

MIROMAR LAKES COMMUNITY DEVELOPMENT DISTRICT



AGENDA

SEPTEMBER 8, 2022

PREPARED BY:

JPWARD & ASSOCIATES, LLC, 2301 NORTHEAST 37TH STREET, FORT LAUDERDALE, FL 33308

T: 954-658-4900 E: JimWard@JPWardAssociates.com

MIROMAR LAKES COMMUNITY DEVELOPMENT DISTRICT

September 1, 2022

Board of Supervisors

Miromar Lakes Community Development District

Dear Board Members:

The regular meeting of the Board of Supervisors of the Miromar Lakes Community Development District will be held on **Thursday, September 8, 2022, at 2:00 P.M.** in the Library at the **Beach Clubhouse, 18061 Miromar Lakes Parkway, Miromar Lakes, Florida 33913.**

The following WebEx link and telephone number are provided to join/watch the meeting remotely.

<https://districts.webex.com/districts/onstage/g.php?MTID=e7976188c82ff2dbac0746a270beb26a3>

Access Code: **2358 419 0633**, Event Password: **Jpward**

Phone: **408-418-9388** and enter the access code **2358 419 0633** to join the meeting.

Agenda

1. Call to Order & Roll Call.
2. Consideration of Minutes:
 - I. August 11, 2022 – Regular Meeting.
3. The third order of business is consideration **Resolution 2022-12**, a resolution of the Board of Supervisors of the Miromar Lakes Community Development District a resolution designating the Registered Agent; designating the Office and Location of the Registered Office; and providing for conflicts and invalid provisions and providing for an effective date.
4. Staff Reports.
 - I. District Attorney.
 - II. District Engineer.
 - III. District Asset Manager.
 - a. Operations Report September 1, 2022.
 - IV. District Manager
 - a. Review of current Facilities Maintenance Agreement.
5. Supervisor's Requests and Audience Comments.

6. Adjournment.

The first order of business is the call to order & roll call.

The second order of business is the consideration and approval of the August 11, 2022, Regular Meeting.

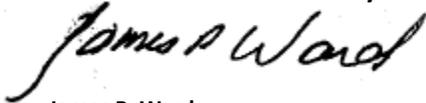
The third order of business is consideration **Resolution 2022-12**, a resolution of the Board of Supervisors of the Miromar Lakes Community Development District designating the Registered Agent; designating the Office and Location of the Registered Office; and providing for conflicts and invalid provisions and providing for an effective date.

The fourth order of business is consideration are the staff reports by the District Manager, District Attorney, District Engineer, and District Asset Manager, including the Operations Report, dated September 1, 2022.

The balance of the agenda is standard in nature, and I look forward to seeing you at the meeting. If you have any questions and/or comments before the meeting, please do not hesitate to contact me directly at (954) 658-4900.

Sincerely yours,

Miromar Lakes Community Development District



James P. Ward
District Manager

The Fiscal Year 2023 schedule is as follows:

October 13, 2022	November 10, 2022
December 8, 2022	January 14, 2023
February 9, 2023	March 9, 2023
April 13, 2023	May 11, 2023
June 8, 2023	July 13, 2023
August 10, 2023	September 14, 2023

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**MINUTES OF MEETING
MIROMAR LAKES
COMMUNITY DEVELOPMENT DISTRICT**

10 The Regular Meeting of the Board of Supervisors of Miromar Lakes Community Development District
11 was held on Thursday, August 11, 2022, at 2:00 p.m. at the Library in the Beach Clubhouse, 18061
12 Miromar Lakes Parkway, Miromar Lakes, Florida 33913.
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Present and constituting a quorum:

Alan Refkin	Chair
Michael Weber	Vice Chair
Patrick Reidy	Assistant Secretary
Mary LeFevre	Assistant Secretary
Doug Ballinger	Assistant Secretary

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Also present were:

James P. Ward	District Manager
Greg Urbancic	District Attorney
John Baker	District Engineer
Bruce Bernard	Asset Manager

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Audience:

Erin Dougherty

42 All resident’s names were not included with the minutes. If a resident did not identify
43 themselves or the audio file did not pick up the name, the name was not recorded in these
44 minutes.
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48

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

District Manager James P. Ward called the meeting to order at approximately 2:00 p.m. He conducted roll call; all Members of the Board were present, constituting a quorum.

SECOND ORDER OF BUSINESS

Consideration of Minutes

July 14, 2022 – Regular Meeting Minutes

Mr. Ward asked if there were any additions, deletions, or corrections for the Minutes.

Mr. Weber noted his name was misspelled in a few locations.

Mr. Reidy asked about Mr. Urbancic’s reference to a “draft” agreement between the HOA and the CDD. He stated he thought the agreement was final, not a draft.

49 Mr. Greg Urbancic stated Miromar had not agreed to the final version of the agreement; therefore, draft
50 was correct. He indicated Miromar was still reviewing the agreement; the agreement was not finalized.

51
52 Mr. Reidy stated the CDD had an agreement in place with the HOA which indicated in case of a
53 hurricane, the HOA would be responsible for fixing the landscaping, cleaning up the landscaping, etc.

54
55 Mr. Ward asked if the original agreement between the CDD and HOA was still in place.

56
57 Mr. Urbancic responded in the affirmative.

58
59 Mr. Ward noted the original agreement indicated the HOA was going to do the maintenance and implied
60 the HOA would be responsible for hurricane damage. He noted in his experience with other projects
61 when larger capital expenditures arose, HOAs have turned around and said, "that was not contemplated
62 under the agreement because it was not clear," so Mr. Urbancic redrafted the agreement to make the
63 issue of the HOA being responsible for damage from hurricanes or other disasters clear in the
64 agreement and required the HOA to set aside reserves for this purpose. He stated Miromar HOA said no
65 to this.

66
67 Mr. Reidy asked for a copy of the current signed agreement.

68
69 Mr. Ward indicated he would provide this.

70
71 Mr. Reidy stated he thought the HOA was balking at the idea of setting aside reserves, not covering
72 storm damage to landscaping.

73
74 Mr. Urbancic stated essentially the existing agreement indicated the HOA was responsible for, at their
75 sole cost, maintaining, repairing, or replacing landscaping. He stated when the agreement was
76 amended, it was made clear that if there was storm damage, the HOA would be responsible for
77 replacing and repairing landscaping, along with a reserve funding provision.

78
79 Mr. Ward stated he and Mr. Urbancic felt the current agreement was not clear enough and there was
80 room for the HOA to come back to the CDD in the event of a storm and say it would not take care of the
81 landscaping restoration which was why the agreement was amended.

82
83 Mr. Alan Refkin indicated he believed Tim was clear about what exactly the HOA would do in a storm
84 situation and Tim's statements could be referred to in previous minutes' records.

85
86 Mr. Urbancic agreed. He stated the existing agreement indicated the HOA would "maintain, repair and
87 replace." He stated the language in the amended agreement said the CDD desired to confirm the
88 obligation of maintain, repair, and replace and clarified the obligation to repair and replace the
89 landscaping if it were damaged or destroyed in a weather event. He stated the agreement was not
90 changing anything exactly; it was adding clarification to ensure there was no misunderstanding when
91 the HOA transferred over to the residents.

92
93 Mr. Refkin stated he felt the only point of contention was the provision for a reserve fund; the HOA and
94 CDD agreed about the repair and replacement of landscaping in a storm event.

95

96 Mr. Ward asked if there were any other changes to the Minutes; hearing none, he called for a motion to
97 approve the Minutes as amended.
98

99 **On MOTION made by Ms. Mary LeFevre, seconded by Mr. Mike**
100 **Weber, and with all in favor, the July 14, 2022, Regular Meeting**
101 **Minutes were approved as amended.**

102

103

104 **THIRD ORDER OF BUSINESS**

Consideration of Interlocal Agreement

105

106 **Consideration and approval in substantial form of the Interlocal Cost Sharing Agreement between**
107 **Miromar Lakes Community Development District and the Esplanade Lake Club Community**
108 **Development District**

109

110 Mr. Ward stated the Interlocal Cost Sharing Agreement was for the fishery program. He stated the
111 Esplanade Lake Club CDD approved this agreement today. He stated essentially the Agreement
112 indicated each year, on or before April 1, both Districts would propose the plan for the ensuing fiscal
113 year for the fishery program. He stated both Districts would agree to the plan and budget for the
114 monies necessary. He stated the agreement required each District to engage the contractor with
115 separate contracts to ensure separate invoices for each party. He noted cost allocation would be
116 divided according to the number of units in each District. He stated the term of the contract ran
117 through September 30, 2027, would renew automatically for a successive five years, and either party
118 could terminate the agreement with 90 days' notice. He indicated the rest of the agreement was fairly
119 standard.

120

121 Mr. Urbancic agreed stating the Districts would cooperate on an annual basis and allocate the agreed
122 upon costs based upon unit counts. He noted the unit counts could change as the Districts developed.

123

124 Mr. Weber asked whether the Plan recommended by Solitude should be attached to this Agreement.

125

126 Mr. Ward stated it was not attached as it was not required to be attached. He noted the plan was
127 intended to change every 12 months and the Plan provided by Solitude was more of a broad overview.

128

129 Mr. Urbancic stated all interlocal agreements had to be recorded by statute and he did not feel it was
130 necessary to include that information in the public record, especially when the agreements would roll on
131 a year-by-year basis.

132

133 Ms. Mary LeFevre asked if having this done on April 1 every year would provide enough time to prepare
134 the budget.

135

136 Mr. Ward responded in the affirmative.

137

138 Mr. Reidy stated this was a straightforward agreement and the cost sharing was fair based upon the
139 number of units.

140

141 Mr. Ward agreed. He noted Esplanade was controlled by the developer but was happy to cooperate
 142 with the Miromar Lakes District. He stated Esplanade’s only request was for the contractor to be a true
 143 professional and the work be scientifically supported.
 144

145 **On MOTION made by Mr. Alan Refkin, seconded by Mr. Doug**
 146 **Ballinger, and with all in favor, the Interlocal Cost Sharing Agreement**
 147 **between Miromar Lakes Community Development District and the**
 148 **Esplanade Lake Club Community Development District was approved**
 149 **in substantial form.**

150
 151 **FOURTH ORDER OF BUSINESS**

Staff Reports

152
 153 **I. District Attorney**

154
 155 No report.
 156

157 **II. District Engineer**

158
 159 No report.
 160

161 **III. Asset Manager**

162
 163 **a) Operations Report August 1, 2022**

164 **b) Waterway Inspection Report July 2022**

165
 166 Mr. Bruce Bernard indicated next month he would have a report on the cane toad traps,
 167 additional lake plantings, and carp. He stated Solitude would be performing an apple snail
 168 treatment next week.
 169

170 Mr. Ballinger stated he reviewed the Solitude Report and felt it was very well done.
 171

172 Mr. Bernard agreed and discussed the Solitude Report. He noted an updated report would be
 173 available every three months from Solitude regarding the progress. He reported the stormwater
 174 contractors would be finished cleaning the stormwater basins next month. He displayed and
 175 discussed different cane toad traps noting both types of traps required weekly monitoring. He
 176 noted seven of the smaller traps could be purchased for the price of one of the larger traps. He
 177 stated the traps would be visible (under shrubberies and such) and the community would need to
 178 be alerted to the presence of the traps. He stated trap monitoring could be done while the cane
 179 toad contractors were onsite and would not be an additional cost.
 180

181 Mr. Weber indicated he saw thousands of penny sized cane toads on his morning walk near the
 182 pond behind Vivaldi. He recommended traps be placed in this area.
 183

184 Mr. Bernard stated the cane toad contractors were present two to three times a week skimming
 185 the lakes, spraying, etc. He stated the contractors were often behind Vivaldi.
 186

187 Mr. Reidy asked about the waterway inspection report on page 13, the summary, where it read
188 “requires attention.”
189

190 Mr. Bernard explained the report was also sent to Solitude’s technicians who went out and
191 addressed the “requires attention” areas of the report. He stated most of these areas, at this time
192 of year, were torpedo grass or weeds which needed attention.
193

194 **IV. District Manager**

195
196 **a) Financial Statement for period ending July 31, 2022 (unaudited)**

197
198 No report.
199

200 **FIFTH ORDER OF BUSINESS**

Supervisor’s Requests and Audience Comments

201
202 Mr. Ward asked if there were any Supervisor’s Requests; there were none. He asked if there were any
203 audience comments or questions; there were none.
204

205 **SIXTH ORDER OF BUSINESS**

Adjournment

206
207 Mr. Ward adjourned the meeting at approximately 2:29 p.m.
208

209 **On MOTION made by Ms. Mary LeFevre, seconded by Mr. Mike**
210 **Weber, and with all in favor, the meeting was adjourned.**

211
212
213 Miromar Lakes Community Development District
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217 _____
James P. Ward, Secretary

Alan Refkin, Chairman

RESOLUTION 2022-12

A RESOLUTION DESIGNATING THE REGISTERED AGENT; DESIGNATING THE OFFICE AND LOCATION OF THE REGISTERED OFFICE; AND PROVIDING FOR CONFLICTS AND INVALID PROVISIONS AND PROVIDING FOR AN EFFECTIVE DATE.

RECITALS

WHEREAS, Miromar Lakes Community Development District (“**District**”) is a local unit of special-purpose government created and existing pursuant to Chapter 190, *Florida Statutes*, being situated entirely within Lee County, Florida; and

WHEREAS, the District is statutorily required to designate a registered agent and a registered office location for the purposes of accepting any process, notice, or demand required or permitting by law to be served upon the District in accordance with Section 189.014(1), *Florida Statutes*; and

WHEREAS, the Board of Supervisors of the Miromar Lakes Community Development District desire to appoint James P. Ward as the Registered Agent and designate the offices of JPWard & Associates, LLC, 2301 Northeast 37th Street, Fort Lauderdale, Florida 3330, as the Registered Office.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE MIROMAR LAKES COMMUNITY DEVELOPMENT DISTRICT:

SECTION 1. DESIGNATION OF REGISTERED AGENT: James P. Ward is hereby appointed as the Registered Agent.

SECTION 2. DESIGNATION OF REGISTERED OFFICE. The offices of JPWard & Associates, LLC, 2301 Northeast 37th Street, Fort Lauderdale, Florida 33308 is hereby designated as the Registered Office.

SECTION 3. SEVERABILITY AND INVALID PROVISIONS. If any one of the covenants, agreements or provisions herein contained shall be held contrary to any express provision of law or contract to the policy of express law, but not expressly prohibited or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way effect the validity of the other provisions hereof.

SECTION 4. CONFLICT: That all Sections or parts of Sections of any Resolutions, Agreements, or actions of the Board of Supervisors in conflict are hereby repealed to the extent of such conflict.

SECTION 5. PROVIDING FOR AN EFFECTIVE DATE. This Resolution shall become effective immediately upon passage.

PASSED AND ADOPTED this 8th day of September 2022.

ATTEST:

MIROMAR LAKES COMMUNITY DEVELOPMENT DISTRICT

James P. Ward, Secretary

Alan Refkin, Chairman



Civil Engineering/Roadway
& Highway Design
Coastal Engineering
Code Enforcement
Construction Engineering
& Inspection (CEI)
Construction Services
Contract Government
Services
Data Technologies &
Development
Electrical Engineering
Emergency Management
Engineering
Environmental Services
Facilities Management
Geographic Information
Systems (GIS)
Indoor Air Quality
Land Development
Landscape Architecture
Municipal Engineering
Planning
Redevelopment
Surveying & Mapping
Traffic Engineering
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Urban Design
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Miromar Lakes CDD

Date: September 1, 2022
To: James P. Ward- District Manager
From: Bruce Bernard - Field Asset Manager
Subject: CDD Monthly Report –August 2022, Report
CGA P.N.: 13-5692

Lake Maintenance

Solitude continues its monitoring of the existing and new wetland plants within Lake 5/6 north for any consequences from the remaining carp on these plantings. This information will be used for next year's wetland material plantings to begin providing buffer locations when fish restocking is undertaken. Contractor to supply update this month littoral plantings within Lake 5/6 north.

Solitude performed an additional Apple Snail treatment inside the lake cove area for Anacapri, Castelli and Volterra.

Wild Things and Scott's Animal Service continue toad larvae and cane toad skimming and removal in and around the lakes. Both contractors are within the community several times each week working on a schedule of the subdivisions to check each week. Both contractors inspected Vivaldi and Caprini small cane toad activity. Contractors advised that these are greenhouse toads not cane toads which are not harmful.

Stormwater Management

CDD stormwater vendor (MRI) has completed the cleaning of catch basins within Phase 1 of the three-year Drainage Maintenance Program. This action was performed in Porta Romano, Verona Lago, Valencia, Siena, MonteLago, Bellavista, Golf Clubhouse, and Beach Clubhouse.



Calvin, Giordano & Associates, Inc.
EXCEPTIONAL SOLUTIONS™

CDD staff reviewed and inspected parcels in Navona and Murano for ownership of existing rip-rap installation. Both locations have not been approved by CDD and not subject to maintenance responsibilities at this time.

Civil Engineering/Roadway
& Highway Design
Coastal Engineering
Code Enforcement
Construction Engineering
& Inspection (CEI)
Construction Services
Contract Government
Services
Data Technologies &
Development
Electrical Engineering
Emergency Management
Engineering
Environmental Services
Facilities Management
Geographic Information
Systems (GIS)
Indoor Air Quality
Land Development
Landscape Architecture
Municipal Engineering
Planning
Redevelopment
Surveying & Mapping
Traffic Engineering
Transportation Planning
Urban Design
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FACILITIES MAINTENANCE AGREEMENT

THIS FACILITIES MAINTENANCE AGREEMENT (“Agreement”) is made and entered into as of the 7th day of June, 2018 between **MIROMAR LAKES COMMUNITY DEVELOPMENT DISTRICT**, a community development district established and existing pursuant to Chapter 190, Florida Statutes (“District”) and **MIROMAR LAKES MASTER ASSOCIATION, INC.**, a Florida not-for-profit corporation (“Association”). The District and the Association are sometimes collectively referred to as the “Parties”.

BACKGROUND INFORMATION

A. The Association is a private not-for-profit corporation formed pursuant to Chapters 617 and 720, Florida Statutes to serve as an association of the homeowners within the District and to manage private common areas and amenities.

B. The District is a local unit of special-purpose government established by ordinance adopted by the Board of County Commissioners of Lee County, Florida, pursuant to the Uniform Community Development District Act of 1980, Chapter 190, Florida Statutes, as amended, and is validly existing under the Constitution and laws of the State of Florida. The District has the authority to, among other things, plan, finance, construct, operate, and maintain certain community infrastructure, including, but not limited to, stormwater management improvements; roadways; entrance, landscape and irrigation improvements; water and sewer improvements; and wetland mitigation within or outside of the boundaries of the District.

C. The District desires to contract with the Association to maintain, repair and replace the landscaping on certain property owned or controlled by the District (collectively, “Landscaping”). The locations of the District property upon which the Landscaping is located are graphically depicted on Exhibit “A” attached and made a part of this Agreement by reference (“District Property”). The District Property will also include that certain median on Ben Hill Griffin Parkway maintained by the District pursuant to that certain Landscape Installation and Maintenance Agreement between the District and Lee County dated September 4, 2008, a copy of which is attached as Exhibit “B” and incorporated by reference (“Interlocal Agreement”).

D. The Association is responsible for maintaining the landscaping on the Association common areas in Miromar Lakes, which are either contiguous or in close proximity to the District Property. The members of the Association are the direct beneficiaries of the Landscaping on the District Property. Further, the Association is uniquely positioned and qualified to maintain, repair, and replace the Landscaping on the District Property.

E. The Association agrees to undertake the responsibility for the Landscaping on the District Property on the terms and conditions set forth in this Agreement.

FACILITIES MAINTENANCE AGREEMENT

F. The District and the Association agree that having the Association undertake the Landscaping is in the best interests of the District and the property owners of the District. It is expected that having the Association undertake such Landscaping will provide for easier administration, potential cost savings, and anticipated efficiencies in operation and maintenance.

THEREFORE, the Parties agree as follows:

1. **Background Information.** The Background Information set forth above is incorporated by reference and made a material and dispositive part of this Agreement.

2. **Finding.** The District and the Association agree that having the Association undertake the landscaping responsibilities relating to the District Property is in the best interest of the District and the property owners of Miromar Lakes.

3. **Maintenance of Landscaping.** The Association agrees to be responsible during the term of this Agreement, at the Association's sole cost and expense, for maintaining, repairing, replacing the Landscaping which may be now or in the future located on the District Property, including any irrigation lines servicing the Landscaping. The Landscaping must be kept by the Association in good, neat and attractive condition and repair. All such action by the Association will be performed in compliance with all applicable statutes, ordinances, administrative rules and regulations, permit conditions and the rules, policies, practices and procedures of the District. In carrying out the maintenance, repair and replacement of the Landscaping in the median of Ben Hill Griffin Parkway pursuant to the Interlocal Agreement, the Association agrees to comply with the terms and conditions imposed upon the District pursuant to the Interlocal Agreement. The Association understands and agrees that the Association will be required to budget for, fund, and complete maintenance, repair, and replacement of the Landscaping and its component parts. During the term of this Agreement, the Association will have a non-exclusive license to enter upon the District Property to the extent reasonably necessary to carry out the Association's obligations under this Agreement. Notwithstanding the foregoing, if any property of the District is damaged a result of any activity of the Association pursuant to this Agreement, the Association will be responsible, at the Association's sole cost and expense, to promptly repair any damaged property or landscaping to the extent necessary to restore the property to its condition prior to the damage.

4. **Representative.** The District will designate in writing a person to act as the District's representative with respect to the services to be performed under this Agreement. The District's representative will have the authority to transmit instructions, receive information, interpret and define the District's policies and decisions with respect to materials, equipment, elements, and systems pertinent to the Association's services. The District initially designates the District's Manager or his authorized designee to act as the District's representative. The Association agrees to meet with the District's representative, as designated by the District Manager, as is reasonably necessary to evaluate the Landscaping and discuss conditions, schedules, and items of concern regarding this Agreement.

FACILITIES MAINTENANCE AGREEMENT

5. **Modifications to the Landscaping.** The District reserves the right to modify or enhance the Landscaping from time to time in its discretion. Prior to any material modification or enhancement, the District must provide 30 days advanced written notice to the Association. The Association may terminate this Agreement during the 30 day District notice period by giving 30 days advance written notice terminating the Agreement. The Association will also have the right to modify or enhance the Landscaping consistent with the terms of this Agreement; provided, however, that the Association may not make any material modification to the Landscaping (including, without limitation, removal or replacement) without the prior written consent of the District, which consent will not be unreasonable withheld.

6. **Inspections by the Association.** The Association will perform regular on-site inspections of the Landscaping to determine their condition as well as perform the maintenance of such Landscaping as outlined in this Agreement. Based upon such inspections, the Association will be required to perform additional maintenance, repair and replacement of the Landscaping as necessary consistent with the obligations set forth under Section 2. The Association will make a representative available to provide reporting on the Landscaping at a regular meeting of the District's Board upon request of the District Manager.

7. **Term/Renewal.** The initial term of this Agreement will commence on January 1, 2019 and will run through September 30, 2019, unless terminated prior to that time by either party pursuant to a provision of this Agreement. Thereafter, this Agreement will automatically renew for additional one (1) year periods (October 1st through September 30th of the next year) unless terminated by either party as provided for herein. The District may terminate this Agreement for any or no reason upon ninety (90) days written notice to the Association. Except as provided in section 5 above, the Association may terminate this Agreement on September 30th of a calendar year provided the Association provides the District written notice of termination no later than May 30th of that year. If written notice of termination is provided by the Association after May 30th, then the effective date of termination will be September 30th of the following calendar year.

8. **Independent Contractor.** In all matters relating to this Agreement, the Association will be acting as an independent contractor. Neither the Association nor employees of the Association, if there are any, are employees of the District under the meaning or application of any Federal or State Unemployment or Insurance Laws or Old Age Laws or otherwise. The Association agrees to assume all liabilities or obligations imposed by any one or more of such laws with respect to employees of the Association, if there are any, in the performance of this Agreement. The Association will not have any authority to assume or create any obligation, express or implied, on behalf of the District and the Association will have no authority to represent the District as an agent, employee, or in any other capacity.

9. **Defend, Hold Harmless and Pay.** The Association will defend and hold the District and its Board members, officers, agents, staff and employees harmless against and pay for all liability, claims, actions, suits or demands by any person, corporation or other entity for

FACILITIES MAINTENANCE AGREEMENT

injuries, death, property damage or harm of any nature, arising out of, or in connection with, the acts or omissions of the Association, or its officers, employees, representatives, contractors, or subcontractors including litigation or any appellate proceedings with respect to such litigation. District requires any contractor or subcontractor performing any of the maintenance, repair or replacement of the Landscaping contemplated under this Agreement to enter into a written agreement with the Association to defend and hold the District and its officers, agents, staff and employees harmless against and pay for all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage or harm of any nature, arising out of, or in connection with, the acts or omissions of such contractors or subcontractors, including litigation or any appellate proceedings with respect to such litigation. Obligations under this section include the payment of all settlements, judgments, damages, liquidated damages, forfeitures, back pay awards, court costs, arbitration and/or mediation costs, litigation expenses, fines, reasonable attorneys' fees, and paralegal fees (incurred in court, out of court, on appeal, or in bankruptcy proceedings) as ordered.

10. **Insurance.** The Association will procure, at the Association's expense, and maintain at all times during the term of this Agreement, comprehensive general liability insurance, worker's compensation insurance, automobile liability insurance, and such other coverage as may be necessary or desirable to carry out its duties under this Agreement regarding the Landscaping on the District Property. The Association will carry the following minimum levels of insurance:

a. Comprehensive general liability insurance coverage of \$1,000,000.00 combined single limit bodily injury and property damage per occurrence, and \$2,000,000 general aggregate.

b. Worker's compensation insurance coverage insurance shall be in full compliance with Florida statutory requirements.

c. Automobile Liability Insurance for bodily injuries in limits of not less than \$1,000,000 combined single limit bodily injury and for property damage, providing coverage for any accident arising out of or resulting from the operation, maintenance, or use by the Association of any owned, non-owned, or hired automobiles, trailers, or other equipment required to be licensed.

The District, its officers and supervisors will be named as an additional insured on all policies required (excluding worker's compensation). A certificate of insurance will be provided to the District annually evidencing compliance with the foregoing insurance requirements. No certificate will be acceptable to the District unless it provides that any change or termination within the policy periods of the insurance coverage, as certified, will not be effective within thirty (30) days of prior written notice to the District. Insurance coverage will be from one or more reputable insurance carriers that are licensed to conduct business in the State of Florida. District requires any contractor or subcontractor performing any of the maintenance, repair or replacement of the Landscaping contemplated under this Agreement to enter into a written

FACILITIES MAINTENANCE AGREEMENT

agreement with the Association to procure and maintain, until the completion of the contractor's or subcontractor's work, insurance of the types and to the limits specified in this Section unless such insurance requirements for the contractor or subcontractor are expressly modified or waived in writing by the District.

11. **Payment.** The District will pay the Association the amount of Ten Dollars (\$10.00) per year for providing the management and maintenance services described in this Agreement. The Association will not be entitled, for any reason, to reimbursement or refund from the District of any funds expended in the performance of the Association's obligations and responsibilities under this Agreement. The Association will be solely responsible for staffing, budgeting, financing, billing and collection of fees, service charges, etc., necessary to perform the Association's obligations and responsibilities set forth in this Agreement.

12. **Prevailing Party.** In any action or proceeding arising between the parties relating to the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, expenses, and all court costs, including fees and costs incurred through any appeal, from the non-prevailing party.

13. **Public Records.** The Association understands and agrees that all documents of any kind provided to the DISTRICT in connection with this Agreement may be public records, and, accordingly, the Association agrees to comply with all applicable provisions of Florida law in handling such records, including, but not limited to, Section 119.0701, Florida Statutes. The Association acknowledges that the designated public records custodian for the District is James P. Ward ("**Public Records Custodian**"). Among other requirements and to the extent applicable by law, the Association will 1) keep and maintain public records required by the District to perform the Services; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the Agreement term and following the Agreement term if the Association does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the Agreement, transfer to the District, at no cost, all public records in the Association's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by the Association, the Association will destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats. Failure of the Association to comply with Section 119.0701, Florida Statutes may subject the Association to penalties under Section 119.10, Florida Statutes. Further, in the event the Association fails to comply with this Section or Section 119.0701, Florida Statutes, District will be entitled to any and all remedies at law or in equity. The following statement is required to be included in this Agreement pursuant to Section 119.0701(2), Florida Statutes:

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IF THE ASSOCIATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES TO THE ASSOCIATION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (JAMES P. WARD C/O JPWARD & ASSOCIATES, LLC) AT (954) 658-4900, JIMWARD@JPWARDASSOCIATES.COM, OR 2900 NORTHEAST 12TH TERRACE, SUITE 1, OAKLAND PARK, FLORIDA 33334.

14. **Waiver/Severability.** A waiver by either party of any provision of this Agreement will not act as a waiver of any other provision of this Agreement. If any provision of this Agreement is for any reason declared invalid, illegal, or unenforceable, that declaration will not affect the remaining provisions of this Agreement.

15. **Amendments.** Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both the District and the Association.

16. **Integration.** This Agreement embraced the entire Agreement between the parties. No oral Agreement or representation concerning this Agreement shall be binding.

17. **Governing Law/Venue.** This Agreement and the provisions contained in it will be construed, interpreted and controlled according to the laws of the State of Florida. Sole and exclusive venue for any dispute will be in a court of appropriate jurisdiction in Lee County, Florida.

18. **Sovereign Immunity.** The Association agrees that nothing contained in this Agreement will constitute or be construed as a waiver of the District's limitations on liability set forth in Section 768.28, Florida Statutes, and other applicable law.

19. **Assignment.** The obligations under this Agreement may not be assigned by the Association without the prior written specific consent of the District, which consent may be withheld in the District's sole and absolute discretion; provided, however, that the Association may contract with third party contractors to perform the work under this Agreement without the consent of the District.

20. **Notices.** Any notice, demand, consent, authorization, request, approval or other communication that any party is required, or may desire, to give to or make upon the other parties pursuant to this Agreement will be effective and valid only if in writing, signed by the party giving notice and either (i) delivered personally to the other parties; (ii) sent by

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commercial overnight courier or delivery service; (iii) email, addressed to the other parties at the addresses set forth below (or to such other place as any party may by notice to the others specify). Notice will be considered given when received, except that if delivery is not accepted, notice will be considered given on the date of such non-acceptance. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, will be considered received on the next business day. If any time for giving notice would otherwise expire on a non-business day, the notice period will be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government will not be regarded as business days. Counsel may deliver notice on behalf of the party represented. Initial addresses for the Parties include:

To District **Miromar Lakes Community Development District**
2900 Northeast 12th Terrace, Suite 1
Oakland Park, Florida 33334
Attention: James P. Ward, District Manager
jimward@jpwardassociates.com

With a copy to:
Coleman, Yovanovich & Koester, P.A.
4001 Tamiami Trail North, Suite 300
Naples, Florida 34103
Attention: Gregory L. Urbancic, Esq.
gurbancic@cyklawfirm.com

To Association: **Miromar Lakes Master Association, Inc.**
10801 Corkscrew Road, Suite 305
Estero, Florida 33928
Attention: Tim Byal, President
tbyal@miromar.com

With a copy to:
Miromar Development Corporation
10801 Corkscrew Road, Suite 305
Estero, Florida 33928
Attn: Mark W. Geschwendt, Esq.

21. **Counterparts.** This Agreement may be executed in several counterparts or by separate instruments, and all of such counterparts and instruments will constitute one agreement which will be binding on all of the parties.

22. **Paragraph Headings.** The paragraph headings for each provision of this Agreement are not part of this Agreement nor shall they be used to construe, explain, modify, simplify or aid in the interpretation of the provisions of this Agreement. This Agreement shall

FACILITIES MAINTENANCE AGREEMENT

be fully executed when each party whose signature is required has signed at least one (1) counterpart even though no one (1) counterpart contains the signatures of all of the parties.

23. **Necessary Documents.** The parties shall execute all necessary documents required to carry out the terms and intent of this Agreement.

24. **Electronic Signatures.** An electronic signature will be considered an original signature on this Agreement and any related documents or subparts and will have the same force and effect as a written signature unless prohibited by Florida law. Electronic signatures include, but are not limited to, facsimiles, electronic signatures, portable document format (PDF), and any other electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a party with the intent to sign the Agreement or any other document related to this Agreement.

25. **Plain Meaning.** Unless the context clearly and unambiguously requires otherwise, the term "will" means that the party so charged is required to take an action or is prohibited from taking an action depending on the context of the term or condition.

(Remainder of Page Intentionally Left Blank. Signatures Appear on Next Page.)

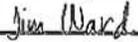
FACILITIES MAINTENANCE AGREEMENT

The parties have executed this Agreement as of the date first above written.

DISTRICT:

**MIROMAR LAKES COMMUNITY
DEVELOPMENT DISTRICT,**
a community development district

ATTEST:

DocuSigned by:


James P. Ward, Secretary

By: 

David Herring, Chairman

Date: _____

ASSOCIATION:

**MIROMAR LAKES MASTER
ASSOCIATION, INC.,**
a Florida not-for-profit corporation

By: _____

Name: _____

Title: _____

Date: _____

FACILITIES MAINTENANCE AGREEMENT

Exhibit "A" Berm and Median Landscape Areas

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Exhibit "B" Interlocal Agreement