



CFN:2004034136

02-04-2004 11:13 am

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This Instrument Prepared By
And To Be Returned To:
R. Mason Blake, Esquire
8240 Devereux Drive, Suite 100
Viera, Florida 32940
(321) 259-8900

Scott Ellis

Clerk Of Courts, Brevard County

#Pgs: 7

#Names: 2

Trust: 4.00

Rec: 29.00

Serv: 0.00

Deed: 16,100.00

Excise: 0.00

Mtg: 0.00

Int Tax: 0.00

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made effective as of the 29th day of January, 2004, by THE VIERA COMPANY, a Florida corporation, whose post office address is 7380 Murrell Road, Suite 201, Viera, Florida 32940 (hereinafter referred to as the "Grantor"), to MAJESTY FLORIDA LIMITED PARTNERSHIP, a Florida limited partnership, whose post office address is 13475 Lakefront Drive, Earth City, MO 63045 (hereinafter referred to as the "Grantee").

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument, the heirs, legal representatives and assigns of individuals, and the successors and assigns of trustees, partnerships and corporations.)

WITNESSETH:

That the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee that certain real property situate, lying and being in Brevard County, Florida (hereinafter referred to as the "Property"), more particularly described on Exhibit "A", attached hereto and made a part hereof.

TOGETHER with all of the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

AND the Grantor hereby covenants with the Grantee that the Grantor is lawfully seized of the Property in fee simple; that the Grantor has good right and lawful authority to sell and convey the Property; and that the Grantor hereby warrants the title to the Property and will defend the same against the lawful claims of all persons claiming by, through or under the Grantor, but against no others. This conveyance is made subject to those matters described in Exhibit "B", attached hereto and made a part hereof.



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RESERVATION OF EASEMENTS

Grantor hereby reserves unto itself and its assigns and successors-in-interest or title, and, to any extent required, Grantee hereby gives and grants unto Grantor, and its assigns and successors-in-interest or title, the following-described easements:

1. A fifty foot (50') wide landscape buffer, sidewalk/trail, drainage and utility easement along the eastern boundary of the Property and adjacent to the right-of-way of Murrell Road; and
2. A twenty-five foot (25') wide landscape buffer, sidewalk/trail, drainage and utility easement along the northern boundary of the Property and adjacent to the right-of-way of Viera Boulevard.

The foregoing non-exclusive easements encumbering portions of the Property hereinabove described (hereinafter referred to as the "Easement Parcels") shall each include a non-exclusive easement for ingress and egress over, upon and across the Easement Parcels, so as to provide access to and from the Easement Parcels for the full use and benefit thereof, together with the right to install, maintain, repair, replace and relocate utilities in, over, under, upon and across the Easement Parcels. The easement rights reserved hereinabove with respect to landscape buffers and sidewalk/trails shall also include, without limitation, the rights in favor of Grantor to plant, mow, cultivate, relocate, irrigate, maintain and care for all landscaping and related aesthetic features, and the right to construct, maintain, relocate and repair any and all sidewalks, trails and related features within the Easement Parcels or any of them.

The easements retained with respect to the Easement Parcels are non-exclusive, and Grantee, its assigns and successors-in-interest and/or title, shall have the non-exclusive right to (i) use, pass and repass over and upon the Easement Parcels, to install, maintain, repair, replace, remove and/or relocate utilities in, over, under, upon and/or across each of the Easement Parcels, or any of them, or any part thereof, and (ii) install, maintain, repair, replace, remove and/or relocate driveway improvements in, over, under, upon and/or across each of the Easement Parcels, or any of them, or any part thereof; provided, however, that any utilities or driveway improvements installed, repaired, replaced and/or relocated in, over, under, upon or across any of the Easement Parcels shall be so installed, repaired, replaced and/or relocated only in accordance with plans and specifications approved in advance and in writing by Grantor.

Each party shall use the rights granted and reserved by this instrument with respect to the Easement Parcels with due regard for the rights of the other party to use and enjoy the Easement Parcels. Moreover, Grantor hereby agrees to use the rights reserved herein so as not to disrupt the conduct of Grantee's activities on and about the Property. Neither Grantor nor Grantee shall use the Easement Parcels in such a way as to impair the right to the other party to use the Easement Parcels, and neither party shall obstruct passage thereon. No buildings, fences or structures of any nature shall be built,

maintained, created, erected or placed within the Easement Parcels by Grantee, and Grantor shall have the right to remove and clear and to keep clear all buildings, fences, structures or materials from the Easement Parcels. Grantee shall not (i) destroy, damage, remove or interfere with any landscaping, trees, grass, plants or plant materials which may be placed or established by Grantor within the Easement Parcels intended for landscaping improvements so long as such landscaping improvements do not unreasonably obstruct Grantee's signage, or (ii) in any manner obstruct, impede or interfere with the rights and duties of Grantor as to the Easement Parcels and Grantor's rights of ingress and egress thereto, except as otherwise specifically provided herein.

RESTRICTIVE COVENANTS

Grantor owns and holds the fee simple title to certain real property adjacent or in proximity to the Property. Accordingly, Grantor has, and will continue to have, a substantial interest in the manner of development and use of the Property and all portions thereof as well as in the type, character, design and configuration of improvements hereafter constructed from time to time upon any portion of the Property. By acceptance of this conveyance, Grantee, for itself, its assigns and successors in interest and/or title, agrees to limit and restrict development of the Property as follows:

1. The Property shall not be hereafter developed, used or occupied in a manner other than for or in connection with retail services use containing in the aggregate not more than 100,000 square feet of building area; and
2. Neither the Property nor any portion thereof may be developed, used or occupied as a movie theater or technological successor thereto or as a real estate sales or brokerage office.
3. Neither the Property nor any portion thereof shall be hereafter developed, used, or occupied as a grocery supermarket. For purposes of this restrictive use covenant, the term "grocery supermarket" shall mean a retail grocery store or a department within a retail business which sells pre-packaged food and grocery items for off-premises consumption; provided, however, that the term "grocery supermarket" shall not be deemed to include, and the foregoing restrictive use covenant shall not be deemed to prohibit sales of pre-packaged food or grocery items by an occupant of the Property or portion thereof, which are incidental to a business primarily engaged in the retail sale of general merchandise, provided that the retail sales floor area of such occupant devoted to such incidental sales of prepackaged food and grocery items shall not exceed 5,000 square feet.
4. Neither the Property nor any portion thereof shall be hereafter developed, used, or occupied as a community pharmacy. For purposes of this restrictive use covenant, the term "community pharmacy" shall mean



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a location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.

5. Neither the Property nor any portion thereof shall be hereafter developed, used, or occupied as a hospital. For purposes of this restrictive use covenant, the term "hospital" shall mean a licensed facility that: (a) offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; (b) regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent; and (c) is licensed as a "hospital" pursuant to the Florida Statutes.

The restrictive covenants set forth hereinabove are each intended to constitute a covenant running with the Property, and each part thereof, in all respects binding upon Grantee and all assigns and successors in interest and/or title of Grantee with respect to the Property and each part thereof. Such restrictive covenants shall be binding and in full force and effect for a period of twenty (20) years from the day of recordation of this instrument in the Public Records of Brevard County, after which time said restrictive covenants shall be automatically extended for successive periods of ten (10) years each, unless terminated by written instrument executed by Grantor. Grantor shall have the right to enforce the above-mentioned restrictive covenants and each of them by actions or proceedings at law and/or in equity against any person or entity violating, or attempting to violate, any of the above mentioned restrictive covenants, the permissible actions or proceedings to include, but not be limited to, actions for mandatory injunctive relief, prohibitory injunctive relief and/or damages. In connection with any action or proceeding brought by Grantor to enforce any of the above-mentioned restrictive covenants, Grantor shall be entitled to recover all costs incurred in connection therewith, including reasonable attorneys' fees at or before the trial level and in any appellate proceeding. The right to enforce the restrictive covenants set forth hereinabove shall be limited to Grantor, its successors and assigns. A successor in title of Grantor shall not, by virtue of such status alone, have the right to enforce the restrictive covenants set forth hereinabove unless the instrument or instruments by which title is conveyed to such successor in title specifically assigns such right to enforce said restrictive covenants.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed and delivered in its name, and its corporate seal to be hereunto affixed, by its corporate officer thereunto duly authorized, the day and year first above written.



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Signed, sealed and delivered
in the presence of:

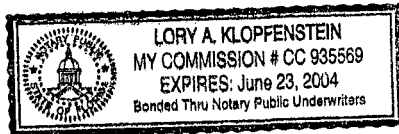
[Signature]
Print Name: Lory Klopfenstein
[Signature]
Print Name: Susan C. Bubes

THE VIERA COMPANY, a Florida
corporation

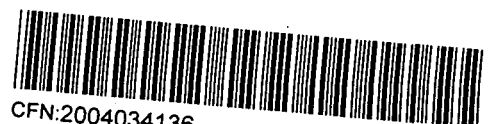
By: [Signature]
Name: Stephen L. Johnson
Title: Vice President

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 28 day of
January, 2004, by Stephen L. Johnson as Vice President of THE VIERA COMPANY, a
Florida corporation, on behalf of said corporation. Said person (check one) ☒ is
personally known to me, ☐ produced a driver's license (issued by a state of the United
States within the last five (5) years) as identification, or ☐ produced other identification,
to wit: _____.



[Signature]
Print Name: _____
Notary Public
Commission No.: _____
My Commission Expires: _____



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EXHIBIT "A"

LEGAL DESCRIPTION

Lot 1, VIERA NORTH PUD PARCEL P, according to the plat thereof, as recorded in Plat Book 46, page 99, Public Records of Brevard County, Florida.



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Exhibit "B"

1. First Amendment to and Restatement of Declaration of Covenants, Conditions, Easements, Reservations and Restrictions for Viera East Community (formerly referred to as Viera Southeast Community) recorded August 31, 1992 in Official Records Book 3225, Page 4071, Public Records of Brevard County, Florida, as the same may be amended, supplemented or modified from time to time.
2. Amended and Restated Viera Development Order, as approved by that certain Resolution 02-314 and as evidenced by that certain Notice of Amendment to Development Order for a Development of Regional Impact known as The Viera Development of Regional Impact recorded January 9, 2003, in Official Records Book 4787, Page 0549, Public Records of Brevard County, Florida.
3. All things and matters described or depicted on or in the Plat of VIERA NORTH PUD-PARCEL P, recorded in Plat Book 46, Page 99, Public Records of Brevard County, Florida.
4. Notice of Agreement between A. Duda & Sons, Inc. and The Florida Department of Community Affairs recorded July 7, 1989 in Official Records Book 3005, Page 3575, Public Records of Brevard County, Florida.
5. Interlocal Agreement between the Viera East Community Development District and the City of Cocoa recorded in Official Records Book 3218, Page 1903, Public Records of Brevard County, Florida, and recorded in Official Records Book 3218, Page 4242, Public Records of Brevard County, Florida.
6. Agreement Covering Water Service between The Viera Company and the City of Cocoa, Florida, dated August 26, 1988, as amended by that certain Amendment #1 To Agreement To Provide Water Service dated June 13, 1989, and as further amended by that certain Second Amendment to Agreement dated May 27, 1994, as recorded in Official Records Book 3404, Page 0953, Public Records of Brevard County, Florida and re-recorded in Official Records Book 3407, Page 3452, Public Records of Brevard County, Florida.
7. Notice of Establishment of the Viera East Community Development District dated November 29, 1994, and recorded December 9, 1994, in Official Records Book 3440, Page 4653 and Amended Notice of Establishment of the Viera East Community Development District recorded in Official Records Book 4070, Page 2505 Public Records of Brevard County, Florida.
8. Transportation Impact Fee Credit and Road Development Agreement dated June 12, 1992, and recorded January 18, 1995, in Official Records Book 3449, Page 0808, Public Records of Brevard County, Florida.
9. Grant of Force Main Easements and Agreement between A. Duda & Sons, Inc., and The Viera Company to County of Brevard, recorded in Official Records Book 4164, Page 1195, Public Records of Brevard County, Florida.
10. Declaration of Restrictions and Grant of Purchase Rights recorded May 24, 2000, in Official Records Book 4168, Page 111, Public Records of Brevard County, Florida.
11. Water Line and Ingress/Egress Easement by THE VIERA COMPANY, a Florida corporation, in favor of the CITY OF COCOA, FLORIDA, filed in Official Records Book 4399, page 842, Public Records of Brevard County, Florida.
12. Sanitary Sewer Easement by THE VIERA COMPANY, a Florida corporation, to VIERA EAST COMMUNITY DEVELOPMENT DISTRICT, filed in Official Records Book 4281, page 3422, Public Records of Brevard County, Florida.
13. Zoning, restrictions, reservations, prohibitions and other requirements imposed by governmental authorities.
14. Taxes for the year of closing and subsequent years.

