

Prepared by and return to:
Manatee County Community Services Department
1112 Manatee Avenue West, Suite 303
Bradenton, FL 34205

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**LAND USE RESTRICTION AGREEMENT
AND DEED RESTRICTIONS
FOR: CALOOSA GARDENS**

THIS LAND USE RESTRICTION Agreement and DEED RESTRICTIONS (hereinafter Agreement) is made and entered into by and between the County of Manatee, a County existing by and under the laws of the State of Florida (hereinafter referred to as the "County") and de Cap Development Two, LLC, a Florida Limited Liability Company, for itself and its successors, assigns, and agents (hereinafter referred to as the "Owner").

RECITALS

WHEREAS, the Owner owns certain land described in Exhibit "A" attached hereto and incorporated herein by reference, hereinafter referred to as the "Property"; and

WHEREAS, the Owner agrees to comply with certain sale restrictions and in the marketing and sale of Dwelling Units constructed on the Property in order to provide affordable housing in Manatee County, Florida; and

WHEREAS, the Owner is composed of the parties listed on Exhibit "B" attached hereto; and

WHEREAS, the County has treated the development of the Property (hereinafter defined as the "Project") as an affordable housing project within the meaning of such term under the County's Land Development Code, based upon Owner's promise to provide affordable housing as provided in this Agreement.

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

ARTICLE I

Definitions

Section 1.1 General. Capitalized terms used in this Agreement shall have, unless the context clearly states otherwise, the meaning specified in this Article I. Certain additional terms may be defined elsewhere in this Agreement.

(a) **"Affordable Unit"** shall mean any dwelling unit located within Manatee County which is designed and intended for the primary purpose of providing decent,

safe and sanitary residential units that are designed to meet the standards of Chapter 553, Florida Statutes, (excluding mobile and manufactured homes) for home ownership or rental for eligible persons. Eligible affordable housing units shall not exceed the maximum values as defined by Manatee County's Local Housing Assistance Plan.

(b) **"Agreement"** means this Land Use Restriction Agreement and the Deed Restriction Agreement, as it may from time to time be amended.

(c) **"Dwelling Unit"** means a residential accommodation constituting a part of the Property and containing separate and complete living facilities.

(d) **"Eligible Persons or Household"** means one or more natural persons or a family determined by Manatee County to be of very low income, low income, or moderate income according to the income limits adjusted to family size published annually by the United States Department of Housing and Urban Development based upon the annual gross income of the household.

(e) **"Project"** means the single family residential development to be located on the Property described in Exhibit "A", as depicted in the site plan for Caloosa Gardens, subject to such adjustments as may be shown in the final site plan approved by County.

ARTICLE II

Use, sale and Occupancy of the Property

Section 2.1 The Owner shall sell, 25% (thirty-one (31) dwelling units) of the total project Dwelling Units (as depicted in the current site plan, one hundred twenty-four (124)) as Affordable Units to Eligible Persons or Households to be utilized as an owner-occupied single family residence, and shall remain as an owner-occupied affordable unit by the initial purchaser for a minimum of one year from the date of purchase unless approved for sale by the Department of Community Services due to special circumstances. If the initial purchaser fails to comply with this affordability period, the County shall have the right to pursue the remedies as set forth in Sections 4.3 and 4.4 herein against the initial purchaser. All Affordable Units shall be subject to the terms and conditions of this Agreement. The Owner shall make the Affordable Units subject to Affordable Housing Deed Restrictions in substantially the same form as presented by the Owner to the County at the public hearing at which the Caloosa Gardens Project was approved by the County.

Section 2.2 The property on the future land use map is designated as RES-6. The preliminary site plan approving the Project was specifically approved by the County based in part upon a finding that the Owner will provide twenty-five percent (25%) of the units as affordable units.

Section 2.3 The Owner shall comply with all requirements of the Comprehensive Plan, all

standards and requirements of the Manatee County Land Development Code (LDC), Manatee County Building Codes and the approved preliminary and final site plan, and shall maintain the Project in compliance with the aforementioned requirements.

Section 2.4 The Owner shall maintain the Project in a condition which is consistent with the Land Development Code.

Section 2.5 During the term of this Agreement, the Owner shall not use the Project for any use other than owner-occupied single family development.

Section 2.6 The Owner shall not discriminate on the basis of race, creed, religion, color, sex, familial status, national origin or handicap in the use or occupancy of the Project. Age discrimination and discrimination against minor dependents, except when units are specifically being held for Elderly Households in accordance with applicable State and Federal law, are also not permitted.

Section 2.7 The Owner hereby covenants and agrees that it will immediately withdraw from circulation any advertisement determined by the County to violate or be inconsistent with its policies with respect to promoting affordable housing and consents to the remedy of specific performance.

Section 2.8 The owner shall provide each purchaser of a Dwelling Unit with information describing the structure and sustainability of a Homeowners Association for Caloosa Gardens. The County shall have the right to request and monitor such information to owners of the Dwelling Unit.

ARTICLE III

Administration

Section 3.1 The Owner shall, for the term of this agreement, submit an Annual Report relative to all affordable units, to the Manatee County Department of Community Services. Said report shall be submitted in accordance with the schedule established by the County providing such documents and certifications as may be required to determine compliance with this Agreement and the Affordable Housing Deed Restrictions referenced in Section 2.1, above, separately imposed by the Owner.

Section 3.2 Should a transfer of ownership for all or any part of the Project take place, the use shall not change and transferee shall develop the property pursuant to this Agreement. Information relating to the new Owner, including name, address and telephone number, shall be forwarded by letter to the Director of the Community Services Department.

Section 3.3 Subject to Section 6.9 hereof, this Agreement, and the restrictions herein, shall run with the land, and be binding upon and enforceable against all successors in title to the current Owner provided, however, this Agreement and the restrictions herein shall not run with the land to any purchaser who purchases a Dwelling Unit as a

Household, or any subsequent successor in title thereto.

- Section 3.4** The omission of any regulatory requirement in this Agreement shall not relieve the Owner from the necessity of complying with any and all applicable State, County and Federal laws, rules and regulations. In particular, this Agreement is governed by the provisions of the Manatee County State Housing Initiative Partnership Ordinance, Part IV of Chapter 420, Florida Statutes, and the Manatee County Land Development Code. In interpreting any applicable requirements, the more stringent provisions shall apply.
- Section 3.5** The Community Services Department shall review the Project at least every twelve (12) months to determine compliance with the terms of this Agreement. Failure of the Community Services Department to conduct said review or identify violations of this Agreement shall not relieve Owner of any obligation hereunder or prevent subsequent enforcement.
- Section 3.6** The County shall have the right to review and audit the records of the Owner relating to the Property as the County deems appropriate to determine compliance with Section 2.1. The Owner shall be required upon written notification, to provide the necessary information to perform an audit to the satisfaction of the County. This information may include but shall not be limited to re-examination relating to the Project and an affidavit by Owner confirming that any units owned by the Owner or Owner's successor are only occupied by a purchaser who has certified the Dwelling Unit as an Affordable Unit. These materials shall at all times be kept separate and identifiable from any other business of Owner, and shall be maintained in reasonable condition for a proper audit, and subject to examination and photocopying during business hours by representatives of the County. Manatee County shall provide at least five (5) days prior written notice before performing such audit or examination.
- Section 3.7** The County periodically will monitor Owner's compliance with the requirements of this Agreement. In conducting its compliance review, the County will rely primarily on information obtained from Owner's records and reports, including those prepared for other governmental agencies, and findings from on-site monitoring and audit reports. The County may consider relevant information gained from other sources, including litigation and citizen complaints.

ARTICLE IV

Enforcement and Remedies

- Section 4.1** If Owner defaults in the performance of obligations under this Agreement and the restrictions set forth herein, and if such default remains uncured for a period of one hundred and twenty days (120) days after notice thereof has been given by the County, the County shall be entitled to apply to any court having jurisdiction of the subject matter for specific performance of this Agreement, for the appointment of a

receiver or successor to take over and operate the Property in accordance with the terms of this Agreement, or for any other legally available remedies including without limitation monetary damages, as may be appropriate. All remedies available to the County under this Agreement, including without limitation the liquidated damages available pursuant to Section 4.3 hereof, shall be cumulative.

Section 4.2 In addition to the provisions of Section 4.1, if the Owner defaults in the performance of obligations under Sections 3.1 or 3.6 or fails to provide certification or other information required under Section 2.1, and if such default or failure remains uncured or uncorrected for a period of one hundred and twenty days (120) after notice thereof has been given by the County, the County shall be entitled to presume that any Dwelling Unit that should have been covered by such report, certification, or information was not in compliance with the requirements of this Agreement, and to receive liquidated damages as provided in Section 4.3.

Section 4.3 In addition to the remedies provided in Section 4.1 of this Agreement, if Owner fails to comply with the requirements of Section 2.1 above, if Owner fails to maintain the project as required by Section 4.6 below, or if County is entitled to a presumption of non-compliance pursuant to Section 4.2 above, and such presumption has not been rebutted by evidence furnished by Owner, owner shall pay liquidated damages to the County for the loss of the public benefit of the program in the amount of \$50,000.00 per unit for (a) each Dwelling Unit, to a maximum of twenty-five percent (25%) of all dwelling units, less any units sold as Affordable Units and (b) any units sold as Affordable Units that are not in compliance with the above requirements. In addition, the Owner shall be required to repay to the County any partial or full refund of any fees received by, or on behalf of, the Owner, for failure by Owner to comply with Section 2.1 of this Agreement. Any payment under this Section shall be made to County by cashier's check. The County shall not be required to commence litigation against the Owner in order to receive such liquidated damages, but may do so in the event the Owner fails to pay them in accordance with this Section.

Section 4.4 Should the Owner fail to comply with any of the restrictions set forth in this Agreement, Owner shall pay to the County all reasonable costs associated with the enforcement thereof, including but not limited to costs associated with employee time, attorneys and paralegals, court costs, and necessary and reasonable expenses, including those associated with any foreclosure, collection of damages or costs, or other proceedings. In any judicial proceeding to resolve a dispute under or enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys fees and costs.

Section 4.5 Owner shall pay to the County any charges in excess of the limits provided in Section 2.1 above along with interest at the judgment rate. The County shall repay such sums to the Household, or if such Household cannot be located within a one year period after vacating the Dwelling Unit, such sum shall be deposited in the County's Affordable Housing Trust Fund or other cost center utilized for aiding in the development of affordable housing.

Section 4.6 Owner agrees to begin construction of the project no later than December 1, 2008. Should Owner fail to have begun construction of the project by the date listed hereto, the County upon due notice to Owner shall have the right to pursue the remedies as set forth in Sections 4.1, 4.3 and 4.5 above.

Section 4.7 In the event the Owner materially breaches any condition or covenant of this Agreement, the County shall be entitled to the remedy of specific performance of such condition or covenant without the necessity of demonstrating extraordinary harm, and the Owner hereby waives any defense to any such claim for specific performance loss on the argument that the County has failed to demonstrate extraordinary harm.

ARTICLE V

Representations and Warranties of Owner

Section 5.1 Owner warrants and represents that it has validly executed this Agreement and the same constitutes the binding obligation of the Owner. Owner warrants and represents that it has full power, authority and capacity to enter into this Agreement, to carry out the Owner's obligations as described in this Agreement and to assume responsibility for compliance with all applicable Local, State and Federal rules and regulations.

Section 5.2 To the best of Owner's knowledge, the making of this Agreement and the Owner's obligations hereunder:

- (a) will not violate any contractual covenants or restrictions between Owner or any third party, or affecting the Property;
- (b) will not conflict with any of the instruments that create or establish Owner's authority;
- (c) will not conflict with any applicable public or private restrictions;
- (d) does not require any consent or approval of any public or private authority which has not already been obtained; and
- (e) are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against Owner, without regard to capacity, any person with Owner may be jointly or severally liable, or the Property or any part thereof.

Section 5.3 There is no litigation pending or proceeding, or, to the best of any Owner's knowledge, threatened, against Owner which if adversely determined could individually or in the aggregate have an adverse affect on title to or the use and

enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation of this Agreement.

Section 5.4 There is no pending, or to Owner's best knowledge, threatened, case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any assignment for the benefit of creditors, or any petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for owner under any present or future federal, state or other statute, law, regulation relating to bankruptcy, insolvency, or relief from debtors, nor is there any basis therefore.

Section 5.5 Owner agrees to indemnify and hold harmless the County from and against all liabilities, losses, claims, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees, through appeal, if necessary) incurred by the County as a result of any inaccuracy in any of the representations and warranties contained in Sections 5.1 through 5.4, inclusive.

ARTICLE VI

Miscellaneous Provisions

Section 6.1 This Agreement may not be amended or modified except by written instrument signed by each party hereto and approved by the County's Board of County Commissioners.

Section 6.2 Notices required to be given by this Agreement shall be in writing, certified mail through the United States Postmaster. Mail shall also have return receipt requested, addressed to the persons and places specified for giving notice below. Requirements for such other or additional parties or address as from time to time may be specified by either party shall be subject to the terms and conditions of this Agreement. This in no way impacts the requirement to provide notice to the Board of County Commissioners and to the County Attorney in the manner outlined above.

Notice shall be forwarded to the following:

FOR THE COUNTY:

**Chairman
Manatee County Board of County Commissioners
1112 Manatee Avenue West
Post Office Box 1000
Bradenton, FL 34206-1000**

with copies by U.S. Mail to:

Office of the County Attorney

**Manatee County Government
1112 Manatee Avenue West
Post Office Box 1000
Bradenton, FL 34206-1000
Frederick J. Loveland, Director
Department of Community Services
1112 Manatee Avenue West, Suite 303
Post Office Box 1000
Bradenton, FL 34206-1000**

FOR THE OWNER:

**De Cap Development Two, LLC
Robert D. Barwick
905 25th Drive East
Ellenton, FL 34222**

- Section 6.3** Both parties have played an equal and reciprocal part in the drafting of this Agreement and, therefore, no provisions of this Agreement shall be construed by any court or other judicial authority against any party hereto because such party is deemed to have drafted or structured such provisions.
- Section 6.4** In the event any term or provision of this Agreement shall be held invalid, such invalid term or provisions shall not affect the validity of any other term or provision hereof and all such other terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been apart of this Agreement; provided, however, if any term or provision of this agreement is held to be invalid due to the scope or extent hereof, such term or provision shall automatically be deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.
- Section 6.5** This Agreement shall be construed, and the rights and obligations of the County and Owner hereunder shall be determined, in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be in Manatee County, Florida, unless prohibited by law.
- Section 6.6** In any litigation between the parties hereto arising out of this Agreement, the prevailing party shall be entitled to recover all fees and costs incurred in such litigation, including reasonable attorneys' fees, through appeal, if necessary.
- Section 6.7** This Agreement shall be recorded in the Official Records of Manatee County, Florida by Manatee County at the expense of the Owner.
- Section 6.8** This Agreement shall become effective upon being recorded in the Official Records of Manatee County, Florida pursuant to Section 6.7 above after both parties have executed it.

Section 6.9 This Agreement and the restrictions provided herein shall remain in effect until the initial sale and occupancy of twenty-five percent (25%), thirty-one (31) units, of the Dwelling Units comprising the Project as an Affordable Unit and to a Household.

IN WITNESS WHEREOF, the Owner and the County have entered into this Agreement, as of the 13 day of MAR 2006.

WITNESSES:

Just Hall - Josie Hollinger
Jeff Lewis

OWNER
Barwick
de Cap Development Two, LLC
By: Robert D. Barwick
As its Manager

STATE OF FLORIDA
COUNTY OF MANATEE

SWORN AND SUBSCRIBED before me this 13 day of March, 2006, by Robert D. Barwick, as Manager and on behalf of de Cap Development Two, LLC, a Florida Limited Liability Company, who is personally known to me and/or provided _____ as identification, and who did take an oath (or affirm). If no type of identification is indicated, the above named persons are personally known to me.

(Stamp and Seal)



L. J.
Signature of Notary Public

MANATEE COUNTY, FLORIDA
By: Board of County Commissioners

By: Joe McClash
Joe McClash Chairman 3/14/06

ATTEST: R. B. SHORE
CLERK OF THE CIRCUIT COURT

By: Susan Shore



EXHIBIT "A"

Legal Description

Commence at the Southeast corner of Section 1, Township 34 South, Range 17 East, Manatee County, Florida, as referenced in certified corner record document numbers 14450, 28823 and 58199, filed with the Florida Department of Environmental Protection; thence North $00^{\circ}21'44''$ East, along the East line of said Section 1, a distance of 1,981.71 feet to the Northeast corner of the S-1/2 of the NE-1/4 of the SE-1/4 of Section 1; thence North $89^{\circ}57'36''$ West, along the North line of the S-1/2 of the NE-1/4 of the SE-1/4 of Section 1, a distance of 1,337.53 feet to the Northwest corner of said S-1/2 of the NE-1/4 of the SE-1/4 of Section 1; thence South $00^{\circ}31'38''$ West, along the East line of the S-1/2 of the NW-1/4 of the SE-1/4 of Section 1, being 25 feet West of and parallel to the West line of lots 99 and 100 of the plat of Palmetto Grove and Garden Co., as recorded in Plat Book 1, page 317 of the Public Records of Manatee County, Florida, a distance of 20.40 feet to the Southerly right-of-way line of 39th Street East and the POINT OF BEGINNING; thence continue South $00^{\circ}31'38''$ West, along said East line of the S-1/2 of the NW-1/4 of the SE-1/4 of Section 1, being 25 feet West of and parallel to the West line of lots 99 and 100 of aforesaid plat of Palmetto Grove and Garden Co., a distance of 641.42 feet to the Southeast corner of said S-1/2 of the NW-1/4 of the SE-1/4 of Section 1; thence North $89^{\circ}52'53''$ West, along the South line of the S-1/2 of said NW-1/4 of the SE-1/4 of Section 1, being 25 feet North of and parallel to the North line of lots 68 and 88 of aforesaid plat of Palmetto Grove and Garden Co., a distance of 1,339.18 feet to the Southwest corner of said S-1/2 of the NW-1/4 of the SE-1/4 of Section 1; thence North $00^{\circ}40'09''$ East, along the West line of said S-1/2 of the NW-1/4 of the SE-1/4 of Section 1, being 25 feet East of and parallel to the east line of lots 53 and 54 of aforesaid plat of Palmetto Grove and Garden Co., a distance of 638.37 feet to aforesaid Southerly right-of-way line of 39th Street East; thence North $89^{\circ}59'16''$ East, along said Southerly right-of-way line, a distance of 1,337.53 feet to the POINT OF BEGINNING.

Lying and being in Section 1, Township 34 South, Range 17 East, Manatee County, Florida.

EXHIBIT "B"

Principles of Current Owner
de Cap Development Two, LLC

OWNERS:

Robert D. Barwick
905 25th Drive East
Ellenton, FL 34222



STATE OF FLORIDA, COUNTY OF MANATEE
This is to certify that the foregoing is a true and
correct copy of the documents on file in my office.

Witness my hand and official seal this 20th day of
March 20 06

R.B. SHORE
Clerk of Circuit Court

By: Robin Liberty O.C.