett*  
Print Name: Janet C. Fitchett

MARSH LANDING AT SAWGRASS  
HOMEOWNERS ASSOCIATION VII, INC.,  
a Florida not for profit corporation

By: *Barbara A. Kroh*  
Print Name: BARBARA A. KROH  
Its \_\_\_\_\_ President

CORPORATE SEAL

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of AUGUST, 2003, by BARBARA KROL, the \_\_\_\_\_ of MARSH LANDING AT SAWGRASS HOME OWNERS ASSOCIATION VII, INC., a Florida not-for-profit association, on behalf of the corporation. He/She  is personally known to the undersigned or  produced \_\_\_\_\_ as identification.

Karen B Artlin

Print Name: \_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA  
My commission expires: \_\_\_\_\_  
Commission Number: \_\_\_\_\_



Karen B Artlin  
My Commission DD108336  
Expires April 7, 2006

MARSH LANDING AT SAWGRASS  
HOMEOWNERS ASSOCIATION VIII, INC.,  
a Florida not for profit corporation

M.L. PARTNERSHIP, BY LANDING VENTURE, INC.

By: TJB  
Print Name: THOMAS C BERGMANN  
Its VICE President

CORPORATE SEAL

Sherry Hice  
Print Name: Sherry Hice

John C. Kunker  
Print Name: JOHN KUNKER

STATE OF FLORIDA  
COUNTY OF Duval

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of August, 2003, by Thomas C. Bergmann, v.p. of \* the \_\_\_\_\_ of MARSH LANDING AT SAWGRASS HOMEOWNERS ASSOCIATION VIII, INC., a Florida not-for-profit corporation, on behalf of the corporation. He/She  is personally known to the undersigned or  produced \_\_\_\_\_ as identification.

Landing Venture, Inc.,  
Member of M.L.  
Partnership,

Sherry Hice  
Print Name: Sherry Hice  
NOTARY PUBLIC, STATE OF FLORIDA  
My commission expires: \_\_\_\_\_  
Commission Number: \_\_\_\_\_

JAX1 #694283 v1



Sherry Hice  
MY COMMISSION # CC906788 EXPIRES  
March 30, 2004  
BONDED THRU TROY FAIN INSURANCE, INC.