

PREPARED BY AND RETURN TO:  
Jeffrey P. Brock, Esq.  
P.O. Box 15200  
Daytona Beach, FL 32115

**PRIVATE ROAD MAINTENANCE AGREEMENT  
FOR  
PORTOFINO ESTATES AT VENETIAN BAY**

THIS AGREEMENT is made this 15<sup>th</sup> day of July, 2008, by and between the CITY OF NEW SMYRNA BEACH, a Florida municipal corporation ("City"), whose address is 210 Sams Avenue, New Smyrna Beach, Florida 32168; and PORTOFINO NEIGHBORHOOD ASSOCIATION AT VENETIAN BAY, INC., a Florida not-for-profit Corporation ("Association"), whose address is 424 Luna Bella Lane, Suite 133, New Smyrna Beach, Florida 32168, and VENETIAN BAY OF NEW SMYRNA BEACH, LLC, a Florida limited liability company ("Developer"), whose address is 424 Luna Bella Lane, Suite 133, New Smyrna Beach, Florida 32168.

WHEREAS, the Developer is desirous of entering into this Agreement: i) because it will provide for an improved plan of development for the Property; and ii) to improve the marketability of the development proposed for the Property;

WHEREAS, the City is desirous of entering into this Agreement, because it will promote the public health, safety, and welfare of the community;

WHEREAS, the Association desires to guarantee a means of providing for maintenance of the private roads located within Portofino Estates at Venetian Bay;

WHEREAS, the Association is desirous of entering into this Agreement, because it will provide for benefits to each and all of the Lot Owners;

WHEREAS, the Developer warrants and guarantees unto the City that the Association, as of the date of execution hereof, is an active Florida corporation incorporated and in good standing with the office of the State of Florida, Secretary of State; and

WHEREAS, the Developer warrants and guarantees unto the City that all Owners of the Property and all individuals or legal entities holding mortgages or other liens thereon have joined in and consented to this Agreement.

NOW, THEREFORE, in consideration of Ten and 00/100 DOLLARS (\$10.00) and certain other good and diverse considerations, each to the other paid in hand, the sufficiency and

receipt all of which be and the same is hereby acknowledged, the parties desiring to be legally bound hereby.

ARTICLE I  
ACKNOWLEDGMENTS

Each and all of the foregoing recitals be and the same hereby incorporated herein and acknowledged to be true correct. Failure of any of the foregoing recitals to be true correct shall not operate to invalidate this Agreement.

ARTICLE II  
DEFINITIONS

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Agreement" means and refers to this Private Road Maintenance Agreement for Portofino Estates at Venetian Bay, as recorded in the Public Records of Volusia County, Florida, and as the same may be amended from time to time.

(b) "Assessment" means and refers to a share of the funds required for payment of the expenses of the Association or the City as the case may be, all in pursuit of the responsibilities set forth in the Agreement.

(c) "Association" means and refers to Portofino Neighborhood Association at Venetian Bay, Inc., a Florida Not-For-Profit Corporation.

(d) "City" means and refers to the City of New Smyrna Beach, Florida, a Florida municipal corporation.

(e) "Developer" means and refers to Venetian Bay of New Smyrna Beach, LLC, a Florida limited liability company, and such of its successors and assigns as to which the rights of Developer hereunder are specifically assigned by written instrument recorded in the Public Records of Volusia County, Florida. A Lot purchaser, Lot Owner or Mortgagee shall not be deemed to be the Developer by the mere act of purchase or mortgage of a Lot.

(f) "Lot" means and refers to any Lot shown on the Plat of the Property and any Lot shown upon any re-subdivision of any such Plat.

(g) "Member" means and refers to all those Owners who are Members of the Association.

(h) "Operation," "Operate," or "Operated," when used in conjunction with the street system located within Portofino Estates shall mean and refer to the repair, management,

improvement, inspection, maintenance, deactivation, construction, renovation, operation, insurance, and replacement or repair of, streets located in Portofino Estates.

(i) "Owner" means and refers to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property.

(j) "Plans" mean and refer to plans prepared by DMW Consulting Group, Inc., for roadway improvements and associated stormwater drainage systems located within Venetian Bay Phase 2, Unit 1.

(k) "Plat" means and refers to Venetian Bay Phase 2, Unit 1 as recorded in Map Book 53, Pages 139 through 175, of the Public Records of Volusia County, Florida.

(l) "Private Roads" shall mean all boulevards, streets, roads, and right of way designated as "private" on any Plat pertaining to Portofino Estates, together with all pavement, sidewalks, curbing, road improvements, road drainage systems, street lighting and appurtenant fixtures, meters and wiring.

(m) "Project" means and refers to the development upon the Property. Development shall be defined as set forth in Section 380.04, Florida Statutes, and includes construction within any road right-of-way.

(n) "Property" means and refers to Lots 1 through 78, Venetian Bay Phase 2, Unit 1 as recorded in Map Book 53, Pages 139 through 175, Public Records of Volusia County, Florida.

### ARTICLE III PROPERTY SUBJECT TO THIS AGREEMENT

Section 1. The Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Agreement, is located in Volusia County, Florida, and is subject to the Plat, all of which real property is herein referred to collectively as "the Property." To the extent all or any portion thereof is not owned by the Developer, the respective Owners thereof shall have joined in this Agreement for the purpose of subjecting that portion of the Property owned by each of them to this Agreement.

Section 2. Expandable Association. The Association shall have as Members all Owners of Lots depicted on the Plat. All portions of the real property depicted upon the Plat, excepting real property dedicated or conveyed in fee simple to the City, shall be subject to the jurisdiction of the Association, as provided in this Agreement and by the terms of the Association Articles of Incorporation and By-Laws, all as amended from time to time. The Association has been created for the purpose, among other purposes, of maintaining the private roads located on the Property or easements for access conveyed to the Association.

Section 3. Future Development Within the Project. The consent or joinder of the Lot owners, other than the Developer, any mortgage holder, or the Association, shall not be required to add or submit any additional lands to the jurisdiction of the Association or to subject the same to the provisions of Articles IV and V of this Agreement. The Developer reserves to itself the sole and absolute right to determine the timing, method of ownership, and manner of development of any portion of the Plat. In no event shall any provision of this Agreement be construed as imposing upon the Developer any obligation whatsoever to submit to the jurisdiction of the Association any property or Lots other than those hereby or heretofore submitted.

#### ARTICLE IV PRIVATE ROAD

Section 1. Maintenance. The Association shall be responsible for and shall at all times maintain in good operation all private roads on the Property which are not conveyed or dedicated to and accepted by the City; all such work to be done as specified in this Agreement. All private roads shall be constructed in accordance with all applicable City and County of Volusia standards. Any repair or reconstruction of the private roads shall, at a minimum, be accomplished consistent with the requirements of the City for a public road located within a residential subdivision. Easements over, under, and across Common Areas encompassing the private roads, if any, are hereby reserved in favor of the Association and its designees to effect such Operation. All work shall be paid for by the Association through Assessments (either general or special) imposed in accordance herewith. No Owner may waive or otherwise escape liability for Assessments by non-use of the private roads, Common Areas or Lot(s) or abandonment of the right to use the private roads or Common Areas.

Section 2. City Easements. Perpetual, nonexclusive easements are reserved over, under and across the private roads to the City, as may be required for the ingress to, egress from and entrance upon, in order to adequately serve the Property. City fire, police, health and sanitation, park maintenance and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the private roads located on the Property. Jurisdiction of the police shall be limited as provided by Chapters 316, 320, and 322 Florida Statutes, regarding enforcement of provisions of those Chapters on private roads.

Section 3. Easements. Easements for installation, replacement, connection to, disconnection from, and maintenance of utilities, including but not limited to cable television, are reserved as shown on the Plat covering the Property subject to the Association's jurisdiction and as provided herein. Within these easements, no structure, planting or other material may be placed or permitted to remain that will interfere with or prevent the maintenance of utilities, including but not limited to cable television, without the approval of the City in its sole and absolute discretion. The area of the Property covered by easements for private roads and all improvements in the area shall be maintained continuously by the Association, except as provided herein to the contrary, and except for installations for which a public authority or utility

company is responsible. The City, appropriate water and sewer authority, electric, gas, telephone and cable television companies or governmental authorities, and their respective successors and assigns, shall have a perpetual easement for the installation, replacement, connection to, disconnection from, and maintenance of, all underground water lines, sanitary sewers, storm drains, and electric, telephone and security lines, cables and conduits, under and through the utility easements as shown on the Plat.

ARTICLE V  
ASSOCIATION COVENANT  
FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of the Assessments. Except as provided elsewhere herein, the Developer and each party joining in this Agreement having any interest in the Property, hereby covenants and agrees, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association or the City as the case may be, assessments or charges for the operation of the private roads (excluding any structures or systems dedicated or conveyed to and accepted by the City), including such reasonable reserves as the Association may deem necessary, all such Assessments to be fixed, established and collected from time to time, as herein provided. The Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lots against which each such Assessment is levied. The terms of this Agreement shall not be construed to limit the Association's ability to levy or collect other assessments for maintenance, repair, replacement or creation of other improvements shown on the Plat. Notwithstanding any other provision in this Agreement the City shall not be responsible for establishing a special taxing district to collect assessments.

Section 2. Purpose of Assessments. The Assessments provided for herein and levied by the Association or the City as the case may be, shall be used exclusively for the maintenance, repair and replacement of the private roads as required to keep the streets in operation. A separate private road reserve fund shall be established by the Association and placed into an FDIC insured bank account which requires the joint signatures of a representative of the City and a representative of the Association for any withdrawal. The private road reserve fund shall be properly funded through assessments such that adequate funds are available for road maintenance when required. The Association shall submit to the City finance department on an annual basis documentation acceptable to the City projecting private road maintenance expenses and anticipated reserve balances for a "sinking fund" calculation.

Section 3. Private Road Maintenance. If the Association has failed to maintain the private roads in good operation or failed to do so in compliance with the Plans or as otherwise required herein, then the City may, but shall not be obligated to, after giving the Association thirty (30) days written notice sent to the Association's last known registered agent, repair and maintain that portion of the private roads in need of repair or maintenance. Said determination by the City to

repair and maintain any part or all of the streets shall be optional. The City shall be under no obligation to either repair or maintain the streets, nor shall the City be liable for failing to repair or maintain the private roads. A determination by the City that the private roads, or any portion thereof, are not being repaired and maintained in compliance with the Plans and other standards set forth in this Agreement, shall be one subject to the sole but reasonable judgment of the City. All costs and expenses to the City resulting from repair or maintenance of the private roads shall be chargeable to and Assessed by the City to the Association; provided, that in the event the City is compelled to repair or maintain the private roads in accordance herewith, the Association shall have thirty (30) days in which to pay the City's Assessment expenses and costs after the Association receives a bill therefor from the City. If the Association shall fail to pay the City the cost of providing said services within said thirty (30) day period, the City has, and is hereby granted, a lien for the costs of said services. Said lien shall include interest to be assessed at the then highest lawful rate of interest and the costs and reasonable attorneys' fees of collection thereof. The total cost of such services shall be pro-rated equally among all the Lots and shall constitute a lien against each Lot for its pro-rata share. Further, to assist in collection of the costs for such services, the City shall have the power of Assessment and collection to the same extent as the Association as set forth in Article V, Section 4 hereof.

Section 4. Effect of Non-payment of Assessment; the Personal Obligation; the Lien; Remedies of the Association. If the Assessments for installments are not paid on the date(s) when due (being the date(s) specified herein), then such Assessments (or installments) shall become delinquent and shall thereupon, together with late charges, interest and the cost of collection thereof as hereinafter provided, become a continuing lien on the Lot which shall bind such property in the hands of the then Owner, its heirs, personal representatives, successors and assigns. Each Assessment against a Lot shall also be the personal obligation of the Owner at the time the Assessment fell due. If any installment of an Assessment is not paid within fifteen (15) days after the due date, and if such installment is not paid thereafter, then at the option of the Association or the City, as the case may be, it shall accrue interest at the highest rate of interest then permissible by law. Further, the Association or the City, as the case may be, may bring an action at law against the Owner(s) personally obligated to pay the same, or may record a claim of lien as evidence of its lien rights as hereinabove provided for against the Lot on which the Assessments and late charges are unpaid, or may foreclose the lien against the Lot on which the Assessments and late charges are unpaid, or may pursue one or more of such remedies at the same time or successively. Interest, attorneys' fees, and the costs of preparing and filing the claim of lien shall be added to the amount of such Assessments. In the event a complaint is filed and a judgment is obtained, such judgment shall include all such sums as above provided, and reasonable attorneys' fee to be fixed by the court together with the costs of the action. The Association or the City, as the case may be, shall also be entitled to attorneys' fees in connection with any appeal of any such action.

Section 5. Lien Subordination. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage made prior to recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any

Lot pursuant to mortgage foreclosure or any proceeding or conveyance in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. Upon foreclosure or acceptance of a deed in lieu thereof, any sums outstanding and due at such time shall then be pro-rata assessed on an equal basis against all Lots. No sale or transfer shall relieve such Lot from liability for any Assessment thereafter becoming due or from the lien thereof.

Section 6. Private Road Conveyance. If the Association has failed to maintain the private roads in good operation or failed to do so in compliance with the Plans or as otherwise required herein, then the City may, but shall not be obligated to, after giving the Association a sixty (60) day opportunity to cure through written notice sent to the Association's last known registered agent, file a Declaratory action against the Association in a court of competent jurisdiction seeking a declaratory judgment that the Association has not repaired or maintained the private roads in accordance with applicable City road standards. If the court finds that the Association has not repaired or maintained the private roads in accordance with the applicable City standards due to actions or inactions of the Association, then the Court shall transfer the fee simple title to the private roads (including associated road drainage systems) to the City along with any road assessment reserves held by the Association. The Developer, and Association by execution of this Agreement consent to such conveyance by the Court. All Owners taking title to Lots subject to this Agreement do so subject to such conditional conveyance of the private roads for lack of maintenance by the Association.

## ARTICLE VI GENERAL PROVISIONS

Section 1. Duration. This Agreement and the provisions hereof shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the City, the Developer, and the Association of any land subject to this Agreement, and their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Agreement is recorded, after which time said Agreement shall be automatically extended for successive periods of five (5) years each, unless an instrument signed by the City and the Association agreeing to revoke said Agreement in part or in whole has been recorded in the Public Records of Volusia County, Florida.

Section 2. Notice. Any notice to be sent to the Developer, the Association, or the City under the provisions of this Agreement shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the said Developer, Association, or to the attention of the City Manager at the City. Any notice hereunder to be sent to any Lot Owner under the provisions of this Agreement shall be deemed to have been properly sent when personally delivered or mailed, postage prepaid, first class U.S. mail, to the address of said Lot Owner as displayed on the most currently compiled ad valorem tax roll for Volusia County.

Section 3. Enforcement. Enforcement of this Agreement may be by the Association, the Developer, or the City and may be accomplished by a proceeding at law or in equity against any person or persons violating or attempting to violate any provision hereof, either to restrain a violation or to recover damages, and against the Lots to enforce any lien created by this Agreement. Failure to enforce any covenant or provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. The City shall not be obligated or bound to enforce any of the covenants or provisions herein or be liable to or for any person or persons for non-enforcement.

Section 4. Amendment. The covenants, provisions, charges and lien rights of this Agreement may be amended, changed or added to at any time and from time to time upon the execution and recordation, in the Public Records of Volusia County, Florida, of an instrument executed by the City and the Association. The consent and joinder of the Developer to any amendment to this Agreement shall be required for so long as the Developer shall own at least ten percent (10%) of the total number of Lots depicted upon the Plat. No amendment to this Agreement may be made which places additional duties, obligations, or responsibilities on any Lot or Lot Owner without the consent and joinder of said Lot Owner to the amendment. This Section 4 may not be amended.

Section 5. Effective Date. This Agreement shall become effective upon its recordation in the Public Records of Volusia County, Florida, and any amendment hereto shall become effective upon recordation in the Public Records of Volusia County, Florida.

Section 6. Conflict. This Agreement shall take precedence over conflicting provisions in the Articles of Incorporation and By-Laws of the Association, any covenants and restrictions common to the Property or the real estate subject to the Plat.

Section 7. Standards for Consent, Approval, Completion, Other Action and Interpretation. In the event of an ambiguity or dispute as to the meaning of the wording of this Agreement, this Agreement shall be interpreted by the City Commission, and an opinion of counsel to the City rendered in good faith that a particular interpretation is not unreasonable shall establish the validity of such interpretation. Further, it is agreed that this Agreement has been mutually negotiated by all parties hereto. Consequently, this Agreement shall not be interpreted more harshly against any one party as drafter of this Agreement.

Section 8. Covenants Running With The Land. Anything to the contrary herein notwithstanding and without limiting the generality (and subject to the limitations) of Article V, Section 1 hereof, it is the intention of the Developer as Owner of the Property, the Association, and the City, that the provisions of this Agreement hereof shall constitute covenants running with the land and with title to the Property, or equitable servitudes upon the land, as the case may be.

Section 9. Dissolution of Association. In the event of a permanent dissolution of the Association without prior conveyance by the Association, the Owners shall immediately



thereupon hold title to the streets as tenants in common and shall collectively provide for the continued maintenance and upkeep thereof in a manner or under a procedure acceptable to the City. In no event shall the City be obligated to accept any dedication offered to it by the Association or the Owners pursuant to this Section, but the City may in its sole and absolute discretion accept such a dedication, and any such acceptance must be made by ordinance adopted by the City Commission of the City. Any successor to the Association, including the Lot Owners, shall pursuant to this Agreement, provide for the continued operation, maintenance, and upkeep of the streets. Anything to the contrary herein notwithstanding, this Section 9 may not be amended without the written consent of the City.

Section 10. Indemnification of the City. The Association and each Lot owner by acceptance of a deed therefor or currently existing, hereby agree to hold harmless and indemnify the City for any injuries to person or body (including death) or losses of or to property, caused by the Association, said Lot Owners, their guests or invitees, or their agents or employees, as a result of any repair or maintenance, or lack thereof, of the private roads by the City, the Association, or its agents or employees, or as a result of a negligent failure of the Association or its agents or employees to adequately train or supervise workers, maintain facilities, or to employ or utilize safety standards.

Section 11. Recordation. The Developer hereby agrees to pay for any costs of recordation of this Agreement in the Public Records of Volusia County, Florida, and the recorded original hereof shall be returned to the City for filing in its records.


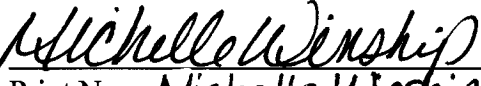
**[Signatures begin on next page.]**

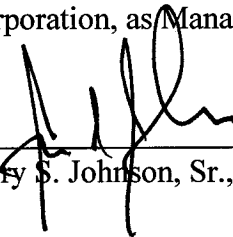
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

In the Presence of:

**DEVELOPER:**


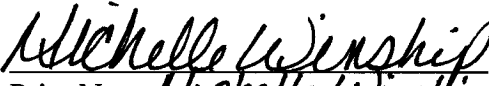
VENETIAN BAY OF NEW SMYRNA BEACH,  
LLC, a Florida limited liability company  
By Venetian Bay Development, Inc. a Florida  
corporation, as Managing Member

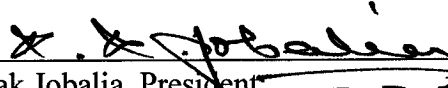
  
\_\_\_\_\_  
Print Name DEREK WAINSCOTT  
  
\_\_\_\_\_  
Print Name Michelle Winship

By:   
\_\_\_\_\_  
Jerry S. Johnson, Sr., President

**ASSOCIATION:**

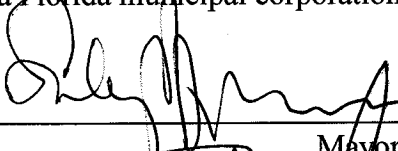
Portofino Neighborhood Association at  
Venetian Bay, Inc.

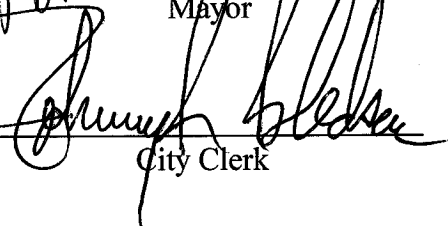
  
\_\_\_\_\_  
Print Name DEREK WAINSCOTT  
  
\_\_\_\_\_  
Print Name Michelle Winship

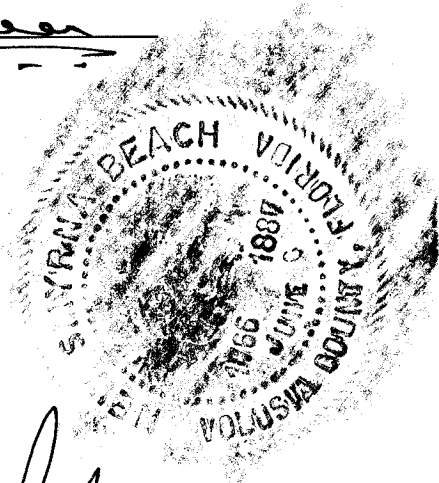
By:   
\_\_\_\_\_  
Dipak Jobalia, President

**CITY:**

The City of New Smyrna Beach,  
a Florida municipal corporation

By:   
\_\_\_\_\_  
Mayor

Attested By:   
\_\_\_\_\_  
City Clerk



STATE OF FLORIDA  
COUNTY OF VOLUSIA

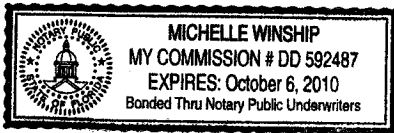
The foregoing instrument was acknowledged before me this 15 day of July, 2008, by Jerry S. Johnson, Sr., as President of Venetian Bay Development, Inc., a Florida corporation, as Managing Member of Venetian Bay of New Smyrna Beach, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me.



Michelle Winship  
Notary Public, State of Florida at Large  
My Commission Expires:

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 15 day of July, 2008, by Dipak Jobalia, as President of Portofino Neighborhood Association at Venetian Bay, Inc., a Florida not for profit corporation on behalf of the corporation. He is personally known to me.



Michelle Winship  
Notary Public, State of Florida at Large  
My Commission Expires:

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 18th day of August, 2008, by Ursula Moccia, and Sally Mackay as Mayor and City Clerk, respectively, on behalf of the City of New Smyrna Beach, a municipal corporation. They are personally known to me.



Ursula Moccia  
Notary Public, State of Florida at Large  
My Commission Expires:


**CONSENT OF MORTGAGEE TO  
PRIVATE ROAD MAINTENANCE AGREEMENT  
FOR PORTOFINO ESTATES AT VENETIAN BAY**

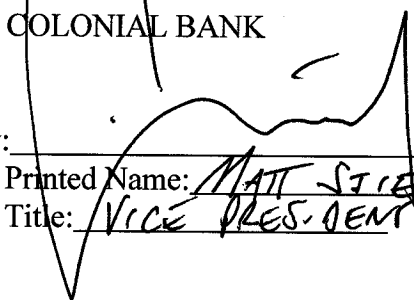
COLONIAL BANK, a Florida bank incorporated and existing under the laws of Florida, the holder of that certain Second Mortgage Modification and Additional Advance Agreement, recorded in Official Records Book 5487, Page 3749, of the public records of Volusia County, Florida, together with all Colonial Loan Documents referred to in said second mortgage modification and additional advance agreement, as may be amended from time to time, ("Mortgage"), which Mortgage encumbers the real property described in Exhibit "A" to the Private Road Maintenance Agreement for Portofino Estates at Venetian Bay ("Agreement"), hereby consents to the recording the Agreement subjecting the real property described therein to the terms and provisions of such Agreement. Notwithstanding the execution of this consent, nothing herein shall be construed to render the Mortgagee responsible or liable for the performance of the Developer or the Association under the Agreement nor shall this consent affect the priority of the Mortgage lien and interest of the Mortgagee.

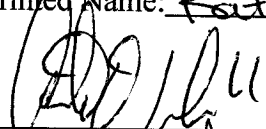
DATE: July 15, 2008.

WITNESSES:

COLONIAL BANK

  
Printed Name: Katie A. Dunn

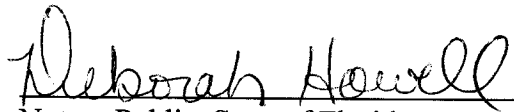
By:   
Printed Name: MATT STIETZEL  
Title: VICE PRESIDENT

  
Printed Name: Arthur Campbell

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 15 day of July, 2008, by Matt Stietzel, as Vice President of Colonial Bank, on behalf of such banking institution. He/she is personally known to me.

**DEBORAH HOWELL**  
Notary Public, State of Florida  
My Comm. Expires June 10, 2012  
No. DD796642

  
Notary Public, State of Florida