

RETURN TO MINUTES OFFICE

Instrument Prepared by  
and Return to: Christian T. Van Hise, Esq.  
Abel, Band, Russell, Collier, Pitchford  
& Gordon, Chartered  
240 S. Pineapple Avenue  
Sarasota, Florida 34230

INSTR # 6261641  
OR BK 04288 Pgs 0467 - 477; (11pgs)  
RECORDED 05/10/2004 03:01:59 PM  
CHARLIE GREEN, CLERK OF COURT  
LEE COUNTY, FLORIDA  
RECORDING FEE 51.00  
DEPUTY CLERK C Keller

**COCO BAY/KELLY GREENS ACCESS EASEMENT AGREEMENT**

THIS AGREEMENT, made this 9<sup>th</sup> day of April, 2004, by and between the

Kelly Greens Master Association, Inc., a Florida corporation, whose address is 12300 Kelly Greens Boulevard, Fort Myers, Florida 33908, its successors and assigns (hereinafter referred to as the "Grantor") and Centex Homes, a Nevada General Partnership, whose address is c/o 5801 Pelican Boulevard, Suite 600, Naples, Florida 34108, and Synergy Golf Development, LLC, a Florida Limited Liability Company, whose address is 25151 Pennyroyal Drive, Bonita Springs, Florida 34134 (hereinafter collectively referred to as the "Grantees").

WITNESSETH:

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

WHEREAS, Grantees own real property located adjacent to Kelly Greens which property is more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, access to Grantees' property is provided through and upon the road right-of-way known as Kelly Cove Drive, which right-of-way is located entirely within the Kelly Greens subdivision; and

WHEREAS, Grantees have been apprised of Grantor's plan to vacate and abandon the platted road rights-of-way within Kelly Greens, including the right-of-way for Kelly Cove Drive,

for the expressed purpose of installing and operating access control gates at various locations within the Kelly Greens subdivision; and

WHEREAS, Grantees do not object to Grantor's plan for installing and operating access control gates at various locations within the Kelly Greens subdivision and acknowledge same by their respective execution of this Easement Agreement; and

WHEREAS, pursuant to Lee County Resolution No. 04-04-22 (hereinafter the "Resolution"), Grantor owns all of the road rights-of-way within the Kelly Greens subdivision, which rights-of-way are more particularly described in Exhibit "B" attached hereto and made apart hereof. The rights-of-way described in Exhibit "B" shall be referred to hereinafter as either the "Kelly Greens Roadways" or the "Easement Property"; and

WHEREAS, Grantee, Centex Homes, is developing a residential community on the real property described in Exhibit "A" which development is generally known as Coco Bay (hereinafter the "Centex Homes Development"); and

WHEREAS, in order to provide Grantees and their respective successors, assigns, affiliated entities, and devisees with continuous and uninterrupted access to Grantees' property, Grantor desires to create and establish a perpetual non-exclusive easement over, upon, and across the Kelly Greens Roadways in accordance with the terms and conditions set forth in this Easement Agreement.

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

1. Grant of Roadway Access Easement. Grantor hereby grants and conveys to Grantees and their respective successors, assigns, affiliated entities, and devisees a perpetual non-exclusive easement ("Easement") for all vehicular and pedestrian access, use, passage, and/or common transportation purposes, over, upon, and across the real property described in Exhibit "B" attached hereto and incorporated herein ("Easement Property"), which property encompasses all of the road rights-of-way within the Kelly Greens subdivision. This Easement is granted for the express purpose of providing Grantees and their respective successors, assigns, affiliated entities, and devisees with a continuous and binding right to utilize the Kelly Greens Roadways as a means of ingress and egress to the Centex Homes Development (Coco Bay).

2. Easement for Utilities. In addition to the Easement granted in Paragraph 1 above, Grantor hereby further grants and conveys to Grantees and their respective successors, assigns, affiliated entities, and devisees a perpetual non-exclusive easement to install, operate, maintain, repair, reconstruct, improve, enlarge and remove all public and private utility lines, conduits, connections, facilities and appurtenant equipment over, upon and across all of the road right-of-way for Kelly Cove Drive and the real property delineated as Tracts 29, 30, 33, 34 and 35 on that certain plat of Kelly Greens Unit Five recorded in Plat Book 43, Pages 90 - 93, of the public records of Lee County, Florida. This easement is granted for the purpose of providing a continuous, perpetual and uninterrupted right to access and utilize the road right-of-way and real property described in this Paragraph to facilitate the installation, operation, maintenance and improvement of any public or private utility service for the Centex Homes Development (Coco Bay).

3. Maintenance and Repair of Easement Property. Grantor agrees and covenants to maintain and repair the Easement Property, including any and all access gates installed thereon, as may be required from time to time and in accordance with all conditions and stipulations for

maintenance enumerated in the Resolution. Grantor's responsibilities under this provision shall include all required service, repair, replacement, upgrades and/or regular maintenance of any appurtenant improvements and/or facilities located within or upon the Easement Property, including but not limited to, asphalt, sidewalks, street signs, pavement markings, street lights, landscaping and access control gates and appurtenant equipment. Grantees shall have the right to specifically enforce Grantor's obligation to maintain and repair the Easement Property. In addition, in the event Grantor fails to maintain and repair the Easement Property, Grantees shall have the right, but not the obligation, following ninety (90) days prior written notice to Grantor, to perform Grantor's maintenance obligation and to recover from Grantor the actual costs thereof.

4. Grantor's Representations. Grantor represents and warrants that it has caused to be taken all actions necessary to make the Easement Property privately owned and that it has good, marketable and insurable title thereto and has taken any and all action necessary to enter into this Easement Agreement and grant the Easement described herein. Grantor makes no representations or warranties regarding any prior access rights from the Kelly Greens subdivision to Grantees' real property described in Exhibit "A." By executing this Easement Agreement, Grantor grants Grantees a perpetual non-exclusive easement as described in Paragraphs 1 and 2 above only to the extent of Grantor's ownership of property within the boundaries of the Kelly Greens subdivision. Grantor does not warrant, verify, or affirm the validity of any driveway or other right-of-way permit(s) issued by any governing authority granting access rights to Grantees' real property described in Exhibit "A."

5. Access Control Gates. Grantor shall install access control gates on the Easement Property in accordance with all construction and permitting requirements enumerated in the Lee County Land Development Code. All access control gates for vehicular traffic shall be activated by

electronic transmitter devices. Grantor shall be responsible for the costs associated with the operation and maintenance of the access control gates and appurtenant equipment installed on the Easement Property. Grantees and/or each individual property, parcel or unit owner of the Centex Homes Development (Coco Bay) shall be responsible to pay the same purchase price paid by individual members of Kelly Greens for the purchase or replacement of each electronic transmitter device utilized by each said property, parcel or unit owner, or their respective tenants, necessary to activate the access control gates.

6. Binding Effect. All references to Grantor and/or Grantees within this Easement Agreement shall include their respective successors, assigns, affiliated entities and devisees. The Easement granted herein, together with the covenants, conditions, and terms hereof shall run with the land described herein and shall be binding on all successors of the parties hereto. It is the expressed intent of both Grantor and Grantees that upon Grantees' subdivision and/or platting of the real property described in Exhibit "A" and subsequent conveyance of lots, units, or parcels within the Centex Homes Development (Coco Bay), that the homeowners association established to operate such development, as well as the individual unit owners or parcel owners therein, together with their respective tenants, guests, invitees, and licensees, are intended beneficiaries of this Easement Agreement and these beneficiaries shall be entitled to all rights and remedies under this Agreement as long as this Agreement remains in effect.

7. Recordation. This Easement Agreement shall be recorded by Grantor in the public records of Lee County, Florida. Grantor shall deliver a copy of this Easement Agreement to Grantees after its recordation.

8. Modifications. This Easement Agreement may be modified only by a written document signed by the Grantor and the Grantees, or their respective successors, assigns, affiliated

entities, or devisees. Any purported oral modification of this Easement Agreement shall not be valid or have any effect whatsoever.

9. Default. In the event the Grantor or any or both Grantees fail to abide by any of the terms or provisions of this Easement Agreement, such failure shall constitute a default and the non-defaulting party may thereafter institute legal action against the defaulting party through specific performance, declaratory or injunctive relief, monetary damages, or any other remedy provided in law or equity. In the event that Grantor or Grantees initiate or defend a legal action to enforce or interpret this Easement Agreement, the prevailing party of any such action shall be entitled to recover from the losing party the reasonable costs and attorney's fees incurred to prosecute such action, including all attorneys' fees and costs incurred through trial and appellate proceedings.

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

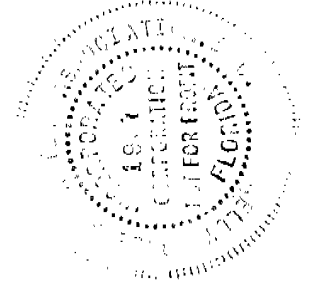
IN WITNESS WHEREOF, Grantor and Grantees have executed this Easement Agreement in the signatory lines below, effective the day and year first above written.

KELLY GREENS MASTER ASSOCIATION, INC.  
a Florida Corporation

By: [Signature]

Print Name: JOHN J. CARVEY

As Its: PRESIDENT



STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me by John J. Carvey  
the President of KELLY GREENS MASTER ASSOCIATION, INC. WITNESS  
my hand and official seal in the County and State named above this 9th day of April,  
2004.

☒ Personally Known

☐ Identification Provided

[Signature]  
Notary Public, State of Florida

Pamela A. Cotter  
Printed Name of Notary Public

(Seal)



Pamela A. Cotter  
Commission #DD303726  
Expires: Apr 30, 2008  
Bonded Thru  
Atlantic Bonding Co., Inc.

CENTEX HOMES GENERAL PARTNERSHIP,  
a Nevada General Partnership

By: CENTEX REAL ESTATE CORPORATION,  
As Its: Managing General Partner

By: [Signature]  
Timothy Ruemler, Division President



STATE OF FLORIDA  
COUNTY OF Collier

The foregoing instrument was acknowledged before me by Timothy Ruemler, Division President of CENTEX REAL ESTATE CORPORATION, Managing General Partner of CENTEX HOMES GENERAL PARTNERSHIP, a Nevada General Partnership.

WITNESS my hand and official seal in the County and State named above this 8<sup>th</sup> day of April, 2004.

X Personally Known

       Identification Provided

[Signature]  
Notary Public, State of Florida  
**KRISTIN M. IRGANG**

Printed Name of Notary Public

(Seal)



**Kristin M. Irgang**  
Commission # DD066809  
Expires Oct. 22, 2015  
Bonded Through  
Atlantic Bonding Co., Inc.



SYNERGY GOLF DEVELOPMENT, LLC  
a Florida Limited Liability Company

By: *Franz Rozinus*  
Franz Rozinus

As Its: *Manager*



STATE OF FLORIDA  
COUNTY OF *Collier*

The foregoing instrument was acknowledged before me by *FRANZ J. ROSINUS*,  
the *MANAGER* of SYNERGY GOLF DEVELOPMENT, LLC. WITNESS my hand  
and official seal in the County and State named above this *8th* day of *April*, 2004.

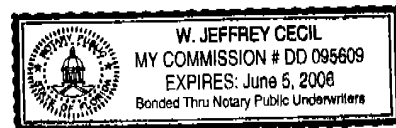
*X* Personally Known

           Identification Provided

*W Jeffrey Cecil*  
Notary Public, State of Florida

Printed Name of Notary Public

(Seal)



## **EXHIBIT A**

September 3, 2003

### **DESCRIPTION**

#### **PARCEL IN SECTION 6, TOWNSHIP 46 SOUTH, RANGE 24 EAST LEE COUNTY, FLORIDA**

A tract or parcel of land lying in the Northwest Quarter (NW-1/4) of Section 6, Township 46 South, Range 24 East, Lee County, Florida, which tract or parcel is described as follows:

From the northwest corner of said Section 6 run S 00° 54' 55" E along the west line of said Section 6 for 682.50 feet to the southwest corner of the plat of Kelly Brooke as recorded in Plat Book 32, Page 33, Public Records of Lee County, Florida and the Point of Beginning.

From said Point of Beginning run N 88° 56' 02" E along the south line of said plat for 1326.11 feet to the southeast corner of Casa Bella, a condominium, as recorded in Official Record Book 1432, Page 848, of said public records; thence run S 01° 07' 39" E for 1972.40 feet to an intersection with the south line of the Northwest Quarter (NW-1/4) of the said Section 6; thence run S 89° 03' 04" W along the south line of said Northwest Quarter (NW-1/4) for 1333.41 feet to the West Quarter (W-1/4) corner of said Section 6; thence run N 00° 54' 55" W along the west line of said Section 6 for 1969.68 feet to the Point of Beginning.

Parcel contains 60.2 acres more or less.

SUBJECT TO easements, restrictions and reservations of records.

Bearings hereinabove mentioned are State Plane Coordinate based on the West Zone of Florida North American datum, 1983 (1990 adjustment) wherein the west line of Section 6, Township 46 South, Range 24 East bears N 00° 54' 55" W.

20033791/Description Parcel 090303

**EXHIBIT B**  
**LEGAL DESCRIPTION**

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

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

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

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

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

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

- Kelly Woods Drive

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

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

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

- Kelly Cove Drive
- All of Tracts 29, 30, 33, 34 and 35 (inclusive)

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

- Kelly Sands Way
- Kelly Woods Drive

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