

THIS INSTRUMENT PREPARED BY:
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Rec Fee: \$52.50
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Mortgage Stamp: \$0.00
Phil Diamond, Comptroller
Orange County, FL
SA - Ret To: COMMUNITY ASSOCIATION LAW



DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is given this 5th day of February, 2018 by Mirabella at Vizcaya, Homeowners Association Inc. c/o Community Association Law Group 157 E. New England Ave Suite 340 Winter Park, FL 32789 ("Grantor") to the South Florida Water Management District ("Grantee"). As used herein, the term Grantor shall include any and all heirs, successors or assign of the Grantor, and all subsequent owners of the "Property" (as hereinafter defined) and the term Grantee shall include any successor or assignee of Grantee.

WITNESSETH

WHEREAS, the Grantor is the owner of certain lands situated in **Orange** County, Florida, and more specifically described in Exhibit A attached hereto and incorporated herein ("Property"); and

WHEREAS, the Grantor is the HOA responsible for **VIZCAYA III** ("Project") a/k/a Mirabella at Vizcaya Homeowners Association Inc. at a site in **Orange** County, which is subject to the regulatory jurisdiction of South Florida Water Management District ("District"); and

WHEREAS, District Permit No. 48-01239-P ("Permit") authorizes certain activities which affect surface waters in or of the State of Florida; and

WHEREAS, this Permit requires that the Grantor preserve and/or mitigate wetlands under the District's jurisdiction; and

WHEREAS, the Grantor has developed and proposed as part of the permit conditions a conservation tract and maintenance buffer involving preservation of certain wetland and/or upland systems on the Property; and

WHEREAS, the Grantor, in consideration of the consent granted by the Permit, is agreeable to granting and securing to the Grantee a perpetual

conservation easement as defined in Section 704.06, Florida Statutes (2017), over the Property.

NOW, THEREFORE, in consideration of the issuance of the Permit to construct and operate the permitted activity, and as an inducement to Grantee in issuing the Permit, together with other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Grantor hereby grants, creates, and establishes a perpetual conservation easement for and in favor of the Grantee upon the Property which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

The scope, nature, and character of this conservation easement shall be as follows:

1. It is the purpose of this conservation easement to retain land or water areas in their natural, vegetative, hydrologic, scenic, open, agricultural or wooded condition and to retain such areas as suitable habitat for fish, plants or wildlife. Those wetland and/or upland areas included in the conservation easement which are to be enhanced or created pursuant to the Permit shall be retained and maintained in the enhanced or created conditions required by the Permit.

To carry out this purpose, the following rights are conveyed to Grantee by this easement:

a. To enter upon the Property at reasonable times with any necessary equipment or vehicles to enforce the rights herein granted in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor at the time of such entry; and

b. To enjoin any activity on or use of the Property that is inconsistent with this conservation easement and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

2. Except for restoration, creation, enhancement, maintenance and monitoring activities, or surface water management improvements, which are permitted or required by the permit, the following activities are prohibited in or on the Property:

a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except for the removal of exotic vegetation in accordance with a District approved maintenance plan;

d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;

e. Surface use except for purposes that permit the land or water area to remain in its natural condition;

f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking and fencing;

g. Acts or uses detrimental to such aforementioned retention of land or water areas;

h. Acts or uses which are detrimental to the preservation of any features or aspects of the Property having historical or archaeological significance.

3. Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and which are not inconsistent with any District rule, criteria, permit and the intent and purposes of this Conservation Easement.

4. Reservation of Riparian Rights. The following rights are specifically reserved to the Grantor, its heirs, successors and assigns:

a. To the extent provided by law, Grantor reserves all riparian rights which are consistent with the purpose of this statutory conservation easement. Notwithstanding, the Grantor specifically reserves the right to conduct limiting vegetation removal and clearing for the purpose of constructing boat docks and

adjoining boardwalks. Grantor shall minimize and avoid, to the fullest extent possible, impact to any wetland or buffer areas within the Conservation Easement Area. This reservation does not release the Grantor from the duty of obtaining any necessary federal, state or local government permit authorizations or sovereign land approvals for construction of the docks or boardwalks.

b. Plans for the construction of boardwalks to a boat dock shall be reviewed and approved by the Grantee prior to any construction.

c. Since there are navigable waters immediately adjacent to the conservation area, boats and other similar surface uses are permissible within the navigable areas of the conservation area.

5. No right of access by the general public to any portion of the Property is conveyed by this conservation area.

6. Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep or maintenance of the Property.

7. Grantor shall pay any and all real property taxes and assessments levied by competent authority on the Property.

8. Any costs incurred in enforcing, judicially or otherwise, the terms, provisions and restrictions of this conservation easement shall be borne by and recoverable against the nonprevailing party in such proceedings.

9. Enforcement of the terms, provisions and restrictions of this conservation easement shall be at the reasonable discretion of Grantee, and any forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach here by Grantor, shall not be deemed or construed to be a waiver of Grantee's rights hereunder.

10. Grantee will hold this conservation easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this conservation easement except to another organization qualified to hold such interests under the applicable state laws.

11. If any provision of this conservation easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the

provisions of this conservation easement shall not be affected thereby, as long as the purpose of the conservation easement is preserved.

12. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

13. This conservation easement may be amended, altered, released or revoked only by written agreement between the parties hereto or their heirs, assigns or successors-in-interest, which shall be filed in the public records in **Orange County**.

TO HAVE AND TO HOLD unto Grantee forever. The covenants, terms, conditions, restrictions and purpose imposed with this conservation easement shall be binding upon Grantor, and shall continue as a servitude running in perpetuity with the Property.

Grantor hereby covenants with said Grantee that Grantor is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of the conservation easement; that Grantor has good right and lawful authority to convey this conservation easement; and that it hereby fully warrants and defends the title to the conservation easement hereby conveyed against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Stephen Scott has hereunto set its authorized hand 5 day of February 2018.

Signed, sealed and delivered in our presence as witnesses:

Mirabella at Vizcaya HOA,
A Florida Corporation

STEPHEN SCOTT
Print Name:
[Signature]

By: HOA President
Print Name: STEPHEN SCOTT
Title: [Signature]

Sign

Christi Smith

Print Name:

[Signature]

Sign

Migdalia Otero

Print Name:

[Signature]

Sign

STATE OF FLORIDA

) ss:

COUNTY OF Orange

On this 5th day of February, 2018 before me, the undersigned notary public, personally appeared Stephen Scott, personally known to me to be the person who subscribed to the foregoing instrument and did not take an oath, as the (position) HOA President, of (corporation) Mirabella at Vizcaya HOA, a Florida corporation, and acknowledged that he executed the same on behalf of said corporation and that he was duly authorized to do so.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY PUBLIC, STATE OF FLORIDA

Pamela R. Wolters
Print Name:

My Commission Expires:

