

In The Twentieth Judicial Circuit
Court in and for Lee County, Florida

Case No. 04-CA-2398

**VANDERBILT LAKES II
HOMEOWNERS ASSOCIATION, INC.,**
Plaintiff and Counter Defendant,

-vs-

**VANDERBILT COMMUNITY SERVICES
ASSOCIATION, INC.,**
Defendant and Counter Plaintiff.

MEDIATED SETTLEMENT AGREEMENT, DATED JANUARY 10, 2008

VANDERBILT LAKES II HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as "VLI," and **VANDERBILT COMMUNITY SERVICES ASSOCIATION, INC.,** hereinafter referred to as "VCSA," agree as follows:

1. A new not-for-profit homeowners association shall be created. The name of the new entity shall be known as Vanderbilt Lakes Amenities Association, Inc., and hereinafter shall be referred to as "VLAA". The attorney's fees and costs for the creation of VLAA shall be shared 50/50 by VLI and VCSA. The parties understand that not all the details, obligations and responsibilities of the VLAA and its Articles of Incorporation and Bylaws of VLAA can be determined in this Settlement Agreement and the parties affirm that they will work in good faith to resolve said issues and agree to such terms as reasonably fulfill the intent of the parties under this Agreement. The parties will endeavor to have all of the necessary documents prepared on or before March 19, 2008.

2. The members of the VLAA shall be one person appointed by Vanderbilt Lakes II Homeowners Association, Inc., one person appointed by Vanderbilt Community Services Association, Inc., from the single family homes, and one person appointed by Bermuda Gardens Condominium Association, Inc. VCSA shall also appoint one person from the multi-family homes for the first two years. Thereafter, the multi-family homeowners shall elect their Board member to VLAA at the VCSA 2010 annual meeting and thereafter.

3. The Board of Directors of VLAA shall consist of the 4 persons appointed/elected as described above in paragraph 2. The Directors shall serve until their successor is appointed/elected.

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[Signature]

4. The VLAA shall only act through and by a majority weighted vote of its Board of Directors. Each Director shall have a weighted vote stated as a percentage. Said percentages shall be as follows:

- a. VLII Director 25%
- b. VCSA SF Director 37.7%
- c. VCSA MF Director 20.3%
- d. BG Director 17%

No action may be taken by the VLAA that has not been approved by at least 51% of the total weighted votes of the Directors. If any party shall not pay its share of the VLAA budget within 30 days its right to vote shall be automatically suspended until such time as full payment has been made.

5. All expenses of the VLAA shall be shared as follows:

- a. VLII 25%
- b. VCSA SF 37.7%
- c. VCSA MF 20.3%
- d. BG 17%

As a budget example:

If the VLAA Budget is	\$100,000.00
VLII shall pay \$25,000	
VCSA SF shall pay \$37,700	
VCSA MF shall pay \$20,300	
BG shall pay \$17,000	

VLII shall not pay 25% of VCSA's contribution to the VLAA budget and Bermuda Gardens shall not pay 17% of VCSA's contribution to the VLAA budget. However, VLII and Bermuda Gardens shall continue to pay 25% and 17% respectively of the remainder of the VCSA budget after deducting VCSA's portion paid to VLAA. VCSA shall send individual bills to each Lot Owner in VLII who shall be obligated to pay VCSA directly.

The initial of funding of VLAA shall be as follows:

VLII shall pay 50% of the first semi-annual payment due to VCSA on or before January 31, 2008. The remaining 50% of the first semi-annual payment shall be paid to VLAA and VCSA after adoption of the VLAA budget and the payment shall be adjusted according to the formula listed in this paragraph above.

VLAA payments shall be due on a semi-annual basis.

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6. **VLAA Duties and Obligations.** The VLAA shall be responsible to maintain, repair, replace, landscape, insure (to the extent available), protect and operate the front entrance/guard gate area as shown on Exhibit "A", the preserves as shown on Exhibit "A" subject to the conditions listed below, Winthrop Circle (excluding landscaping), and the lakes and all obligations of SFWMD under the permit. VI.II, VCSA and Bermuda Gardens shall assign their current and on-going obligations for maintenance, repair, replacement, protection and insurance of said areas to the VLAA for a period of at least 20 years. Said assignments of obligations shall be made in the form of written contracts. VI.II shall bring its preserve areas into compliance with all governmental agencies before VLAA shall have any responsibility for said areas.

7. VCSA and VL II will execute any and all materials and documents necessary to transfer the lake permit to VLAA.

8. VLAA shall have the power to promulgate and enact rules as to ingress and egress to the community. The Boards of VCSA and VL II will promulgate and enact rules in compliance with the VLAA rules.


9. The initial access rules will be:
- a. Guards in the gatehouse
 - b. VLAA to have a master list of speed passes or an access control system.
 - c. Vendor time limits
 - d. Call ahead and allowed list

These initial rules will be effective for two (2) years from VLAA's first Board meeting which shall occur no later than 60 days from the date of incorporation of VLAA, after which the new entity can promulgate amended rules. The foregoing to the contrary notwithstanding, during the first two (2) years following VLAA's first Board meeting the initial access rules shall be subject to modification by the affirmative weighted vote of 75% or more of the weighted voting interests. The parties agree that any ingress and egress rules will supersede the issue of unfettered access under the Access, Utility and Drainage Easements.

10. Both VL II and VCSA will maintain insurance over the lake areas. Contracts will be drawn up between VCSA and VL II and the VLAA to provide the Gatehouse and Lake Services defined herein.

11. VLII shall contribute the sum of \$25,000 to VLAA Road Reserve by January 31, 2009. The linear feet of that portion of Winthrop Circle within VI.II shall be divided into \$25,000 to determine the per linear foot charge. Then VCSA shall contribute an amount equal to the per linear foot charge times the number of linear feet of Winthrop Circle within VCSA by April 30, 2008. VLII shall grant an easement to VCSA and its members, invitees, and guests over the portion of Winthrop Circle in VI.II.

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12. The lake maintenance responsibilities of the VLAA will extend to the area defined in the SFWMD permit. VCSA and VL II will each remain responsible for the maintenance of the drainage facilities and/or equipment from its property into the lake, including but not limited to culverts, swales, storm drains, etc.

13. VCSA will relinquish claims for interest for the assessment withheld in 2007, and VL II for itself and its members will waive any claims in regard to attorney's fees and costs in regard to the 2007 liens. VCSA shall execute the Satisfaction of Lien attached hereto.

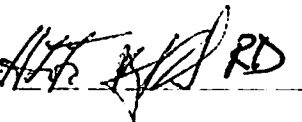
14. The parties stipulate to a continuance of the trial date in this matter while the formal materials are drafted and executed by the parties.

15. **Authority.** By signing below the undersigned Directors of the respective Association parties affirm that they have full authority to bind their Associations and have voted by proper motion, second and majority vote to accept and execute this Agreement on behalf of said Associations. Further said Directors agree that should the Board be required to take any further corporate action necessary to ratify or affirm this Agreement said action will occur as soon as possible.

16. **Stipulation for Dismissal.** Within 14 days of the execution hereof, counsel for the parties shall submit to the Court a Stipulation for Dismissal with Prejudice with a proposed Order on the Stipulation, which shall provide that this entire action including all counter claim is to be dismissed with prejudice, all parties to bear their own attorneys' fees and costs, but which Order shall also provide that the Court reserves jurisdiction to enforce the terms of this Mediated Settlement Agreement.

17. **Releases.** Except for the obligations of this Mediated Settlement Agreement, which are not hereby released and which shall survive the execution hereof, VLII, on the one hand, and VCSA, on the other hand, for themselves and for their respective successors and assigns, hereby remise, release, acquit, waive, satisfy and forever discharge one another and one another's respective officers, directors, shareholders, members, employees, agents, servants, representatives and insurers, and the respective personal representatives, heirs, successors and assigns of all of them, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, guarantees, warranties (whether express or implied, and whether based on statute, common law or otherwise), third-party claims, bad faith claims, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, which either has or may have against the other, whether arising in tort, by contract, by virtue of statute, or otherwise, and whether in law or in equity (hereinafter referred to collectively as "Claims"), regardless of whether the same are known or unknown, suspected or unsuspected, patent or latent, or have yet accrued or not accrued as of the date of execution hereof, provided the same are based upon any act or omission that occurred or failed to occur prior to the date hereof.

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18. **Entire Agreement** - This Agreement sets forth the entire understanding of the parties and no verbal or written warranties or representations have been made or have been relied upon which do not appear in writing within this Agreement. Any reliance on verbal or other representations which do not appear within this Agreement shall be deemed unjustifiable reliance. The parties hereby agree that no representations which do not appear within this Agreement have been made to induce them to enter into this Agreement. The parties further agree and acknowledge that they have not relied upon and cannot justifiably rely upon any representations or information that is not specifically contained in this Agreement. Moreover, each party hereto is represented by that party's own counsel (or has had the opportunity to confer with counsel of their own choosing) and has had the benefit of such counsel's advice in reviewing, commenting upon, and modifying this Agreement.

19. **Modification of Agreement**. This Agreement may not be amended or modified except by written instrument signed by all of the parties hereto, and the parties agree that this provision may not be waived except in writing.

20. **Waiver** - The rights of the parties under this Agreement are to be considered cumulative, and the failure on the part of any party to exercise or enforce properly or promptly any rights arising out of this Agreement shall not operate to forfeit or serve as a waiver of any of those or other rights. The waiver by one party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of any other covenant or condition herein. The waiver by any party of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

21. **Interpretation**. The parties hereto agree that in the event of any dispute as to the precise meaning of any term or provision contained herein, the principle of construction and interpretation that written documents are to be construed against the party preparing the same shall not be applicable. Wherever used herein, the singular shall include the plural, the plural shall include the singular, and pronouns shall be read as masculine, feminine or neuter as the context requires.

22. **Cooperation**. The parties hereto agree to cooperate fully in the execution of any documents or performance in any way which may be reasonably necessary to carry out the purposes of this Agreement and to effectuate the intent of the parties hereto.

23. **No Admission of Liability**. By this settlement, no party admits any liability, but rather the parties have agreed to this settlement as a compromise of disputed claims in the interests of avoiding the costs and uncertainty of continued litigation.

24. **Time is of the Essence**. Time is of the essence of this Agreement.

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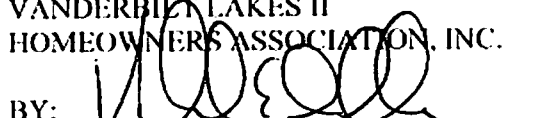
not be added to the jurisdiction of VLAA until said preserves have been brought into compliance with all governmental agencies.

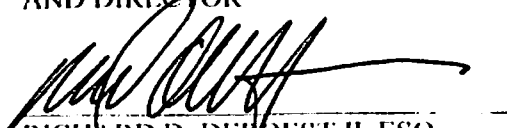
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first stated above.

VANDERBILT LAKES II
HOMEOWNERS ASSOCIATION, INC.

BY: 
KEN O'LEARY AS PRESIDENT AND
DIRECTOR

VANDERBILT LAKES II
HOMEOWNERS ASSOCIATION, INC.

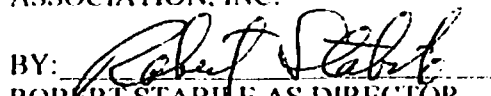
BY: 
RICHARD GALLAHUE AS TREASURER
AND DIRECTOR


RICHARD D. DELOEST II, ESQ.

VANDERBILT COMMUNITY SERVICES
ASSOCIATION, INC.

BY: 
HANK FOX AS DIRECTOR

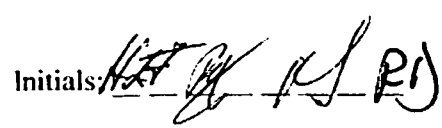
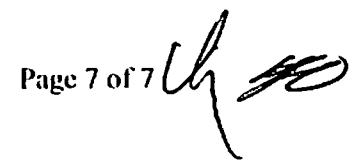
VANDERBILT COMMUNITY SERVICES
ASSOCIATION, INC.

BY: 
ROBERT STABILE AS DIRECTOR

VANDERBILT COMMUNITY SERVICES
ASSOCIATION, INC.

BY: 
BRIGITTE VANGUNTEN AS DIRECTOR


JEFFREY S. SCHELLING, ESQ.

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AARON HAAK, ESQ.

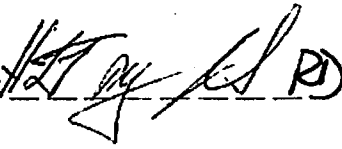

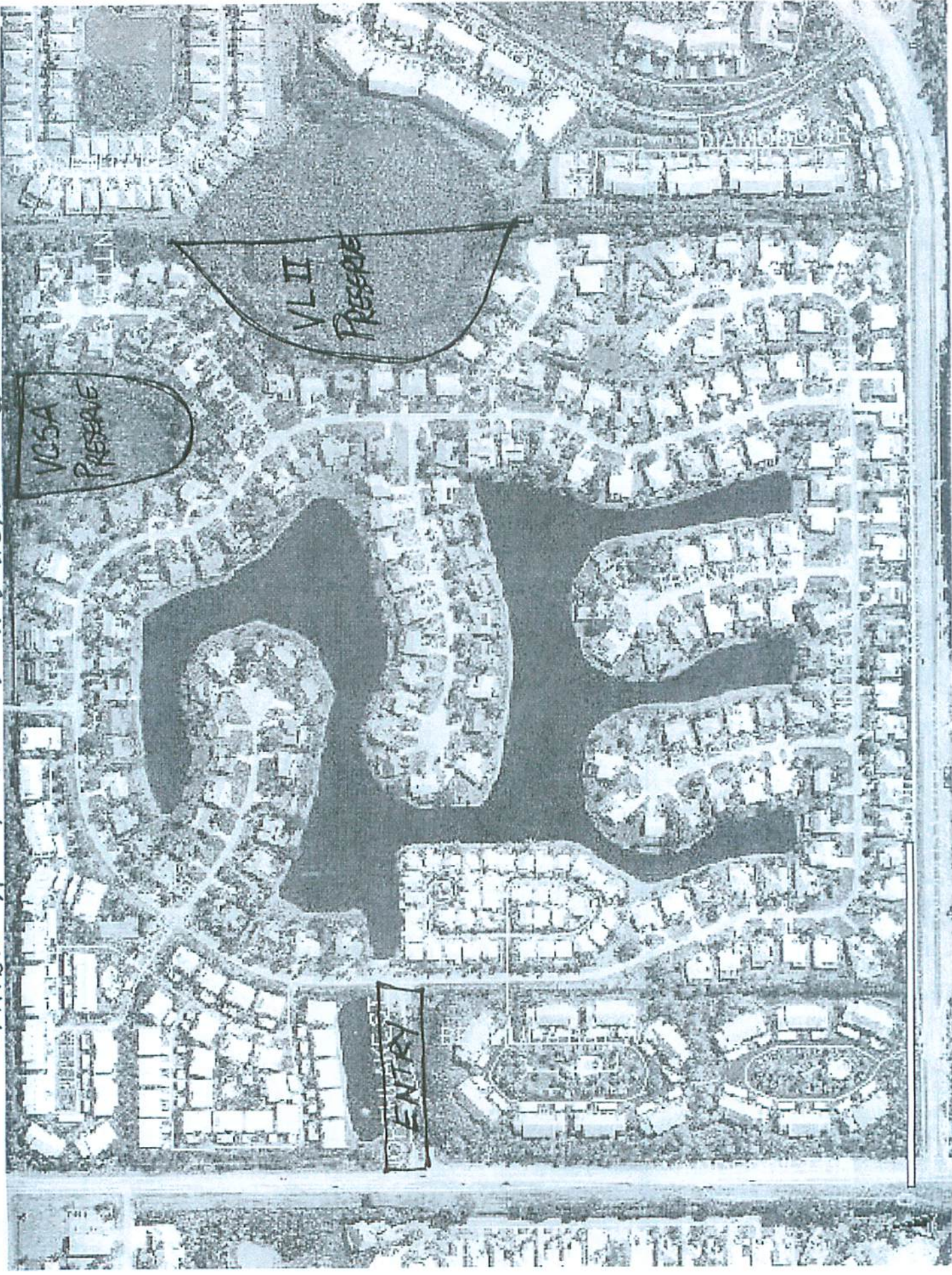
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EXHIBIT A - 10 VLT P. VCSA SCHEDULED AGREEMENT



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Prepared by and return to:
Richard D. DeBoest II, Esquire
DEBOEST, STOCKMAN, DECKER,
BROUGHTON & HAGAN, P A
2030 McGregor Boulevard
Fort Myers, FL 33901
239-333-0693

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SATISFACTION OF CLAIMS OF LIEN FOR UNPAID ASSESSMENTS

THIS IS TO CERTIFY that the Claims of Lien for Unpaid Assessments in the amounts shown on Exhibit "A" attached hereto, recorded on behalf of Vanderbilt Community Services Association, Inc., on April ____, 2007, at the Instrument Numbers identified on Exhibit "A" hereto, all recorded in Public Records of Lee County, Florida, against the following described parcels:

SEE EXHIBIT "A" ATTACHED HERETO

and the Owner(s) of the above-described parcels, against whose interest the liens are claimed, have been satisfied in full and that Vanderbilt Community Services Association, Unit, Inc., acting through the undersigned agent, hereby releases its liens and acknowledges that the debts secured by the liens have been paid and satisfied in full, and consents that the same be discharged of record.

DATED this ____ day of January, 2008.

**VANDERBILT COMMUNITY SERVICES
ASSOCIATION, INC.**

Print Name: _____

By: _____
Jeffrey S. Schelling, as Agent and Attorney in Fact

Print Name: _____

STATE OF FLORIDA)
COUNTY OF LEE)

THE FOREGOING INSTRUMENT was acknowledged before me this _____ day of January, 2008, by Jeffrey S. Schelling, as Agent and Attorney-in-Fact of Vanderbilt Community Services Association, Unit II, Inc., on behalf of the Association who is personally known to me

(Official Seal)

Notary Public, State of Florida
Commission No. _____, Expiration Date: _____

VCSA AND VLII JOINT ANNOUNCEMENT
January 10, 2009

VCSA and VLII are pleased to announce that they have reached an agreement resolving the pending litigation between the parties. A copy of the Settlement Agreement may be viewed at www.vanderbiltlakes.com.

