

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,  
IN AND FOR MARION COUNTY, FLORIDA**

**HEATH BROOK HILLS OWNERS'  
ASSOCIATION, INC.,**

**Plaintiffs,**

vs.

**GARY SMITH, individually, KELLY HILL,  
individually, and DENNIS SAUNDERS,  
individually,**

**Defendants,**

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) **CASE NO. 2011-CA-2953-CAB**  
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**DEFENDANTS' MEMORANDUM OF LAW  
IN SUPPORT OF DEFENDANTS' AMENDED MOTION TO DISMISS**

COMES NOW Defendants, **GARY SMITH** ("Smith") and **KELLY HILL** ("Hill"), referred to collectively as "Defendants," by and through undersigned counsel and files this Memorandum of Law in Support of Defendants' Motion to Dismiss the above-referenced action. In support thereof the Defendants state:

1. Plaintiff filed its action for Declaratory Relief (Count I), a Writ of Quo Warranto or, in the alternative, a Writ of Prohibition (Count II) and Injunctive Relief (Count III) on or about September 30, 2011.
2. Defendants moved to dismiss this action on October 19, 2011 and filed an Amended Motion to Dismiss on November 3, 2011. The Amended Motion to Dismiss does not change any of the arguments in the original Motion to Dismiss, but adds an additional argument for failure to include indispensable parties.
3. Defendants served upon the Plaintiff and Plaintiff's counsel a Motion for Attorneys' Fees Pursuant to *Fla. Stat. §57.105* on October 19, 2011 for Plaintiff and Plaintiff's counsel's failure to comply with the statutory requirement submitting a recall dispute to arbitration and failure to meet the minimum pleading requirements of *Fla. R. Civ. Pro. 1.130(a)*.

## MEMORANDUM OF LAW

### ⚡ **Summary of the Case**

Plaintiff is a homeowners' association pursuant to *Fla. Stat. §720 et. seq.* (hereinafter "the Act"), the *Fla. Admin. Code 61B-81* (hereinafter "the Admin Code") governing elections and recalls in homeowner associations, and the governing documents of the Association, which consist of the Declaration of Restrictive Covenants (hereinafter the "Declarations"), the Bylaws and the Articles of Incorporation (hereinafter "the Articles"). The Bylaws, which provide the procedures for recalling board members by voting at a members meeting, are a controlling document upon which the Plaintiff asserts its claim. Therefore, Plaintiff's Complaint fails to conform the pleadings with the requirements of the *Fla. R. Civ. Pro. 1.130(a)* by failing to include at least the relevant pages of the Bylaws. Plaintiff also failed to acknowledge the requirement to comply with the recall procedures in the Admin Code and, in not properly following recall procedures, brings this case alleging the Defendants refused to certify the recall. A more complete discussion of the recall procedures that are required and those used by the Plaintiff is provided below. Plaintiff also asserts additional facts, but fails to include documents which are the basis for those facts, again failing to properly plead a cause of action.

### ⚡ **The Court Lacks Jurisdiction**

Pursuant to *Fla. Stat. § 720.311 (1)*, any dispute involving elections and recalls must first be submitted to arbitration before the Department of Business and Professional Regulation (hereinafter "DBPR"). Only after DBPR has issued an order of removal of directors subject to the recall may the Plaintiff bring an action in Circuit Court enforce the arbitration order if the recalled directors fail to comply with the arbitration order. Plaintiff alleges in its Complaint that the named Defendants failed to turn over control of the Plaintiff Association to the newly elected board members, but there is no arbitration order requiring the turn over that would subject this matter to the jurisdiction of the Court. Not only does this Court lack jurisdiction until an

enforceable arbitration order is issued, but Plaintiff has failed to exhaust all administrative remedies, as required by the statute, before proceeding to Circuit Court.

Pursuant to *Fla. Stat. §720.303(10)(d)*, if the board determines not to certify the written agreement or written ballots to a recall or does not certify the recall by a vote at a meeting, “the board shall, within 5 full business days after the meeting, file with the department a petition for binding arbitration pursuant to the applicable procedures in ss. 718.112(2)(j) and 718.1255 and the rules adopted thereunder.” For reasons stated below, the board did not hold a recall meeting and therefore did not petition DBPR for arbitration per the statute. Pursuant to *Fla. Stat. §720.303(10)(f)*, if the board fails to hold the recall meeting or petition for arbitration within five (5) days, the recall is deemed effective. For the reasons stated below, there was no recall meeting or duty of the board to petition DBPR for arbitration that would allow the Plaintiff Association to bring this action in circuit court pursuant to *Fla. Stat. §720.303(10)(g)*.

Defendants assert, pursuant to *Fla. R. Civ. Pro 1.140(4)(b)*, this Court lacks jurisdiction any over the subject matter and Plaintiff has failed to state a cause of action upon which relief can be granted. The Plaintiff Association has failed to properly comply with the recall procedures, failed to properly petition for a recall meeting, and performed conditions precedent to bringing this action. Failure to comply with the alternate dispute resolution requirements of *Fla. Stat. §720.311* precludes the Plaintiff from a recovery of attorneys’ fees and costs should it prevail.

#### ↓ **Plaintiff Failed to Comply with the Recall Procedures for a Valid Recall**

Pursuant to *Fla. Stat. §720.303(10)(a)(1)*, “any member of the board of directors may be recalled and removed from office with or without cause by a majority of the voting interests.” Pursuant to *Fla. Stat. §720.303(10)(b)(1)*, “Board directors may be recalled by an agreement in writing or by written ballot without a membership meeting. The agreement in writing or written ballots, or a copy thereof, shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the *Florida Rules of Civil Procedure*.” Chapter 48 requires personal service on a corporation by either the sheriff of the county in which

the corporation does business or by a process server. Service of the “recall petition” was done by hand delivery of a petition, to Defendant **KELLY HILL** on August 9, 2011, consisting of two (2) pages containing twenty-six (26) signatures. *See* attached as Exhibit “A,” the “recall petition” received by Kelly Hill. The Association consists of 105 homes and pursuant to the recall procedures set out in 4.4.1 of the Bylaws, the members may petition for a recall meeting upon a petition signed by thirty percent (30%) of the voting members. A petition for a recall meeting would therefore require the signatures of 32 voting members. Even though the petition did not contain enough signatures for a recall meeting, it should be noted that of the twenty-six (26) signatures submitted, six (6) were ineligible because two owners of the same parcel signed the petition for four (4) parcels, two (2) signatures were from non-owners. Specifically, Arthur Ward signed for 6505 SW 50<sup>th</sup> Terrace, a property owned by Heather C. True (*see* Marion County Property Appraiser 2011 Property Record marked as Exhibit “B”), and Keith D. Weber signed for 4903 SW 63<sup>rd</sup> Loop, a property owned by Diana McManaway (*see* Marion County Property Appraiser 2011 Property Record marked as Exhibit “C”).

It should also be noted that *Fla. Stat. §720.303(10)(c)(1)* provides “If the declaration, articles of incorporation, or bylaws specifically provide, the members may also recall and remove a board director or directors by a vote taken at a meeting. *If so provided in the governing documents*, a special meeting of the members to recall a director or directors of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting...” *The important language of this statute is the wording “If so provided by the governing documents.”* While the governing documents, specifically the Bylaws, provide for a recall meeting by the members, the Bylaws specifically require thirty percent (30%) of the membership to request the meeting. The governing documents of the Plaintiff Association were executed on June 4, 2003, prior to the creation of *Fla. Stat. §720.303(10)*, therefore, since no new law can be applied to retroactively change an existing contract, the provision in the Bylaws requiring thirty per cent (30%) would overrule the ten percent (10%) in the statute. *See Cohn v. The Grand Condominium*, 62 So.3d 1120, 2011 WL 1158938 (2011); *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (1979).

Additionally, the provision in *Fla. Stat. §720.303(10)(c)(1)* also defeats application of the statute because taken by its literal meaning that “*if the governing documents so provide*” for a recall meeting by ten percent (10%) of the membership would mean the governing documents of the Plaintiff Association do not provide for a recall meeting by ten percent (10%) of the membership.

Plaintiff Association, by and through the actions of board member Tommy Henderson, held a members meeting for recall of the named Defendants on August 30, 2011 after submitting only twenty-six (26) signatures, some of which were ineligible, on a petition requesting a recall meeting. This meeting was not a valid recall meeting as a meeting can only be called by the President, a majority vote of the entire board, or by thirty percent (30%) of the members. Furthermore, the Plaintiff Association failed to provide proper notice of such meeting fourteen (14) days in advance of the meeting by individual and personal delivery to all members and to the Board of Directors with proof of compliance with § 4.4.1, as required by § 4.4.2 of the Bylaws.

Plaintiff failed to properly conduct the members meeting, will Plaintiff alleges was a recall meeting, because the members are required to designate an owner to conduct the meeting, call the meeting to order, establish a quorum is present, and conduct a separate vote for each director being recalled pursuant to § 4.4.3 of the Bylaws of the Association. This section of the Bylaws also requires the members give the directors who are being subjected to the recall the opportunity to speak at the meeting, record the vote count for each director being subjected to recall, announce if the recall was effective, and vote for replacement directors for any director effectively recalled. The minutes of the recall meeting must then be served upon the Board of Directors. Plaintiff failed to follow any of these procedures and materially failed to comply with the recall procedures of the Bylaws or even *Fla. Admin. Code 61B-81.001 to 61B-81.003*. A copy of the relevant sections of the Bylaws is attached hereto as Exhibit “E.”

Plaintiff asserts a proper recall was conducted based on its submittal of a “recall petition” when the statute does not provide for recall by petition. The Plaintiff appears to be confused as

to the difference between a petition for members to demand a recall meeting and a written recall agreement or recall by ballot. Plaintiff attempted to do was petition for a recall meeting as authorized by § 4.4.1 of the Bylaws and *Fla. Stat. § 720.303(10)(c)* and when those efforts failed because they did not even minimally comply with the recall procedures, Plaintiff attempts to assert a petition for a recall meeting is the same as a recall. Plaintiff next submitted the requisite number of signatures needed for a recall meeting, but the members of the Association failed to notice or hold the recall meeting as provided for in the procedures. Instead, the members of the Association held an election for new board members even though the existing board members were not recalled. Such meeting was not properly noticed pursuant to *Fla. Stat. §720.303(2)* or § 4.4.1 of the Bylaws.

Plaintiff erroneously asserts the Defendants had a duty to call the meeting to hold a vote for recall, however, while the Bylaws permit the Board of Directors to hold such a meeting, the burden is on the members to notice such a meeting and hold such a meeting if the Board of Directors does not. The duty of the Board of Directors does not ripen until after the vote at the members meeting. It is at this time that the Board of Directors must hold a board meeting, within five (5) days to certify the recall, or if they chose to not certify the recall, they must, after five days from the *board meeting*, file a petition for arbitration with DBPR. Plaintiff, asserting the Board of Directors has the duty to notice and conduct such meeting, fails to acknowledge that all board members hold that duty equally. Therefore, Plaintiff's Complaint should be dismissed on additional grounds of failure to include indispensable parties by naming the other two board members as Defendants. As no such recall meeting has yet occurred or been noticed by the members of the Association, any legal action is pre-mature and there is no cause of action upon which relief can be granted.

Plaintiff attempted to remedy the non-compliance by gathering additional signatures on the "recall petition" after the initial papers were hand-delivered to Kelly Hill, however, the second set of papers, delivered to Kelly Hill by regular mail on September 3, 2011, did not include the all of the pages and signatures Plaintiff has provided in in the attachments to the Complaint. For example, Kelly Hill the second version of the "recall petition" in the mail on

September 3, 2011, while Ms. Hill was out of town for the Labor Day Holiday, but some of the signatures are dated September 2<sup>nd</sup>, September 3<sup>rd</sup> and September 8<sup>th</sup>. Ms. Hill could not have been served with papers that were signed *while in possession of the post office*. The “recall petition” becomes further suspect when some of the signatures have a date that is later than the date of signatures that are on lines below them. The full “recall petition” is attached as Exhibit “F.”

Plaintiff then sent Ms. Hill a letter, by process server on September 16, 2011, dated September 13, 2011, stating the “petition/agreement” was signed by more than fifty percent (50%) of the members. This fact is not true. The papers submitted by Plaintiff and attached to the Complaint contained only forty-eight (48) signatures, which is less than half of the 105 members. Additionally, subtracting at least seven (7) ineligible signatures further reduces this number to forty-one (41). Plaintiff then goes on to state in the letter that the September 1, 2011 “recall notice” was a follow-up to the August 10<sup>th</sup> and August 24<sup>th</sup> recall notices. Neither the Bylaws nor the Florida Statutes nor the Florida Administrative Code provide for a recall to be submitted in phases. Additionally, Defendant Kelly Hill asserts she never received any “recall notice” or documents on or after August 24<sup>th</sup> until the documents that were delivered September 3, 2011. By Plaintiff’s own admission in this letter those documents were mailed September 1, 2011 and therefore could not have included the three signatures dated September 2<sup>nd</sup> and afterwards and most likely the signatures dated September 1<sup>st</sup> as well.

Plaintiff and Plaintiff’s counsel then go on to misinterpret the law and the governing documents further by stating:

- ⚡ The Board received a recall meeting request in August with thirty percent (30%) of the members signatures and the Board failed to hold the meeting within “five (5) days of receipt of a petition;”
- ⚡ The Board failed to comply with *Fla. Stat. §720.303(1)(f)* by failing to “duly hold a board meeting within 5 full business days after service of an agreement in writing;”
- ⚡ The Board failed to “file a petition with the State for arbitration within five (5) days of delivery of the most (sic) recall petition.”

Plaintiff's statements are factually incorrect and discombobulated because:

- ✦ The August "recall petition" did not contain thirty percent (30%) of the signatures;
- ✦ The recall meeting can be called by the members of the Plaintiff Association and not just the Board of Directors, if the required number of signatures are obtained;
- ✦ The Board did not receive an "agreement in writing," but merely received a request for a recall meeting;
- ✦ The Board is not required to petition DBPR for arbitration until a recall meeting is held or a written agreement for recall is received.

The letter goes on to state the Florida Statutes provide board members can be recalled without a membership meeting, but fails to acknowledge this procedure requires a written agreement or written ballots. The letter dated September 13, 2011 is attached as Exhibit "G."

A written agreement, or written ballot as it is also called, for recall is a specific document with a specific format as outlined in *Fla. Admin. Code 61B-81.003 "Recall by Written Agreement of the Voting Interests; Board Certification, Filling Vacancies."* A copy of this administrative rule is attached as Exhibit "H." The form must:

- ✦ List by name each director sought to be recalled;
- ✦ Provide spaces by the name of each director sought to be recalled where the person executing the agreement can indicate if the director should be recalled or retained;
- ✦ List, in the form of a ballot, at eligible candidates to replace the directors being recalled;
- ✦ Provide a space for the person executing the agreement to state his/her name, parcel number or street address, and date of execution of the agreement;
- ✦ Provide a signature line for execution of the agreement with a statement that he or she is authorized to cast a vote for that parcel;
- ✦ Designate the person authorized to be the representative to receive the written agreements, tally the votes, serve copies on the board, and perform any other duties required by the representative.



The Code requires substantial compliance with these guidelines or the recall will be deemed not eligible for certification. See Coquina Beach Club Condominium Association, Inc. v. Members of the Association Voting for Recall, Arb. Case No. 96-0012, Final Order (January 31, 1996) whereby "Because the recall agreement failed to substantially comply with the statute and rules, the arbitrator held that the recall was void at the time of service on the board and such precluded the certification of the recall." Also see The Sales Condominium Association, Inc. v. Unit Owners Voting for Recall, Arb. Case No. 2004-01-4011, Summary Final Order (April 19, 2004) whereby the arbitrator failed to certify the recall on the basis that the written recall "was void *ab initio* in that it failed to substantially comply with rule 61B-23.0028(1), Florida Administrative Code, regardless of the board's failure to properly notice its recall meeting or its failure to timely file a petition for arbitration with the Division." A copy of the written recall ballot, as approved by DBPR, is attached hereto as Exhibit "I."

### CONCLUSION

Plaintiff, by and through the actions of its counsel, has brought this action against the named Defendants without fully investigating the matter and failing to advise the Plaintiff of the proper procedures for recalling board members. More importantly, Plaintiff and Plaintiff's counsel completely ignore the laws, administrative code and governing documents of the Plaintiff Association and attempt to bypass the system in place for calls, ignoring the rights of the named Defendants and subjecting them to costly litigation. Had Plaintiff's counsel spent any time reviewing the Code or the governing documents, rather than a cursory review of the statute, Plaintiff's counsel could have advised his clients of the proper manner in which to recall directors of an association and could not have brought this action in good faith.

**WHEREFORE**, Defendants request this Court to enter an Order of Dismissal, dismissing the Plaintiff's Complaint with prejudice, and award the Defendants attorneys' fees and costs, pursuant to *Fla. Stat. §720.311* and *§720.305(1)*, and further order such monetary judgment be paid equally by the Plaintiff and Plaintiff's counsel pursuant to *Fla. Stat. §57.105*, along with any further relief as this Court may determine to be appropriate.

**CERTIFICATE OF SERVICE**

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the foregoing was served via Certified U.S. Mail to Plaintiff's attorney on record, **R. GREGG JERALD**, c/o Landt, Wiechens, LaPeer & Ayres, P.A., 445 N.E. 8<sup>th</sup> Avenue, Ocala, Florida, 34470 this 11<sup>th</sup> day of November, 2011.

Respectfully submitted,

*Barbara Billiot Stage*

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Barbara Billiot Stage, Esq.  
Florida Bar No. 0042467  
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Facsimile: 321.445.9857  
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The below list is circulated for the purpose of obtaining signatures, to hold a recall meeting, to recall three board members of the Heath Brook Hills Homeowners Association, Inc., a State of Florida, Chapter 720 Homeowners Association located in Ocala, Florida.

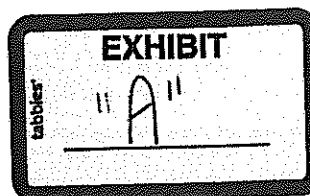
Cindy Henderson handed to me on, Tuesday, Aug 9, 2011 in the evening.

The recall is for board members Kelly Hill, Gary Smith and Dennis Saunders.

Replacement board members shall be elected at the board meeting if a majority or more of the existing members are successfully recalled at the meeting.

We have affixed our name, home address in association, signature and date of signature below.

Name	Home address	Signature	Date
LeRoy Cooper	6570 SW 50 <sup>th</sup> Ct	LeRoy Cooper	8-9-11
ROBERT FORAKIN	6580 SW 51 <sup>st</sup> Ct	Robert Forakin	9 Aug 11
A. SYPHER	6580 SW 51 <sup>st</sup> Ct	A. Sypher	9-11
Cyndi Henderson	6470 SW 50 <sup>th</sup> Ct.	Cyndi Henderson	8/09/11
JAMES A HERNANDEZ	6530 SW 50 <sup>th</sup> Ct.	James A Hernandez	8/9/11
FRANK WOOD	6505 SW 50 <sup>th</sup> Dr	Frank Wood	8/9/11
Myra Wood	6445 SW 60 Terr.	Myra Wood	8/9/11
Cleveland Anderson	5040 SW 63 <sup>rd</sup> Loop	Cleveland Anderson	8/9/11
Josephine Anderson	"	Josephine Anderson	8/9/11
Robin Th. Maroney	4903 SW 63 <sup>rd</sup> Loop	Robin Th. Maroney	8/9/11
KEITH D WELER	4907 SW 63 <sup>rd</sup> Loop	Keith D Weler	8/9/11
Florence Spothoff	4911 SW 63 <sup>rd</sup> Loop	Florence Spothoff	8/9/11
Frank Spothoff	4911 SW 63 <sup>rd</sup> Loop	Frank Spothoff	8-9-11
DON ECKHART	4913 SW 63 <sup>rd</sup> Loop	Don Eckhart	8-9-11
Tony Campbell	4915 SW 63 <sup>rd</sup> Loop	Tony Campbell	8-9-11
Scott Cunningham	4935 SW 63 <sup>rd</sup> Loop	Scott Cunningham	8-9-11
Paul LaChausse	4910 SW 63 <sup>rd</sup> Loop	Paul LaChausse	8/9/11
Paul LaChausse	4910 SW 63 <sup>rd</sup> Loop	Paul LaChausse	8/9/11





# Marion County Property Appraiser

## Villie M. Smith, CFA, ASA

HOME Search Previous Parcel Next Parcel TRIM Notice TRIM Supplement Address Change Form

GO TO Current 2011 2010 PRC

### 2011 Property Record Card

**2389-200-027**

Prime Key: 3302192

Property Information

Map It!

TRUE HEATHER C  
6505 SW 50TH TER  
OCALA FL 34474-5781

Taxes / Assessments: \$2,376.29

M.S.T.U.

Map: 148

PC: 01

Mill Group: 1005

Acres: 0.16

Location: 6505 SW 50TH TER

Current Values

Land Just Value	\$26,001
Buildings	\$144,478
Miscellaneous	\$1,346
Total Just Value	\$171,825
Total Assessed Value	\$171,825
Exemptions	-\$50,000
Total Taxable	\$121,825
School Taxable	\$146,825

Ex Codes: 01 38

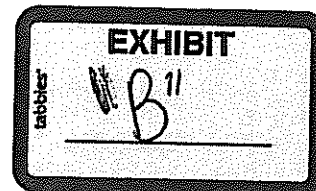
History of Assessed Values

Year	Land	Building	Misc Impr	Just	Assessed	Exemption	Taxable
2011	\$26,001	\$144,478	\$1,346	\$171,825	\$171,825	\$50,000	\$121,825 HX
2010	\$28,964	\$154,923	\$1,436	\$185,323	\$185,323	\$50,000	\$135,323 HX
2009	\$32,769	\$182,444	\$1,526	\$216,739	\$216,739	\$50,000	\$166,739 HX

Property Transfer History

Book/Page	Date	Instrument	Code	Q/U	V/I	Price
<u>4874/0944</u>	08/07	07 WARRANTY	2 V-SALES VERIFICATION	Q	I	\$265,000
<u>4082/1826</u>	06/05	07 WARRANTY	2 V-SALES VERIFICATION	Q	V	\$52,000
<u>3833/0910</u>	09/04	06 WARRANTY	3 DEVELOPER SALE	U	V	\$25,000

Property Description



SEC 04 TWP 16 RGE 21  
 PLAT BOOK 007 PAGE 120  
 HEATH BROOK HILLS  
 LOT 27

Parent Parcel: 2389-200-000

Land Data - Warning: Verify Zoning

Use	Front	Depth	Zone	C	Notes	Units	Type	Rate	Loc	Shp	Phy	Class Value	Just Value
0100	60	120	PUD			1.00	LT	26,000.00	1.00	1.00	1.00	\$26,000	\$26,000
0496			PUD		COMMON EL	1.00	UT	1.00	1.00	1.00	1.00	\$1	\$1

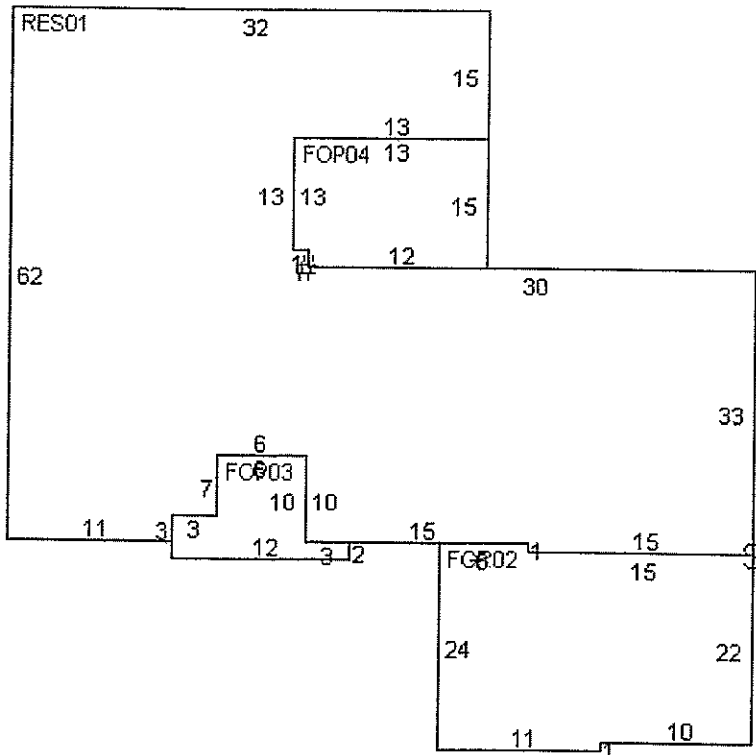
Neighborhood 5541 - HEATH BROOK HILLS  
 Mkt: 8 70

Total Land - Class \$26,001  
 Total Land - Just \$26,001

Traverse

Building 1 of 1

RES01=L15U1L15U10L6D7L3D3L11U62R32D15L13D13R1D2R30D33.  
 FGR02=D22L10D1L11U24R6D1R15.L30U1  
 FOP03=U10L6D7L3D5R12U2L3.U32  
 FOP04=R12U15L13D13R1D2.



Building Characteristics

Structure Type 1F-SFR- 01 FAMILY RESID Year Built 2006  
 Effective Age 1 - 00-04 YRS Obsolescence: Functional 0.00 %  
 Condition 8 - EXCELNT Obsolescence: Locational 0.00 %  
 Quality Grade 700 - GOOD Architecture 0 - STANDARD SFR  
 Inspected on 10/17/2006 by 179 Base Perimeter 272

Type	ID	Exterior Walls	Nbr Stories	Yr Built	Attic Finish	Bsmt Area	Bsmt Finish	Grd Flr Area	Total Flr Area
RES	01	32 - CONC BLK-STUCO	1.00	2006	N	0 %	0 %	2,313	2,313 SF
FGR	02	32 - CONC BLK-STUCO	1.00	2006	N	0 %	0 %	479	479 SF
FOP	03	01 - NO EXTERIOR	1.00	2006	N	0 %	0 %	93	93 SF
FOP	04	01 - NO EXTERIOR	1.00	2006	N	0 %	0 %	193	193 SF

Section: 1

Roof Type 12 HIP Floor Finish 24 CARPET Bedrooms 3 Kitchen Y  
 Roof Cover 08 FBRGLASS SHNGL Wall Finish 16 DRYWALL-PAINT 4FixBath 1 Dishwasher Y  
 Heat Type1 22 DUCTED FHA Heat Source1 06 GAS 3FixBath 2 Disposal Y  
 Heat Type2 00 Heat Source2 00 2FixBath 0 Compactor N  
 Foundation 6 MONOLITC SLAB Fireplaces 0 XFixture 3 Intercom N  
 A/C Y Vacuum N

Miscellaneous Improvements

Type	Nbr	Units	Type	Life	EYB	Grade	Length	Width	Depr Value	
159	PAV	CONCRETE	1056.00	SF	20	2006	3	0.0	0.0	\$1,346
Total Depreciated Value as of 11/11/2011 - \$1,346										

Appraiser Notes

MODEL=BELMONT

Planning and Building, County Permit Search

\*\* Permit Search \*\*

Permit Number	Amount	Issued	Completed	Construction Description
OCO1932	\$197,140	7/1/2005	5/1/2006	SFR

Cost/Market Summary

Buildings R.C.N.	Amount	Issued	Bldg Nbr	RCN	Depreciation	Depreciated
Buildings R.C.N.	\$147,427	3/11/2011				
Total Depreciation	-\$2,949					
Bldg - Just Value	\$144,478		1	\$147,427	\$2,949	\$144,478
Misc - Just Value	\$1,346	3/11/2011				
Land - Just Value	\$26,001	9/9/2011				
Total Just Value	\$171,825					



# Marion County Property Appraiser

## Villie M. Smith, CFA, ASA

HOME Search Previous Parcel Next Parcel TRIM Notice TRIM Supplement Address Change Form

GO TO Current 2011 2010 PRC

### 2011 Property Record Card

**2389-200-004**

Prime Key: 3301692

Property Information

Map It!

MCMANAWAY DIANA  
4903 SW 63RD LOOP  
OCALA FL 34474-5763

Taxes / Assessments: \$1,155.83

M.S.T.U.

Map: 148

PC: 01

Mill Group: 1005

Acres: 0.18

Location: 4903 SW 63RD LOOP

Current Values

Land Just Value	\$13,001		
Buildings	\$131,631		
Miscellaneous	\$3,388		
Total Just Value	\$148,020	Amendment 10 Impact	-\$44,286
Total Assessed Value	\$103,734	<u>Ex Codes:</u> 01 38	
Exemptions	-\$50,000		
Total Taxable	\$53,734		
School Taxable	\$78,734		

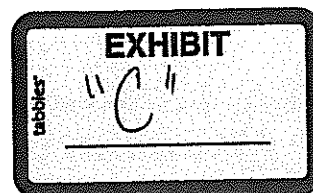
History of Assessed Values

Year	Land	Building	Misc Impr	Just	Assessed	Exemption	Taxable
2011	\$13,001	\$131,631	\$3,388	\$148,020	\$103,734	\$50,000	\$53,734 TN
2010	\$28,964	\$157,479	\$3,597	\$190,040	\$190,040	\$50,000	\$140,040 HX
2009	\$32,769	\$185,259	\$3,806	\$221,834	\$221,834	\$50,000	\$171,834 HX

Property Transfer History

Book/Page	Date	Instrument	Code	Q/U	V/I	Price
<u>4967/0351</u>	01/08	61 FJDMNT	0	U	I	\$100
<u>4119/1656</u>	07/05	07 WARRANTY	2 V-SALES VERIFICATION	Q	V	\$55,000
<u>3833/0892</u>	09/04	06 WARANTY	3 DEVELOPER SALE	U	V	\$25,000

Property Description







Building Characteristics

Structure Type 1F-SFR- 01 FAMILY RESID Year Built 2006  
 Effective Age 1 - 00-04 YRS Obsolescence: Functional 10.00 %  
 Condition 8 - EXCELNT Obsolescence: Locational 0.00 %  
 Quality Grade 700 - GOOD Architecture 0 - STANDARD SFR  
 Inspected on 1/16/2009 by 179 Base Perimeter 272

Type	ID	Exterior Walls	Nbr Stories	Yr Built	Attic Finish	Bsmt Area	Bsmt Finish	Grd Flr Area	Total Flr Area
RES	01 32	- CONC BLK-STUCO	1.00	2006	N	0 %	0 %	2,313	2,313 SF
FGR	02 32	- CONC BLK-STUCO	1.00	2006	N	0 %	0 %	479	479 SF
FOP	03 01	- NO EXTERIOR	1.00	2006	N	0 %	0 %	80	80 SF
FSP	04 01	- NO EXTERIOR	1.00	2006	N	0 %	0 %	193	193 SF
EPA	05 01	- NO EXTERIOR	1.00	2006	N	0 %	0 %	390	390 SF

Section: 1

Roof Type 12 HIP Floor Finish 24 CARPET Bedrooms 4 Kitchen Y  
 Roof Cover 08 FBRGLASS SHNGL Wall Finish 16 DRYWALL-PAINT 4FixBath 1 Dishwasher Y  
 Heat Type1 22 DUCTED FHA Heat Source1 06 GAS 3FixBath 2 Disposal Y  
 Heat Type2 00 Heat Source2 00 2FixBath 0 Compactor N  
 Foundation 6 MONOLITC SLAB Fireplaces 0 XFixture 3 Intercom N  
 A/C Y Vacuum N

Miscellaneous Improvements

Type	Nbr	Units	Type	Life	EYB	Grade	Length	Width	Depr Value	
159	PAV	CONCRETE	1009.00	SF	20	2006	3	0.0	0.0	\$1,286
156	PAVING	BRICK	390.00	SF	20	2008	5	0.0	0.0	\$2,102

Total Depreciated Value as of 11/11/2011 - \$3,388

Appraiser Notes

MODEL=BELMONT  
 ESTIMATED INTERIOR AND FGR  
 ADJUSTED DUE TO SINKHOLE STIGMA

Planning and Building, County Permit Search

\*\* Permit Search \*\*

Permit Number	Amount	Issued	Completed	Construction Description
OC02123	\$197,140	8/1/2005	3/1/2006	SFR
OC01225	\$3,280	7/1/2008	8/1/2008	SCREEN ENCLOSURE

Cost/Market Summary

Buildings R.C.N.	Amount	Date	Bldg Nbr	RCN	Depreciation	Depreciated
Buildings R.C.N.	\$149,241	3/11/2011				
Total Depreciation	-\$17,610					
Bldg - Just Value	\$131,631					
Misc - Just Value	\$3,388	3/11/2011				
Land - Just Value	\$13,001	9/9/2011	1	\$149,241	\$17,610	\$131,631

# Marion County Property Appraiser

## Villie M. Smith, CFA, ASA

HOME Search Previous Parcel Next Parcel TRIM Notice TRIM Supplement Address Change Form

GO TO Current 2011 2010 PRC

### 2011 Property Record Card

**2389-200-053**

Prime Key: 3302672

Property Information

Map It!

LOVE CHARLES A JR  
 LOVE BEVERLY  
 6535 SW 51ST TER  
 Ocala FL 34474-5772

Taxes / Assessments: \$2,201.15

M.S.T.U.

Map: 148

PC: 01

Mill Group: 1005

Acres: 0.28

Location: 6535 SW 51ST TER

#### Current Values

Land Just Value	\$26,001		
Buildings	\$133,630		
Miscellaneous	\$2,423		
Total Just Value	\$162,054		
Total Assessed Value	\$162,054	<u>Ex Codes:</u> 01 38	
Exemptions	-\$50,000		
Total Taxable	\$112,054		
School Taxable	\$137,054		

#### History of Assessed Values

Year	Land	Building	Misc Impr	Just	Assessed	Exemption	Taxable
2011	\$26,001	\$133,630	\$2,423	\$162,054	\$162,054	\$50,000	\$112,054 HX
2010	\$28,964	\$145,341	\$2,596	\$176,901	\$176,901	\$50,000	\$126,901 HX
2009	\$32,769	\$159,773	\$2,769	\$195,311	\$195,311	\$50,000	\$145,311 HX

#### Property Transfer History

Book/Page	Date	Instrument	Code	Q/U	V/I	Price
<u>3888/1685</u>	11/04	41 CORP	2 V-SALES VERIFICATION	Q	V	\$65,000
<u>3608/0726</u>	12/03	07 WARRANTY	8 ALLOCATED	U	V	\$660,000
<u>3608/0725</u>	12/03	06 WARRANTY	8 ALLOCATED	U	V	\$495,000

#### Property Description



SEC 04 TWP 16 RGE 21  
PLAT BOOK 007 PAGE 120  
HEATH BROOK HILLS  
LOT 53

Parent Parcel: 2389-200-000

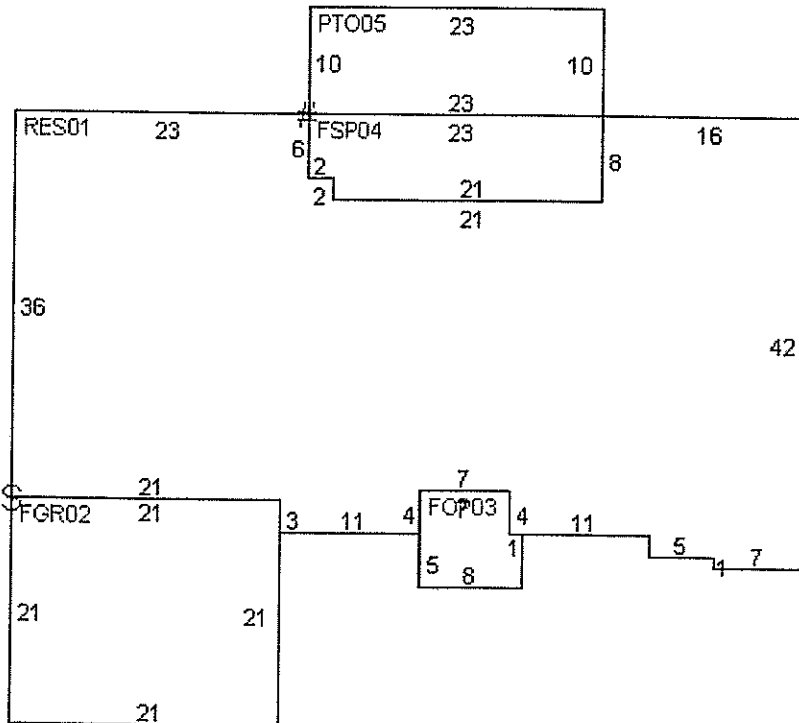
Land Data - Warning: Verify Zoning

Use	Front	Depth	Zone	C	Notes	Units	Type	Rate	Loc	Shp	Phy	Class Value	Just Value
.0100	94	130	PUD		IRREGULAR	1.00	LT	26,000.00	1.00	1.00	1.00	\$26,000	\$26,000
0496			PUD		COMMON EL	1.00	UT	1.00	1.00	1.00	1.00	\$1	\$1
Neighborhood 5541 - HEATH BROOK HILLS											Total Land - Class \$26,001		
Mkt: 8 70											Total Land - Just \$26,001		

Traverse

Building 1 of 1

RES01=U36R23D6R2D2R21U8R16D42L7U1L5U2L11U4L7D4L11U3L21.  
 FGR02=D21R21U21L21.R32D3  
 FOP03=U4R7D4R1D5L8U5.L9U39  
 FSP04=R23D8L21U2L2U6.  
 PTO05=U10R23D10L23.



Building Characteristics

Structure Type 1F-SFR- 01 FAMILY RESID Year Built 2005  
 Effective Age 1 - 00-04 YRS  
 Condition 7 - VERY GD  
 Quality Grade 700 - GOOD  
 Inspected on 5/2/2011 by 181

Obsolescence: Functional 0.00 %  
 Obsolescence: Locational 0.00 %  
 Architecture 0 - STANDARD SFR  
 Base Perimeter 232

Type	ID	Exterior Walls	Nbr Stories	Yr Built	Attic Finish	Bsmt Area	Bsmt Finish	Grd Flr Area	Total Flr Area
RES	01 32	- CONC BLK-STUCO	1.00	2005	N	0 %	0 %	2,178	2,178 SF
FGR	02 32	- CONC BLK-STUCO	1.00	2005	N	0 %	0 %	441	441 SF
FOP	03 01	- NO EXTERIOR	1.00	2005	N	0 %	0 %	68	68 SF
FSP	04 01	- NO EXTERIOR	1.00	2005	N	0 %	0 %	180	180 SF
PTO	05 01	- NO EXTERIOR	1.00	2005	N	0 %	0 %	230	230 SF

Section: 1

Roof Type 12 HIP Floor Finish 24 CARPET Bedrooms 3 Kitchen Y  
 Roof Cover 08 FBRGLASS SHNGL Wall Finish 16 DRYWALL-PAINT 4FixBath 1 Dishwasher Y  
 Heat Type1 20 HEAT PUMP Heat Source1 10 ELECTRIC 3FixBath 1 Disposal Y  
 Heat Type2 00 Heat Source2 00 2FixBath 0 Compactor N  
 Foundation 6 MONOLITC SLAB Fireplaces 0 XFixture 3 Intercom N  
 A/C Y Vacuum N

Miscellaneous Improvements

Type	Nbr	Units	Type	Life	EYB	Grade	Length	Width	Depr Value
159	PAV	CONCRETE	SF	20	2005	3	0.0	0.0	\$1,035
117	FENCE	IRON	LF	20	2005	3	0.0	0.0	\$1,388

Total Depreciated Value as of 11/11/2011 - \$2,423

Appraiser Notes

ESTIMATED INTERIOR AND FGR

Planning and Building, County Permit Search

\*\* Permit Search \*\*

Permit Number	Amount	Issued	Completed	Construction Description
OCO0122	\$130,140	1/1/2005	6/1/2005	SFR

Cost/Market Summary

Buildings R.C.N.	Amount	Date	Bldg Nbr	RCN	Depreciation	Depreciated
Buildings R.C.N.	\$137,763	5/6/2011				
Total Depreciation	-\$4,133					
Bldg - Just Value	\$133,630		1	\$137,763	\$4,133	\$133,630
Misc - Just Value	\$2,423	3/11/2011				
Land - Just Value	\$26,001	9/9/2011				
Total Just Value	\$162,054					



12  
202

entitled to elect a majority of the Directors, the size of the Board of Directors shall be increased to five (5) Directors and the Directors shall be elected for staggered terms as follows: (a) the three (3) candidates receiving the highest, second highest and third highest number of votes shall each be elected as Directors for a term of two (2) years; (b) any remaining vacancies shall be filled by the candidates receiving the next highest number of votes, which Director(s) shall each be elected for a term of one (1) year. At each annual election held thereafter, Directors chosen to succeed those whose terms expire shall be elected for a term of two (2) years. Except as provided herein to the contrary, the term of each Director's service shall extend until the next annual meeting of the Members and subsequently until his successor is duly elected and has taken office, or until he is removed in the manner elsewhere provided. Any person serving as a Director may be re-elected, and there shall be no limitation on the number of terms during which he may serve. The conveyance of all Lots owned by any Director (except Directors appointed by Declarant or other Directors who are not Owners) shall result in the automatic resignation of such Director. Notwithstanding the foregoing, any Director designated by the Developer shall serve at the pleasure of the Developer and may be removed and replaced by the Developer at any time.

4.2 Election and Term of Office. Directors shall be elected by written ballot by a majority of Voting Members at the annual meeting of the Members, as provided in these By-Laws. Each Voting Member shall be entitled to cast their vote for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting. In the event that an annual meeting is not held, or the Board is not then elected, the Board may be elected at a special meeting of the Members held for that purpose.

4.3 Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Voting Members of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Members of the Association, or at a special meeting of the Members called for that purpose. A vacancy or vacancies shall be deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director, increases in the size of the Board or in case the Voting Members fail to elect the full number of authorized Directors at any meeting at which such election is to take place.

4.4 Removal of Directors. Any one or more of the Directors (other than Declarant's or Participating Builder's designees) may be removed with or without cause by a majority vote of the Voting Members of the Association, provided the following procedures are followed:

4.4.1 A recall meeting may be called at any time by the President or a majority of a quorum of the Board of Directors or upon a petition signed by Voting Members holding at least thirty percent (30%) of the votes of the Voting Members.

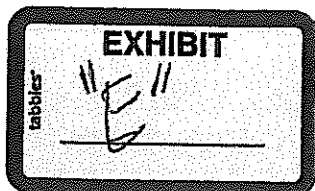
4.4.2 Written notice of the recall meeting shall be mailed or delivered not less than fourteen (14) days or more than sixty (60) days from the date when the recall meeting is scheduled. The recall meeting notice shall:

4.4.2.1 State that the purpose of the meeting is to recall one or more members of the Board and, if a majority or more of the Board of Directors is subject to recall, the notice shall also state that an election to replace recalled Board members will be conducted at the meeting;

4.4.2.2 List by name each Director sought to be recalled at the meeting, even if every Director is sought to be recalled;

4.4.2.3 Specify a person, other than a Director subject to recall at the meeting, who shall determine whether a quorum is present, call the meeting to order and preside at it;

4.4.2.4 List at least as many eligible persons who are willing to be candidates for replacement Directors as there are Directors sought to be recalled, in those cases where a majority or more of the Board of Directors is sought to be recalled.



- Candidates for replacement Board members shall not be listed when a minority of the Board is sought to be recalled, as the remaining Directors of the Board may appoint replacements. In addition, the notice must state that nominations for replacement Directors may be taken from the floor at the meeting;
- 4.4.2.5 Have attached to it proof of compliance with the provisions of paragraph 4.4.1 above; and
- 4.4.2.6 Be mailed or delivered to the Board of Directors at least fourteen (14) days proper to the recall meeting. The notice shall become an official record of the Association upon actual receipt by the Board.
- 4.4.3 Any Director whose removal has been proposed shall be given an opportunity to be heard at the meeting. A separate vote shall be required for each Board member sought to be removed. The minutes of the recall meeting shall include at a minimum the following: record the vote count taken on each member of the Board sought to be recalled; state whether the recall was effective as to each Director sought to be recalled; record the vote count taken on each candidate to replace the Directors subject to recall and, if applicable, the specific seat each replacement Director was elected to, in those cases where a majority or more of the existing Board was subject to recall. The minutes shall be delivered to the Board of Directors and, upon such delivery to the Board, become an official record of the Association.
- 4.4.4 When one or more Directors have been removed at a meeting of the Members, the following provisions apply regarding the filling of vacancies on the Board of Directors:
- 4.4.4.1 If less than a majority of the existing Board is recalled at the meeting, no election of replacement Directors shall be conducted at the Members' meeting as the existing Board of Directors may, in its discretion, fill these vacancies by the affirmative vote of the remaining Directors. In the alternative, if less than a majority of the existing Board of Directors is recalled at the meeting, the Board may call and conduct an election to fill a vacancy or vacancies;
- 4.4.4.2 If a majority or more of the existing Board of Directors is recalled at the meeting, an election shall be conducted at the recall meeting to fill vacancies on the Board occurring as a result of recall. A majority vote of the Voting Members may vote to elect replacement Directors in an amount equal to the number of recalled Directors.
- 4.4.4.3 A Director appointed or elected pursuant to this Section 4.4 shall fill the vacancy until the next regularly scheduled election for any Board position, regardless of whether the Board position to which the Director was appointed or elected is scheduled to be filled at that election.
- 4.4.4.4 Any Director who is removed from the Board shall not be eligible to stand for re-election or appointment to the Board until the next annual meeting of the Members.
- 4.4.4.5 Any Director removed from office shall turn over to the Board of Directors within seventy-two (72) hours any and all records of the Association in his possession.
- 4.5 Organizational Meeting. The organizational meeting of newly-elected or appointed Directors shall be held within fifteen (15) days of their election or appointment. The Directors calling the organizational meeting shall give at least three (3) days advance notice thereof, stating the time and place of the meeting.
- 4.6 Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Special meetings of the Directors may be called by the President, and must be called by the President or Secretary at the written request of one-third



(1/3) of the Directors. Notice of all meetings shall be given to each Director, personally or by mail, telephone or facsimile and shall be transmitted at least three (3) days prior to the meeting. Adequate notice of such meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously in the Common Areas at least forty-eight (48) continuous hours preceding the meeting, except in the event of an emergency. Meetings of the Board of Directors and any Committee thereof at which quorum of the members of that Committee are present shall be open to all Members. The right to attend such meetings includes the right to speak at such meetings with respect to all designated agenda items. The Association may adopt reasonable rules governing the frequency, duration and manner of Member statements. The Board shall adopt by rule, and give notice to the Members of, a specific location in the Common Areas upon which all notices of Board and/or Committee meetings shall be posted. Directors may not vote at Board meetings by proxy or by secret ballot.

- 4.7 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by said Director of notice. Attendance by any Director at a meeting shall constitute a waiver of notice of such meeting, and a waiver of any and all objections to the place of the meeting, to the time of the meeting or the manner in which it has been called or convened, except when a Director states at the beginning of the meeting, or promptly upon arrival at the meeting, any objection to the transaction of affairs because the meeting is not lawfully called or convened. The transactions at any meeting of the Board, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present, and if, either before or after the meeting, each of the Directors not present signs such written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the records of the Association or made a part of the minutes of the meeting.
- 4.8 Quorum. A quorum at a Board of Directors' meetings shall consist of a majority of the entire Board. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is specifically required by the Governing Documents.
- 4.9 Adjourned Meetings. If at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting, from time to time, until a quorum is present, provided notice of such newly scheduled meeting is given as required hereunder. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted as long as notice of such business to be conducted at the rescheduled meeting is given, if required.
- 4.10 Joinder in Meeting by Approval of Minutes. The joinder of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the approval of that Director of the business conducted at the meeting, but such joinder shall not allow the applicable Director to be counted as being present for purposes of quorum.
- 4.11 Presiding Officer. The presiding Officer at the Directors' meeting shall be the President (who may, however, designate any other Officer to preside).
- 4.12 Action Without Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the vote or written consent of all Directors. Any action so approved shall have the same effect as though taken at a duly constitute meeting of the Directors.
- 4.13 Committees. The Board may by resolution also create Committees and appoint persons to such Committees and vest in such Committees such powers and responsibilities as the Board shall deem advisable. The resolution establishing a Committee shall appoint its members, as well as a chair, state the purposes of the Committee, and provide for reports, termination and other administrative matters as deemed appropriate by the Board.
- 4.14 Minutes of Meetings. The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Members, or their authorized representatives, and Board members at any reasonable time. The vote or abstention of each Director on each issue voted on by the Board at a meeting

26

We, the undersigned agree as follows:

The below list is circulated for the purpose of obtaining signatures, to hold a recall meeting, to recall three board members of the Heath Brook Hills Homeowners Association, Inc., a State of Florida Chapter 720 Homeowners Association located in Ocala, Florida.

The recall is for board members Kelly Hill, Gary Smith, and Dennis Saunders.

Replacement board members shall be elected at the board meeting if a majority or more of the existing members are successfully recalled at the meeting.

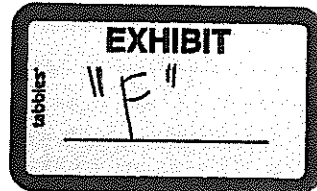
We have affixed our name, home address in association, signature and date of signature below.

Name	Home address	Signature	Date
LEROY COOPER	6570 SW 50th	Leroy Cooper	8-9-11
ROBERT FORAKIN	6586 SW 51st CT	Robert Forakin	9 Aug 11
A. SYPHER	6570 SW 51st CT	A. Sypher	9-11
Cyndi Henderson	6470 SW 50th CT.	Cyndi Henderson	8/10/11 signature?
JAMES A HERNANDEZ	6530 SW 50th CT.	James Hernandez	8/9/11
WILLIAM WARD	6505 SW 50th AVE	William Ward	8/9/11
Myra Wood	6445 SW 60 Terr.	Myra Wood	8/9/11
Cleveland Anderson	5040 SW 63rd Loop	Cleveland Anderson	8/9/11
Maureen Anderson	"	Maureen Anderson	8/9/11
William D. Anderson	4913 SW 63rd Loop	William D. Anderson	8/9/11
KEITH D. WELKER	4901 SW 63rd Loop	Keith D. Welker	8/9/11
Pherence Steinhoff	4911 SW 63 Loop	Pherence Steinhoff	8/9/11
Frank Steinhoff	4911 SW 63 Loop	Frank Steinhoff	8/9/11
DEN ERENIO FAZ	6513 SW 63rd Loop	Den Erenio Faz	8-9-11
Tom Anderson	4915 SW 63rd Loop	Tom Anderson	8-9-11
Sally Cunningham	4935 SW 63rd Loop	Sally Cunningham	8-9-11
Eric La Chan	4910 SW 63 Loop	Eric La Chan	8/9/11
Eric La Chan	4910 SW 63 Loop	Eric La Chan	8/9/11
Robert F. Kelly	6440 SW 50th Terr.	Robert F. Kelly	8/9/11
Elizabeth M Hayes	6540 SW 51st CT	Elizabeth M Hayes	8/9/11
Walter Bowen, Jr.	6525 SW 50th CT	Walter Bowen, Jr.	8/9/11
LUTHER HARMON	5060 SW 63RD LOOP	Luther Harmon	8-10-11
ANNA LOUIS	6535 SW 51st Terr.	Anna Louis	8/10/11
Stanley Jankowski	6530 SW 51st Terr.	Stanley Jankowski	8/10/11
John P. ...	6550 SW 51st Terr.	John P. ...	8/10/11
William Bin ...	6505 SW 51st Terr.	William Bin ...	8/10/11

signature? not owner?

not owner

not owner



Handwritten scribble

Handwritten scribble



The below list is circulated for the purpose of obtaining signatures, to hold a recall meeting, to recall three board members of the Heath Brook Hills Homeowners Association, Inc., a State of Florida, Chapter 720 Homeowners Association located in Ocala, Florida.

The recall is for board members Kelly Hill, Gary Smith and Dennis Saunders.

Replacement board members shall be elected at the board meeting if a majority or more of the existing members are successfully recalled at the meeting.

We have affixed our name, home address in association, signature and date of signature below:

Name	Home address	Signature	Date
Tim Ryan	6460 SW 50th Terrace Ocala, FL 34474	<i>Timothy Ryan</i>	8/10/11 ✓

The below list is circulated for the purpose of obtaining signatures, to hold a recall meeting, to recall three board members of the Heath Brook Hills Homeowners Association, Inc., a State of Florida, Chapter 720 Homeowners Association located in Ocala, Florida.

The recall is for board members Kelly Hill, Gary Smith and Dennis Saunders.

Replacement board members shall be elected at the board meeting if a majority or more of the existing members are successfully recalled at the meeting.

We have affixed our name, home address in association, signature and date of signature below.

Name	Home address	Signature	Date
Drew Anderson	4855 SW 65th Loop		Sep 3 2011

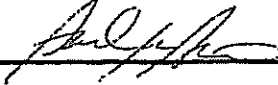
How can this be signed on day rec'd in mail?

The below list is circulated for the purpose of obtaining signatures, to hold a recall meeting, to recall three board members of the Heath Brook Hills Homeowners Association, Inc., a State of Florida, Chapter 720 Homeowners Association located in Ocala, Florida.

The recall is for board members Kelly Hill, Gary Smith and Dennis Saunders.

Replacement board members shall be elected at the board meeting if a majority or more of the existing members are successfully recalled at the meeting.

We have affixed our name, home address in association, signature and date of signature below.

Name	Home address	Signature	Date
<i>Eula Riordan</i>	<i>5050 SW 63 loop</i>		<i>Sept 8'11</i>

X



We, the undersigned agree as follows:

The below list is circulated for the purpose of obtaining signatures, to hold a recall meeting, to recall three board members of the Heath Brook Hills Homeowners Association, Inc., a State of Florida, Chapter 720 Homeowners Association located in Ocala, Florida.

The recall is for board members Kelly Hill, Gary Smith and Dennis Saunders.

Replacement board members shall be elected at the board meeting if a majority or more of the existing members are successfully recalled at the meeting.

We have affixed our name, home address in association, signature and date of signature below.

Name	Home address	Signature	Date
ARTHUR W. ROY, JR.	6500 SW 30th Terrace Ocala Florida 34874		8-26-11 ✓

28

The below list is circulated for the purpose of obtaining signatures, to hold a recall meeting, to recall three board members of the Heath Brook Hills Homeowners Association, Inc., a State of Florida, Chapter 720 Homeowners Association located in Ocala, Florida.

The recall is for board members Kelly Hill, Gary Smith and Dennis Saunders.

Replacement board members shall be elected at the board meeting if a majority or more of the existing members are successfully recalled at the meeting.

We have affixed our name, home address in association, signature and date of signature below.

Name	Home address	Signature	Date
Jadelle	Stanford	4900 S.W. 63rd loop	Jadelle Stanford 8/30/2011













# LANDT, WIECHENS, LaPEER & AYRES

*A Limited Liability Partnership*

ATTORNEYS AT LAW

FREDERICK E. LANDT, III  
EUGENE A. WIECHENS, P.A.  
RUSSELL W. LaPEER, P.A.\*  
BENJAMIN H. AYRES (1947-2005)  
R. GREGG JERALD, P.A.

OCALA OFFICE  
445 N.E. 8TH AVENUE  
OCALA, FLORIDA 34470  
Telephone (352) 732-8622  
Telecopier (352) 732-1162

BELLEVIEW OFFICE  
5709 S.E. ABSHIER BLVD.  
BELLEVIEW, FLORIDA  
Telephone (352) 245-5184  
Telecopier (352) 245-9808

PLEASE REPLY TO  
OCALA OFFICE

September 13, 2011

\* Board Certified: Civil Litigation and  
Business Litigation  
Also Admitted to District of Columbia  
Certified Mediator: Florida & Federal Courts

## VIA HAND DELIVERY

HeathBrook Hills Owners' Association, Inc.  
1136 N.E. 14<sup>th</sup> St.  
Ocala, FL 34470

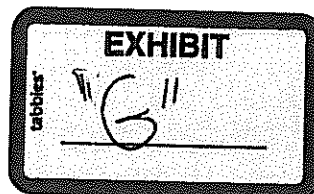
Re: Recall of Directors

To Board of Directors:

It is my understanding that a petition/agreement was delivered to the Heath Brook Hills Owners' Association, Inc. (the "Association"), Board of Directors, individually, on or around September 1, 2011 and which petition was signed by more than fifty percent (50%) of the voting interests in the Association and sought the recall of three of the Board members, to wit: Kelly Hill, Gary Smith and Dennis Saunders. The September 1<sup>st</sup> recall notice was a follow-up to notices submitted August 10<sup>th</sup> and 24<sup>th</sup> which were signed by more than thirty percent (30%) of the voting interests in the Association and requested a recall meeting. The August recall meeting request was unanswered by the Board. Pursuant to section 720.303, Florida Statutes, the Board had a period of five (5) days from the receipt of a petition within which to hold a recall meeting to certify the recall of the directors that were sought to be recalled or, alternatively, if the Board did not wish to certify the recall of its directors, then to file a petition for binding arbitration with the State of Florida within five (5) days of receipt of the signed petition.

Unfortunately, it is my understanding that the Board neither held a recall meeting, nor filed a petition with the State for arbitration, within five (5) days of delivery of the most recall petition and, of course, likewise failed to respond to the August petition. To that end, section 720.303(1)(f), Florida Statutes, provides as follows:

If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing...the recall shall be deemed effective and the board directors so recalled shall immediately turn over to the board all records and property of the association...



Thus, it would appear that because the Board failed to hold a recall meeting or file a petition for arbitration, the Board members who were subject to the recall petition are deemed, by statute, to have been recalled and are required to immediately turn over to the remaining board members all records and property of the Association. Furthermore, it is my understanding that a meeting will be held in approximately two (2) weeks to elect replacement directors to the Board. In the meantime, it would be a recommendation, and I believe the duty of the remaining board members, that the board carry on Association business as usual until the recall meeting can be held in two weeks.

I believe it is also prudent to acknowledge the correct procedure for recalling board members in Florida in general and in this instance in particular. The declarations and covenants for the Association do not speak to the issue of recalling directors, however, the issue is addressed in the Association By-Laws. Section 4.4 of the Association By-Laws appears to require the holding of a recall meeting in order to recall directors with the notice of such meeting required to be delivered not less than 14 days from the date the meeting is scheduled. Section 4.4. goes through a number of additional requirements that are required to be in the notice of such recall meeting.

However, section 720.303(10)(b), Florida Statutes, expressly permits the recall of directors without a membership meeting, but rather, for the recall of directors without a meeting performed pursuant to the procedure spelled out under that statute. While there is an apparent conflict in the procedure to be followed between 720.303(10), and the by-laws of the HOA, it is my opinion that the statute controls. Specifically, section 720.303(10)(a), Florida Statutes, provides, in relevant part, "**regardless of any provision to the contrary contained in the governing documents** [of the Association]...any member of the board of directors may be recalled and removed from office with or without cause by a majority of the total voting interests." Additionally, section 720.303(1), Florida Statutes, provides in relevant part that "the powers and duties of an association include those set forth in this chapter and, except as expressly limited or restricted in this chapter, those set forth in the governing documents." As a result, the statute tells us that the powers and duties of the Association are those set forth in section 720.303, in addition to those set forth in the governing documents except where the Association's powers limited or restricted by section 720.303. Thus, the provisions of section 720.303(10), Florida Statutes, controls on the procedure for recalling directors to the extent that procedure conflicts with

**61B-81.003 Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies.**

(1) Form of Written Agreement. All written agreements used for the purpose of recalling one or more directors shall:

- (a) List by name each director sought to be recalled;
- (b) Provide spaces by the name of each director sought to be recalled so that the person executing the agreement may indicate whether that individual director should be recalled or retained;
- (c) List, in the form of a ballot, at least as many eligible persons who are willing to be candidates for replacement directors as there are directors subject to recall, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement directors shall not be listed when a minority of the board is sought to be recalled, as the remaining board may appoint replacements. A space shall be provided by the name of each candidate so that the person executing the agreement may vote for as many replacement candidates as there are directors sought to be recalled. A space shall be provided and designated for write-in votes. The failure to comply with the requirements of this subsection shall not effect the validity of the recall of a director or directors;
- (d) Provide a space for the person signing the written agreement to state his or her name, identify his parcel by number or street address and indicate the date the written agreement is signed;
- (e) Provide a signature line for the person executing the written agreement to affirm that he or she is authorized in the manner required by the governing documents to cast the vote for that parcel;
- (f) Designate a representative who shall open the written agreements, tally the votes, serve copies on the board and, in the event the board does not certify the recall by written agreement and files a petition for arbitration, receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the persons executing the written agreement;
- (g) The written agreement or a copy shall be served on the board by certified mail or by personal service. Service on the board after 5:00 p.m. on a business day or on a Saturday, Sunday or legal holiday, as prescribed by Section 110.117, F.S., shall be deemed effective as of the next business day that is not a Saturday, Sunday, or legal holiday. Service of the written agreement on an officer, association manager, board director or the association's registered agent will be deemed effective service on the association. Service upon an attorney who has represented the association in other legal matters will not be effective on the association unless that attorney is a director, the association's registered agent, or has otherwise been retained by the association to represent it in the recall proceeding. Personal service shall be effected in accordance with the procedures set out in Chapter 48, F.S., and the procedures for service of subpoenas as set out in rule 1.410(c), Florida Rules of Civil Procedure, effective 2-3-05; and
- (h) Become an official record of the association upon service upon the board.
- (i) Written recall ballots in a recall by written agreement may be reused in one subsequent recall effort. A written recall ballot expires 120 days after it is signed by a homeowner. Written recall ballots become void



with respect to the director sought to be recalled where that director is elected during a regularly scheduled election.

(j) Written recall ballots may be executed by an individual holding a power of attorney or limited or general proxy given by the homeowner(s) of record.

(k) Any rescission or revocation of a homeowner's written recall ballot or agreement must be done in writing and must be delivered to the board prior to the board being served the written recall agreements.

(2) Substantial compliance with the provisions of subsection (1) of this rule shall be required for an effective recall of a director or directors.

(3) Board Meeting Concerning a Recall by Written Agreement; Filling Vacancies. The board shall hold a duly noticed meeting of the board to determine whether to certify (to validate or accept) the recall by written agreement within five full business days after service of the written agreement upon the board. It shall be presumed that service of a written agreement to recall one or more directors shall not, in and of itself, constitute grounds for an emergency meeting of the board to determine whether to certify the recall.

(a) Certified Recall. If the board votes to certify the written agreement to recall, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled director shall return to the board all association records in his or her possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining directors, subject to the provisions of Section 720.307, F.S., relating to developer control of the association and regardless of whether the authority to fill vacancies in this manner is provided in the governing documents. No recalled director shall be appointed by the board to fill any vacancy on the board. A director appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining directors or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote on the proposed replacement director; if a quorum is not obtained, or otherwise) the board may, in its discretion, call and hold an election in the manner provided by Section 720.306(9), F.S., in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement directors elected by the written agreement pursuant to the procedure referenced in paragraph (1)(c) of this rule shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A director who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the Board. If the board votes not to certify the written agreement to recall for any reason, the following provisions apply:

1. The board shall, consistent with the provisions of Chapter 61B-80, F.A.C., file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the written agreement to recall.

2. Any director sought to be recalled shall, unless he or she resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining directors may fill the vacancy or vacancies as provided in subparagraph (3)(a)2. of this rule.



## FORM FOR HOMEOWNERS WRITTEN RECALL AGREEMENT / BALLOT

### BLOCK A

This agreement is being circulated for the purpose of recalling the board directors listed below, currently serving on the board of directors at \_\_\_\_\_ (fill in name of homeowners' association). Pursuant to section 720.303(10), Florida Statutes, any board director may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. Rule 61B-81.003, Florida Administrative Code, governs recall by written agreement. This recall ballot may be used for one successive recall effort occurring within 120 days from the date the ballot was signed by the homeowner if the first recall effort is unsuccessful. Any revocation of this agreement must be in writing and delivered to the board prior to service of the recall agreement on the board.

**THE BOARD DIRECTORS SUBJECT TO RECALL ARE LISTED BELOW. PLEASE CAST YOUR VOTE BY PLACING A CHECKMARK IN EITHER THE "RECALL" OR "RETAIN" BOX NEXT TO EACH BOARD DIRECTOR'S NAME.** (Note that these boxes cannot be pre-marked but must be filled out by the voter.)

	RECALL	RETAIN
Name of board director _____	<input type="checkbox"/>	<input type="checkbox"/>
Name of board director _____	<input type="checkbox"/>	<input type="checkbox"/>
Name of board director _____	<input type="checkbox"/>	<input type="checkbox"/>
Name of board director _____	<input type="checkbox"/>	<input type="checkbox"/>
Name of board director _____	<input type="checkbox"/>	<input type="checkbox"/>

### BLOCK B

**BALLOT FOR REPLACEMENT OF BOARD DIRECTORS** (use only where at least a majority of the board is being recalled)

The individuals listed below have indicated their willingness to replace the recalled board directors. You may vote for these candidates by placing a checkmark in the box next to the candidate's name OR you may write in the name of a write-in candidate. **In any event, do not vote for more than a total of the number of directors sought to be recalled, including write-in candidates.**

	Checkmark
Name of replacement board director _____	<input type="checkbox"/>
Name of replacement board director _____	<input type="checkbox"/>
Name of replacement board director _____	<input type="checkbox"/>
Name of replacement board director _____	<input type="checkbox"/>
Name of replacement board director _____	<input type="checkbox"/>
Write-In Candidate _____	<input type="checkbox"/>

### BLOCK C

Homeowner (Print name) \_\_\_\_\_

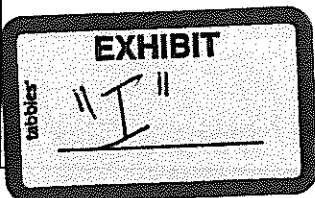
Parcel Address \_\_\_\_\_

By signing this document, I affirm that I am authorized in the manner required by the governing documents to cast this vote on behalf of this parcel.

Homeowner(s) Signature \_\_\_\_\_

Date signed \_\_\_\_\_

**HOMEOWNERS' REPRESENTATIVE:** The person identified below has been designated as the homeowners' representative who will receive the recall agreements, open the written agreements, tally the votes, serve copies of the agreements on the board, and receive other information on behalf of the homeowners: (below, fill in the name and address of the homeowners' representative)



\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## WRITTEN RECALL AGREEMENT INSTRUCTIONS

*To recall and replace board directors listed on the recall agreement, please follow the steps below:*

- (1) In Block A on the attached form, place a checkmark on the "RECALL" line next to the name of each board director you wish to recall and remove from the board. Place a checkmark next to the board director's name on the "RETAIN" line if you are voting for the board director to remain on the board. Note that ballots may not be pre-marked. The voter must fill in the recall or retain boxes.
- (2) Place a checkmark next to the names of the candidates in Block B who you wish to replace the recalled board directors **OR** you may write in your own choices. **DO NOT VOTE FOR MORE THAN A TOTAL OF THE NUMBER OF DIRECTORS SOUGHT TO BE RECALLED. This includes voting for persons listed, write-in votes, or a combination.** The ballot for replacement board directors in Block B should be included and filled in on the written agreement only if a majority or more of the board directors are sought to be recalled. Where a majority or more of the board directors are recalled, the homeowners have the right to name replacement board directors. If less than a majority of the board is recalled, the remaining board directors have the right to appoint replacements.
- (3) In Block C, print your name and address of the parcel (property) subject to the homeowners' association in the space designated. Sign the agreement in the space designated. This will affirm that you are authorized to cast the vote, in the manner required by the documents. If your parcel is owned by more than one person, your documents may require that a voting certificate be filed with the association designating which owner has the authority to cast votes on behalf of the parcel. If your documents require a voting certificate and one has not been filled out and delivered to the association, your vote may be rejected.
- (4) Return the executed agreement to the homeowners' representative named in the agreement in Block C.

HeathBrook Hills Owners' Association, Inc.  
September 13, 2011  
Page 3

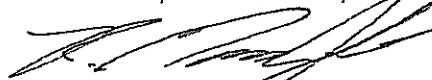
the procedure set forth in the Association By-Laws. As a result, it is my opinion that the procedure for the recall of directors set forth in section 720.303(10) – which does not require a member meeting – is a wholly appropriate, and proper, procedure to follow.

Finally, I have also been advised that the recalled Board members have requested that the current property manager for the Association, Property Management Consultants, hand over voluminous Association documents which would be performed at a significant cost to the Association. The requested document production has previously been requested by the recalled Board members to take place on or before September 15, 2011. By this correspondence, it would be my opinion that, due to the significant cost to be incurred by the Association, the current property manager abstain from producing the requested records until the meeting to elect new Board members to be held in two weeks. This opinion is premised on the assumption that the remaining Board members do not wish for the production to take place. Should the remaining Board members have a different opinion, and affirm the document request made by the now recalled Board members then, of course, the production should continue. It seems illogical to compel the Association to incur the significant expense associated with the production of documents which were only requested by Board members who have now been recalled. Should the recalled Board members request by affirmed by the new Board once then, of course, the production would need to continue.

Should you have any questions concerning the foregoing please feel free to contact the undersigned at our Ocala office.

Sincerely,

LANDT, WIECHENS, LaPEER & AYRES, LLP



R. Gregg Jerald