

State of Florida



Public Service Commission  
-M-E-M-O-R-A-N-D-U-M-

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**DATE:** January 6, 2005  
**TO:** Division of the Commission Clerk and Administrative Services  
**FROM:** Division of Economic Regulation (Brady) *pb*  
**RE:** Docket No. 031042-WS, Application for transfer of Certificate Nos. 611-W and 527-S from Hunter Creek Utilities, LLC to MSM Utilities, LLC, in Charlotte County

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Please add to the docket file the attached post-closing documents faxed on December 17, 2004, from the utility, to Pat Brady, Commission staff.

Attachment

cc: Division of Economic Regulation (Redemann, Kaproth)  
Office of the General Counsel (Vining)  
Division of the Commission Clerk and Administrative Services (2)

DOCUMENT NUMBER-DATE

00213 JAN-6 05

FPSC-COMMISSION CLERK

## POST-CLOSING AGREEMENT

This Post-Closing Agreement ("Agreement") is entered into this \_\_\_\_\_ day of December, 2004 by and between ZOLA'S FAMILY TRUST, L.P., a Pennsylvania limited partnership ("Seller Assignee") and WATERFRONT HOMES OF CHARLOTTE, L.L.C., a Florida limited liability company ("Buyer Assignee") regarding that certain real estate contract dated March 18, 2004 and all subsequent amendments between ZOLA M. MacLACHLAN and MARYLU FITZPATRICK, as Trustees of the ZOLA M. MacMACHLAN REVOCABLE TRUST dated August 9, 1994, ZOLA MacLACHLAN and JANICE FADER, successor trustees of the ERNEST E. MacLACHLAN REVOCABLE TRUST dated August 9, 1994, as Sellers and MSMLAND INVESTMENTS, L.L.C., a Florida limited liability company, as Buyer, for the sale and purchase of the real estate described in the Contract and amendments, situated in Charlotte County, Florida ("Contract").

*WHEREAS*, Seller Assignee and Buyer Assignee have executed all closing documents and transferred all monies as required under the Contract; and

*WHEREAS*, there remain outstanding issues to be resolved between the parties post-closing; and

*WHEREAS*, the parties have agreed to escrow all Closing proceeds paid by Buyer Assignee under the Contract and to not record any Closing documents in the Public Records of Charlotte County, Florida until the terms and conditions of this Agreement are fully met by each party.

*NOW, THEREFORE*, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereby agree as follows:

1. **Closing Proceeds and Documents.** Seller Assignee and Buyer Assignee hereby agree that Escrow Agent shall not disburse any proceeds under the Contract or record any of the Closing Documents in the Public Records of Charlotte County until:
  - a. a Post-Closing Agreement is executed by both parties and
  - b. Seller Assignee provides written verification to Buyer Assignee from the Florida Department of Environmental Protection ("DEP") that DEP wastewater permit number FLA014062 is renewed.
2. **Insurance Policy.** Seller Assignee hereby assigns all of its right, title and interest in and to Auto-Owners Insurance Policy Nos. 024612-20625452-02, effective 12:01 a.m. November 27, 2003 to 12:01 a.m. November 27, 2004, and 024612-20625452-03, effective 12:01 a.m. November 27, 2003 to 12:01 a.m. November 27, 2004, to Buyer Assignee, including, but not limited to, all insurance proceeds relating to the hurricane damage and the right to pursue any additional claims relating to the hurricane damage that may be available.
  - a. Seller Assignee and Buyer Assignee hereby agree that Buyer Assignee shall pursue all insurance claims under said insurance policies in good faith.
  - b. Seller Assignee hereby agrees to cooperate with Buyer Assignee in good faith by providing, and executing, any documents or receipts required by the insurance company.

- c. Buyer Assignee hereby agrees to provide Seller Assignee with any insurance proceeds received under said insurance policies relating to debris, tree removal and Phase I.
  - d. Seller Assignee hereby agrees that Buyer Assignee shall not be liable to Seller Assignee in any manner relating to the amount of insurance proceeds received under said insurance policies relating to debris, tree removal and Phase I.
  - e. All proposed insureds under said insurance policies shall join in the execution of this Agreement acknowledging their acknowledgment of, and consent to, the assignment of the insurance policies to Buyer Assignee.
3. **Florida Department of Environmental Protection Permit Number FLA014062.** Both parties hereby acknowledge and agree that no Closing proceeds shall be disbursed and no Closing documents shall be recorded in the Public Records until Seller Assignee provides written verification from the Florida Department of Environmental Protection that said permit has been renewed.
  4. **Transfer of Certificate Nos. 611-W and 527-S.** Both parties hereby acknowledge and agree that the Contract is contingent upon the Florida Public Service Commission's ("PSC") approval of the transfer of Certificate Nos. 611-W and 527-S from Hunter Creek Utilities, L.L.C. to MSM Utilities, L.L.C. However, in the event the PSC does not approve the transfer of said Certificates, the parties hereby agree to the "unwind" provision set forth in Paragraph 5 hereof.
  5. **Unwind Provision.** In the event that the PSC does not approve the transfer of Certificate Nos. 611-W and 527-S from Hunter Creek Utilities, L.L.C. to MSM Utilities, L.L.C., the following shall occur:
    - a. Seller Assignee shall remit all Contract monies paid by Buyer Assignee to Olmsted & Wilson Trust Account, as Escrow Agent hereunder, including all deposits made under the Contract, within five (5) days of PSC notification that the transfer of said Certificates was not approved.
    - b. Buyer Assignee shall execute a warranty deed to Seller Assignee for the transfer of all Contract property and shall deliver said warranty deed to Escrow Agent within five (5) days of PSC notification that the transfer of said Certificates was not approved.
    - c. Escrow Agent shall only disburse the Contract monies to Buyer Assignee once Escrow Agent has received the executed warranty deed from Buyer Assignee to Seller Assignee.
    - d. Escrow Agent shall only record the executed warranty deed from Buyer Assignee to Seller Assignee once Escrow Agent is in receipt of all Contract monies due Buyer Assignee.
    - e. The transfer of the Certificates is a material basis for Buyer Assignee entering into the Contract. Therefore, in the event the transfer of Certificates is not approved, it is the intent of the parties that this unwind provision allow the parties to terminate the Contract and return to their pre-closing positions (i.e. as if the parties never entered into the Contract, Seller Assignee retains title to the Contract property and Buyer Assignee receives a full refund of all Contract monies paid).
  6. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties to this Agreement with respect to its subject matter, and no other agreement,

statement, or promise relating to the subject matter of this Agreement that is not contained herein shall be valid or binding.

- 7. The parties hereto agree to execute any and all further instruments and documents and take all such action as may be reasonably required by either party to effectuate the terms and provisions of this Agreement.
- 8. Neither this Agreement nor any duties or obligations under this Agreement shall be assignable by either party without the prior written consent of the other party.
- 9. Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, legal representative, successors, and assigns of the respective parties.
- 10. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, including appeals, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief that may be available.
- 11. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement shall be governed by the laws of the State of Florida.
- 12. Proper venue for any litigation involving this Agreement shall be in Charlotte County, Florida.
- 13. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

IN WITNESS WHEREOF, the parties have set their hands and respective seals to be attached hereto on the day and year first above written.

Signed, sealed and delivered in the presence of:

**ZOLA'S FAMILY TRUST, L.P., a Pennsylvania limited partnership**

By: \_\_\_\_\_  
Printed Name: Marylu Fitzpatrick  
Title: General Partner

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

**WATERFRONT HOMES OF CHARLOTTE, LLC, a Florida limited liability company**

By: Br J Mattae  
Printed Name: MSM LAND INVESTMENTS, LLC  
Title: Managing Member



James E. Bluff  
WITNESS  
James E. Bluff  
WITNESS

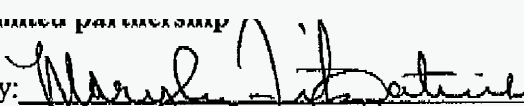
statement, or promise relating to the subject matter of this Agreement that is not contained herein shall be valid or binding.

7. The parties hereto agree to execute any and all further instruments and documents and take all such action as may be reasonably required by either party to effectuate the terms and provisions of this Agreement.
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11. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement shall be governed by the laws of the State of Florida.
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Signed, sealed and delivered in the presence of:

  
 \_\_\_\_\_  
 WITNESS  
  
 \_\_\_\_\_  
 WITNESS

By:   
 \_\_\_\_\_  
 Printed Name: Marylu Fitzpatrick  
 Title: General Partner

**WATERFRONT HOMES OF CHARLOTTE, LLC, a Florida limited liability company**

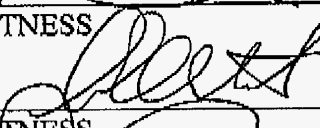
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By: \_\_\_\_\_  
 Printed Name: MSM LAND INVESTMENTS, LLC  
 Title: Managing Member

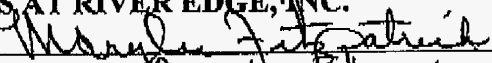
**ACKNOWLEDGMENT OF AND CONSENT TO ASSIGNMENT**

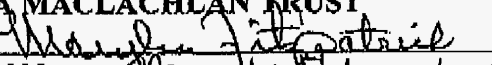
The below undersigneds hereby acknowledge and agree to the assignment of all of its right, title and interest in and to Auto-Owners Insurance Policy Nos. 024612-20625452-02, effective 12:01 a.m. November 27, 2003 to 12:01 a.m. November 27, 2004, and 024612-20625452-03, effective 12:01 a.m. November 27, 2003 to 12:01 a.m. November 27, 2004, to Buyer Assignee, including, but not limited to, all insurance proceeds relating to the hurricane damage and the right to pursue any additional claims that may be available


  
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**OAKS AT RIVER EDGE, INC.**  
By:   
Printed Name: Marilyn Fitzpatrick  
Title: Vice President

**ZOLA MACLACHLAN TRUST**  
By:   
Printed Name: Marilyn Fitzpatrick  
Title: Co-Trustee

**ERNEST MACLACHLAN TRUST**  
By:   
Printed Name: Janice Foder  
Title: Successor Trustee

THIS INSTRUMENT PREPARED BY:  
DAVID E. OLMSTED, Esquire  
OLMSTED & WILSON, P.A.  
17801 Murdock Circle, Suite A  
Port Charlotte, FL 33948

Parcel ID: SEE ATTACHED

WARRANTY DEED

THIS INDENTURE, made the 15<sup>th</sup> day of Dec, 2004, is between ZOLA'S FAMILY TRUST, L.P., a Pennsylvania limited partnership, whose address is 33 McVehil Drive, Washington, PA 15301, and ZOLA MacLACHLAN AND JANICE FADER, Successor Trustees of the ERNEST E. MacLACHLAN REVOCABLE TRUST dated August 9, 1994, whose address is 29000 Tamayo Drive, Punta Gorda, FL 33982, collectively Grantor, and WATERFRONT HOMES OF CHARLOTTE, LLC, a Florida limited liability company, whose address is 9696 Bonita Beach Road, Bonita Springs, FL 34135, Grantee:

Witnesseth: that said GRANTOR, for and in consideration of the sum of TEN & NO/100 (\$10.00) and other good and valuable considerations to said GRANTOR in hand paid by said GRANTEE, the receipt of which is hereby acknowledged, has granted, bargained and sold to the said GRANTEE, and GRANTEE'S heirs and assigns forever, the following described land, situate, lying and being in the County of Charlotte, State of Florida, to-wit:

DESCRIBED IN THE ATTACHED EXHIBIT "A".

Subject to easements, restrictions, and reservations of records, and taxes for the year 2005.

And said GRANTOR does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

In Witness Whereof, the grantor has hereunto set our hands and seals the day and year first above written

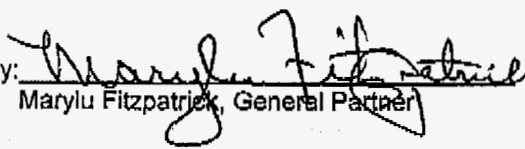


Printed name: David E. Olmsted  
Witness



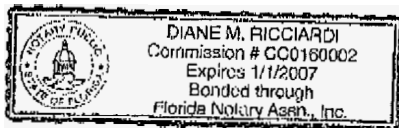
Printed name: Diane M. Ricciardi  
Witness

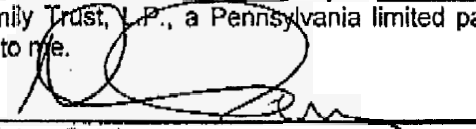
ZOLA'S FAMILY TRUST, L.P., a Pennsylvania limited partnership

By:   
Marylu Fitzpatrick, General Partner

STATE OF FLORIDA  
COUNTY OF CHARLOTTE

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of Dec, 2004, by Marylu Fitzpatrick, General Partner of Zola's Family Trust, L.P., a Pennsylvania limited partnership, on behalf of the partnership. She is personally known to me.



  
Notary Public  
My Commission Expires:





WARRANTY DEED – PAGE 3

Joanna D. Dempsey  
Printed name: Joanna D. Dempsey  
Witness

Lynette R. Malloy  
Printed name: Lynette R. Malloy  
Witness

Zola MacLachlan  
Zola MacLachlan, Successor Trustee of the  
Ernest E. MacLachlan Revocable Trust  
dated 8/9/94

STATE OF Pennsylvania  
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of December, 2004, by ZOLA MacLACHLAN as Successor Trustee of the ERNEST E. MacLACHLAN REVOCABLE TRUST dated August 9, 1994. She  is personally known to me, or          produced her          drivers license as identification.

Dona C. Hamilton  
Notary Public  
My Commission Expires: September 25, 2005

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Dona C. Hamilton, Notary Public  
North Franklin Twp., Washington County  
My Commission Expires Sept. 25, 2005  
Member, Pennsylvania Association of Notaries

**EXHIBIT "A"**

The Northeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of the Southwest 1/4, lying and being in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida (I.D. No. 0070972-000100-6).

AND

The Southeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of the Southwest 1/4, lying and being in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida (I.D. No. 0070973-000000-6).

AND

The Northwest 1/4 of the Southwest 1/4 of Section 12, Township 40 South, Range 23 East, and that portion of Government Lot 2, Section 12, Township 40 South, Range 23 East, lying South of Lee Branch, and all of government Lot 5, lying South of Lee Branch, Section 11, Township 40 South, Range 23 East, Charlotte County, Florida; LESS portion platted as Hunter Creek Village Phase I, a subdivision as recorded in Plat Book 15, Page 54, of the Public Records of Charlotte County, Florida (I.D. Nos. 0070873-000500-2, 00708893-001000-1, and 0070893-001500-6).

**LESS AND EXCEPT:**

All that tract or parcel of land lying in Government Lot 5, Section 11, and Government Lot 2, Section 12, Township 40 South, Range 23 East, Charlotte County, Florida, and being more particularly described as follows: Commencing at the Southeast corner of Government Lot 2, Section 12, Township 40 South, Range 23 East, run North 0°14'00" East, 657.38 feet to a concrete monument; thence North 88°46'30" West, 329.75 feet to a concrete monument; said monument lying on the Northerly right-of-way line of the Florida Power and Light Company easement; thence North 85°35'12" West along the Northerly right-of-way line of Florida Power and Light Company, 980 feet to an iron pin and the Point of Beginning; thence continue North 85°35'12" West along said right-of-way line 353.00 feet, plus or minus, to its point of intersection with the mean high water line of Hunter Creek Village Phase I; thence in a Northeasterly direction following the meanderings of the mean high water line of Hunter Creek Village Phase I, 485.0 feet, plus or minus, to its point of intersection with a line running North 4°24'43" East, from the Point of Beginning; thence South 4°24'43" West, 322.00 feet, plus or minus, to an iron pin and the Point of Beginning; together with 10 feet along and adjacent to the Southerly boundary of said property; said 10 foot strip constituting a portion of the easement described in O.R. Book 372, Page 403, Public Records of Charlotte County, Florida.

AND LESS AND EXCEPT:

The East 1/2 of the Northeast 1/4 of the Southwest 1/4 of the Northwest 1/4 of Section 12, Township 40 South, Range 23 East, Charlotte County, Florida.

AND

Tract B, and that portion of Lake Quail, all as shown on the plat of HUNTER CREEK VILLAGE PHASE I, a subdivision as recorded in Plat Book 15, Page 54, of the Public Records of Charlotte County, Florida (Tax I.D. Nos. 0086591-000380-4 and 0086591-000384-0).

AND

Tract 3 of unrecorded plat of Punta Gorda Ranches, being more particularly described as follows: Commence at the Northeast corner of the Northwest 1/4 of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida; thence North 88°25'30" West along the North line of said Section 13, 293.0 feet; thence North 03°04'30" East along the Westerly right-of-way of A.C.L.R.R., 1573.36 feet for a Point of Beginning; thence continue North 03°04'30" East, 360.32 feet; thence North 88°25'30" West 606.14 feet; thence South 0°16'35" West 360.0 feet; thence South 88°25'30" East, 588.45 feet to the Point of Beginning. All lying in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida. SUBJECT TO an easement across the West 25 feet for road (Tax I.D. No. 0070966-000100-4).

AND

Tract 4 of unrecorded plat of Punta Gorda Ranches, being more particularly described as follows: Commence at the Northeast corner of the Northwest 1/4 of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida; thence North 88°25'30" West along the North line of said Section 13, 293.0 feet; thence North 03°04'30" East along the Westerly right-of-way of A.C.L.R.R., 1203.04 feet for a Point a Beginning; thence continue North 03°04'30" East, 370.32 feet; thence North 88°25'30" West, 588.45 feet; thence South 0°16'35" West, 370.0 feet; thence South 88°25'30" East, 570.27 feet to the Point of beginning. All lying in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida. SUBJECT TO an easement across the West 25 feet for road (Tax I.D. No. 0070966-000000-5).

AND

The South 30 feet of Lot 18, and the North 30 feet of Lot 19, PINEHURST SUBDIVISION, a subdivision according to the plat thereof as recorded in Plat Book 8, Page 10, of the Public Records of Charlotte County, Florida (Tax I.D. No. 0090841-000500-9).

AND

Tract 11 – Commence at the Southeast corner of the Southwest 1/4 of the Southwest 1/4 of Section 12, Township 40 South, Range 23 East; thence North 0°16'35" East, 1315.21 feet for a Point of Beginning; thence continue North 0°16'35" East, 438.40 feet; thence

South 88°25'30" East, 511.21 feet; thence South 0°16'35" West, 438.40 feet; thence North 88°35'30" West, 511.21 feet to the Point of Beginning. All lying in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida (Tax I.D. No. 0070967-000000-4).

AND

The Northeast 1/4 of the Northeast 1/4 of the Northeast 1/4 of the Northeast 1/4 of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida (Tax I.D. No. 0070981-000500-1),

LESS AND EXCEPT the right-of-way for a public highway along the East side of said land, and

LESS AND EXCEPT the right-of-way for a public road along the north line of said land, and

LESS AND EXCEPT the following: Commence at the Northeast corner of said Section 13; thence along the North boundary of said section 13, North 88°26'45" West, 45.15 feet to the westerly maintained right-of-way line of State Road 35 (U.S. 17) for a Point of Beginning; thence along said westerly maintained right-of-way line South 00°23'35" West, 330.28 feet; thence North 88°24'16" West, 8.00 feet; thence North 00°23'35" East, 330.28 feet to said North boundary of Section 13; thence along said North boundary South 88°26'45" East, 8.00 feet to the Point of Beginning.

TOGETHER WITH access over the public right-of-way as shown on the plat of Hunter Creek Village, Phase I, as recorded in Plat Book 15, Page 54, of the Public Records of Charlotte County, Florida, as originally established by instruments recorded in O.R. Book 551, Page 1357, O.R. Book 551, Page 1359, O.R. Book 568, Page 1347, O.R. Book 612, Page 1945, and O.R. Book 626, Page 1414, all of the Public Records of Charlotte County, Florida.