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Cross Reference: Verandah
Declaration

Book 3795
Page 2515

VERANDAH
COVENANT TO SHARE COSTS

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TABLE OF CONTENTS

<u>Article</u>	<u>Section</u>	<u>Page</u>
	BACKGROUND STATEMENT	1
I.	DEFINITIONS	2
	1.1 Association.....	2
	1.2. Board of Directors or Board.....	2
	1.3. Club.....	2
	1.4. Community-Wide Standard	2
	1.5. Contribution	2
	1.6. Declaration.....	2
	1.7. Joint Property	2
	1.8. Joint Property Expenses.....	2
	1.9. Master Plan	2
	1.10. Person.....	3
II.	MAINTENANCE	3
	2.1. Joint Property	3
	2.2. Rights and Obligations.....	3
	2.3. Reciprocal Easements	4
	2.4. Additional Association Service Responsibilities.....	4
	2.5. Standard of Performance.....	5
	2.6. Dispute Procedures	5
	2.7. Limitation of Liability	5
III.	OBLIGATION TO SHARE COSTS	6
	3.1. Responsibility and Obligation for Contributions.....	6
	3.2. Computation of Contributions	6
	3.3. Payment of Contributions	6
	3.4. Recordkeeping.	7
IV.	DECLARANT'S RIGHTS	7
V.	GENERAL	8
	5.1. Notice.....	8
	5.2. Enforcement.....	8
	5.3. Amendment.....	8
	5.4. Duration	9
	5.5. Interpretation.....	9

5.6. Waiver..... 9
5.7. Perpetuities..... 9
5.8. Gender and Grammar..... 9
5.9. Severability..... 9
5.10. Captions..... 9

**DECLARATION OF EASEMENTS AND
COVENANT TO SHARE COSTS FOR VERANDAH**

THIS DECLARATION OF EASEMENTS AND COVENANT TO SHARE COSTS ("Covenant to Share Costs") is made as of the date set forth on the signature page by Verandah Development LLC, a Florida limited liability company ("Declarant").

BACKGROUND STATEMENT

Verandah is a master planned community located in Lee County, Florida. Declarant is the developer of Verandah and has caused to be recorded that certain Declaration of Covenants, Conditions, and Restrictions for Verandah more specifically described in Section 1.6. All property now or hereinafter made subject to such Declaration shall be encumbered by this Covenant to Share Costs by this reference as if fully set forth therein.

As part of the development of Verandah, Declarant intends to develop or to cause to be developed certain real property, and improvements and facilities thereon, located within, adjacent to, or in the vicinity of Verandah ("Private Amenities") which are privately owned and operated by Persons other than the Verandah Community Association, Inc. ("Association") and which are located within the real property described on Exhibit "A" hereto, as it may be supplemented from time to time. Such Private Amenities shall include the private golf club known as the Verandah Club ("Club").

This Covenant to Share Costs sets forth easement, covenants and agreements between the Association and the Club establishing a flexible and reasonable procedure for the administration, maintenance, and preservation of certain common benefit areas within Verandah which shall be used by and for the benefit of the Association and the Club. These common benefit areas are referred to as the Joint Property and are more specifically described in Section 2.1. This Covenant to Share Costs establishes maintenance requirements, a method of allocating costs between the Association and the Club, and other rights and responsibilities of the parties.

NOW, THEREFORE, Declarant hereby declares that all property described on Exhibit "A" hereto, subjected to the Declaration, or now or hereafter subject to this Covenant to Share Costs shall be held, sold, and conveyed subject to the covenants and conditions contained herein, which are made for the express benefit of Declarant, the Association, and the Club as representatives of the present and future owners of property within Verandah. The covenants and conditions contained herein shall run with the title to the property now or hereafter submitted to this Covenant to Share Costs and bind all parties having any right, title, or interest therein, their heirs, successors, successors-in-title, and assigns.

NOW, THEREFORE, the Association and the Club hereby consent, covenant, and agree to perform the maintenance services on the Joint Property and fulfill the responsibilities set forth herein in consideration of the mutual promises, covenants, and benefits, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Article I
Definitions

The words used in this Covenant to Share Costs shall generally be given their normal, commonly understood definitions unless otherwise specified. Capitalized terms shall be defined as follows:

1.1. "Association": The Verandah Community Association, Inc., a Florida not-for-profit corporation, its successors or assigns which, under this Covenant to Share Costs, is assigned certain maintenance responsibilities for the Joint Property and is obligated to pay as share of the Joint Property Expenses.

1.2. "Board of Directors" or "Board": The board of directors of the Association, generally serving the same role as a board of directors under Florida corporate law.

1.3. "Club": The Verandah Club which, under this Covenant to Share Costs, is assigned certain maintenance responsibilities for the Joint Property and is obligated to pay as share of the Joint Property Expenses.

1.4. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout Verandah. Such standard is originally established by Declarant and may be more specifically defined by the Board.

1.5. "Contribution": Obligation of the Association to be paid to the Club to fund Joint Property Expenses.

1.6. "Declaration": The Declaration of Covenants, Conditions, and Restrictions for Verandah, recorded in Book 3795, Page 2515, of the Official Records of Lee County, Florida, as it may be amended from time to time, and which by its terms and the applicability of this Covenant to Share Costs makes the Association subject to this Covenant to Share Costs.

1.7. "Joint Property": The real and personal property within or in the area of Verandah, designated by Declarant, which is owned and/or maintained for the common benefit of the Association and the Club, as more particularly described in Section 2.1.

1.8. "Joint Property Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association or the Club to own, operate, maintain, improve, repair, replace, and/or insure the Joint Property for the general benefit of the Association and the Club.

1.9. "Master Plan": The land use plan for the development of Verandah approved by Lee County, Florida, as it may be amended. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Covenant to Share Costs, nor shall the omission of property from the Master Plan bar its later submission to this Covenant to Share Costs.

1.10. "Person": A natural person, a corporation, a partnership, a trustee, or other legal entity.

Article II MAINTENANCE

2.1. Joint Property. The Joint Property includes, without limitation, the real and personal property designated by Declarant and located within, or in the area, surrounding Verandah as described below:

(a) the entry features, roadways, and associated landscaping on Verandah Boulevard west of River Village Way and on River Village Way;

(b) the gatehouse, gates, and related landscaping on Verandah Boulevard at the West entrance to the community; and

(c) the parking area and grounds surrounding the River Village;

(d) the maintenance facility located at State Road 80 and Davis Street to be utilized for the purpose of storage and maintenance of materials and equipment used by the Club and the Association; and

(e) such other community-wide amenities or facilities which benefit jointly the Association and the Club, as may be designated in writing by Declarant and made subject to this Covenant to Share Costs by amendment or supplement.

2.2. Rights and Obligations. The Club shall have the right and the obligation to maintain that portion of the Joint Property assigned to it by Declarant. Declarant may make such assignment through a written notice of assignment given to the Club and the Association pursuant to Section 5.1 describing the portion of the Joint Property so assigned. Declarant shall have the right, but not the obligation to record such notice of assignment in the Official Records of Lee County, Florida. The Association covenants and agrees to contribute to the cost of such maintenance. The Association shall have the right and the obligation to maintain all other portions of the Joint Property not assigned to the Club for maintenance and for which the Club covenants and agrees to contribute to the cost of such maintenance. The obligation to maintain the portion of the Joint Property described in Section 2.1(b) shall include the obligation to operate the gatehouse and the gates.

Notwithstanding the initial assignment of maintenance responsibilities for the Joint Property, Declarant may, so long as it owns any property within Verandah, transfer and assign such maintenance responsibilities from the Club to the Association or from the Association to the Club through a written notice of the transfer and assignment given to the Club and the Association pursuant to Section 5.1 describing the maintenance responsibility transferred and assigned. Declarant shall have the right, but not the obligation to record such notice in the

Official Records of Lee County, Florida. In the event that any maintenance responsibilities are so transferred and assigned, the party not assigned the maintenance responsibility covenants and agrees to contribute to the costs of such maintenance as set forth in Article III.

Notwithstanding the initial assignment of maintenance responsibilities for the Joint Property, the Club and the Association, by separate written agreement, may transfer and assign such maintenance responsibilities from the Club to the Association or from the Association to the Club. So long as Declarant owns any property within Verandah, any such agreement shall require the written consent of Declarant to be valid. The Association shall have the right, but not the obligation, to record such agreement in the Official Records of Lee County, Florida. In the event that any maintenance responsibilities are so transferred and assigned, the party not assigned the maintenance responsibility covenants and agrees to contribute to the costs of such maintenance as set forth in Article III.

In addition to the maintenance responsibilities for the Joint Property addressed above, the Association and the Club, by separate covenant or agreement, may agree to maintain property, other than Joint Property, owned by, or which is the maintenance responsibility of, the other.

2.3. Reciprocal Easements. Declarant hereby reserves to itself and grants to the Club, its members, agents, and assigns, a blanket perpetual, non-exclusive easement over, under, and across the Joint Property which is now or hereafter owned by the Association for the purpose of access, ingress and egress, use and enjoyment, and maintenance and repair to the extent reasonably necessary for the Club to perform its maintenance responsibilities with respect to the Joint Property. Declarant hereby reserves to itself and grants to the Association, its members, agents, and assigns, a blanket perpetual, non-exclusive easement over, under, and across the Joint Property which is now or hereafter owned by the Club for the purpose of access, ingress and egress, use and enjoyment, and maintenance and repair to the extent reasonably necessary for the Association to perform its maintenance responsibilities with respect to the Joint Property. The easement rights granted herein to the Association, its members, agents, and assigns shall be strictly limited to the Joint Property and shall not include access to or use and enjoyment of any of the Club's recreational facilities.

All work associated with the exercise of these easements shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of any maintenance or repair required by this Covenant to Share Costs, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of such repair or maintenance.

2.4. Additional Association Service Responsibilities. The Association may employ or otherwise provide personnel to staff the gatehouses and to monitor and patrol Verandah for the benefit of the Association and the Club. All costs associated with the provision of such personnel shall be Joint Property Expenses. In addition to the services described herein, the Association may, as a Joint Property Expense, maintain or support certain other activities designed to make Verandah safer than it otherwise might be.

Notwithstanding the provision of such services as described in this Section 2.4, neither the Association, the Club, nor Declarant shall in any way be considered insurers or guarantors of security or safety within any area whether subject to any of the services described in this Section 2.4 or otherwise, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security or safety measures undertaken. No representation or warranty is made that any safety measure or security system cannot be compromised or circumvented, nor that any such systems or measures undertaken will in all cases prevent loss or provide the detection or protection for which it is designed or intended. Each Person using any portion of Verandah assumes all risks for personal injury and loss or damage to property resulting from acts of third parties.

2.5. Standard of Performance. Maintenance, as such term is used in this Covenant to Share Costs, shall mean maintaining, improving, repairing, replacing, insuring, and taking any and all steps to keep the Joint Property neat, clean, and attractive, including, without limitation, repairing and replacing improvements, fixtures, and landscaping, as well as such other duties as may be necessary or appropriate to satisfy the Community-Wide Standard.

2.6. Dispute Procedures.

(a) In the event that Declarant, the Association, or the Club believes that the Joint Property is not being maintained to the Community-Wide Standard, the party making such a complaint ("Claimant") shall provide written notice ("Notice") to the party charged with the maintenance of the portion of the Joint Property about which the complaint is being made.

(b) Claimant's Notice shall state plainly and concisely:

1. the nature of the maintenance deficiency, including specific problems with the appearance, the level, quality, or frequency of maintenance being performed, and examples of where maintenance of a similar nature, if any, is being performed within Verandah to the Community-Wide Standard; and

2. what Claimant wants the party charged with the maintenance obligation to do or not do to resolve the maintenance deficiency.

(c) The party responsible for such maintenance shall have 10 business days to cure the maintenance deficiency, or if the deficiency is not capable of being cured within such period, such party shall respond to the Claimant with a detailed explanation of the steps being taken to cure the deficiency, a good faith estimate of when such deficiency shall be cured, and any other pertinent information.

(d) If Claimant's Notice is not resolved within the time set forth in subsection (c), Claimant may file a "Claim" as provided in the alternative dispute resolution provisions of the Declaration, in which case the Claimant, the Association, the Club, or any other party involved in or responsible for such maintenance shall be deemed "Bound Parties" and shall comply with the dispute resolution procedures set forth therein.

2.7. Limitation of Liability. Notwithstanding anything contained herein to the contrary, a party fulfilling its responsibilities under this Covenant to Share Costs shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

Article III **OBLIGATION TO SHARE COSTS**

3.1. Responsibility and Obligation for Contributions. The Association covenants and agrees to pay an annual Contribution to the Club to cover an equitable portion of the Joint Property Expenses incurred by the Club; provided, the Contribution shall credit to the Association's account the Joint Property Expenses incurred directly by the Association, if any. The obligation to pay this Contribution shall be mandatory and shall be a separate and independent covenant on the part of the Association. No diminution or abatement of the Contribution or setoff shall be claimed or allowed by reason of any alleged failure of the Club to perform its maintenance responsibilities to the Community-Wide Standard. The Association's sole remedy for failure of the Club to perform its responsibilities hereunder shall be the dispute procedures set forth in Section 2.6.

3.2. Computation of Contributions. On an annual basis, at least 90 days before the beginning of its fiscal year, the Club shall determine an estimated budget of Joint Property Expenses for the upcoming year, including the expenses the Association is expected to incur in the performance of the Joint Property maintain obligations assigned to it pursuant to Section 2.2. The total budget of Joint Property Expenses shall be allocated between the Association and the Club. The Association shall be obligated to pay 60% of the Joint Property Expenses and shall be assessed as a Common Expense of the Association (as that term is defined in the Declaration). The remainder of the Joint Property Expenses shall be the responsibility of the Club.

Prior to the beginning of each fiscal year, the Club shall send the Association a copy of the budget for the Joint Property Expenses and a notice of annual Contribution for its share of the Joint Property Expenses. Such Contribution shall be reduced by the Joint Property Expenses the Association will incur directly to maintain the portion of the Joint Property assigned to it pursuant to Section 2.2. The notice of annual Contribution shall be adjusted to reflect any excess or deficiency in the budget prepared for the immediately preceding year as compared to actual expenses for that period and any unreimbursed costs incurred by the Club during the previous fiscal year to collect amounts due hereunder. The notice of the Association's annual Contribution may also be adjusted to (i) add any costs incurred by the Club to maintain property, other than Joint Property, owned by the Association but maintained by the Club pursuant to a separate covenant or agreement and (ii) subtract any costs incurred by the Association to maintain property, other than Joint Property, owned by or that is the maintenance responsibility of the Club pursuant to a separate covenant or agreement.

3.3. Payment of Contribution. Within 30 days of receipt of written notice of an annual Contribution, the Association shall pay to the Club the entire amount due; provided, the owner of the Club may provide that such Contribution may be paid in installments. The Association's share of the Joint Property Expenses shall be included in its annual budget of common expenses. Any Contribution delinquent for a period of more than 30 days shall incur a late charge in such amount as the Club may from time to time reasonably determine (subject to the limitations of Florida law), interest (not to exceed the lesser of 12% or the highest rate allowed by Florida law) on the principal amount due, all costs of collection (including attorney's fees), and any other amounts provided or permitted by law. In the event that the Association's Contribution remains unpaid after 90 days, the Club may institute suit to collect a money judgment for such amounts. Disputes over the payment of Contributions shall not be subject to the dispute procedures of Section 2.6, and any claim, grievance, or dispute shall be an "Exempt Claim" from the alternative dispute resolution procedures set forth in the Declaration. All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest, and then to delinquent Contributions.

3.4. Recordkeeping. The Association and the Club shall maintain or cause to be maintained full and accurate books of account with respect to the performance of their responsibilities hereunder. The books and records and related financial statements related to the performance of responsibilities under this Covenant to Share Costs shall be made available for inspection and copying upon request by the Board or the Club's owner or board of directors during normal business hours. Copying charges shall be paid by the Person requesting copies. If either the Association or the Club desires to have the other party's records relating to the obligations hereunder audited, it may do so at its expense, and the party being audited shall cooperate by making available to the auditors the records, including all supporting material (e.g., check copies, invoices, etc.), for the year in question.

If the amount of actual expenses for the year is disputed after the audit, the Association and the Club shall cause a second audit to be performed by a mutually acceptable auditor and the decision of the second auditor shall be binding. If the amount as determined by the second auditor varies from the amount asserted by the party being audited by five percent or more, that party shall pay the entire cost of the second auditor. If the amount as determined by the second auditor varies from the amount asserted by the party being audited by two percent or less, the party conducting the audit shall pay the entire cost of the second auditor. Otherwise, the cost of the second auditor shall be shared equally by the Association and the Club. Variances shall be taken into account in the following year's budget as provided in Section 3.2.

Article IV **DECLARANT'S RIGHTS**

Declarant may from time to time subject to the provisions of this Covenant to Share Costs all or any portion of the property described on the Master Plan by filing a supplemental declaration in the Official Records of Lee County, Florida, describing the additional property to be subjected. A supplemental declaration filed pursuant to this Article IV shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to subject additional property to this Covenant to Share Costs pursuant to this Article IV shall expire when all property described on the Master Plan has been subjected to this Covenant to Share Costs or 40 years after the recording of this Covenant to Share Costs in the Official Records, whichever is earlier. Until then, Declarant may transfer or assign this right to any Person who is the owner or developer of a portion of the real property described in the Master Plan. Any such transfer shall be memorialized in a written, recorded instrument executed by Declarant. Nothing in this Covenant to Share Costs shall be construed to require Declarant or any successor to subject additional property to this Covenant to Share Costs or to develop any of the property described on the Master Plan in any manner whatsoever.

Declarant reserves the right to amend this Covenant to Share Costs, so long as it has a right to submit additional property, for the purpose of removing any portion of the property subjected to this Covenant to Share Costs for any reason. Such amendment shall not require the consent of any Person other than the owner(s) of the property to be withdrawn, if not Declarant. If the property is Common Area of the Association (as that term is defined in the Declaration), the Association shall consent to such withdrawal.

Article V **GENERAL**

5.1. Notice. Any notice provided for in this Covenant to Share Costs shall be served personally or shall be mailed by registered or certified mail to the president or secretary of the Association or to the general manager of the Club, as applicable. All such notices shall, for all purposes, be deemed delivered (a) upon personal delivery to the party or address specified above or (b) on the third day after mailing when mailed by registered or certified mail, postage prepaid, and properly addressed.

5.2. Enforcement. The obligations created hereunder shall inure to the benefit of, and may be enforced by, Declarant, the Association's Board of Directors, and the Club, in accordance with the dispute procedures of Section 2.6 and the dispute resolution procedures set forth in the Declaration, or, if exempt, any means at law or in equity.

5.3. Amendment. In addition to specific amendment rights granted elsewhere in this Covenant to Share Costs, so long as Declarant owns any property within the Master Plan, Declarant may unilaterally amend this Covenant to Share Costs for any purpose so long as such amendment does not substantially conflict with the Master Plan; provided, any amendment shall not be contrary to the general scheme of development of Verandah.

Thereafter, this Covenant to Share Costs may be amended upon the written consent of the Club owner (or, if the Club is member-owned, then by its board of directors) and the Association's Board of Directors. So long as Declarant owns any property within Verandah for development and sale in the ordinary course of business, Declarant's consent shall be required for any amendment to this Covenant to Share Costs.

Amendments to this Covenant to Share Costs shall become effective upon recordation in the Official Records of Lee County, Florida, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Covenant to Share Costs.

If a Person consents to any amendment to this Covenant to Share Costs, it will be conclusively presumed that such Person has the authority so to consent, and no contrary provision in any mortgage or contract between such individual or entity and a third party will affect the validity of such amendment.

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

5.4. Duration. Unless terminated as provided below, this Covenant to Share Costs shall have perpetual duration. If Florida law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Covenant to Share Costs shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided below.

This Covenant to Share Costs shall not be terminated unless agreed upon in an instrument in writing, signed by at least a majority of the then members of the Board of Directors of the Association and consented to by the Club owner (or, if the Club is member-owned, then by its board of directors) and by Declarant so long as Declarant owns any property within Verandah for development and sale in the ordinary course of business.

5.5. Interpretation. This Covenant to Share Costs shall be governed by and construed under the laws of the State of Florida.

5.6. Waiver. No failure of the Association or the Club to exercise any power under this Covenant to Share Costs or insist upon strict compliance with this Covenant to Share Costs and no custom or practice at variance with the terms of this Covenant to Share Costs shall constitute a waiver of the right to demand exact compliance with the terms of this Covenant to Share Costs

5.7. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Covenant to Share Costs shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue for a period of 90 years from the date this Covenant to Share Costs is recorded in the Official Records of Lee County, Florida.

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

5.9. Severability. Invalidation of any provision of this Covenant to Share Costs, in whole or in part, or any application of a provision of this Covenant to Share Costs by judgment or court order shall in no way affect other provisions or applications.

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

IN WITNESS WHEREOF, the undersigned Declarant has executed this Covenant to Share Costs this 16th day of May, 2003

DECLARANT: VERANDAH DEVELOPMENT LLC,
a Florida limited liability company

By: Resource Conservation Properties,
Inc., a Florida corporation, its
managing member

By: Katherine C. Green
Katherine C. Green, Vice President

[CORPORATE SEAL]

Witness

Witness

Attest: _____
Name: _____
Title: _____

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 16th day of May, 2003, by Katherine C. Green, as Vice President for Resource Conservation Properties, Inc., a Florida corporation, on behalf of the corporation, as the managing member of Verandah Development LLC, a Florida limited liability company. She is personally known to me or has produced _____ as identification and did (did not) take an oath.

By: Joanne Janes
Name: Joanne Janes

Title: Notary Public

Serial Number, if any: _____

My Commission Expires: _____

[NOTARIAL SEAL]




JOINDER OF VERANDAH COMMUNITY ASSOCIATION, INC.

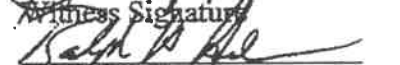
VERANDAH COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation, hereby joins in this Verandah Covenant to Share Costs and agrees as follows:

1. VERANDAH COMMUNITY ASSOCIATION, INC., is the "Association" as that term is defined in the Declaration of Covenants, Conditions, and Restrictions for Verandah.

2. VERANDAH COMMUNITY ASSOCIATION, INC., joins in this Covenant to Share Costs for the purpose of agreeing to perform its obligations as contained herein as the same are now or hereafter amended.

WITNESSES:



Witness Signature


Witness Signature

VERANDAH COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation


By: 

Katherine C. Green, Vice President

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 16th day of May, 2003, by Katherine C. Green, President of Verandah Community Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. She is personally known to me or has produced _____ as identification and did (did not) take an oath.

By: 

Name: Joanne Janes

Title: Notary Public

Serial Number, if any: _____

My Commission Expires: _____

[NOTARIAL SEAL]



EXHIBIT "A"

Legal Description of the Verandah Club Property

Final Plat of Verandah Unit One, as recorded in Plat Book 74 Pages 31 through 50 (inclusive) of the Public Records of Lee County, Florida, on May 14, 2003, as such Final Plat sets forth the metes and bounds description thereof, which is incorporated herein by this reference.