

JUL-12-02 FRI 09:31 AM

FAX NO.

P. 02/12

Original

This document prepared by:

Return only to:

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Eve Wagner Rosen, P.A.
Northmark Building, Suite #101
33 N.E. 2nd Street
Ft. Lauderdale, Florida 33301

Also prepared by:

Allyson D. Goodwin, Esq.
Saavedra, Pelosi & Goodwin, A.P.A.
312 S.E. 17th Street, 2nd Floor
Ft. Lauderdale, Florida 33316

**BINDING MODIFICATION TO SETTLEMENT AGREEMENT
CONTAINING COVENANTS RUNNING WITH THE LAND**

THIS MODIFICATION TO SETTLEMENT AGREEMENT made this ____ day of July, 2002 by and between **VIZCAYA AT PALM-AIRE ASSOCIATION, INC.**, a Florida not-for-profit corporation (hereinafter referred to as "**Association**") and **MASTER BUILDERS OF FLORIDA, LLC**, a Florida limited liability company (hereinafter referred to as "**Developer**"), with the joinder of consent of Vizcaya at Palm-Aire Townhomes Homeowners' Association, a Florida not-for-profit corporation ("**Adjoining Association**").

WITNESSETH:

WHEREAS, Association is a condominium association responsible for the administration and maintenance of "Vizcaya at Palm-Aire" a multi-phased development located in Pompano Beach, Florida and originally planned for condominium ownership ("**Vizcaya**"). Presently two (2) phases of Vizcaya and Recreation areas have been developed upon real property described on Exhibit "A" attached hereto and made a part hereof (the "**Phase I Property**", "**Phase II Property**" and "**Recreation Area**", respectively and hereinafter collectively referred to as the "**Condominium Property**"); and

WHEREAS, Developer warrants that it has acquired the two (2) remaining properties comprising the remaining proposed phases of Vizcaya, as more particularly described on Exhibit "B" attached hereto and made a part hereof, (the "**Phase III Property**" and the "**Phase IV Property**", respectively and hereinafter collectively referred to as the "**Developer Property**");

WHEREAS, the Adjoining Association, shall be the homeowners association for the Phase III and Phase IV Property; and

WHEREAS, the Association and a predecessor in title to **Developer** entered into a Settlement Agreement containing covenants running with the land regarding certain aspects of the development

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and maintenance and administration of the Developer Property and Vizcaya in an instrument recorded in O.R. Book 29256, page 1037 of the Public Records of Broward County, Florida ("Settlement Agreement"), which the parties wish to modify as set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and premises as hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1. **Development of Developer Property.** Paragraphs 1 and 2 of the Settlement Agreement are hereby amended to now read as follows:

*1. **Use of Phase III and Phase IV Property.** The Phase III and Phase IV Properties shall be developed by Developer, its successors and assigns as a luxury development(s) consistent with the zoning and land use requirements of the City of Pompano Beach (the "City"). Developer hereby agrees to use its best efforts to construct said development(s) in a manner aesthetically pleasing and co-operative with the architectural style and color of the existing buildings of the Association. Developer hereby agrees notwithstanding anything above to the contrary, that Developer shall build a luxury townhouse development, with a maximum of twenty-six (26) units on Phase III. Developer further agrees that Phase IV will not be built as "tower" construction, and further agrees that whatever development is constructed on Phase IV shall not incorporate exterior catwalks as part of its design.*

2. **Omitted.**

2. **Authority & Indemnification.** The parties represent to one another that the signatories hereto are duly authorized to enter into this Modification and that no further consents other than an Order from the court authorizing the amendments or approvals are required for this Modification to be binding upon them. Developer hereby agrees to warrant and indemnify Association for any and all legal costs, including any and all reasonable attorneys' fees, incurred by Association as a result of any legal challenge brought against this Modification. The Association hereby agrees to warrant and indemnify Developer for any and all legal costs, including any and all reasonable attorneys' fees, incurred by Developer as a result of any legal challenge brought against this Modification by any Member (as that term is defined in the Association's By-Laws, Articles and Declaration) of the Association.

3. **Notice.** Except as otherwise stated, all notices requests, demands, and other communications required or permitted to be given hereunder or in the Settlement Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, given by prepaid telegram or mailed first class, postage prepaid, registered or certified mail, as follows:

If to DEVELOPER:

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Master Builders, LLC
c/o Mr. J. M. Beeson, Jr.
488 S.W. 5th St.
Ft. Lauderdale, Florida 33315

If to ASSOCIATION:
Vizcaya at Palm Aire Association, Inc.
c/o its President
3500 Gateway Drive, Suite #202
Pompano Beach, Florida 33069

unless the address is changed by the party by like notice given to the other parties. Notice shall be in writing, mailed certified mail, return receipt requested, postage prepaid, and shall be deemed delivered three (3) business days after mailing or upon hand delivery to the address indicated. Notwithstanding the foregoing, in the event of any mail disruption by virtue of any stoppage of mail service performed by the United States Postal Service due to strike or labor difficulty, notices, requests, or demands or other communications referred to in this Modification shall be sent by telegraph, but shall be deemed to have been given when received.

4. **Entire Agreement.** This Modification sets forth the entire understanding and agreement between the parties hereto with reference to the subject matter hereof and may not be modified, amended or terminated, nor may any term be waived, except by a written instrument executed by all parties. In the event of a conflict between this Modification and the Settlement Agreement, the terms of this Modification shall control. In all other respects, except as set forth herein, the Settlement Agreement is hereby ratified.

5. **Governing Law.** This Modification and all rights and liabilities of the parties hereto shall be governed by and construed in accordance with the laws of the State of Florida.

6. **Legal Fees.** Should it become necessary for any party hereto to institute legal action to enforce the terms and conditions of this Modification or the Settlement Agreement, the successful party shall be awarded reasonable attorneys' fees, which shall include reasonable attorneys' fees for any appellate proceedings, expenses and costs. In the event of a successful counter-claim, the prevailing party shall be the party entitled to injunctive relief, or if no injunctive relief is sought, to the party awarded the higher monetary judgment.

7. **Parties Bound.** This Modification shall be binding upon the parties, their successors, grantees, assigns, and members, owners and lessees, and its entire content, including all terms and conditions, shall be deemed as binding covenants running with the land.

8. **Construction.** The parties agree that the legal principal that the Modification shall be construed against the person or entity that drafted the document shall not apply with respect to this Modification or any of the terms contained herein.

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9. Use of Name. The Association hereby acknowledges it has no objection to Developer's intended use of the name Vizcaya at Palm Aire Townhomes, or any similar derivation thereof.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Modification on the date written above.

WITNESSED BY:

ASSOCIATION:
VIZCAYA AT PALM AIRE
ASSOCIATION, INC.

By: Judy Appleman
(Name) JUDY APPLEMAN

By: Robert Gutterman
Robert Gutterman, its authorized Board Member

By: Phyllis McRae
(Name) Phyllis McRae

STATE OF FLORIDA :
: SS.
COUNTY OF BROWARD :

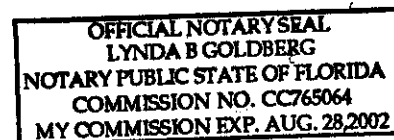
The foregoing instrument was acknowledged before me on this 12 day of July, 2002, by Robert Gutterman, as an authorized Board Member of Vizcaya at Palm Aire Association, Inc., and who is personally known to me

Lynda B Goldberg
Signature of Notary or Officer

Notarial Seal (stamped
in black ink)

OR

Printed Name of Notary Public
State of Florida Commission Number:



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WITNESSED BY:

By: Judy Appleman
(Name) JUDY APPLEMAN

By: Sharon Yost
(Name) Sharon Yost

STATE OF FLORIDA :
: SS.
COUNTY OF BROWARD :

DEVELOPER:

MASTER BUILDERS, LLC

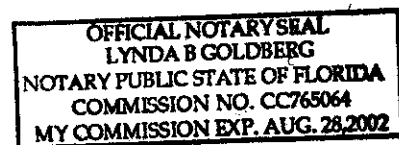
By: J.M. Beeson
MANAGER, its authorized
representative

The foregoing instrument was acknowledged before me on this 30 day of July, 2002, by J.M. Beeson, JR as MANAGER of MASTER BUILDERS, LLC and who is personally known to me or who has produced identification as follows

Lynda B Goldberg
Signature of Notary or Officer

Notarial Seal (stamped in
black ink)
OR

Printed Name of Notary Public
State of Florida Commission
Number:



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WITNESSED BY:

By: Jud Appleman
 (Name) JUDY APPLEMAN

By: Sharon Yost
 (Name) Sharon Yost

STATE OF FLORIDA :
 : SS.
 COUNTY OF BROWARD :

ADJOINING ASSOCIATION:
VIZCAYA AT PALM-AIRE TOWNHOMES
HOMEOWNERS' ASSOCIATION

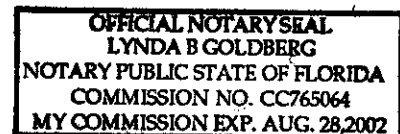
By: J.M. Beeson, Jr.
J.M. BEESON, JR its President

The foregoing instrument was acknowledged before me on this 30 day of July, 2002, by J.M. BEESON, JR. as President of Vizcaya at Palm-Aire Townhomes Homeowners' Association, and who is personally known to me or who has produced identification as follows

Lynda B Goldberg
 Signature of Notary or Officer

Notarial Seal (stamped in
 black ink)
 OR

Printed Name of Notary Public
 State of Florida Commission
 Number:



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 10/5/2021

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FAX NO.

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GENERAL RELEASE**KNOW ALL MEN BY THESE PRESENTS:**

That Vizcaya at Palm Aire Association, Inc., for good and valuable consideration do hereby, and on behalf of each of the above principals, officers, directors, successors, assigns, agents, servants, employees (hereinafter "Releasor"), releases, remises, acquits, satisfies and forever discharges Master Builders, LLC, Master Builders of South Florida, Inc., Mr. J.M. Beeson, Jr., and Vizcaya at Palm-Aire Townhomes Homeowners' Association, Inc., and all their respective principals, officers, Board members, directors, agents, servants, employees, heirs, personal representatives, successors, and assigns, and all other persons, firms, entities or corporations in any way connected therewith (hereinafter "Released Parties"), of and from any and all claims, suits, debts, torts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, executions, demands, causes of action, damages, judgments or suits at law and/or equity of whatsoever kind or nature, whether due or not, direct or contingent, liquidated or unliquidated, latent or patent, Releasor had or has of any kind, existing and/or known as of the date of execution hereof.

Releasor acknowledges full and complete satisfaction, represents and warrants that it has not assigned any present or potential right, claim or cause of action against any of the Released Parties and declares and represents that no promises, inducements, statements, representations or agreements not herein expressed have been made, and that the terms of this Release are contractual and not mere recitals.

IN WITNESS WHEREOF, this Release has been read and signed this ____ day of July, 2002.

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10/5/2021

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By: Judy Appleman
 (Name) JUDY APPLEMAN

VIZCAYA AT APLM AIRE ASSOCIATION,
 INC.

By: Phyllis McKee
 (Name) Phyllis McKee

By: Robert Gutterman
 Robert Gutterman, its authorized representative

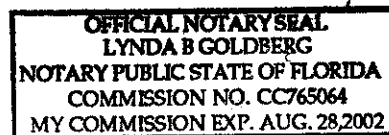
STATE OF FLORIDA :
 : SS.
 COUNTY OF BROWARD :

The foregoing instrument was acknowledged before me on this 12 day of July, 2002, by Robert Gutterman, as the authorized representative of Vizcaya at Palm Aire Association, Inc., and who is personally known to me or who has produced identification as follows

Lynda B Goldberg
 Signature of Notary or Officer
 Notarial Seal (stamped in black ink)

OR

 Printed Name of Notary Public
 State of Florida Commission Number:



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 10/5/2021

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P. 10/12

GENERAL RELEASE**KNOW ALL MEN BY THESE PRESENTS:**

That Master Builders, LLC, Master Builders of South Florida, Inc., Mr. J.M. Bccson, Jr., and Vizcaya at Palm-Aire Townhomes Homeowners' Association, Inc., for good and valuable consideration does hereby, and on behalf of each of the above principals, officers, directors, successors, assigns, agents, servants, employees (hereinafter "Releasors"), release, remise, acquit, satisfy and forever discharge Vizcaya at Palm Aire Association, Inc., and all its respective principals, officers, Board members, directors, agents, servants, employees, heirs, personal representatives, successors, and assigns, and all other persons, firms, entities or corporations in any way connected therewith (hereinafter "Released Parties"), of and from any and all claims, suits, debts, torts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, executions, demands, causes of action, damages, judgments or suits at law and/or equity of whatsoever kind or nature, whether due or not, direct or contingent, liquidated or unliquidated, latent or patent, Releasor had or has of any kind, existing and/or known as of the date of execution hereof.

Releasor acknowledges full and complete satisfaction, represents and warrants that it has not assigned any present or potential right, claim or cause of action against any of the Released Parties and declares and represents that no promises, inducements, statements, representations or agreements not herein expressed have been made, and that the terms of this Release are contractual and not mere recitals.

IN WITNESS WHEREOF, this Release has been read and signed this ____ day of July, 2002.

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By: Judy Appleman
 (Name) JUDY APPLEMAN
 By: Sharon Yost
 (Name) Sharon Yost

MASTER BUILDERS, LLC

By: J. M. Beeson, Jr.
 J. M. Beeson, Jr., its authorized representative

STATE OF FLORIDA :
 : SS.
 COUNTY OF BROWARD :

The foregoing instrument was acknowledged before me on this 30 day of July, 2002, by J. M. Beeson, Jr., as the authorized representative of Master Builders, LLC, and who is personally known to me or who has produced identification as follows

Lynda B Goldberg
 Signature of Notary or Officer
 Notarial Seal (stamped in black ink)

OR

OFFICIAL NOTARY SEAL
 LYNDA B GOLDBERG
 NOTARY PUBLIC STATE OF FLORIDA
 COMMISSION NO. CC765064
 MY COMMISSION EXP. AUG. 28, 2002

Printed Name of Notary Public
 State of Florida Commission Number:

By: Judy Appleman
 (Name) JUDY APPLEMAN
 By: Sharon Yost
 (Name) Sharon Yost

MASTER BUILDERS OF SOUTH FLORIDA, INC.

By: J. M. Beeson, Jr.
 J. M. Beeson, Jr., its President

STATE OF FLORIDA :
 : SS.
 COUNTY OF BROWARD :

The foregoing instrument was acknowledged before me on this 30 day of July, 2002, by J. M. Beeson, Jr., as President of Master Builders of South Florida, Inc., and who is personally known to me or who has produced identification as follows

Lynda B Goldberg
 Signature of Notary or Officer
 Notarial Seal (stamped in black ink)

OR

OFFICIAL NOTARY SEAL
 LYNDA B GOLDBERG
 NOTARY PUBLIC STATE OF FLORIDA
 COMMISSION NO. CC765064
 MY COMMISSION EXP. AUG. 28, 2002

Printed Name of Notary Public
 State of Florida Commission Number:

AAC

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 10/5/2021

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By: Judy Appleman
(Name) JUDY APPLEMAN

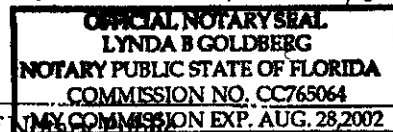
J. M. BEESON, JR.

By: Sharon Yost
(Name) Sharon YostBy: J. M. Beeson, Jr.
J. M. Beeson, Jr.STATE OF FLORIDA :
: SS.
COUNTY OF BROWARD :

The foregoing instrument was acknowledged before me on this 30 day of July, 2002, by J. M. Beeson, Jr., and who is personally known to me or who has produced identification as follows _____.

Lynda B Goldberg
Signature of Notary or Officer
Notarial Seal (stamped in black ink)

OR



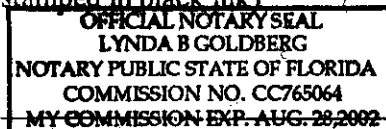
Printed Name of _____
State of Florida Commission Number: _____

By: Judy Appleman
(Name) JUDY APPLEMANVIZCAYA AT PALM-AIRE TOWNHOMES
HOMEOWNERS' ASSOCIATIONBy: Sharon Yost
(Name) Sharon YostBy: J. M. Beeson, Jr.
its PresidentSTATE OF FLORIDA :
: SS.
COUNTY OF BROWARD :

The foregoing instrument was acknowledged before me on this 30 day of July, 2002, by JM BEESON, JR. as President of Vizcaya at Palm-Aire Townhomes Homeowners' Association, and who is personally known to me or who has produced identification as follows _____.

Lynda B Goldberg
Signature of Notary or Officer
Notarial Seal (stamped in black ink)

OR



Printed Name of Notary Public _____
State of Florida Commission Number: _____

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10/5/2021