

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20040310

1. REQUESTED MOTION:

ACTION REQUESTED: Conduct a Public Hearing to adopt a Petition to vacate and convey a series of platted roads and road rights-of-way to the homeowners' association, all located within the residential subdivision known as Kelly Greens (Case No. VAC2003-00041), and authorize the Chairman to accept the donation of a replacement Perpetual Public Utility Easement Grant and Perpetual Access and Maintenance Easement Grant.

WHY ACTION IS NECESSARY: To vacate and convey the roads to the homeowners' association to allow the subdivision to be gated and maintained by the homeowners' association. **The vacation and conveyance of the roads will not alter traffic conditions, and the roads are not necessary to accommodate any future traffic requirement.** With respect to the replacement easements, the Board must accept all real estate conveyances to Lee County.

WHAT ACTION ACCOMPLISHES: Vacates the public's interest in the named roads and conveys same to the homeowner's association; and accepts the replacement easement.

2. DEPARTMENTAL CATEGORY: 04
COMMISSION DISTRICT # 1 *5:00 #3* **3. MEETING DATE:** *04-13-2004*

<p>4. AGENDA:</p> <p><input type="checkbox"/> CONSENT</p> <p><input type="checkbox"/> ADMINISTRATIVE</p> <p><input type="checkbox"/> APPEALS</p> <p><input checked="" type="checkbox"/> PUBLIC</p> <p><input type="checkbox"/> WALK ON</p> <p>Time Required: 20Min.</p>	<p>5. REQUIREMENT/PURPOSE: (Specify)</p> <p><input checked="" type="checkbox"/> STATUTE F.S. Ch. 336 (PTV) & 125 (Easements)</p> <p><input type="checkbox"/> ORDINANCE</p> <p><input checked="" type="checkbox"/> ADMIN. CODE 13-8 (PTV)</p> <p><input type="checkbox"/> OTHER</p>	<p>6. REQUESTOR OF INFORMATION:</p> <p>A. COMMISSIONER</p> <p>B. DEPARTMENT Community Development</p> <p>C. DIVISION Development Services</p> <p>BY: <i>3-18-04</i> Peter J. Eckenrode, Director</p>
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7. BACKGROUND: Kelly Greens Homeowners Association, Inc., a Florida not for profit corporation under F.S. Chapter 617, has submitted a Petition to vacate the public's interest in the roads, rights-of-ways and drainage facilities of thirteen road segments and four related tracts of unnamed road right-of-way, all located in the residential subdivision known as Kelly Greens.
(Continued on next page.)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services	G County Manager								
<i>Mary Gibbs</i>	N/A	N/A	N/A	<i>John J. Deegan 3-17-04</i>	<i>Alpha 3/25/04</i>									
					<table border="1" style="width:100%; border-collapse: collapse; text-align: center;"> <tr> <td>OA</td> <td>OM</td> <td>RISK</td> <td>GC</td> </tr> <tr> <td><i>1/22/04 3/23/04</i></td> <td><i>1/25/04 3/23/04</i></td> <td><i>2/25/04 3/23/04</i></td> <td><i>1/10/04 3/23/04</i></td> </tr> </table>	OA	OM	RISK	GC	<i>1/22/04 3/23/04</i>	<i>1/25/04 3/23/04</i>	<i>2/25/04 3/23/04</i>	<i>1/10/04 3/23/04</i>	
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10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

REC'D.
by CO. ATTY.

3/18/04

CO. ATTY.
FORWARDED TO:
Co. Adm.

3/19/04 11:30 AM

RECEIVED BY
COUNTY ADMIN: *JD*

3/26/04

3-26-04

COUNTY ADMIN
FORWARDED TO: *PL*

*Jas. Lee
4pm*

BA

Subject: Vacation of Roads in Kelly Greens Subdivision

The vacation request is submitted pursuant to §316.00825, F.S., (adopted in 2002) in conjunction with the existing vacation procedure found in F.S. Chapter 336 (and Lee County Administrative Code Section 13-8).

The vacation, if granted, will result in the simultaneous conveyance of the roads to the homeowners association (HOA) and a shifting of the maintenance responsibility from the County to the HOA . The HOA seeks to gate the community, but can only do so if the County grants the requested vacation.

The following is the list plats that comprise the residential subdivision known as Kelly Greens (located in Sections 1 and 6, Township 46 South, Ranges 23 East, Lee County, Florida):

- Kelly Greens Unit One-A, recorded in Plat Book 38, Pages 61-64;
- Kelly Greens Unit Two, recorded in Plat Book 40, Pages 24-30;
- Kelly Greens Unit Three, recorded in Plat Book 42, Pages 71-72;
- Kelly Greens Unit Four, recorded in Plat Book 42, Pages 73-74; and
- Kelly Greens Unit Five, recorded in Plat Book 43, Pages 90-93; all in the Public Records of Lee County, Florida.

The following is the list of the road segments and road rights-of-way within the plats of Kelly Greens requested to be vacated and turned over to the Kelly Greens Homeowners Association, Inc.:

- | | | |
|--------------------------------------|--|--|
| 1) Kelly Palm Drive (Unit One-A) | 2) Kelly Greens Boulevard
(Unit One-A) | 3) Kelly Sands Way
(Unit One-A) |
| 4) Kelly Greens Boulevard (Unit Two) | 5) Kelly Bay Court (Unit Two) | 6) Kelly Sands Way (Unit Two) |
| 7) Kelly Cove Drive (Unit Three) | 8) Kelly Woods Drive (Unit Two) | 9) Cul-de-sac on Kelly Sands
Way at Tract 14 (a/k/a Kelly
Pine Court) - (Unit Two) |
| 10) Kelly Woods Drive (Unit Three) | 11) Kelly Woods Drive (Unit Four) | 12) Kelly Cove Drive (Unit
Four - unnamed but
depicted) |
| 13) Kelly Cove Drive (Unit Five) | 14) All of Tracts 29, 33, 34, and 35 (inclusive) (Unit Five) | |

NOTE: The described road rights-of-way do not include or intend to vacate any of Lee County's rights in the IDD canals depicted on the referenced plats. The described road rights-of-way remain subordinate and inferior to those rights held by Lee County in the IDD canals where the two may overlap.

A summary of the requirements of §316.00825, F.S., created and adopted by the Legislature in 2002, is as follows:

1. The petitioning homeowners' association has requested the abandonment and conveyance for the purpose of converting the subdivision to a gated neighborhood with restricted public access; and
2. No fewer than four-fifths of the owners of record of property located in the subdivision have consented in writing to the abandonment and simultaneous conveyance to the petitioning homeowners' association; and

3. The petitioning homeowners' association is a "homeowners' association" as defined under Section 720.301(7), F.S., with the power to levy and collect assessments for routine and periodic major maintenance and operation of street lighting, drainage, sidewalks and pavement in the subdivision; and
4. The petitioning homeowners' association has adequate funds, reserve funds and funding sources for the ongoing operation, maintenance and repair and the periodic reconstruction or replacement of the roads, drainage, street lighting and sidewalks in the subdivision after the abandonment by the County. (The case file includes documentation from the HOA's accountant, McGladrey & Pullen, LLP.)

Additionally, the petitioning HOA must represent that it will:

1. Install, operate, maintain, repair and replace all signs, signals, markings, striping, guardrails and other traffic control devices necessary or useful for the roads conveyed herein; and
2. Hold the roads and rights-of-way in trust for the benefit of the owners of the property in the subdivision, and will operate, maintain, repair and, from time to time, replace and reconstruct the roads, street lighting, sidewalks and drainage facilities as necessary to ensure their use and enjoyment by the property owners, tenants and residents of the subdivision and their guests and invitees.
3. **In support of the Petitioner's representations to hold the roads and rights-of-way for the use and benefit of the residents in the adjoining residential development, a copy of an Agreement between the Petitioner and the Cinnamon Cove Master Association, Inc., executed December 30, 2003, is requested to be attached and made a part to the Resolution as Exhibit "E."** (A copy of this Agreement is attached to the Resolution attached to this Blue Sheet.)

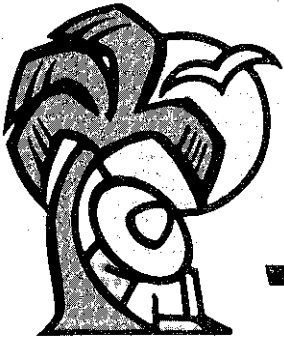
A series of replacement easements have been prepared and executed in favor of the servicing utility companies, such as FP&L, TECO-Peoples Gas, SPRINT and Comcast Cablevision to guarantee continued access to the provider's respective facilities. Easements have also been prepared and executed in favor of Lee County to guarantee continued access to the County's utility facilities (including the County's IDD canals) located within the bounds of the platted subdivision. These easements are being held in trust by the County pending the outcome of the public hearing on the request to vacate and privatize the roads. The Petitioner will pay the necessary costs of recording the replacement easements. (Copies of replacement easements are included in the case file.)

Finally, as a precondition to the County's approval of the requested vacation, the HOA has agreed to repay \$80,293.50 in Road Impact Fee Credits previously issued by the County for additional road right-of-way width anticipated to be utilized is certain segments of the road system within the subdivision were to be widened for additional future capacity. The funds have been placed in the hands of the Office of the County Attorney and are being held in trust pending the outcome of the public hearing on the request to vacate and privatize the roads. (A copy of this check is included in case file.)

Documentation pertaining to this Petition to Vacate is available for viewing at the Office of Lee Cares.

There are no objections by County staff to the request; however, several private parties has expressed an objection to the request and their four (4) letters are available upon request. Staff recommends adoption of this resolution and the acceptance of the replacement easements for utilities and access to County maintained drainage facilities within the residential development.

Also attached to this Blue Sheet is the Resolution, with exhibits.



Siesta Bay

RV Resort

LEE COUNTY
RECEIVED

03 AUG -1 AM 11:48

COMM. DEV/
PUB. WRKS. CNTR.
SECOND FLOOR

July 30, 2003

Peter Eckenrode
Director of Community Development
1500 Monroe Street
Ft. Myers, FL 33902

Dear Mr. Eckenrode,

We have been informed that Kelly Greens is petitioning to close Kelly Cove Drive. We would like to share our concerns with you regarding the county possibly vacating Kelly Cove Drive. Our rear entrance is directly across Summerlin Road from Kelly Cove Drive and we feel that our residents or anyone else residing or traveling in Lee County should not be denied access to this through street. Kelly Cove Drive provides access to Kelly Road and McGregor Boulevard. This road has been available for access and should remain open to the public, this will help alleviate some traffic and congestion on San Carlos Boulevard. Our Resort has over 800 home sites, typically occupied by 2 persons each, therefore we represent 1600 persons within this resort.

If you have further information on this petition to vacate please keep us informed.

Sincerely,

Tammy Siebert
Resort Manager

Cc: All Lee County Commissioners
Lori Rumer
Helen Krieger

Sal - For me file

LEE COUNTY
RECEIVED

August 1, 2003

03 AUG -4 AM 11:43

COMM. DEV/
PUB. WRKS. CNTR.
SECOND FLOOR

Mr. Peter Eckenrode
Director of Development
1500 Monroe Street
Ft. Myers, FL 33901

Dear Mr. Eckenrode:

We are writing to you to inform you of the concern of a large number of residents of Cinnamon Cove who are opposed to the request of the Kelly Greens Community to privatize Kelly Cove Drive. At a recent meeting of our Master Board of Directors, a petition containing the signatures of a vast number of summer residents was submitted. This petition indicated overwhelming opposition to the privatization of this road.

Kelly Cove Drive was built by U. S. Homes and was subsequently turned over to the County. This road has, and remains, our rear ingress and egress since the establishment of Cinnamon Cove. It has always been heavily used by our residents, especially in season, due to the tremendous amount of traffic on San Carlos Boulevard, our front ingress and egress.

Our documents, including the surveyor's maps, show this ingress and egress. The cost of this road was borne by the unit owners of Cinnamon Cove when they purchased their unit from U. S. Homes, prior to the development of Kelly Greens. We believe that Kelly Greens is attempting to take from our Cinnamon Cove Community an essential major road we have had the use of all along. It should be noted that all who purchased in Kelly Greens did so with the knowledge that they were buying into a non-gated community, with County roads throughout.

We are also concerned with their proposed gating at both ends of Kelly Cove Drive. The space available at each end, both Summerlin Road and Kelly Road, has insufficient storage capacity and present major safety factors.

It would seem that the Kelly Greens Community could enclose their community by fencing and gating the west side of Kelly Cove Drive. This would allow everyone, Cinnamon Cove residents as well as all other county residents, including Sun Corporation Siesta Bay Community and Palmetto Pines, continued free and unencumbered use of Kelly Cove Drive. We have no objection to the privatization of all other roads in Kelly Greens

We appreciate your consideration of the above information in determining your recommendations to the County Commissioners.

Sincerely,

George E. Cook
George E. Cook
11801 Caravel Cir.
Ft. Myers, FL 33908

Helen Krieger
Helen Krieger
16901 Ginger Lane
Ft. Myers, FL: 33908

Sol - For the File

LEE COUNTY
RECEIVED

03 AUG -4 AM 11:43

COMM. DEV/
PUB. WRKS. CNTR.
SECOND FLOOR

August 1, 2003

Mr. Peter Echenrode
Director of Development
1500 Monroe Drive
Fort Meyers, FL 33901

Re: The privatization of Kelly Cove Drive

Dear Mr. Echenrode,

I am the president of Terrace III, and represent our Terrace on the Master Board of Directors of Cinnamon Cove. The positions stated in this letter represent the positions the Terrace III board has taken on this matter.

1. It is our understanding from original owners that Kelly Cove Drive was part of the U.S. Homes construction of our development. Therefore, the cost of the road would have been included in the original cost of each unit. The purpose of the road was to allow a rear exit from Cinnamon Cove with **unlimited and free access** to both Summerlin Road and McGregor Blvd. One of the reasons for privatization of this road is to gate the Kelly Green community. This move, of course, would end the **unlimited and free access** and thus **reduce the value of our units.**
2. Turning over control of Kelly Cove Drive would affect the **safety of our community.** The present situation allows for quick exit from many units close to the rear exit. The use of this exit allows for a shorter travel time to our local hospital, which in some cases could be a matter of life and death. The average age of our owners appears to be over 70.
3. Entry into a gated Kelly Cove Drive might require the addition of a stacking lane for cars approaching from San Carlos. We would oppose our tax money being used for such a project. A gate would probably make it impossible for cars approaching from Sanibel to make a left turn onto Kelly Green if cars were waiting for entry through a gate.
4. An honest effort has been made to find positive benefits to our owners if the privatization of Kelly Cove Drive would be approved. Since we have not been able to accomplish this goal we must file this letter in **opposition** to a change in the status of our rear exit and Kelly Cove Drive.

Thank you for your consideration of our position.

Yours truly,



Marvin R. Berk

11250 Caravel Circle

Apt. #107

Fort Myers, FL 33908

LEE COUNTY
RECEIVED

03 AUG 13 AM 11:58

COMM. DEV/
PUB. WRKS. CNTR.
SECOND FLOOR

11404 Caravel Circle
Ft. Myers, FL 33908-3392
August 11, 2003

Mr. Peter Echenrode, Director of Development
1500 Monroe St.
Ft. Myers, FL 33901

Re: Privatization of Kelly Cove Drive

Dear Mr. Echenrode:

When Kelly Greens officials first presented their proposal to privatize Kelly Cove Drive I was in favor of the change. However after reading the proposed contract for Cinnamon Cove to sign I am very much against it. Even if they change the contract now I will be against it because I don't trust them. Their contract allows them to block our usage of the "Drive" for several minor infractions.


During the winter season many residents use the back gate onto Kelly Cove Drive because it is almost impossible to safely exit left out of our front gate onto San Carlos.

Gating Kelly Cove Drive will create a traffic hazard since there is not enough space along Summerlin to wait safely. Also if two cars are waiting for the gate to open anyone coming back from Sanibel will be stuck in the median of Summerlin adding to the problem.

In just two days after reading the contract I was able to get 75 signatures asking our directors to put the proposal to a vote of our membership but there is not enough time to do this before Kelly Greens presents their request.

I was a condominium association president and therefore one of the 14 directors on the Master Board of Cinnamon Cove but resigned after a short time because I didn't feel the board provided fiduciary responsibility to the residents.

Very truly yours,


William H. Westerman



LEE COUNTY
SOUTHWEST FLORIDA

(941) 479-8124

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: _____

Friday, July 11, 2003

Bob Janes
District One

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

Diana M. Parker
County Hearing Examiner

Mr. Christian Van Hise
Abel, Band, Russell, Collier, Pitchford & Gordon
P.O. Box 49948
Sarasota, FL 34230-6498

Re: Petition to Vacate all of the rights of way in Kelly Greens Golf and
Subdivision, as recorded in the public records, Lee County, Florida.

Dear Mr. Van Hise:

Based on the review of the documents submitted with your request, Lee County
Division of Natural Resources has no objection to the vacation of the subject
rights of way.

Should you have any questions, please call me at the above telephone number.

Regards,

LEE COUNTY PUBLIC WORKS DEPARTMENT

Allen L. Davies, Jr.
Natural Resources Division

-cc: Don Blackburn, Development Services
Joan Henry, County Attorney's Office
Margaret Lawson, LCDOT
Roland Ottolini, P.E., NRD

S:\NATRES\SURFACE\DOCUMENT\vac345.doc

THIS INSTRUMENT PREPARED BY:

Department of Community Development
Development Services Division
1500 Monroe Street
Fort Myers Florida 33901

RESOLUTION NO. _____ FOR PETITION TO VACATE

Case Number: VAC2003-00041

WHEREAS, Petitioner, Kelly Greens Master Association, Inc., a Florida not for profit corporation organized and good standing under Florida Statutes (F.S.) Chapter 617, in accordance F.S. Chapter 336 and Lee County Administrative Code (LCAC) 13-8, filed a Petition to Vacate the public's interest in the roads, rights-of-way and appurtenant drainage facilities, legally described in the attached Exhibit "A," and request the simultaneous conveyance of the same to the petitioning homeowners association for the subdivision where those improvements are located; and

WHEREAS, Petitioner has represented its petitioned request is consistent with the provisions of Section 316.00825, F.S., as set forth therein, including the following:

1. The petitioning homeowners' association has requested the abandonment and conveyance for the purpose of converting the subdivision to a gated neighborhood with restricted public access; and
2. No fewer than four-fifths of the owners of record of property located in the subdivision have consented in writing to the abandonment and simultaneous conveyance to the petitioning homeowners' association; and
3. The petitioning homeowners' association is a "homeowners' association" as defined under Section 720.301(7), F.S., with the power to levy and collect assessments for routine and periodic major maintenance and operation of street lighting, drainage, sidewalks and pavement in the subdivision; and
4. The petitioning homeowners' association has adequate funds, reserve funds and funding sources for the ongoing operation, maintenance and repair and the periodic reconstruction or replacement of the roads, drainage, street lighting and sidewalks in the subdivision after the abandonment by the County.

WHEREAS, consistent with the additional provisions of Section 316.00825, F.S., the Petitioner has represented that it will:

1. Install, operate, maintain, repair and replace all signs, signals, markings, striping, guardrails and other traffic control devices necessary or useful for the roads conveyed herein; and
2. Hold the roads and rights-of-way in trust for the benefit of the owners of the property in the subdivision, and will operate, maintain, repair and, from time to time, replace and reconstruct the roads, street lighting, sidewalks and drainage facilities as necessary to ensure their use and enjoyment by the property owners, tenants and residents of the subdivision and their guests and invitees; and
3. In support of the Petitioner's representations to hold the roads and rights-of-way for the use and benefit of the residents in the adjoining residential development, a copy of an Agreement between the Petitioner and the Cinnamon Cove Master Association, Inc., executed December 30, 2003, is attached as Exhibit "E."

WHEREAS, the Board of County Commissioners of Lee County, Florida held a Public Hearing on this Petition to Vacate on the **13th day of April, 2004, at 5:00 P.M.**; and

WHEREAS, notice concerning the intent of the Petition to Vacate was provided in accordance with LCAC 13-8; and

WHEREAS, a legally sufficient Affidavit of Publication regarding the Notice of Public Hearing on this Petition to Vacate was entered into the minutes of the County Commission Meeting and a copy of said Affidavit is attached as Exhibit "C;" and

WHEREAS, it appears that vacating, abandoning and conveying the roads, rights-of-way and appurtenant drainage facilities legally described in attached Exhibit "A" is in the best interest of the public and promotes the public's health, safety, and welfare without invading or violating any individual property rights; and

WHEREAS, the letters of review and recommendation provided by the various governmental and utility entities indicate granting the Petitioner's request is appropriate and in accordance with F.S. Chapter 336.

NOW therefore be it resolved by the Board of County Commissioners as follows:

1. Petition to Vacate No. **VAC2003-00041** is hereby granted.

2. The public's interest in the roads, rights-of-way and drainage facilities legally described in attached Exhibit "A" and graphically depicted in the sketch attached as Exhibit "B" is hereby vacated and abandoned, and simultaneously conveyed to the Petitioner homeowners' association.
3. A Notice of Resolution Adoption will be published one time within 30 days of adoption in a newspaper of general circulation. An Affidavit of Publication for the Notice of Resolution Adoption will be attached to this Resolution as Exhibit "D."
4. This Resolution will become effective upon recording of a fully executed Resolution, including all exhibits referred to above, in the Public Records of Lee County, Florida.

This Resolution passed by voice and entered into the minutes of the Board of County Commissioners of Lee County, Florida, this 13th day of April, 2004, at 5:00 P.M.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

Deputy Clerk Signature

Chairman Signature

Please Print Name

Please Print Name



APPROVED AS TO FORM

County Attorney Signature

Please Print Name

LEGAL DESCRIPTION

All of the road rights-of-way designated or depicted on the plats for KELLY GREENS, a subdivision located in Section 1, Township 46 South, Range 23 East, Lee County, Florida, recorded in the public records of Lee County, Florida, in the following Plat Books:

Plat Book 38, Pages 61-64

KELLY GREENS UNIT ONE - A

- Kelly Palm Drive
- Kelly Greens Boulevard
- Kelly Sands Way

Plat Book 40, Pages 24-30

KELLY GREENS UNIT TWO -

- Kelly Greens Boulevard
- Kelly Bay Court
- Kelly Sands Way
- Kelly Cove Drive
- Kelly Woods Drive
- Cul-de-sac on Kelly Sands Way at Tract 14 (a/k/a Kelly Pine Court)

Plat Book 42, Page 71-72

KELLY GREENS UNIT THREE -

- Kelly Woods Drive

Plat Book 42, Pages 73-74

KELLY GREENS UNIT FOUR -

- Kelly Woods Drive
- Kelly Cove Drive (unnamed but depicted)

Plat Book 43, Pages 90-93

KELLY GREENS UNIT FIVE -

- Kelly Cove Drive
- All of Tracts 29, 33, 34 and 35 (inclusive)

The herein described road rights-of-way do not include or intend to vacate any of Lee County's rights in the IDD canals depicted on the referenced plats. The herein described road rights-of-way remain subordinate and inferior to those rights held by Lee County in the IDD canals where the two may overlap.



Exhibit "B"
 Petition to Vacate
 VAC2003-00041



Scale - 1 inch = 300 feet

Roads to be Vacated

All of the road rights-of-way designated or depicted on the plats for KELLY GREENS, a subdivision located in Section 1, Township 46 South, Range 23 East, Lee County, Florida, recorded in the public records of Lee County, Florida, in the following Plat Books:

☐ = LOCATION

Plat Book 38, Pages 61-64
 KELLY GREENS UNIT ONE - A

- Kelly Palm Drive 1
- Kelly Greens Boulevard 2
- Kelly Sands Way 3

Plat Book 40, Pages 34-39
 KELLY GREENS UNIT TWO -

- Kelly Greens Boulevard 1
- Kelly Bay Court 4
- Kelly Sands Way 5
- Kelly Cove Drive 6
- Kelly Woods Drive 7
- Cut-de-sac on Kelly Sands Way at Tract 14 (a/k/a Kelly Pine Court) 8

Plat Book 42, Page 71-72
 KELLY GREENS UNIT THREE -

- Kelly Woods Drive 5

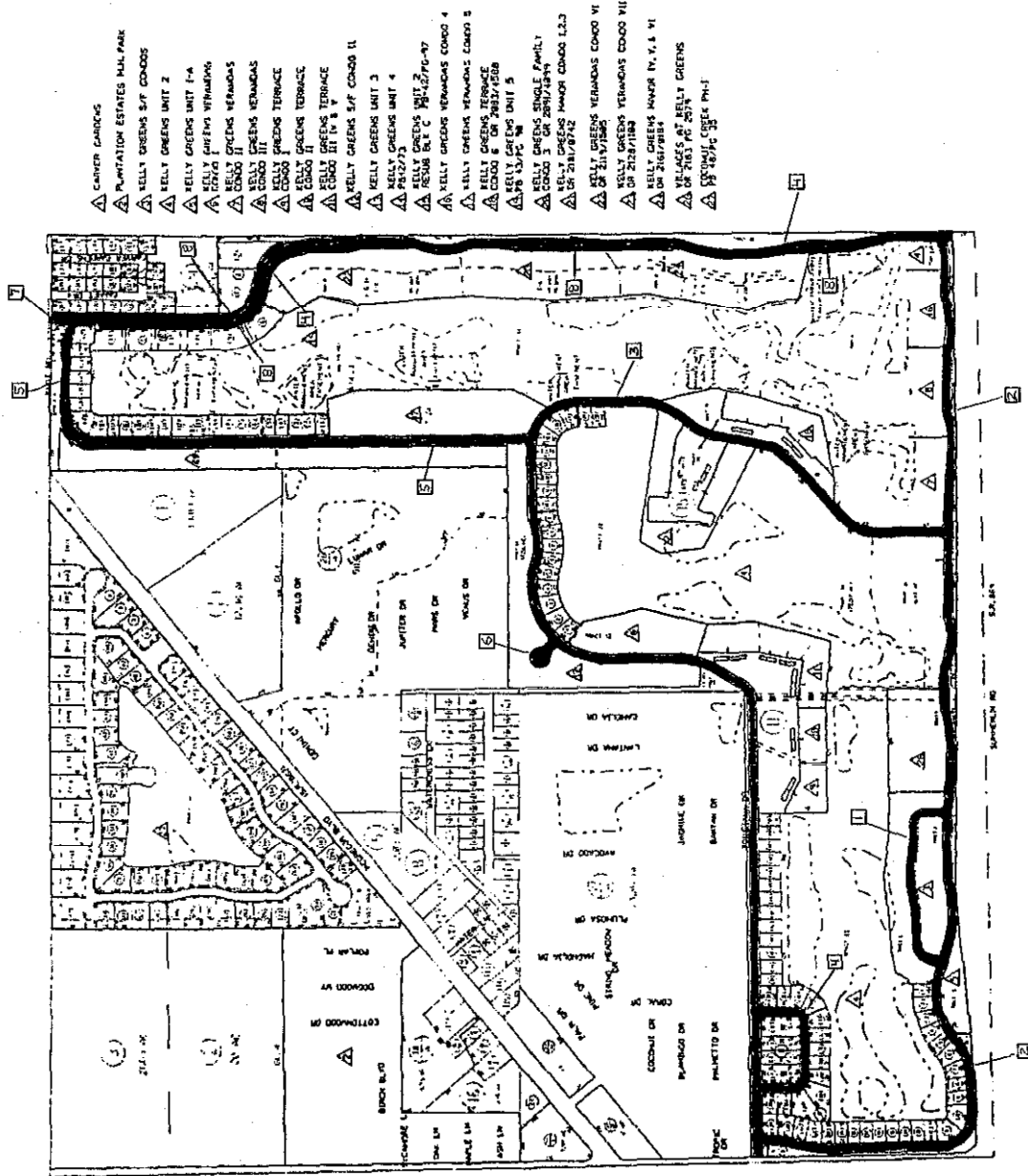
Plat Book 42, Pages 73-74
 KELLY GREENS UNIT FOUR -

- Kelly Woods Drive 5
- Kelly Cove Drive (unnamed but depicted) 7

Plat Book 43, Pages 90-93
 KELLY GREENS UNIT FIVE -

- Kelly Cove Drive 4
- All of Tracts 29, 33, 34 and 35 (inclusive) 8

The herein described road rights-of-way do not include or intend to vacate any of Lee County's rights in the IDD canals depicted on the referenced plats. The herein described road rights-of-way remain subordinate and inferior to those rights held by Lee County in the IDD canals where the two may overlap.



- ▲ CANYON CANYONS
- ▲ PLANTATION ESTATES MUL PARK
- ▲ KELLY GREENS S/F CONDO 5
- ▲ KELLY GREENS UNIT 2
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- ▲ KELLY GREENS VERANDAS
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AGREEMENT

CINNAMON COVE MASTER ASSOCIATION, INC.

KELLY GREENS MASTER ASSOCIATION, INC.

WHEREAS, Kelly Greens Master Association, Inc. ("Kelly Greens") wishes to "privatize" various public roadways within the various subdivisions commonly known as "Kelly Greens;" and,

WHEREAS, Cinnamon Cove Master Association, Inc. ("Cinnamon Cove") administers access to the community commonly known as "Cinnamon Cove;" and,

WHEREAS, Kelly Greens has requested Cinnamon Cove to issue a letter of non-objection to Lee County in connection with Kelly Greens desire to privatize the roadways within or servicing Kelly Greens; and,

WHEREAS, Cinnamon Cove is agreeable to issuing a letter of non-objection in consideration for the undertakings expressed herein.

NOW THEREFORE, it is agreed as follows:

1. The above recitations are true and correct.
2. This agreement does not terminate the agreement between the parties relative to Kelly Greens' reimbursement of Cinnamon Cove's attorneys fees, which remains in full force and effect.
3. Each party represents that it has the authority to enter into this Agreement and the Kelly Greens Roadways Access Easement Agreement attached hereto as **Exhibit "1."**
4. The date of this Agreement shall be the date latest executed by Cinnamon Cove or Kelly Greens.
5. Upon obtaining title to the roadways within Kelly Greens, Kelly Greens shall, within ten (10) days, record the Kelly Greens Roadways Access Easement Agreement attached as **Exhibit "1"** hereto which is incorporated into this Agreement.
6. Any action to enforce or defend the provisions of this Agreement, including implementation of the Kelly Greens Roadways Access Easement Agreement appended hereto, shall entitle the prevailing party to recover all costs and attorneys fees (whether incurred before the filing of suit, before trial, at trial, on appeal, or in any ancillary proceedings) from the non-prevailing party.
7. This Agreement may only be modified by a writing signed by both parties.

CINNAMON COVE MASTER ASSOCIATION, INC.

BY: Robert Sempsey
Robert Sempsey, President

Date: 12/30/03

CORPORATE SEAL:

ATTEST: [Signature]
R.L. Lison, Secretary

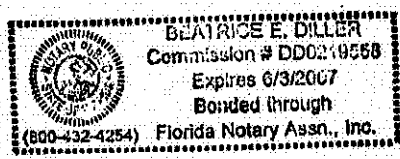
WITNESSES:

[Signature]
Signature
CINDY MOORE
Printed Name

[Signature]
Signature
MARY A SMITH
Printed Name

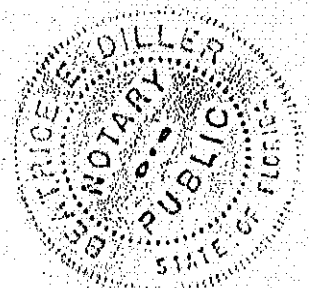
STATE OF FLORIDA)
) SS:
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 30 day of December 2003 by Robert Sempsey, as President of Cinnamon Cove Master Association, Inc., a Florida Corporation, on behalf of the corporation. He/She is personally known to me or has produced (type of identification) as identification and did take an oath.



[Signature]
Notary Public
BEATRICE E. DILLER
Printed Name

My commission expires: 6-3-2007



Instrument Prepared by
and Return to: Joseph E. Adams, Esq.
Becker & Poliakoff, P.A.
14241 Metropolis Avenue, Suite 100
Fort Myers, Florida 33912

KELLY GREENS ROADWAYS ACCESS EASEMENT AGREEMENT

THIS AGREEMENT, made this ___ day of _____, _____, by and between the Kelly Greens Master Association, Inc., a Florida corporation, whose address is 12300 Kelly Greens Boulevard, Fort Myers, Florida 33908, its successors and assigns (hereinafter collectively referred to as the "Grantor") and the Cinnamon Cove Master Association, Inc., a Florida corporation, whose address is 11650 Caravel Circle, Fort Myers, Florida 33908, its successors and assigns (hereinafter referred to as the "Grantee").

WITNESSETH:

WHEREAS, to enhance the safety and security within the Kelly Greens Golf and Country Club community (hereinafter "Kelly Greens"), Grantor, in accordance with applicable statutory and regulatory authority, petitioned the Lee County Board of County Commissioners to vacate and abandon the County's interest in the road rights-of-way identified in those certain recorded plats for Kelly Greens on file in the public records for Lee County, Florida; and

WHEREAS, Grantee has been duly apprised of Grantor's action to secure approval from the Lee County Board of County Commissioners regarding the vacation of the platted road rights-of-way within Kelly Greens and Grantee has no objection to Grantor's action and acknowledges same by its execution of this Agreement; and

WHEREAS, pursuant to Lee County Resolution No. _____ ("the Resolution"), Grantor owns those certain road rights-of-way collectively known as the Kelly Greens roadways within the Kelly Greens subdivision, as more particularly described in Exhibit "A" attached hereto and made apart hereof. The Kelly Greens road rights-of-way described in

Exhibit "A" shall hereinafter be referred to as either the "Kelly Greens Roadways" or the "Easement Property"; and

WHEREAS, Grantee is a Florida corporation operating in accordance with the provisions of Chapter 718, Florida Statutes, with authority to act on behalf of and for the benefit of the individual unit owners of that certain condominium development located in Lee County, Florida, known as Cinnamon Cove (hereinafter "Cinnamon Cove"); and

WHEREAS, it is advantageous to both Grantor and Grantee to establish a perpetual non-exclusive roadway and access easement over and across the Kelly Greens Roadways in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the terms and conditions set forth herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee, intending to be legally bound hereby, consent to the following:

1. Grant of Roadway Access Easement. Grantor hereby grants and conveys to Grantee a perpetual non-exclusive easement for access, use, passage, and/or common transportation purposes, over, upon, and across the Easement Property described in Exhibit "A" attached hereto and incorporated herein which property encompasses all of the road rights-of-way in the Kelly Greens subdivisions, ownership of which has passed to Grantor by virtue of the Resolution. This road access easement is granted for the express purpose of providing all individual unit owners within the Cinnamon Cove condominium, together with their respective tenants, guests, invitees and licensees, a continuous and binding right to utilize all Kelly Greens Roadways.

2. Maintenance of Kelly Greens Roadways. Grantor agrees and covenants to maintain and repair the Easement Property as may be required from time to time and in

accordance with all conditions and stipulations enumerated in the Resolution, if any, and in any event in a condition at least comparable to the condition of the roadways on the date of the Resolution. Grantor agrees and covenants to maintain and/or repair all appurtenant improvements and/or facilities located within or upon the Easement Property, including street signs, pavement markings, street lights, and access control gates and security equipment.

3. Access Control and Extent of Easement Granted. It is specifically understood that this easement shall require Grantor to permit Cinnamon Cove unit owners (which shall include their respective tenants, guests, invitees, and licensees) to utilize all of the Kelly Greens Roadways administered by Grantor. It is further understood that Grantor intends to install access control installations, such as electronically operated gates, at various points within the roadway system, so as to preclude entry by non-authorized parties into Kelly Greens. Grantor shall be obligated, at its sole cost and expense, to ensure that the access control installations are electronically programmed in such a manner so as to be accessible by Cinnamon Cove unit owners by operation of the existing remote control transmitters ("clickers") that are presently utilized by them to access the back entrance gate to Cinnamon Cove located at the intersection of Caravel Circle and Kelly Cove Drive. Without limitation, this includes access through any gate placed on the Kelly Greens Roadways. Further, Grantor shall be responsible, at its sole cost and expense, to ensure that the remote control transmitters utilized by Kelly Greens unit owners will not activate any gate accessing Cinnamon Cove, specifically including the aforesaid back entrance gate located at Caravel Circle and Kelly Cove Drive. In the event Cinnamon Cove, or its successors or assigns, proposes to modify, improve, replace, reconfigure or otherwise upgrade or change its existing access gate system, Grantor shall provide its reasonable cooperation and technical operating information to assist Cinnamon Cove with any such proposal. Grantor shall be responsible to promptly address any malfunction in Grantor's access control system, it being

the intent that Cinnamon Cove unit owners shall, without cost to them, be entitled access through all gates within Kelly Greens but Kelly Greens unit owners are not conferred rights of access through Cinnamon Cove. It is further understood that the easement granted to Cinnamon Cove unit owners herein includes not only vehicular access, but also rights to use the Easement Property for walking and bicycling.

4. Pedestrian Access Gates. In addition to the electronically operated access control installations identified in Paragraph 3 above, Grantor shall also install manually operated pedestrian access gates at locations as required under the governing provisions of the Lee County Land Development Code. Consistent with Grantor's intent to enhance the safety and security within the subdivision, the pedestrian access gates will require the use of a key for operation thereof. At no cost to the Grantee or to the individual unit owners within Cinnamon Cove, Grantor shall provide one key for each Cinnamon Cove unit to permit use and/or operation of the herein described pedestrian access gates. Any Cinnamon Cove unit owner may obtain a pedestrian access gate key from the Grantor by personally applying to Grantor's manager or other authorized representative of the Grantor in the Executive Office of Kelly Greens. Grantor shall maintain a written record of pedestrian access gate keys issued to Cinnamon Cove unit owners. In the event a Cinnamon Cove unit owner requests more than one pedestrian access gate key, the unit owner shall be required to reimburse Grantor the cost to duplicate and/or procure each additional key requested. Additionally, in the event a Cinnamon Cove unit owner sells or otherwise transfers or conveys its unit, said unit owner shall, prior to the sale, transfer of conveyance, either return any pedestrian access gate key(s) issued or provide written notice to the Grantor that such key(s) will be transferred to the successor owner of the unit, such notice to include the name, address, and telephone number of the successor owner. Notwithstanding the terms and conditions enumerated herein, this paragraph shall not be construed to limit or restrict

the use of the pedestrian access gates by any tenants(s), guest(s), invitee(s), or licensee(s) of any Cinnamon Cove unit owner. Any Cinnamon Cove unit owner may provide any tenant(s), guest(s), invitee(s), or licensee(s) with the pedestrian access gate key issued hereunder to facilitate the intent and purpose of this Access Easement Agreement.

5. Binding Effect. All references to the Grantor and/or the Grantee within this Agreement shall include their respective successors and/or assigns. The easement granted herein, together with the covenants, conditions, and terms of this Agreement shall run with the land and shall be binding on all successors and assigns of the parties hereto. It is the expressed intent of both the Grantor and the Grantee that the individual unit owners within Cinnamon Cove, together with their respective tenants, guests, invitees, and licensees, are intended beneficiaries of this Agreement and these beneficiaries shall be entitled to all rights and remedies under this Agreement as long as the Agreement remains in effect.

6. Indemnity. Grantor shall defend, indemnify, and hold the Grantee harmless against any and all claims, obligations, liabilities, expenses or fees, including reasonable attorneys fees and costs incurred by the Grantee (before trial, at trial, or on appeal) arising out of or resulting from any negligent act, action, inadvertence or omission of the Grantor, its agents, contractors, or employees, with respect to Grantor's obligation to operate, repair, and maintain the roads, street signs, pavement markings, street lights, access control gates, and any related and appurtenant equipment or facilities within or upon the Easement Property.

7. Recordation. This Agreement shall be recorded by the Grantor in the public records of Lee County, Florida. The real property subject to the terms of this Agreement is described in Exhibit "A" attached hereto which Exhibit is specifically made a part of this Agreement.

8. Modifications. This Agreement may be modified only by a written document signed by both the Grantor and the Grantee or their respective successors or assigns. Any purported oral modification of this Agreement shall not be valid or have any effect whatsoever.

9. Default. In the event either Grantor or Grantee fails to abide by any of the terms or provisions of this Agreement, such failure shall constitute a default and the non-defaulting party may thereafter institute legal action against the defaulting party through specific performance, declaratory or injunctive relief, monetary damages, or any other remedy provided in law or equity. In the event that Grantor or Grantee initiates or defends a legal action to enforce or interpret this Agreement, the prevailing party of any such action shall be entitled to recover from the losing party the reasonable costs and attorneys fees incurred to prosecute such action.

10. Severability. In case any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein unless such unenforceable provision results in a frustration of the purpose of this Agreement or a failure of consideration provided hereunder.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Kelly Greens Roadways Easement Agreement effective the day and year first above written.

KELLY GREENS MASTER ASSOCIATION, INC.

BY: _____

Dated: _____

_____, President

Corporate Seal

WITNESSES:

Signature

Signature

Printed Name

Printed Name

STATE OF FLORIDA)
) SS:
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this _____ day of _____, 200__ by _____ as President of Kelly Greens Master Association, Inc., a Florida Corporation, on behalf of the corporation. He/She is personally known to me or has produced (type of identification) _____ as identification and did take an oath.

Notary Public

Printed Name

My Commission Expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION

All of the road rights-of-way designated and depicted on the plats for **KELLY GREENS**, a subdivision located in Section 1, Township 46 South, Range 23 East, Lee County, Florida, recorded in the public records of Lee County, Florida, in the following Plat Books:

Plat Book 38, Pages 61-64
KELLY GREENS UNIT ONE - A

- Kelly Palm Drive
- Kelly Greens Boulevard
- Kelly Sands Way

Plat Book 40, Pages 24-30
KELLY GREENS UNIT TWO -

- Kelly Greens Boulevard
- Kelly Bay Court
- Kelly Sands Way
- Kelly Cove Drive
- Kelly Woods Drive

Plat Book 42, Page 71-72
KELLY GREENS UNIT THREE -

- Kelly Woods Drive

Plat Book 42, Pages 73-74
KELLY GREENS UNIT FOUR -

- Kelly Woods Drive
- Kelly Cove Drive (unnamed but depicted)

Plat Book 43, Pages 90-93
KELLY GREENS UNIT FIVE -

- Kelly Cove Drive

Plat Book 42, Page 97-98
Resubdivision of Lots 1 thru 18, Block C,
KELLY GREENS UNIT TWO

- Kelly Sands Way
- Kelly Woods Drive