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Public Records of
St. Johns County, FL
Clerk# 02-048316
O.R. 1800 PG 1771
11:10AM 08/20/2002
REC \$25.00 SUR \$3.50

Prepared by and return to:
Linda Connor Kane, Esquire
Holland & Knight LLP
50 N. Laura Street, Suite 3900
Jacksonville, Florida 32202

**USE AND ACCESS AGREEMENT
(Harbour View Drive)**

THIS AGREEMENT is made this 19th day of August, 2002, by and between MARSH LANDING AT SAWGRASS HOMEOWNERS ASSOCIATION III, INC., a Florida not for profit corporation ("MLAS III Association") and HARBOUR ISLAND AT MARSH LANDING HOMEOWNERS ASSOCIATION, INC., a Florida not for profit corporation ("Harbour Island Association").

RECITALS

- A. MLAS III is the owner of a roadway more fully described as:

Parcels A and B (Harbour View Drive); The Harbour at Marsh Landing Unit One according to plat thereof recorded in Map Book 24, pages 71-88 of the public records of St. Johns County, Florida ("Harbour View Drive").
- B. Harbour Island 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 of Harbour Island at Marsh Landing recorded in Official Records Book 997, page 1273 of the public records of St. Johns County, Florida, as amended and supplemented ("Harbour Island Declaration").
- C. Harbour View Drive is a part of the roadway system which provides ingress and egress access to the lands subject to the Harbour Island

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 III, Inc., recorded in Official Records Book 886, page 700 of the public records of St. Johns County, Florida ("MLAS III Declaration").

- D. Harbour Island Association has a perpetual non-exclusive easement agreement between it and MLAS III Association for the use of Harbour View Dr., which is being amended to include 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 III Association hereby grants to Harbour Island Association, all owners subject to the Harbour Island Declaration, their successors, assigns and mortgagees, a perpetual, non-exclusive easement for ingress, egress over and through Harbour View Drive.

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

a. Each year the MLAS III Association shall establish a budget for the maintenance and repair of Harbour View Drive, which for the calendar year 2002 includes the following:

One Tenth the Cost to	
Repave Harbour View Drive	\$4,646.00
Street Light Repair & Electricity	\$2,343.00
One Eighth the Cost to Replace the Fountain	\$875.00
Insurance Allocation	\$750.00
Estimated Annual Allowance for Repairs	\$400.00
One Quarter the Cost to Mow the Right of Way	<u>\$10,595.00</u>
Total Costs for Maintenance of Harbour View Drive	\$19,608.00

b. The Harbour Island Association shall pay an annual pro-rata share of the budget which shall be calculated by multiplying Harbour View Drive budget by a fraction, the numerator which is the number of Lots subject to the Harbour Island Declaration on January 1 of each year and the denominator of which shall be the sum of the number of Lots subject to the Harbour Island Declaration plus the number of Lots subject to the MLAS III Declaration on January 1 of each year. On the date of recording this Agreement the fractional share to be assessed to the Harbour Island Association is 125/244. 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 without the consent of any owner or mortgagee.

c. Pursuant to the 2002 budget as set forth above the Annual amount to be paid by the Harbour Island Association is \$10,045.00. The Harbour Island Association shall remit to the MLAS III Association one twelfth (1/12) of the annual amount of the budget for Harbour View Drive or \$837.11, on or before the first day of each month during the year.

d. In the event that the budget for the MLAS III Association increases for any subsequent calendar year, then the prorata share amount as set forth in paragraph c shall increase by the same percentage. Accordingly, if the annual assessment paid by each owner in the MLAS III Association increases five percent (5%), then the annual assessment paid by the Harbour Island Association shall increase to \$10,547.34 per year.

e. In the event that there is an unforeseen repair or maintenance required to Harbour View Drive, or in the event that the budget is insufficient for the cost of the operation, maintenance and repair of Harbour View Drive in any one year, the MLAS III Association may submit to the Board of Directors of the Harbour Island Association an amended budget to cover the actual costs of operation, maintenance and repair of Harbour View Drive. The Board of Directors of the Harbour Island Association shall levy the pro-rata additional assessment on its members unless the Board of Directors of the Harbour Island Association is able to determine that the MLAS III Association amended budget is in error. Such special assessment shall be due within thirty (30) days of levy of the assessment. In the event of a dispute between the Association, 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.

f. Within sixty (60) days of the close each calendar year, the MLAS III Association shall submit to the Board of Directors of the Harbour Island Association accounting for the income and expenses of Harbour View Drive for the prior year. In the event that the Board of Directors of the Harbour 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.

g. In the event that the MLAS III Association fails to properly operate, maintain, or repair Harbour View Drive, then in such event the Board of Directors of the Harbour Island Association may give written notice to the Board of Directors of the MLAS III Association and if the MLAS III Association fails to take corrective action within thirty (30) days then the Harbour 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 Harbour View Drive 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

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

in the presence of:

Robert L. Johnson

Print Name: Robert L. Johnson

By: Frank Treadwell

Print Name: FRANK TREADWELL
Its Vice President

Anita M. Farace
Print Name Anita M. FARACE

CORPORATE SEAL

STATE OF FLORIDA
COUNTY OF Duval

The foregoing instrument was acknowledged before me this 19th day of August, 2002, by Frank Treadwell, the Vice President of MARSH LANDING AT SAWGRASS HOME OWNERS ASSOCIATION III, INC., a Florida not-for-profit association, on behalf of the corporation. He/She is personally known to the undersigned or produced _____ as identification.

0R1800P61775

Frances F. Hutchinson
Print Name: Frances F. Hutchinson
NOTARY PUBLIC, STATE OF FLORIDA

My commission expires: 12/3/04

Commission Number: CC 981677



OR1800P61776

HARBOUR ISLAND AT MARSH LANDING
HOMEOWNERS ASSOCIATION, INC., a
Florida not for profit corporation

Robert L. Johnson
Print Name: Robert L. Johnson

By: Frank Treadwell
Print Name: FRANK TREADWELL
Its VICE President

Anita M. Farace
Print Name Anita M. Farace

CORPORATE SEAL

STATE OF FLORIDA
COUNTY OF DUVAL

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Frances F. Hutchinson
Print Name: Frances F. Hutchinson
NOTARY PUBLIC, STATE OF FLORIDA

My commission expires: 12/3/04

Commission Number: CC 981677

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