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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS**

**FOR**

**ESTERO POINTE**

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**TABLE OF EXHIBITS**

**EXHIBIT**

**SUBJECT MATTER**

“A”	Legal Description of Property
“B”	Site Plan of Estero Pointe
“C”	Initial Use Restrictions
“D”	Articles of Incorporation of Estero Pointe Community Association, Inc.
“E”	Bylaws of Estero Pointe Community Association, Inc.
“F”	South Florida Water Management District Permit

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS**

**FOR**

**ESTERO POINTE**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("Declaration") is made this 23<sup>rd</sup> day of September, 2016, by TAYLOR MORRISON OF FLORIDA, INC., a Florida corporation ("Declarant") and is joined in by ESTERO POINTE COMMUNITY ASSOCIATION, INC., a Florida corporation not for profit ("Association").

WHEREAS, Declarant is the owner in fee simple of the real property more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, Declarant desires to develop a planned community to be known as "Estero Pointe" (as hereinafter defined) upon the Property; and

WHEREAS, in order to develop and maintain Estero Pointe as a planned residential community and to preserve the values and amenities of such community, it is necessary to declare, commit and subject the Property (and any additional property which may hereafter be added to the Property and made subject to this Declaration) and the improvements now or hereafter constructed thereon to certain land use covenants, restrictions, reservations, regulations, burdens, liens, and easements; and to delegate and assign to the Association certain powers and duties of ownership, administration, operation, maintenance and enforcement; and

WHEREAS, the Association is joining in this Declaration in order to acknowledge its obligations hereunder.

NOW, THEREFORE, in consideration of the premises and covenants herein contained, Declarant hereby declares that the Property and any other property which is or becomes Committed Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth, all of which shall run with the Property and any such Committed Property and any part thereof, and which shall be binding upon all parties having any right, title or interest in the Property and any such Committed Property or any part thereof, their heirs, successors and assigns. This Declaration does not, and is not intended to create a condominium within the meaning of Chapter 718, Florida Statutes.

## **ARTICLE I CREATION OF THE COMMUNITY**

### **1.1. Purpose and Intent.**

Declarant (as defined in Article II), as the owner of the real property described in Exhibit "A," intends, by recording of this Declaration of Covenants, Conditions, Restrictions and Easements for Estero Pointe (the "Declaration"), to establish a general plan of development for Estero Pointe, a planned residential community. This Declaration, together with the other Governing Documents described in Section 1.3, provides for the overall development, administration, maintenance, and preservation of Estero Pointe, and provides a flexible and reasonable procedure for its future expansion. An integral part of the development plan is the creation of Estero Pointe Community Association, Inc. (the "Association") to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents.

This document does not and is not intended to create a condominium under Florida law.

### **1.2. Binding Effect.**

This Declaration governs the Property, which is described in Exhibit "A," and any other property submitted to this Declaration in the future pursuant to Article X. This Declaration shall run with the title to such Property and shall bind everyone having any right, title, or interest in any portion of such Property, their heirs, successors, successors-in-title, and assigns. Declarant, the Association, any aggrieved Owner (as defined in Article II), and their respective legal representatives, heirs, successors, and assigns, may enforce this Declaration. Each Owner shall automatically be a Member (as defined in Article II) of the Association.

This Declaration is intended to have perpetual duration, but shall be effective for a minimum of thirty (30) years from the date it is recorded, subject to the right of Declarant and the Members to amend it as provided in Article XX. After the initial thirty (30)-year period, it shall automatically be extended for successive ten (10)-year periods in perpetuity unless, within the twelve (12)-month period preceding any extension, an instrument signed by the then Owners of at least seventy-five percent (75%) of the Lots (as defined in Article II) agreeing to terminate this Declaration is recorded. If any provision of this Declaration would be invalid under the Florida Uniform Statutory Rule Against Perpetuities, that provision shall expire ninety (90) years after this Declaration is recorded. This section does not authorize termination of any easement created in this Declaration without the consent of the holder of such easement.

### 1.3. Governing Documents.

The following chart identifies the documents which govern the Community (as they may be amended from time to time, the "Governing Documents") and describes, in part, the purpose of each. Every Owner and occupant of a Lot in Estero Pointe, and their respective guests, tenants, visitors and invitees, shall comply with the Governing Documents.

<b>Declaration</b> (Recorded)	→	creates obligations which are binding upon the Association and all present and future owners and occupants of, and others with any interest in, property in the Community
<b>Supplemental Declaration</b> (when Recorded)	→	adds property to the Community; and/or <i>may</i> impose additional obligations or restrictions on such property
<b>Articles of Incorporation</b> (filed with the Secretary of State; initial Articles attached as Exhibit "D")	→	establish the Association as a not-for-profit corporation under Florida law
<b>Bylaws</b> (Board adopts; initial Bylaws attached as Exhibit "E")	→	govern the Association's internal affairs, such as voting rights, elections, meetings, officers, etc.
<b>Architectural Guidelines</b> (Declarant or Association may adopt)	→	establish architectural standards and guidelines for improvements and modifications to Lots, including structures, landscaping, and other items on Lots
<b>Use Restrictions</b> (initial set attached as Exhibit "C")	→	govern use of property and activities within the Community
<b>Board Resolutions and Rules</b> (Board may adopt)	→	establish rules, policies, and procedures for internal governance and Association activities; regulate operation and use of Common Area (as defined in Article II)

Additional covenants, conditions, restrictions and easements may be imposed on all or any portion of the Community, in which case the more restrictive provisions will be controlling. However, no Person (as defined in Article II) shall record any additional covenants, conditions, restrictions or easements which abridges, affects or modifies any of Declarant's rights and privileges under this Declaration affecting any portion of the Community without Declarant's written consent, during the Development and Sale Period (as defined in Article II), or without the Board's consent thereafter. Any instrument recorded without the necessary consent is void and of no force or effect.

If there are conflicts between Florida law, this Declaration, the Articles, and the Bylaws, Florida law, this Declaration, the Articles, and the Bylaws (in that order) shall prevail. If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or other applications of the provision.

#### 1.4. Enforcement.

The Association and Declarant shall have the right to enforce compliance of the terms of this Declaration by each Owner, his or her family, lessees, invitees and guests. Each Owner, the County and the SFWMD shall have the right, but not the obligation, to enforce this Declaration to the extent an Owner or the Association fails to perform its maintenance responsibilities pursuant to this Declaration and the Plat, including the Surface Water and Storm Water Management System (if the same is the entity's responsibility), private rights-of-way and any easements appurtenant to the Surface Water and Storm Water Management System or private rights-of-way owned by the Association in a manner required by governmental approvals. In the event the Association, or any successor organization, shall fail to adequately maintain the Common Area and/or Surface Water and Storm Water Management System in accordance with the County's standards, the County shall have the right, but not the obligation, to enter the Community for the purpose of maintaining the Surface Water and Storm Water Management System. All expenses incurred by the County in maintaining the Surface Water and Storm Water Management System shall be assessed prorata against the Lots in the manner provided for the payment of Assessments as set forth in this Declaration and shall be payable by the Owners of the Lots within sixty (60) days after receipt of a statement therefor. If any Owner fails to pay such assessment within such sixty (60)-day period, the assessment shall become a lien on such Owner's Lot which may be foreclosed by the County. The rights of the County contained in this restriction shall be in addition to any other rights the County may have in regulating the operation and development of the Community.

## ARTICLE II CONCEPTS AND DEFINITIONS

#### 2.1. Defined Terms.

The terms used in the Governing Documents are given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms are defined as follows:

**"Affiliate":** Any Person which (either directly or indirectly, through one or more intermediaries) controls, is in common control with, or is controlled by, another Person, and any Person that is a director, trustee, officer, employee, independent contractor, shareholder, agent, co-venturer, subsidiary, personal representative, or attorney of any of the foregoing. For the purposes of this definition, the term "control" means the direct or indirect power or authority to direct or cause the direction of an entity's management or policies, whether through the ownership of voting securities, by contract, or otherwise.

**"Architectural Guidelines":** The architectural, design, and construction guidelines and review procedures adopted pursuant to Article IV as they may be amended from time to time.

**"Architectural Review Board" or "ARB":** The committee established, upon delegation or termination of Declarant's authority under Article IV, to review plans and specifications for the construction or modification of improvements and to administer and enforce the architectural controls described in Article IV.

**“Articles”:** The Articles of Incorporation of Estero Pointe Community Association, Inc., filed with the Secretary of State for the State of Florida, as they may be amended from time to time. A copy of the initial Articles is attached to this Declaration as Exhibit “D.”

**“Assessments”:** Assessments for which all Owners are obligated to pay to the Association and includes “Individual Lot Assessments,” “Benefited Assessments,” and “Special Assessments” (as such terms are defined herein) and any and all other assessments which are levied by the Association in accordance with the Governing Documents.

**“Association”:** Estero Pointe Community Association, Inc., a Florida not-for-profit corporation, its successors or assigns.

**“Benefited Assessment”:** Assessments charged against a particular Lot or Lots for Association expenses as described in Section 9.5.

**“Board of Directors” or “Board”:** The body responsible for the general governance and administration of the Association, selected as provided in the Articles.

**“Builder”:** Any entity(ies) Declarant may designate as a Builder. Declarant shall have the right to assign, in whole or in part, any of its rights and/or responsibilities hereunder to a Builder(s).

**“Bylaws”:** The Bylaws of Estero Pointe Community Association, Inc., as they may be amended from time to time. A copy of the initial Bylaws is attached to this Declaration as Exhibit “E.”

**“Class “B” Control Period”:** The time period during which the Class “B” Member may appoint a majority of the Board members. The Class “B” Control Period shall end when any one of the following occurs:

(a) when 90% of the total of all Lots proposed under the Development Plan have been issued certificates of occupancy and are owned by Class “A” Members other than Declarant; or

(b) when, in its discretion, the Class “B” Member so determines.

**“Committed Property”:** Any real property that is hereafter made a part of the Property pursuant to the recordation of one or more Supplemental Declarations among the Public Records of the County.

**“Common Area” or “Common Property”:** All real and personal property, including easements, which the Association owns, holds, leases, or otherwise has a right to possess or use for the common use and enjoyment of the Owners. Common Area includes the Surface Water and Storm Water Management System.

“Community” or “Estero Pointe”: The real property described in Exhibit “A,” together with such additional property as is subjected to this Declaration in accordance with Article X.

“Community Systems”: Any and all television (cable, satellite or otherwise), telecommunication, internet access, alarm monitoring, utility or other lines, conduits, wires, satellites, amplifiers, towers, antennae, equipment, materials, installations and fixtures (including those based on, containing or serving future technological advances not now known) installed by Declarant, an affiliate of Declarant, any other entity in which Declarant or an affiliate of Declarant may have an interest (financial or otherwise), or any third party expressly granted the rights by Declarant or Association to provide Community Systems within the Property, or pursuant to any grant of easement or authority by Declarant or Association and serving the Common Areas and/or more than one Lot.

“Community-Wide Standard”: The standard of conduct, maintenance, or other activity generally prevailing throughout the Community, or the minimum standards established pursuant to the Architectural Guidelines, Use Restrictions, and Board resolutions, whichever is the highest standard. Declarant initially shall establish such standard and Declarant has the right to change such standard in its sole discretion. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the Board’s or the ARB’s discretion. The Community-Wide Standard may or may not be set out in writing. The Community-Wide Standard may evolve as development progresses and as the Community matures.

“Completed Lot”: A Lot on which the construction of a Home has been completed, for which a certificate of occupancy or equivalent therefore has been issued by the appropriate governmental agency, and the title to which has been conveyed by Declarant.

“Completed Lot Owner”: The Owner of a Completed Lot.

“County”: Lee County, Florida.

“Declarant”: Taylor Morrison of Florida, Inc., a Florida corporation, or any successor or assign as developer of all or any portion of the Community that is designated as Declarant in a recorded instrument which the immediately preceding Declarant executes. On all matters, Declarant may act through any of its Affiliates. Any Person who at any time holds the rights of Declarant hereunder and subsequently transfers or assigns the rights of Declarant to another Person shall be known as a “predecessor Declarant” and, unless otherwise agreed in writing, shall be entitled to the rights of a predecessor Declarant established in this Declaration. Whether or not specifically stated, a predecessor Declarant shall be afforded the same protection with respect to matters arising during its tenure as Declarant as the predecessor Declarant would have if it were still Declarant.

“Development Plan”: The land use plan for the Community described in Article XI, as the same may be amended from time to time by Declarant, which initially includes all of the property described in Exhibit “A.” Declarant reserves the right to submit other property adjacent to Estero Pointe to this Declaration and to withdraw portions of the Property. Reference should

be made to Articles X and XI of this Declaration for the respective rights and obligations of Owners and Declarant with respect to the use and development of the Community.

**“Development and Sale Period”**: The period of time during which Declarant and/or its Affiliates and/or any Builder and/or its Affiliates are using the Community for the sale and marketing of Homes in the Community and/or in any other communities developed or to be developed by Declarant or any of its affiliates, including, but not limited to, the holding of sales and marketing meetings, the use of “model row(s)” if one or more, the use of design centers, the use of service and construction trailers, and engaging in sales promotions and related sales and marketing activities for the general public.

**“HOA Act”**: The homeowners’ association act, Chapter 720, Florida Statutes, as amended through the date of recording this Declaration amongst the Public Records of the County.

**“Home”**: A single-family detached residential dwelling unit in Estero Pointe intended as an abode for one family. The term Home shall include the Lot as provided in this Article II, Section 2.1. No portion of any Community System (as hereinafter defined), even if installed in a Home, shall be deemed to be a part of a Home unless and until same is made such pursuant to Section 12.5 hereof, if at all.

**“Improvement”**: Any Home, building, structure or improvement of any kind including, but not limited to, any wall, fence, landscaping, planting, topographical feature, mailbox, play set, basketball pole and backboard, swimming pool, tennis court, screen enclosure, driveway, sidewalk, sewer, drain, water area, outside lighting or sign and addition, alteration or modification thereto.

**“Incomplete”**: The status of construction where a certificate of occupancy for a Home constructed on a Lot has not been issued by the appropriate governmental agency but which Lot has been cleared, filled and compacted and is ready to receive a Home thereon.

**“Incomplete Lot”**: Any Lot which is not a Completed Lot.

**“Incomplete Lot Owner”**: The Owner of an Incomplete Lot.

**“Individual Lot Assessment”**: Annual assessments levied to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 9.1.

**“Institutional Mortgage”**: A mortgage held by an Institutional Mortgagee on any property within Estero Pointe.

**“Institutional Mortgagee”**: Any lending institution owning a first mortgage encumbering any Home or Lot within Estero Pointe, which owner and holder of said mortgage shall either be a bank, life insurance company, federal or state savings and loan association, real estate or mortgage investment trust, building and loan association, mortgage banking company licensed to do business in the State of Florida, or any subsidiary thereof, licensed or qualified to make



mortgage loans in the State of Florida or a national banking association chartered under the laws of the United States of America or any "secondary mortgage market institution," including the Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC") and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; any and all lenders, and the successors and assigns of such lenders, which have loaned money to Declarant and which hold a mortgage on any portion of the Property securing any such loan; any pension or profit-sharing funds qualified under the Internal Revenue Code; the Veterans Administration, the Federal Housing Administration or the Department of Housing and Urban Development or such other lender as is generally recognized in the community as an institutional lender; or Declarant, its successors and assigns.

"Lake": The portions of Estero Pointe designated on the Plat as "Lake, D.E. (Drainage Easement), L.M.E. (Lake Maintenance Easement)."

"Lake Lot": A Lot which abuts one of the Lakes in Estero Pointe as shown on the Plat.

"Legal Costs" or "Legal Fees": The costs which a Person entitled to reimbursement for "Legal Costs" under any provision of the Governing Documents incurs in pursuing legal action (regardless of whether suit is filed) to enforce the Governing Documents, including, but not limited to, reasonable attorneys' and paralegals' fees, expert witness fees, and court costs at all tribunal levels incurred in connection with: (i) negotiation and preparation for mediation, arbitration or litigation, whether or not an action is actually begun, and (ii) collection of past due Assessments including, but not limited to, preparation of notices and liens.

"Lot": A portion of the Community, whether improved or unimproved, which may be independently owned and conveyed, and which is improved, or intended to be improved, with a Home. The term shall refer to the land, if any, which is part of the Lot as well as any improvements on the Lot. The boundaries of each Lot are shown on the Plat. Upon completion of construction of the Home on a Lot, such Lot and the improvements thereon shall collectively be considered to be a Home for purposes of this Declaration and the other Governing Documents.

"Member": A Person subject to membership in the Association, as described in Section 6.2. There initially are two (2) membership classes- Class "A" and Class "B."

"Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

"Operating Expenses": The expenses for which Owners are liable to the Association as described in this Declaration and any other Governing Documents and include, but are not limited to: (a) the costs and expenses incurred by the Association in owning, administering, operating, maintaining, financing, or repairing (but not reconstructing, replacing or improving), the Common Area or any portion thereof and Improvements thereon, all other property owned by the Association (including, without limitation, the Surface Water and Storm Water Management

System), and (b) all costs and expenses incurred by the Association in carrying out its powers and duties hereunder or under any other Governing Documents.

**“Owner”**: The record title holder to any Lot, but excluding, in all cases, anyone holding an interest merely as security for the performance of an obligation (*e.g., an Institutional Mortgagee*).

**“Person”**: An individual, a corporation, a partnership, a trustee, or any other legal entity.

**“Plat”**: The plat of Estero Pointe referenced in Exhibit “A” attached hereto and made a part hereof, and any replats thereof or any portions thereof. In the event an additional plat is recorded in the Public Records of the County with respect to any property made subject to this Declaration pursuant to a Supplemental Declaration, then the term “Plat” as used herein shall also mean the additional plat.

**“Property”**: The real property subjected to this Declaration from time to time; provided, however, Declarant reserves the right to withdraw from the provisions hereof such portion or portions of the Property (which is owned by Declarant) as Declarant from time to time elects, upon the execution by Declarant of a Supplemental Declaration.

**“Rules and Regulations”**: The rules and regulations pertaining to the Community as established by the Association, as same may be amended and/or abolished from time to time.

**“Special Assessment”**: Assessments levied against Lots in accordance with Section 9.3 to cover unbudgeted expenses or expenses in excess of those budgeted.

**“Supplemental Declaration”**: A recorded instrument which subjects additional property to this Declaration and/or imposes additional and/or modified restrictions and obligations on the land described in such instrument.

**“Surface Water and Storm Water Management System”**: A drainage system consisting of swales, inlets, culverts, retention ponds, detention ponds, Lakes, outfalls, storm drains and the like, and all connecting pipes and easements, which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation, and water pollution or otherwise affect quantity and quality of discharges from the system, as permitted pursuant to the SFWMD Rules. The Surface Water and Storm Water Management System facilities include, but are not limited to: all inlets, ditches, swales, culverts, water control structures, retention and detention ponds, Lakes, floodplain compensation areas, wetlands and any associated buffer areas and wetland mitigation areas, to the extent that any such facilities, areas, or conditions apply to the Community.

**“SFWMD”**: The South Florida Water Management District, a regional water management district established in accordance with Florida law, and any successor, governmental agency, body or special district charged with the rights and responsibilities of the SFWMD.

“SFWMD Permit”: SFWMD Environmental Resource Permit No. 36-08550-P issued by the SFWMD, a copy of which is attached hereto as Exhibit “F,” as same may be amended and/or modified from time to time.

“Turnover”: The date Class “B” membership shall cease and be converted to Class “A” membership, upon which Declarant transfers majority control of the Board as provided in the Articles.

“Use Restrictions”: The initial use restrictions, rules, and regulations governing the use of and activities on the Lots and Common Areas are set forth in Exhibit “C,” as they may be changed in accordance with Article III or otherwise amended from time to time.

“Wetland” or “Preserves”: Any area within the Community identified or designated as habitat for wetland species of plants and/or animals by the SFWMD, or by the County, or by the United States Army Corps of Engineers, or by any other agency of the State of Florida or the United States government, whether or not such area is included within the Surface Water and Storm Water Management System, or is an isolated area that is not connected to the Surface Water and Storm Water Management System.

## 2.2. Interpretation of Certain References.

(a) Recording. All references in the Governing Documents to a “recorded” legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument, in the public records of the County, or such other place designated as the official location for filing documents affecting title to real estate in the County in order to make them a matter of public record.

(b) Consent or Approval. All references in the Governing Documents to “consent” or “approval” shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(c) Discretion and Determinations. All references in the Governing Documents to “discretion” or to the right to “determine” any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Governing Documents, a Person entitled to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

### ARTICLE III USE AND CONDUCT

#### 3.1. Restrictions on Use, Occupancy, and Alienation.

In addition to the Use Restrictions set forth in Exhibit "C" which may be modified as provided below, the Lots shall be subject to the following restrictions set forth in this Section and may be amended only in accordance with Article XX.

(a) Residential and Related Uses. Lots shall be used primarily for residential and related purposes. No business shall be conducted in, on, or from any Lot, except that an occupant residing in the Home on a Lot may conduct business activities ancillary to their primary residential use, if the business activity, as determined in the Board's discretion:

(i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

(ii) complies with applicable zoning and other legal requirements and other requirements of this Declaration;

(iii) does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and

(iv) is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the use and enjoyment of other Lots by the Owner thereof or the security or safety of others within the Community.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

No Lot shall be rezoned to any classification allowing commercial, institutional, or other non-residential use without the express written consent of the Association and Declarant, which either may withhold in their discretion. Notwithstanding anything in this Article to the contrary, Declarant or the Association may enforce this covenant by obtaining an injunction against any unapproved rezoning at the expense of the party pursuing the unapproved rezoning, in addition to and not in limitation of Declarant's or the Association's other rights and remedies.

This Section shall not apply to restrict Declarant's, or Declarant's Affiliates' or Builder's or Builder's Affiliates' activities, nor shall it restrict the activities of Persons Declarant approves with respect to the development, construction, and sale of property in the Community. This Section shall not apply to Association activities related to the provision of services or to

operating and maintaining the Community, including the Community's recreational and other amenities.

Leasing of a single Lot by the Owner thereof for residential occupancy shall not be considered a "business" within the meaning of this subsection; however, no Owner or group of Owners who are Affiliates shall, on their own behalf or through any agent, engage in leasing activity with respect to multiple Lots at the same time.

(b) Leasing. For purposes of this Declaration, "leasing" is the regular, exclusive occupancy of a Home by any Person other than the Owner, for which the Owner receives any consideration or benefit, including, without limitation, a fee, service, or gratuity.

The Home may be leased only in its entirety (*e.g.*, separate rooms within the same Home may not be separately leased). All leases must be in writing and shall have a term of no less than thirty (30) days. No Owner may lease his or her Home more than four (4) times in any twelve (12)-month period, even if a tenant defaults on a lease or abandons the Home before expiration of the lease term. No lease shall provide for an early lease termination which would reduce a lease term to a period of less than said thirty (30) days, except in the event of a default by the tenant. Any lease terminated as a result of a default or otherwise, shall nevertheless still count towards the foregoing rental limitations. The restrictions on lease terms set forth in this paragraph shall not apply to Homes owned or leased by Declarant, its Affiliates, or Persons Declarant approves, in connection with their development, construction, or sale of property in the Community. Any short-term rental of the Home (less than thirty (30) days) shall be considered a business use of the Home and a violation of this Declaration as well as a violation of the zoning of the Property.

All leases shall include an acknowledgment by the tenant that the tenant and all occupants of the leased Home are bound by and obligated to comply with the Governing Documents and that the tenant has received a copy of the Governing Documents. The Association may require that the lease contain an addendum approved by the Association. The Owner shall be responsible for providing a copy of the Governing Documents to the tenant prior to execution of the lease and shall monitor enforcement and compliance with the Governing Documents by the tenant.

In the event that an Owner is delinquent in the payment of his or her Assessments or other sums due and owing to the Association, the Home shall not be leased until such amounts are paid in full or unless the Association consents, in writing, to any such lease. If the Home is leased in violation of this provision, the Association may terminate the lease and evict the tenants in addition to imposing all other available remedies. In the event an Owner is in default in the payment of Assessments or other sums due and owing to the Association and the Owner's Home is leased, the Association shall have the right and authority to collect the rent to be paid by the tenant to the Owner directly from the tenant. In the event such tenant fails to remit said rent directly to the Association within ten (10) days (but no later than the day the next rental payment is due) from the day the Association notified such tenant in writing that the rents must be remitted directly to the Association, the Association shall have the right to terminate the lease and evict the tenant. All sums received from the tenant shall be applied to the Owner's account

for the leased Home according to the priority established in Section 720.3085, Florida Statutes, until the Owner's account is current. All leases entered into by an Owner shall be deemed to automatically incorporate this provision and all the Owners hereby appoint the Association its agent for such purpose. The Association may, without further approval of the Owner of the leased Home, terminate the lease for violations of this Declaration by the tenants, or the tenant's family or guests and thereafter evict the tenants from the Home.

In addition to any notice to a tenant of a Home permitted to be given by law, an Owner by acceptance of a deed to a Lot, does hereby irrevocably grant to the Association (and its officers, directors, designees, agents, and employees) and to any professional management or accounting firm providing management or accounting services to the Association, the right to notify, in writing, the tenant of the Home of any delinquency by the Owner of the Home in payment of any monetary obligations due to the Association, including but not limited to the amount thereof. Further each Owner hereby agrees and acknowledges that the disclosure of any of Owner's delinquent monetary obligations due to the Association, as provided in the preceding sentence, shall not be construed or be deemed to be a violation of the Fair Debt Collection Practices Act ("FDCPA") 15 U.S.C. Section 1692 et. seq.

Each lease shall set forth the name, address, and telephone number of the Home's Owner and of the tenant(s); the date the tenant's occupancy commences and ends; a description of each motor vehicle owned or operated by the tenant or members of the tenant's household; and a description of all pets to be kept at the Home.

If an Owner elects to permit a tenant to sublease during the term of the lease, such sublease shall be subject to the limitations and requirements established in this Declaration to the same extent and effect as the original lease.

Within five (5) days of a lease being signed for a Home, the Owner shall notify the Board or the Association's managing agent of the lease and provide an entire copy of such lease to the Association and such additional information the Board may reasonably require. In addition to this subsection (b), the Board may, from time to time, adopt reasonable Use Restrictions and rules regulating leasing and subleasing.

No Owner may assign or otherwise transfer the Owner's obligations under this Declaration to any tenant. The Association shall have the right to enforce the covenants, conditions, and restrictions set forth in this Declaration against the Owner, the tenant, or any member of the tenant's household, individually or collectively. The Association shall not be bound by any provision in the lease or other agreement between Owner and his or her tenant requiring prior notice or imposing other conditions on the rights of the Association.

The Association shall be deemed a third party beneficiary of all leases of Homes, and shall have the right, but not the obligation, to enforce the terms and conditions of such leases against the tenant or the Owner. Notwithstanding the foregoing, the Association's failure to object to any term or condition of a lease or occupancy arrangement shall not be deemed to be consent or approval of any term or condition of the lease, nor shall the Association have any

obligation whatsoever for the performance of any obligation of Owner or tenant contained in the lease or otherwise.

Notwithstanding any condition of any lease to the contrary, each Owner, by acceptance of the deed to a Lot, hereby covenants and agrees with the Association and all other Owners in the Community, including, but not limited to, Declarant, that the Owner shall be responsible for any violation of the Governing Documents resulting from the acts or omissions of his or her tenant, other occupants of the leased Home, and their respective guests to the same extent that Owner would be liable for such violation if it had resulted from the acts or omissions of the Owner or a member of the Owner's household or guests. The Owner's obligations hereunder shall be deemed a guaranty of performance by his or her tenant, and the Association shall have the right to take any action or seek any remedy for the tenant's failure or refusal to comply with the Governing Documents directly from or against the Owner without first taking such action or obtaining such remedy from or against the tenant.

The Association may, without further approval of the Owner of the leased Home, terminate the lease for violations of the Governing Documents by the tenants, or the tenant's family or guests and thereafter evict the tenants from the Home.

(c) Occupants Bound. Every Owner shall cause anyone occupying or visiting his or her Lot to comply with the Governing Documents and shall be responsible for all violations of the Governing Documents and any damage and losses they cause to the Common Areas, notwithstanding the fact that such Persons also are personally responsible for complying and may be sanctioned for any violation.

(d) Subdivision of a Lot. Lots may not be subdivided or their boundary lines changed except with Declarant's or the ARB's prior written approval. Declarant may subdivide, change the boundary lines of, and replat any Lot it owns without ARB or Board approval. In addition, if Declarant, or any Declarant Affiliate, owns any portion of the Community, it may convert Lots it owns into Common Area.

(e) Lodging; Timeshares. No Lot may be used as a rooming house, hostel, or hotel. Timesharing or other arrangements involving more than three ownership interests in a Lot (including ownership by more than three Persons as joint tenants or tenants-in-common), or assigning separate use periods of less than thirty (30) consecutive days' duration, are prohibited.

### 3.2. Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and the Members, the Board may change (*i.e.*, modify, cancel, limit, create exceptions to, or add to) the Use Restrictions and/or Rules and Regulations; however, during the Development and Sale Period the Board shall be required to obtain Declarant's written consent. The Board shall send the Members notice of any proposed change at least five (5) business days before the Board meeting at which such change will be considered. The Owners shall have a reasonable opportunity to be heard at such Board meetings.

The proposed change to the Use Restrictions shall be approved unless disapproved by a majority of the Class "A" votes and by the Class "B" Member, if any. The Board is not obligated to call a meeting of the Members to consider disapproval unless it receives a petition that meets the Bylaws requirement for special meetings. If the Board receives such a petition before the effective date of the change, the change shall not become effective until after a meeting is held, and then subject to the outcome of the meeting. The Board, acting alone, may amend and/or abolish the Rules and Regulations, or any of them, in the Board's discretion, subject to its duty to exercise business judgment and reasonableness on behalf of the Association and the Members.

(b) Alternatively, members representing a majority of the Class "A" votes, at an Association meeting duly called for such purpose, may vote to change the Use Restrictions and/or the Rules and Regulations then in effect. Any such change during the Development and Sale Period shall require approval of Declarant.

(c) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Architectural Guidelines or any provision of this Declaration other than the Use Restrictions and Rules and Regulations, respectively. In the event of a conflict between the Architectural Guidelines, the Use Restrictions and/or the Rules and Regulations, the Architectural Guidelines, the Use Restrictions and the Rules and Regulations shall control in that order. In the event of a conflict between the Use Restrictions or Rules and Regulations, and any provision within this Declaration (exclusive of the Use Restrictions), the Declaration provision shall control.

(d) The procedures described in this Section 3.2 are not intended to apply to reasonable rules and regulations relating to use and operation of the Common Area, which the Board may adopt by resolution, or other administrative rules, unless the Board chooses, in its discretion, to submit to such procedures.

(e) Except as may be set forth in this Declaration (either initially or by amendment) or in the Use Restrictions set forth in Exhibit "C," or in the Rules and Regulations, the Association's actions with respect to Use Restrictions and Rules and Regulations must comply with the following:

(i) Displays. Owners' rights to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residential neighborhoods with homes of comparable type, quality, and price range to those in the Community shall not be further abridged, except that the Association may adopt time, place, size, number, and manner restrictions with respect to such displays.

(ii) Signs. No sign, display, poster, advertisement, notice or other lettering of any kind whatsoever (including, without limitation, "For Sale," "For Rent" or "By Owner" or any other signs for the sale or renting of homes) shall be exhibited, displayed, inscribed, painted or affixed in public view of any portion of any building, vehicle or other Improvement in Estero Pointe (including, without limitation, a Home) without the prior written



approval of the ARB, which approval may be given, withheld, conditioned or denied in the sole and absolute discretion of the ARB. Notwithstanding anything to the contrary contained in these Rules and Regulations, the ARB shall not approve any sign, display, poster, advertisement, notice or other lettering which is or in the nature of a "For Sale," "For Rent," "By Owner" or any other similar sign for the renting or sale of a Home so long as Declarant owns a Lot in Estero Pointe or so long as Declarant or any of Declarant's affiliates (or any of their respective successors or assigns) are conducting sales and marketing of Homes in Estero Pointe or other communities developed or marketed by Declarant or its affiliates, whichever is later. Signs, regardless of size, used by Declarant or a Builder, their successors or assigns, for advertising and marketing during the Development and Sale Period of Estero Pointe or other communities developed and/or marketed by Declarant and/or its Affiliates and other signs authorized by Declarant and/or its Affiliates shall be exempt from these restrictions. Such sign or signs as Declarant and/or its Affiliates and/or a Builder and/or its Affiliates may be required to erect under the terms of an institutional mortgage shall be exempt from this restriction. An Owner may display a security sign, provided by a contractor for security services, as permitted by the HOA Act. This provision may not be amended without the prior written consent of Declarant.

(iii) Activities Within Homes. The Association shall not interfere with activities carried on within a Home, except that it may prohibit activities not normally associated with residential property, and it may restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the Home, that create undesirable odors noticeable to persons outside the Home, or that are an unreasonable source of annoyance, or that violates a provision of the Governing Documents. This provision shall not be applicable to Declarant and/or its Affiliates and/or a Builder and/or its Affiliates.

(iv) Alienation. The Association shall not prohibit leasing or transfer of any Lot, or require the Association's or the Board's consent prior to leasing or transferring a Lot. The Association may impose restrictions on leasing, in addition to those set forth in this Article, and may require that Owners use an Association-approved addendum (or include specific lease terms) and may impose a reasonable review or administrative fee on the lease or transfer of any Lot.

(v) Abridging Existing Rights. The Association may not require an Owner to dispose of personal property that was in or on a Lot in compliance with previous rules. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.

(vi) Right to Develop. The Association may not impede Declarant's or any Builder's right to develop, market, or sell the Property or any portions thereof.

Declarant plans to undertake the work of constructing Homes and Improvements upon the Property and may undertake the work of constructing other buildings upon adjacent land or other property being developed or marketed by Declarant, Builder or any of their affiliates. The completion of the aforementioned work and the sale, rental and other transfer of Homes by Declarant, Builder and their affiliates are essential to the establishment and

welfare of the Property as a residential community. In order that such work may be completed and a fully occupied community established as rapidly as possible, neither the Owners, the Association, nor the ARB shall do anything whatsoever to interfere with or impede any of Declarant's, Builder's or of their affiliates' activities relating to the selling or constructing of Homes and Improvements upon the Property, the selling or constructing of other buildings upon adjacent land or any other property being developed or marketed by Declarant, Builder or any of their affiliates, or the sale, rental and/or other transfer of Homes by Declarant, Builder or any of Declarant's affiliates. In this respect, Declarant hereby reserves the right for itself and its employees, agents, licensees, and invitees to come upon any and all portions of the Property (including, without limitation, the Common Areas as well as a Lot even after the same has been conveyed to an Owner) as may be necessary or convenient to enable Declarant, Builder and/or any of their affiliates to carry on its work and other activities including, without limitation, Declarant's development and construction of Estero Pointe and the Homes therein.

In general, the restrictions and limitations set forth in this Article III and in Exhibit "C" shall not apply to Declarant or to Lots owned by Declarant. Declarant shall specifically be exempt from any restrictions which interfere in any manner whatsoever with Declarant's plans for development, construction, sale, lease, or use of the Property and to the Improvements thereon. Declarant shall be entitled to injunctive relief for any actual or threatened interference with its rights under this Article III and Exhibit "C" in addition to whatever remedies at law to which it might be entitled.

This subsection (e) may not be amended without the prior written consent of Declarant so long as Declarant owns any portion of the Property.

### 3.3. Owners' Acknowledgment and Notice to Purchasers.

Each Owner, by accepting a deed, acknowledges and agrees that the use, enjoyment, and marketability of his or her Lot is limited and affected by the terms of the Governing Documents, including the Use Restrictions and the Rules and Regulations, which may change from time to time. All Lot purchasers are on notice that the Association may have adopted changes to the Use Restrictions and Rules and Regulations and those changes may or may not be set forth in a recorded document. Copies of the current Use Restrictions and Rules and Regulations may be obtained from the Association.

## ARTICLE IV ARCHITECTURE AND LANDSCAPING

### 4.1. General.

Estero Pointe is being developed with the intent that Homes harmonize with each other and present a consistent style. To ensure the preservation of the existing harmonious design and to prevent the introduction of design that is not in keeping with Estero Pointe, Declarant hereby declares that the style and form of Estero Pointe as originally constructed or approved by Declarant with respect to architectural style, colors and materials as the standard. This standard shall continue in effect until the adoption and publication of new guidelines and standards.

Except for work done by or on behalf of Declarant or any Declarant Affiliate, no structure or thing shall be placed, erected, or installed upon any Lot, and no improvements of any kind or other work (including, without limitation, staking, clearing, excavation, grading and other site work, exterior alterations or additions, or planting or removal of landscaping) shall take place within the Community, except in compliance with this Article and the Architectural Guidelines.

All Owners of Lots along or adjacent to the Lakes are prohibited from disturbing or removing any vegetation within the Lake bank areas and are subject to certain restrictions regarding fences as set forth in Section 7.11 and in Exhibit C.

An Owner shall not plant any shrubs, trees and/or landscaping on his or her Lot and/or in any manner alter the landscaping in the Community as initially installed by Declarant, without the prior written consent of the ARB. If an Owner receives such approval and plants any shrubs, trees and/or landscaping on his or her Lot, such Owner shall be responsible for the payment of the increase in maintenance fees for the maintaining of such shrubs, trees and/or landscaping.

Any Owner may remodel, paint, or redecorate the interior of the Home on his or her Lot without approval hereunder. However, modifications to the interior of screened porches, patios, and any other portions of a Lot or structure visible from outside a structure are subject to approval under this Article.

Improvements shall be constructed only by qualified Persons acceptable to the Reviewer [as defined in Section 4.2(c)]. Owners shall be responsible for obtaining all permits and approvals from the County and other governmental agencies.

This Article does not apply to Declarant's or its Affiliates' activities, nor to the Association's activities during the Development and Sale Period.

#### 4.2. Architectural Review.

(a) By Declarant. Declarant shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for architectural and other improvements within the Community. Declarant's rights under this Article shall continue until termination of the Development and Sale Period, unless Declarant earlier terminates its rights in a recorded instrument. Declarant may designate one or more Persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant's interest and owes no duty to any other Person.

Declarant may from time to time delegate or assign all or any portion of its rights under this Article to any other Person or committee, including the ARB. Any such delegation shall be in writing, shall specify the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this

Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(b) Architectural Review Board. Upon Declarant's delegation or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the ARB, shall assume jurisdiction over architectural matters. When appointed, the ARB shall consist of at least three (3), but not more than five (5), persons. Members of the ARB need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish. The ARB members shall serve and may be removed and replaced in the Board's discretion.

Unless and until such time as Declarant delegates any of its reserved rights to the ARB or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Reviewer. For purposes of this Article, the "Reviewer" is the Person having jurisdiction under this Section in a particular case.

(d) Fees; Assistance. The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include, without limitation, the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals the Reviewer employs or with whom it contracts.

The Board may include the compensation of such Persons in the Association's annual operating budget.

#### 4.3. Guidelines and Procedures.

(a) Architectural Guidelines. Declarant may prepare the initial Architectural Guidelines, which may contain general provisions applicable to all of the Community as well as specific provisions that may vary according to location within the Community or product type. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer. The Architectural Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Architectural Guidelines does not guarantee an application's approval.

Declarant shall have sole and full authority to amend the Architectural Guidelines, from time to time, during the Development and Sale Period. Declarant's right to amend shall continue even if its reviewing authority is delegated to the ARB, unless Declarant also delegates the power to amend to the ARB. Upon termination or delegation of Declarant's right to amend, the Board may amend the Architectural Guidelines, subject to Declarant's veto right under Section 4.2(a) (if still applicable).

Amendments to the Architectural Guidelines shall be prospective only. They shall not require modifications to or removal of structures, improvements, and other things previously

approved once the approved construction or modification has begun. However, any new work or improvements on such structures must comply with the Architectural Guidelines as amended. Subject to the Community-Wide Standard, there is no limit to the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Reviewer shall make the Architectural Guidelines available to Owners and Builders who seek to engage in development or construction within the Community. In Declarant's discretion, the Architectural Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

(b) Procedures. Unless the Architectural Guidelines provide otherwise, no construction activities or other activities described in Section 4.1 may begin until a request is submitted to and approved in writing by the Reviewer. The request must be in writing and be accompanied by plans and specifications and other information the Reviewer and/or the Architectural Guidelines require. Plans and specifications shall show, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction or other activity as the Reviewer deems relevant.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations are not subject to review so long as they are made in good faith and in accordance with the required procedures.

The Reviewer shall make a determination on each application within forty-five (45) days after receipt of a completed application and all other information the Reviewer requires. The Reviewer may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until forty-five (45) days after the final, required submission stage. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application, with or without conditions, and disapprove other portions; or (iii) disapprove the application. The Reviewer shall notify the applicant in writing of a final determination on any application. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

After the initial forty-five (45)-day period has elapsed, if the Owner has not received notice of the Reviewer's determination, the Owner may make a second written request for approval of the plans previously submitted which shall be marked "Second Request." If the Reviewer fails to respond within seven (7) business days from receipt of the Second Request, approval shall be deemed given. However, no approval, whether expressly granted or deemed

granted, shall be inconsistent with the Architectural Guidelines or other Governing Documents unless a written variance has been granted pursuant to Section 4.6.

Notwithstanding anything to the contrary in this Declaration or the Bylaws, Owners shall send any such "Second Request" via the U. S. Postal Service, certified mail, return receipt requested, or by commercial overnight carrier that obtains a signed receipt upon delivery. A Second Request shall be deemed made, and the seven (7) business day time period shall commence running, on the date of the Reviewer's actual receipt of the Second Request, as evidenced by its signature on the return receipt provided by the U. S. Postal Service or in the records of the overnight carrier, as applicable.

As part of any approval, the Reviewer may require that construction and landscaping in accordance with approved plans commence and be completed within a specified time period. If construction does not commence within the required period, the approval shall expire and the Owner must reapply for approval before commencing any activities within the scope of this Article. Once commenced, such activities must be diligently pursued to completion. All elements of the approved plans shall be completed within one year of commencement unless a shorter or longer period is otherwise specified in the notice of approval or the Architectural Guidelines, or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be in violation of this Article and shall be subject to enforcement action by the Association or Declarant.

Any approvals granted under this Article are conditioned upon completion of all elements of the approved work, unless written approval to modify any application has been obtained.

Declarant or the ARB, by resolution, may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

#### 4.4. Security Deposits for Improvements; Indemnification.

Any Owner desiring to make Improvements may be required by the ARB, depending upon the Improvements being requested and the manner of installation of such Improvements, to provide to the ARB, at the time of the Owner's submission of plans and specifications for review and approval by the Reviewer, a Five Thousand Dollar (\$5,000.00) security deposit to cover costs of incidental damage caused to Common Areas, an adjacent Home or Lot, or any other property (whether real or personal) by virtue of such Owner's construction of Improvements. The ARB shall have the sole and absolute discretion to determine whether a security deposit is required for the Improvements being requested. The ARB shall not be obligated to place the security deposit in an interest bearing account. The Owner shall be entitled to the return of the security deposit upon: (i) such Owner's written notice to the ARB that the Improvements covered by the security deposit have been completed in accordance with the plans and specifications approved by the ARB, and (ii) the ARB's (or its duly authorized representative's) inspection of such Improvements confirming completion; provided, however, should any incidental damage be caused to Common Areas by virtue of such Owner's construction of

Improvements, the security deposit shall not be returned to Owner until such damages have been repaired. In the event that Owner has not repaired such damages to the Common Areas to the satisfaction of the ARB, the ARB shall have the right (but not the obligation), after five (5) days' notice to the offending Owner, to repair such incidental damage and to use so much of the security deposit held by the ARB to reimburse itself for the costs of such work. Further, the offending Owner hereby agrees to indemnify and reimburse the ARB for all reasonable costs expended by the ARB that exceed the security deposit, including Legal Fees, if any, incurred in connection therewith. Should any incidental damage be caused to an adjacent Lot or Home by virtue of such Owner's construction of Improvements, the Owner of the adjacent Lot (the "Adjacent Lot Owner") may, at such Adjacent Lot Owner's sole option: (a) remedy such damage and submit to the ARB a receipt, invoice or statement therefor for reimbursement from the offending Owner's security deposit; or (b) allow the offending Owner to repair such incidental damage to the Adjacent Lot Owner's Lot or Home, at the offending Owner's sole cost and expense, and upon receipt by the ARB of written notice from the Adjacent Lot Owner that such incidental damage has been repaired, the offending Owner shall be entitled to a return of the balance of the security deposit being held by the ARB, if any.

Notwithstanding anything contained in this Section to the contrary, the ARB's return of the security deposit being held by it for any such Improvements shall be based solely on considerations set forth above. The ARB's return of the security deposit does not and shall not be construed to constitute a determination by members and representatives of the ARB, Declarant, and/or the Association of the structural safety, approval or integrity of any Improvement, conformance with building or other codes or standards, or the proper issuance of governmental permits and approvals for any Improvement. By submitting a request for review and approval of proposed plans and specifications, along with the security deposit required hereunder, an Owner shall be deemed to have automatically agreed to hold harmless and indemnify the members and representatives of the ARB, the Declarant, and the Association generally, from any loss, claim, damage or liability connected with or arising out of the Improvements or alterations, and/or the security deposit (including, without limitation, the disbursement thereof).

The ARB shall not be liable or responsible to anyone for any damages, losses or expenses resulting from the ARB's holding of the security deposit or disbursement thereof unless same shall be caused by the gross negligence or willful malfeasance of the ARB. In the event of any disagreement relating to the security deposit held by the ARB or the disbursement thereof, the ARB shall be entitled (but not obligated) to refuse to disburse the security deposit (or any portion thereof) as long as such disagreement may continue, and the ARB shall not become liable in any way for such refusal. The ARB shall have the right, at any time, after a dispute has arisen, to pay the security deposit (or any portion thereof) held by it into any court of competent jurisdiction for payment to the appropriate party, whereupon the ARB's obligations hereunder shall terminate and the ARB shall be automatically released of any and all obligations.

#### 4.5. No Waiver of Future Approvals.

Each Owner acknowledges that the people reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be feasible to identify objectionable features until work is completed, at which time, it may or may not be unreasonable to require that such objectionable features be changed. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the Reviewer's right to withhold approval of similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### 4.6. Variances.

The Reviewer may authorize variances from compliance with the Architectural Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires Declarant's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the improvements for which the variance was granted.

#### 4.7. Limitation of Liability.

This Article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community. The standards and procedures do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on purely aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that every Home is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

Declarant, Declarant's Affiliates, any predecessor Declarant, the Association, its officers, the Board, the ARB, the Association's management agent, any committee, or any member of any of the foregoing shall not be held liable to anyone whatsoever for the approval of, disapproval of, or failure to approve or disapprove any plans; soil conditions, drainage, or other general site work related to approved work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any owner or their contractor or their subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a Builder in the Community; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot or in any other way connected with the performance of the duties hereunder unless due to the willful misconduct or bad faith. In all matters, the



Association shall defend and indemnify and hold harmless Declarant, Declarant's Affiliates, any predecessor Declarant, the Board, the ARB, the members of each, and the Association officers as provided in the Articles.

By submitting a request for review and approval, an Owner shall be deemed to have and does automatically agree to indemnify, defend and hold harmless the Declarant, Declarant's Affiliates, any predecessor Declarant, the Association, its officers, the Board, the ARB, the Association's management agent, any committee, or any member of any of the foregoing, from and against any and all claims, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, Legal Costs) arising from, relating to or in any way connected with the Improvement or alterations for which such request was submitted and/or the security deposit (including, without limitation, the disbursement thereof). Furthermore, approval by the ARB of any request does not excuse any Owner from also obtaining approvals from all applicable governmental authorities.

#### 4.8. Enforcement.

Any construction, alteration, improvement or other work done in violation of this Article or the Architectural Guidelines is subject to enforcement action pursuant to Section 7.4. Any act of any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed to be an act done by or on behalf of such Owner.

### **ARTICLE V MAINTENANCE AND REPAIR**

The responsibility for the maintenance of the Property is divided between the Association and the Owners. Interior maintenance of structures is the responsibility of the owners of such structures. The Association may enter into agreements with others for the Association's management and/or maintenance of all or part of the property to be maintained by such entity (regardless of whether the subject property is within the Property) for purposes of carrying out all or a portion of the maintenance responsibilities of such entity, the expenses of which may be designated an Operating Expense, if the Association's Board of Directors determines such is in the interest of the Owners. Privately owned property shall be the maintenance responsibility of the Owner thereof, unless the responsibility is assumed by another by agreement approved or acknowledged by the Association. Open space owned by or dedicated to the Association shall be maintained by the Association and will not be diminished or destroyed in a manner which materially alters its use or enjoyment as open space.

#### 5.1. Maintenance of Lots and Homes.

(a) By the Owner. Each Owner must maintain his or her Home, including all structures and other improvements comprising the Lot, in a manner consistent with the Governing Documents, the Community-Wide Standard, and any other applicable covenants, except to the extent that such maintenance responsibility is assigned to or assumed by the Association, or assigned to the Association under this Declaration or any Supplemental Declaration or additional covenants applicable to such Lot. The Owner of each Home shall be

responsible for any damages caused by a failure to so maintain such Home. The Owners' responsibility for maintenance, repair and replacement shall include, but not be limited to, all of the physical structures constructed in, upon, above or below the Lot, and physical items attached or connected to such structures that run beyond the boundary line of the Lot which exclusively service or benefit the Lot and Home. Without limiting the generality of the foregoing, the Owner of each Lot shall keep all drainage structures (such as catch basins) located on the Owner's Lot clear of grass, leaves and other debris. Additionally, the painting, caulking and maintenance of the exterior surface of all walls (including, but not limited to any masonry walls extended from the rear of the Home), doors, windows and roof of the physical structure of the Home shall be performed by the Owner, and the exterior surface of such walls, doors, windows and roof shall at all times be maintained in a good and serviceable condition with no damage or other defect therein by the Owner. The Owner of a Lot further agrees to pay for all utilities (including, without limitation, those provided by the Community Systems), such as telephone, cable or satellite television, water, (but excluding, potable water-associated with irrigation which shall be an Operating Expense of the Association), sewer, sanitation, electric, etc., that may be separately billed or charged to each Home. The Owner of each Lot shall be responsible for insect and pest control within the Home and the Lot. Whenever the maintenance, repair and replacement of any items which an Owner is obligated to maintain, repair or replace at such Owner's own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Owner shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance or otherwise, reduce the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

In addition to the foregoing, each Owner shall be required to maintain appropriate climate control, keep his or her Home clean, and take necessary measures to retard and prevent mold from accumulating in the Home. Each Owner shall be required to clean and dust the Home on a regular basis and to remove visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces as soon as reasonably possible and must not block or cover any heating, ventilation or air-conditioning ducts. Owners are required to report immediately in writing to the Board (i) any evidence of water leak or water infiltration or excessive moisture in the Home, and any other common elements; (ii) any evidence of mold that cannot be removed with a common household cleaner; (iii) any failure or malfunction in heating, ventilation or air conditioning, and (iv) any inoperable doors or windows. Each Owner shall be solely responsible for damage to the Home and personal property, as well as any injury to the Owner and/or occupants of the Home resulting from any of the foregoing. Each Owner is fully responsible and liable for the entire amount of all cleaning expenses and remediation costs incurred to remove mold from the Home and each Owner shall be responsible for the repair and remediation of all damages to the Home caused by mold.

(b) By the Association. The Association shall perform, or cause to be performed, the following:

(i) maintenance (including, mowing, fertilizing, edging, watering, pruning, and replacing, and controlling disease and insects), of all lawns and landscaping installed on the Lot as part of the initial construction of the Lots, specifically excluding landscaping within any enclosed area not readily accessible from outside the Home.

(ii) operation, maintenance, repair, and replacement of any irrigation equipment (including, without limitation, any sprinklers, pumps, wells, water lines, and time clocks, wherever located) serving the Lots, except that the Association shall have no responsibility for any sprinklers or other irrigation equipment installed by the Owner or occupants of any Lot after issuance of a certificate of occupancy for the Home on the Lot. Notwithstanding the foregoing, each Owner shall be responsible for any damage caused to any portions of the irrigation system caused by such Owner and/or such Owner's family members, tenants, guests and invitees and Owner shall indemnify, defend and hold Association harmless from and against any and all losses, claims damages and/or liabilities resulting from any such damage.

(c) Declarant or a Builder may have constructed or installed drainage swales, drainage lines, and/or other equipment on a Lot for the purpose of managing and/or containing the flow of excess surface water, if any, found upon such Lot from time to time. Except to the extent that such responsibility is assigned to or assumed by the Owners pursuant to this Declaration or any Supplemental Declaration, the Association shall be responsible for the maintenance, operation, and repair of such drainage swale(s), drainage lines, and other equipment. Maintenance, operation, and repair shall, without limitation, mean the exercise of practices, such as mowing and erosion repair, which allow the drainage swales, drainage lines, and other equipment to provide drainage, water storage, conveyance, or other storm water management capabilities as permitted by the SFWMD. Filling, excavation, construction of fences, or otherwise obstructing the surface water flow in or into the drainage swales, drainage lines, and other equipment is prohibited. No alteration of a drainage swale, drainage lines, and other equipment shall be authorized and any damage to any drainage swale, drainage lines, and other equipment, whether caused by natural or human-induced phenomena, shall be repaired and the drainage swale returned to its former condition as soon as possible by the Owner(s) of the Lot upon which the drainage swale, drainage lines, and other equipment is located.

(d) The Association shall have the right, but not the obligation, following a tropical storm, hurricane or other Act of God, to upright and/or remove any fallen or dislodged trees, at the respective Owner's cost and expense on (i) any Lot, and/or (ii) any grassed areas located between the front and/or side(s) of such Owner's Lot and the street; on behalf of the Owner of such Lot. The Owner of said Lot shall be required to reimburse the Association for the costs and expenses incurred by the Association in connection with the uprighting and/or removal of any fallen or dislodged trees. In that regard, the Association may levy a Special Assessment against such Lot in connection with such costs and expenses, to the exclusion of all other Owners.

(e) The Association has a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of Estero Pointe.

(f) Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance includes responsibility for repair and replacement. The maintenance, repair, replacement, and other obligations of the Association and Owner specified in this Declaration shall be performed as and when the Board determines it necessary to maintain the property to a level consistent with the Community-Wide Standard.

## 5.2. Insurance on Lots; Casualty Losses.

Each Owner shall maintain property insurance providing fire and extended coverage at full replacement cost, less a reasonable deductible, on all insurable improvements located on such Owner's Lot. In addition, every Owner shall be obligated to obtain and maintain at all times insurance covering consequential damages to any other Lot or the Common Area due to occurrences originating within the Owner's Lot caused by the negligence of the Owner, the failure of the Owner to maintain the Lot, and any other casualty within the Lot which causes damage to the Lots or the Common Area, to the extent such coverage is not provided by policies maintained by the Association or to the extent insurable losses may result in the Owner's liability for payment of deductibles under the Association's policies. Such insurance policy or policies shall name the Association as an additional insured. Unless a Mortgagee is named as the loss payee under any such policy, the Association shall be named as an additional loss payee.

Each Owner shall provide a certificate evidencing such insurance to the Association within ten (10) days of any written request from the Board of Directors. In addition, if the Board so requests, each Owner shall file with the Association a copy of the individual policy or policies covering his or her Lot. Each Owner shall promptly notify the Board in writing in the event such policy on his or her Lot is canceled. In the event that an Owner fails to obtain any insurance which the Owner is required to obtain hereunder, or permits such insurance to lapse, the Association may, but shall not be obligated to, obtain such insurance on behalf of the Owner and assess the costs thereof to the Owner and the Owner's Lot as a Benefited Assessment.

If a Home is damaged by fire or other casualty, its Owner shall properly and promptly restore it to at least as good a condition as it was before the casualty occurred. Any such work shall be in accordance with the original plans and specifications of the Home unless otherwise authorized by the Board and shall be otherwise subject to all provisions of Article IV hereof.

Regardless of whether the insurance required hereunder is obtained by the Association or the Owners, in the event of a casualty loss, the Association shall be entitled to file a claim against such insurance for the cost of any repair or reconstruction to the Lot and improvements thereon which is the Association's responsibility, and the Owner shall pay the amount of any deductible and shall be responsible for any deficiency in the insurance proceeds. The Association shall be entitled to adjust with the insurance provider the amount of any proceeds payable to the Association and the Owner thereunder, based upon the amount necessary to enable the Owner and the Association each to repair and replace those portions of the Lot and improvements thereon which are their respective responsibilities.

If the Owner is required to obtain insurance hereunder and such insurance is insufficient, the Association shall be relieved of any obligation to maintain, repair, and replace damaged or destroyed portions of the Owner's Lot, to the extent of such insufficiency. Alternatively, the Association may perform required repairs, whether the responsibility of the Association or the Owner, and assess all costs to the Owner and the Owner's Lot as a Benefited Assessment pursuant to Section 9.5.

In the event of damage to or destruction of a structure on a Lot, the Owner shall promptly repair or reconstruct the structure in a manner consistent with the original construction or other plans and specifications approved in accordance with Article IV, except that if the Association has assumed responsibility for insurance coverage hereunder, the Association shall, subject to the limitations above, be responsible for repair or reconstruction of those portions of the structure on the Lot for which the Association has expressly, in writing, assumed insurance responsibility.

Declarant, Builders and their respective Affiliates shall be exempt from the provisions of this Section 5.2, provided that any such reconstruction, rebuilding or repairs made by Declarant or Builder shall be consistent, as to the exterior appearance, with the improvements as they existed prior to the damage or other casualty.

## **ARTICLE VI THE ASSOCIATION AND ITS MEMBERS**

### **6.1. Function of Association.**

The Association is the entity responsible for management, maintenance, operation, and control of the Common Areas. The Association also has primary responsibility for administering and enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Florida law. The Board shall be responsible for management of the Association and may contract with a property manager for such purposes. The Board is appointed or elected as provided in the Articles. Membership in the Association is appurtenant to and may not be severed from the Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in this Declaration, the Articles of Incorporation, or Bylaws of the Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot.

### **6.2. Membership.**

The Association initially shall have two (2) classes of membership, Class "A" and Class "B." Class "A" Members are all Owners of Lots in Estero Pointe, except the Class "B" Member. The sole Class "B" Member shall be Declarant. The Class "B" membership shall terminate on the Turnover Date (as defined in the Articles).

If a Lot is owned by more than one Person, each co-Owner shares the privileges of the membership, subject to reasonable Board regulation and the voting restrictions described in Section 6.3 and in the Articles. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner that is not an individual (*e.g.*,

a corporation) may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a voting certificate provided to the Association's Secretary.

### 6.3. Voting.

(a) Class "A." Class "A" Members have one (1) equal vote for each Lot they own, except that there is only one (1) vote per Lot.

(b) Class "B." The Class "B" Member shall have three (3) times the total number of votes of the Class "A" Members plus one (1).

Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to one Class "A" vote for each Lot it owns.

Any vote associated with a Lot (i) owned by a husband and wife may be exercised by the husband or wife, subject to the provision of this Declaration, the Articles and the Bylaws, or (ii) owned by a corporation, partnership, trust or other entity or joint form of ownership, may only be exercised by the individual(s) listed on a voting certificate filed with the Board of Directors and then subject to Rules and Regulations of the Association.

## **ARTICLE VII ASSOCIATION POWERS AND RESPONSIBILITIES**

### 7.1. Acceptance and Control of Common Area

(a) The Association may acquire, hold, mortgage or otherwise encumber, lease (as landlord or tenant), operate, and dispose of tangible and intangible personal property and real property, subject to the provisions of Section 16.9. The Association may enter into leases, licenses, or operating agreements, for payment or no payment, as the Board deems appropriate, permitting use of portions of the Common Area by others.

(b) Declarant or Builder and their respective Affiliates, or their respective designees, may, from time to time, transfer to the Association, and the Association shall accept, personal property and/or fee title or other property interests in any improved or unimproved real property included within the Property. Subject to the provisions of Section 16.9, upon Declarant's request, the Association shall transfer back to Declarant or its designees any real property which has not been improved by a structure intended for occupancy, whether or not such property has been improved by landscaping, decorative walls, signs, irrigation, utilities, or other improvements, if originally conveyed to the Association for no payment.

(c) The Association is responsible for management, operation, and control of the Common Area, subject to any covenants, easements, or restrictions set forth in the deed or other instrument transferring the property to the Association. The Board may, from time to time, adopt such reasonable rules regulating use of the Common Area as it deems appropriate. The

Association may enter into a property management agreement with any Person, including Declarant or any Declarant Affiliate.

(d) Declarant may elect to construct or install certain improvements or facilities upon portions of the Common Area, but is not obligated to do so and may elect to leave portions of the Common Area in their natural unimproved state. Declarant shall have the absolute right and power to determine what improvements or facilities, if any, will be located on the Common Area during the Development and Sale Period.

(e) Declarant hereby reserves the right, at all times after conveyance of the Common Area to the Association, to enter the Common Area, without prior notice, and to inspect the condition thereof and the improvements and facilities thereon, if any. If Declarant determines, in its sole judgment, that the Association has failed to maintain any portion of the Common Area in a manner consistent with the Community-Wide Standard, it may so notify the Association, in writing, and the Association shall promptly perform the required maintenance or repairs. Failure of the Association to maintain the Common Area in a manner consistent with the Community-Wide Standard shall relieve Declarant and any predecessor Declarant of any liability to the Association or to any Member for any condition of the Common Area. Declarant shall have the right to make a record of its inspections by any means available, including, but not limited to, photographing and/or videotaping the Common Area, and shall have the right to perform tests or examinations to determine the condition of the Common Area. Notwithstanding the foregoing, Declarant shall have no obligation to perform inspections of the Common Area owned by the Association, and the Association shall not be relieved of its obligation to maintain the Common Area because of the election of Declarant or any predecessor Declarant to inspect or not to inspect or report to the Association the condition of the Common Area.

(f) From the time that the Common Areas or any portion thereof is opened and put into use for the enjoyment of Owners, Declarant shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners, the Association and all persons and entities of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Areas or any of its improvements, fixtures, and facilities; inasmuch as the control, operation, management, use and enjoyment of the Common Areas shall be within, under, and subject to the Association's control as may be set forth in this Declaration and not Declarant. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the Common Areas and facilities, fixtures or improvements located thereon or comprising same to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Areas and its improvements, facilities and fixtures shall use, enjoy, and visit the same at their own risk and peril.

## 7.2. Maintenance of Common Areas.

The Association shall maintain the Common Areas in accordance with the Community-Wide Standard. The Common Areas shall include, but are not limited to (a) the Common Area, including landscaping, signage, perimeter walls, fencing, structures, and other improvements

located on the Common Area, as well as any private streets and entry gates serving the Community; (b) landscaping within public rights-of-way within or abutting the Community, or wetlands if not the obligation of Owners; and (c) such portions of Lots as are specifically identified as the Association's responsibility under Article V; and (d) all Lakes, ponds, streams, ditches, culverts, and/or wetlands located within the Community which serve as part of the Surface Water and Storm Water Management System, including associated improvements and equipment, but not including any such areas, improvements, or equipment maintained by the County or any other governmental or quasi-governmental body.

The Association shall maintain the littoral shelf, if any, of all Lakes, culverts, ditches, or waterways serving as part of the Surface Water and Storm Water Management system, which maintenance may include, without limitation, appropriate landscaping and plantings.

The Association may maintain other property that it does not own, including property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and the owner of such other property consents. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been grossly negligent in performing its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Common Areas in continuous operation, except for any periods necessary, as the Board may determine in its discretion, to perform required maintenance, repairs, or replacement, unless Members representing at least seventy-five percent (75%) of the Class "A" votes agree in writing to discontinue such operation (which may include closing and/or demolishing such facilities or equipment). Notwithstanding the above, the Common Areas may not be reduced, nor shall operation of its facilities and equipment be discontinued, without Declarant's prior written approval during the Development and Sale Period.

Unless otherwise provided in this Declaration or any applicable Supplemental Declaration, the costs associated with maintenance, repair, and replacement of the Common Areas shall be an Operating Expense.

Unless Declarant expressly agrees in writing with the Association to pay the costs of maintaining any portion of the Common Areas, Declarant shall have no such obligation, regardless of any inferences which may be drawn from promotional or other materials. Notwithstanding the foregoing, in the event Declarant determines that the Association is not operating, maintaining, repairing, replacing and/or managing the Common Areas in accordance with the Association's obligations hereunder, Declarant may (but is not obligated) rectify such failure by the Association after first providing Association written notice thereof and an opportunity to cure such failure with fifteen (15) days after delivery of such written notice. In the event that Association fails to so cure, then Declarant may do so on behalf of Association and all fees, costs and expenses incurred by Declarant in during Association's failure shall be reimbursed by Association within ten (10) days following written demand therefor. All sums unpaid by the Association to Declarant shall bear interest at the maximum amount allowed by applicable law until repaid to Declarant in full.



### 7.3. Insurance for Common Areas.

The Association shall keep all improvements, facilities, and fixtures located within the Common Areas insured against loss or damage by fire or other casualty for the full insurable replacement value thereof (with reasonable deductibles and normal exclusions for land, foundations, excavation costs and similar matters) and may obtain insurance against such other hazards and casualties as the Association may deem desirable.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect any or all of the following types of insurance, as deemed necessary or advisable in the Board's business judgment and as may be reasonably available: (i) blanket property insurance covering all insurable improvements within the Common Areas to the extent that the Association has responsibility for repair or reconstruction in the event of a casualty, regardless of ownership; (ii) commercial general liability insurance on the Common Areas of at least \$1,000,000.00 (if available at reasonable rates and upon reasonable terms) insuring against liability for bodily injury, death, and property damage arising from the activities of the Association or with regards to Common Areas, including, if obtainable, a cross liability endorsement insuring each Member against liability to each other Member and the Association and vice versa; (iii) directors and officers liability coverage; (iv) commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount at least equal to three months of Assessments, plus all reserve funds; (v) to the extent any insurable improvements to Common Areas are within an "A" flood zone, flood insurance in an amount equal to the lesser of 100% of the replacement costs of all insurable improvements (if any) within the Common Areas or the maximum amount of coverage available under the National Flood Insurance Program; and (vi) such additional insurance as the Board, in its business judgment, determines advisable. Notwithstanding the foregoing, Declarant may obtain insurance for multiple communities which it is developing and/or other projects under a blanket policy instead of obtaining a separate policy for the Association, and charge a reasonable portion of the cost thereof to the Association.

Premiums for Common Area insurance shall be an Operating Expense.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

To the extent obtainable at reasonable rates, the insurance policy(ies) maintained by the Association may contain provisions, or be accompanied by endorsements, for agreed amount and inflation guard, demolition costs, contingent liability from operation of building laws and increased costs of construction. All insurance policies shall contain standard mortgagee clauses, if applicable.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the

requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as an Operating Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or tenants, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Benefited Assessment.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(d) Waiver of Subrogation. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Members, Declarant, any predecessor Declarant, and the directors, trustees, officers, shareholders, attorneys, agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said Persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Damaged improvements on the Common Area shall be repaired or reconstructed unless Members representing at least 80% of the total Class "A" votes in the Association and Declarant during the Development and Sale Period, decide, within sixty (60) days after the loss, not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such sixty (60) day period, then the period may be extended until such funds or information are available. No Mortgagees shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall deposit any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed-upon settlement, in a capital improvements account for the benefit of the Members. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

#### 7.4. Enforcement.

(a) The Association, acting through the Board, may impose sanctions for violation of the Governing Documents, subject to the notice and hearing procedures set forth in the Bylaws, as applicable. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines, which may accrue from the date of notice (in the event that any occupant, guest or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board); and

(ii) suspending the vote attributable to the violating Owner's Lot; and

(iii) suspending the violator's and any guest or invitee of the violator's right to use any recreational facilities within the Common Area; and

(iv) suspending any services which the Association provides to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association; and

(v) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and/or the Architectural Guidelines from continuing or performing any further activities in the Community; and

(vi) levying Benefited Assessments pursuant to Section 9.5 to cover costs which the Association incurs to bring a Lot into compliance with the Governing Documents, including Legal Costs, or costs incurred as a consequence of the conduct of an Owner or occupant of a Lot, their guests or invitees.

(b) In addition, but without limitation of the Association's other rights and remedies, the Association, acting through the Board or its designee, may take the following action to enforce the Governing Documents without the necessity of compliance with the notice and hearing procedures set forth in the Bylaws:

(i) requiring an Owner, at its own expense, to perform maintenance on such Owner's Lot, to complete any construction or modification approved pursuant to Article IV, or to remove any structure, item or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition; or

(ii) entering the property pursuant to the easement granted in Section 13.5 and exercising self-help to remove or cure a violating condition, or to complete any construction or modification approved pursuant to Article IV which was begun and not completed within the required time period, upon failure of an Owner to take action as required pursuant to subsection (i) above within ten (10) days after the Board's mailing of written notice

to do so, and any such entry shall not be deemed a trespass (in the event of the occurrence of the same or similar violating condition within twelve (12) months, the Owner shall not be entitled to any notice or opportunity to cure); or

(iii) exercising self-help in any situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); and/or

(iv) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, subject to the procedures set forth in Article XVI, if applicable.

(c) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all Legal Costs incurred in any such action.

(d) The Association's decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interests, considering, among other things, hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under the same or other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

(e) The Association, by contract or other agreement, may enforce applicable governmental regulations and permit a governmental authority to enforce ordinances, rules, statutes, or laws within the Community for the benefit of the Association and its Members.

(f) The SFWMD, the County and the Association shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration that relate to the maintenance, operation, and repair of the Surface Water or Storm Water Management System.

(g) Declarant shall be entitled to exercise all of the rights and powers granted to the Association under Sections 7.4(a)(v), 7.4(b), and 7.4(c), and shall be entitled to recover all costs that it incurs in so doing from the responsible Owner to the same extent as the Association would be entitled to recover them after notice and a hearing under Sections 7.4(a)(vi) and Section 7.4(c).

(h) The covenants, conditions, restrictions and easements herein contained shall be enforced by Declarant (so long as Declarant holds an equitable or legal interest in any Lot), the Association, any Owner and any Institutional Mortgagee holding a mortgage on any portion of the Property in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant, restriction, easement or provision hereunder. The failure by any party to enforce any such covenant, restriction, easement or provision herein contained shall in no event be deemed a waiver of such covenant, restriction, easement or provision or of the right of such party to thereafter enforce such covenant, restriction, easement or provision. The prevailing party in any such litigation shall be entitled to all costs thereof including, but not limited to, Legal Fees.

#### 7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly or by reasonable implication by the Governing Documents, and may take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all of the Association's rights and powers may be exercised by the Board without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Areas, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation on behalf of or in the name of the Association or the Members. In exercising the Association's rights and powers, making decisions on the Association's behalf, including, without limitation, deciding whether to file a lawsuit under any circumstances, and conducting the Association's affairs, Board members and the Association's officers are subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws.

Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of three-fourths (3/4) of the total voting interests (at a duly called meeting of the Owners at which a quorum is present) prior to engaging persons or entities for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- (a) the collection of Assessments;
- (b) the collection of other charges which Owners are obligated to pay pursuant to the Governing Documents;

- (c) the enforcement of the use and occupancy restrictions contained in the Governing Documents;
- (d) the enforcement of Association rules;
- (e) the enforcement of the Architectural Guidelines;
- (f) the enforcement of a contract entered into by the Association with vendors providing services to the Association;
- (g) dealing with an emergency when waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Common Areas, any improvements or to Owner(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths [3/4] of the Owners); or
- (h) filing a compulsory counterclaim.

#### 7.6. Provision of Services to Lots.

The Association may provide, or provide for, services and facilities for all or any of the Members and their Lots, and may enter into contracts or agreements with other entities, including, without limitation, Declarant or its Affiliates, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities, or may include the costs in the Association's budget as an Operating Expense and assess it as part of the Assessment, if provided to, or determined by the Board to be a benefit to, all Lots. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, telephone, internet access, security monitoring, caretaker, transportation, fire protection, utilities, trash collection and recycling, and other services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services or facilities shall be provided. In addition, subject to the contract terms, the Board may modify or cancel existing contracts for services in its discretion, unless the services are otherwise required by the Governing Documents. Non-use of services or facilities provided to Owners as an Operating Expense, shall not exempt any Owner from the obligation to pay assessments for such services or facilities.

#### 7.7. Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring properties to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of maintenance of Common Areas.

#### 7.8. Relationship with Governmental and Tax-Exempt Organizations.

The Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to, state or local governments, public or private

utility providers, and non-profit, tax-exempt organizations for the benefit of the Community, the Association and the Members. The Association may contribute money, real property (including, without limitation, Common Area), personal property, or services to any such entity. Any such contribution may be an Operating Expense and included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

7.9. Right To Designate Sites for Governmental and Public Interests.

During the Development and Sale Period, Declarant may, but is not obligated to, designate sites within the Community for government, education, or religious activities and interests, including, without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. Subject to the approval requirements set forth in Section 16.9, the sites may include Common Area, in which case the Association shall take whatever action is required to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

7.10. Responsibilities Under Governmental Permits.

Declarant shall have the absolute and unconditional right in its sole discretion to assign, delegate, or otherwise transfer to the Association any of its continuing obligations and/or responsibilities under governmental permits and approvals with respect to the Community, including, without limitation, its continuing obligations with respect to the Surface Water and Storm Water Management System under the SFWMD Permit. The Association shall accept and assume such obligations and responsibilities without condition or consideration. Such assignment or transfer and assumption shall be effective without the consent of the Association, but upon Declarant's request, the Association shall promptly execute any documents which Declarant requests to evidence the assignment or transfer and assumption of such responsibilities. The Association shall comply in all respects with the terms of and shall not undertake any activity inconsistent with, such permits and approvals. The Association shall indemnify, defend and hold Declarant harmless from any claims or losses arising out of the violation or failure to comply with any permit(s), or out of the operation, maintenance or use of any improvement or facility authorized by the permit(s), provided such claim or loss first occurs after the effective date of the assignment, delegation, transfer (or tender of the assignment, delegation, or transfer, if wrongfully refused by the Association).

7.11. Lakes; Water Level and Use.

With respect to any Lakes now existing or which may hereafter be contained within or adjoining the Community, only the Association shall have the right to pump or otherwise remove any water from such Lakes for the purposes of irrigation or other use or to place any matter or object in such Lakes. No docks, moorings, pilings, boat shelters, or other structure shall be

erected on or over the Lakes, except as may be erected or approved in writing by Declarant (and following the termination of the Class "B" Control Period, the Association or the ARB). Only Declarant (and after termination of the Class "B" Control Period, the Association) shall have the right to prescribe the schedule for watering of the landscaping in the Community, including the Lots and Common Areas (subject to applicable legal requirements). No swimming, motorized boats or other motorized water vehicle or craft shall be permitted on such Lakes. Subject to the provisions of this Declaration, the Association shall have the right and, as permitted by law, the obligation to control the growth and eradication of plants, fowl, reptiles, animals, fish, and fungi in and on such Lakes.

All Owners acknowledge that the Property is located within the boundaries of the SFWMD. Due to ground water elevations underneath the Property, priorities established by governmental authorities and other causes outside of the reasonable control of Declarant and the Association, water levels in the Lakes may rise and fall significantly due to among other things, fluctuations in ground water elevations within the surrounding areas. Accordingly, Declarant and the Association have no control over such water levels and/or ground water elevations. Neither Declarant nor the Association shall have any liability for aesthetic conditions, objectionable odors, damage to plantings or direct or consequential damages of any nature caused by rainfall and fluctuation of water levels or water quality. Each Owner, by acceptance of title to a Lot, hereby releases Declarant and the Association from and against any and all losses, claims, demands, liabilities, damages, costs and expenses of whatever nature or kind (including, without limitation, attorneys' fees and courts costs at trial and all appellate levels), related to, arising out of and/or resulting from water levels in the Lakes.

DECLARANT AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS, FOR THE LAKES. ANY INDIVIDUAL USING THE LAKES SHALL DO SO AT HIS/HER OWN RISK AND HEREBY HOLDS DECLARANT AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

EACH OWNER, BY THE ACCEPTANCE OF TITLE TO A LOT, ACKNOWLEDGES THAT THE LAKES ARE DEEP AND DANGEROUS. NEITHER DECLARANT, THE ASSOCIATION, NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY OR WATER LEVEL OF/IN ANY LAKE WITHIN ESTERO POINTE, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY WATER BODY, ALL PERSONS USING SAME DOING SO AT THEIR OWN RISK. ALL OWNERS AND USERS OF ANY PORTION OF ESTERO POINTE SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED



TO RELEASE THE LISTED PARTIES FROM ALL CLAIMS FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME WILDLIFE MAY HABITAT OR ENTER INTO WATER BODIES WITHIN OR NEARBY ESTERO POINTE AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

No planting, fencing or other improvements or additions by Owners within any Open Space, Lakes, buffer easements or drainage easements is permitted. No installation of sand or other materials intended to simulate a beach shall be permitted along the Lake banks or within the buffer easements or drainage easements or rear yards of Lake Lots. In addition to the use of any buffer easements or drainage easements by any Owner, as described above, the buffer easements and drainage easements are for the use of the Association, the SFWMD, the County and any other governmental agency for access to the Lakes for maintenance of the Lakes and any littoral plantings and other proper purposes. No removal or damage to littoral or wetland plantings, if any, is permitted.

An imaginary line will be extended from the side property lines at the back of each Lake Lot down to the water's edge. The area encompassed between the rear property line and the water's edge between these imaginary lines shall be defined as the "Lake Bank Zone" as to each Lake Lot.

All Lake Lot Owners are prohibited from disturbing or removing any vegetation within the Lake Bank Zone without the prior written approval of the ARB, the SFWMD and the County. A copy of any such approvals shall be provided to the Association.

All Lake Lot Owners are prohibited from disturbing or removing any landscaping located in the rear of the Lots near the Lake Bank Zones without the prior approval of the ARB, the SFWMD and the County.

#### 7.12. Surface Water and Storm Water Management System.

(a) Maintenance and Operation. The Association shall be responsible for the maintenance, operation, repair, and replacement of the Surface Water and Storm Water Management System, in compliance with all governmental approvals and requirements of the SFWMD. Maintenance of the Surface Water and Storm Water Management System(s) shall mean the exercise or practices which allow the systems to provide drainage, water storage, conveyance, or other surface water or storm water management capabilities as permitted by the SFWMD. Any repair or reconstruction of the Surface Water and Storm Water Management System shall be as permitted or, if modified, as approved by the SFWMD and the County. Notwithstanding anything contained herein to the contrary, the Association shall maintain embankments so that grass, planting, or other lateral support shall prevent erosion of the embankment. The height, grade, and contour of such embankments shall not be changed without the prior written consent of Declarant, the ARB, the SFWMD and/or the County. No portion of

the Surface Water and Storm Water Management System shall be altered without the prior written approval of the SFWMD and the County Engineer or its authorized designee.

(b) Littoral Shelf. The stormwater Lakes contain a littoral shelf, as required by State and County regulations. The vegetation planted upon the littoral shelf filters pollutants and allows for sediment to settle, thus assuring better water quality in the Lakes, streams, and bays of the County. Perpetual maintenance of littoral shelf vegetation is a responsibility of the Association; therefore, no Person shall impact a littoral shelf (i.e., alter and/or remove littoral shelf vegetation) without prior written consent of the County's Resource Protection office.

(c) Effect of Dissolution. In the event of the termination, dissolution, or final liquidation of the Association, the responsibility for the operation and maintenance of the Surface Water and Storm Water Management System and wetlands must be transferred to and accepted by an entity which would comply with Section 40.E, F.A.C. ("SFWMD Rules"), and be approved by the SFWMD prior to such termination, dissolution, or liquidation. In the event that no other entity exists to receive such transfer, the obligations of the Association shall be deemed assumed by the Owners, and all such Owners shall be jointly and severally responsible for the operation and maintenance of the Surface Water and Storm Water Management System and wetlands in accordance with the requirements of the permits.

(d) Shared Facilities. Certain portions of the Surface Water and Storm Water Management System may serve the drainage needs of adjacent lands not owned by Declarant and not within the Community. Declarant reserves the right to grant such drainage and/or use such easements and rights as Declarant may deem necessary or appropriate for accomplishing the drainage needs of the Community and/or lands owned by others provided that such agreements shall not unreasonably interfere with the use of the system by the Owners or unreasonably increase the cost of maintenance of the system by the Association.

(e) Any amendment of this Declaration which would affect the Surface Water and Storm Water Management System or the responsibility of the Association to maintain or cause to be maintained the Surface Water and Storm Water Management System must be approved by SFWMD.

## **ARTICLE VIII**

### **COVENANT TO PAY ASSESSMENTS; ESTABLISHMENT OF LIENS; COLLECTION OF ASSESSMENTS; COLLECTION BY DECLARANT; CERTAIN RIGHTS OF DECLARANT AND INSTITUTIONAL MORTGAGEES**

#### **8.1. Affirmative Covenant To Pay Assessments.**

In order to: (i) fulfill the terms, provisions, covenants, conditions, restrictions, reservations, regulations, burdens, liens and easements contained in the Governing Documents; and (ii) maintain, operate and preserve the Common Area for the use, safety, welfare and benefit of the Members and their family members, guests, invitees and tenants, there is hereby imposed upon each Completed Lot and Incomplete Lot and each Completed Lot Owner and Incomplete Lot Owner, the affirmative covenant and obligation to pay to the Association commencing from

and after the first conveyance of a Completed Lot from Declarant as evidenced by the recordation of a deed in the Public Records of the County (in the manner herein set forth) all Assessments as more fully set forth herein, which Assessments may include, but may not be limited to, the Individual Lot Assessments, Benefited Assessments and Special Assessments. Each Owner, by acceptance of a deed or other instrument of conveyance conveying a Lot within the Property, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Assessments in accordance with the provisions of the Governing Documents.

#### 8.2. Operating Expenses.

The following expenses of the Association are hereby declared to be Operating Expenses which the Association is obligated to assess and collect, and which the Owners are obligated to pay as provided herein or as may be otherwise provided in the Governing Documents: (1) any and all taxes and tax liens which may be assessed or levied at any and all times against the Common Area, the Community Systems or against any and all personal property or Improvements thereon; (2) all charges levied for Community Systems or other utilities providing services for the Common Area or to Owners on a bulk basis, such as water, gas, electricity, telephone, cable television, sanitation, sewer and any type of utility or any other type of service charge which is not separately billed to an Owner; (3) the premiums on policies of insurance including, but not limited to, liability and casualty insurance for the Common Area and directors and officers liability insurance for the officers and directors of the Association; (4) any sums necessary for the maintenance and repair of the Common Area and all Improvements located thereon; (5) administrative and operational expenses; (6) all fees and other costs of water usage relating to and the use, maintenance and repair of the irrigation system(s); (7) all sums necessary for the maintenance and repair of the Surface Water and Storm Water Management System, including, but not limited to, work within retention areas, drainage structures and drainage easements and wetland mitigation areas; and (8) any and all expenses deemed to be Operating Expenses by the Association and/or under this Declaration. Reserves for replacements are specifically excluded from Operating Expenses. The Board may, if it so determines, include reserves in the Association's annual budget; however, reserves are not part of Operating Expenses and are therefore payable only by Completed Lot Owners. In addition, any expense which is required by this Declaration to be the matter of Special Assessment shall not be deemed to be an Operating Expense. Expenses which are required to be the matter of Special Assessment include, by way of example but not by way of limitation, the following: the cost of reconstructing, replacing or improving the Common Area or any portion thereof or Improvements thereon; any casualty loss affecting the Association or the Common Area to the extent such loss exceeds the insurance proceeds, if any, receivable by the Association as a result of such loss; any judgment against the Association (or against a Director or Directors if and to the extent such Director is, or such Directors are, entitled to be indemnified by the Association therefor pursuant to the Articles) to the extent such judgment exceeds the insurance proceeds, if any, received by the Association as a result of such judgment, or an agreement by the Association (or such Director or Directors to whom indemnification is owed) to pay an amount in settlement of a lawsuit against it (or such Director or Directors) to the extent such settlement exceeds the insurance proceeds, if any, received by the Association as a result of such settlement agreement; and Legal Fees incurred by the Association in connection with litigation (whether incurred for the preparation, filing, prosecution or settlement thereof or otherwise), except Legal

Fees incurred by the Association in connection with the collection of Assessments or other charges which Owners are obligated to pay pursuant to the Governing Documents or the enforcement of the use and occupancy restrictions contained in the Governing Documents, and except Legal Fees incurred for lawsuits not approved pursuant to Section 7.5.

The Operating Expenses with respect to the Common Area are payable by each Owner to the Association notwithstanding the fact that Declarant may not have as yet conveyed title to the Common Area to the Association.

### 8.3. Establishment of Liens.

Each Assessment against a Lot, together with Interest thereon and costs of collection, including, but not limited to, Legal Fees, shall be the personal obligation of the Owner of such Lot. Any and all Assessments made by the Association in accordance with the provisions of the Governing Documents with Interest thereon and costs of collection, including, but not limited to, Legal Fees, are hereby declared to be a charge and continuing lien upon each Lot against which each such Assessment is made. Said lien shall be effective only from and after the time of the recordation amongst the Public Records of the County of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Notwithstanding anything to the contrary herein contained, except to the extent of any liability set forth in Chapter 720 Florida Statutes, in the event a first Mortgagee of record obtains a deed or title to a Lot as a result of foreclosure of its first mortgage or deed in lieu of foreclosure, such acquirer of a deed or title, its successors or assigns, shall not be liable for the share of Assessments pertaining to such Lot or chargeable to the former Owner thereof which became due prior to the acquisition of a deed or title as a result of the foreclosure or deed in lieu thereof, unless the Assessment against the Lot in question is secured by a claim of lien for Assessments that is recorded prior to the recordation of the mortgage which was foreclosed or with respect to which a deed in lieu of foreclosure was given.

### 8.4. Collection of Assessments.

In the event any Owner shall fail to pay any Assessment, or installment thereof, charged to such Owner within fifteen (15) days after the same becomes due, then the Association, through its Board, shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

1. To accelerate the entire amount of any Assessment for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.

2. To advance on behalf of the Owner(s) in default funds to accomplish the needs of the Association up to and including the full amount for which such Owner(s) is (are) liable to the Association and the amount or amounts of monies so advanced, together with Interest and all costs of collection thereof, including, but not limited to, Legal Fees, may

thereupon be collected by the Association from the Owner(s) and such advance by the Association shall not waive the default.

3. To file an action in equity to foreclose its lien at any time after the effective date thereof as provided in Section 8.3 hereinabove. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.

4. To file an action at law to collect said Assessment plus Interest and all costs of collection thereof, including, but not limited to, Legal Fees, without waiving any lien rights or rights of foreclosure in the Association.

5. To charge Interest on such Assessment from the date it becomes due, as well as a late charge of Twenty-Five and No/100 Dollars (\$25.00) or five percent (5%) of the past due amount, whichever is greater, by the Association to defray additional collection costs.

6. To suspend the use rights of the Owner(s) in default to the Common Area, subject to the notice and hearing provisions in the Bylaws.

7. To suspend the right of the Owner(s) in default to vote on any matter on which Owners have the right to vote if such Owner is delinquent in payment of assessments for more than ninety (90) days.

#### 8.5. Collection by Declarant.

In the event for any reason the Association shall fail to collect the Assessments, Declarant shall at all times have the right (but not the obligation): (i) to advance such sums as the Association could have advanced as set forth above; and (ii) to collect such Assessments and, if applicable, any such sums advanced by Declarant, together with Interest and costs of collection, including, but not limited to, Legal Fees.

#### 8.6. Rights of Declarant and Institutional Mortgagees to Pay Assessments and Receive Reimbursement.

Declarant and any Institutional Mortgagee(s) shall have the right, but not the obligation, jointly or individually, and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Lot(s). Further, Declarant and any Institutional Mortgagee shall have the right, but not the obligation, jointly or individually, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association in the event the same are overdue and when lapses in policies or services may occur. Declarant and any Institutional Mortgagee paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus Interest and any costs of collection including, but not limited to, Legal Fees, and the Association shall execute an instrument in recordable form acknowledging such reimbursement obligation(s) and deliver the original of such instrument to each Institutional Mortgagee who is so entitled to reimbursement and to Declarant if Declarant is entitled to reimbursement.

#### 8.7. Community Systems Services.

The Association shall have the right to enter into one or more agreement(s) ("Bundled Service Agreements") for receipt of television (via cable, satellite or otherwise), entertainment, telecommunication, internet, monitored alarm and/or other services (collectively, "Bundled Services") for Homes in Estero Pointe. Any and all costs and expenses incurred by the Association under or pursuant to any Bundled Service Agreements entered into by the Association for Bundled Services will be assessed against all Completed Lot Owners. It is contemplated that there may be features and services that are or will be available in addition to and not part of the Bundled Services (each, an "Optional Service"). Owners will be responsible for hook-up costs, any converter boxes, remote control units and any Optional Services elected by the Owner, and the charges therefor shall be billed directly to the Owner. Notwithstanding anything to the contrary contained in this Declaration, the costs and expenses charged to the Association under the Bundled Services Agreements shall be apportioned equally, but only amongst those Homes with respect to which the Association is being charged under or pursuant to the Bundled Services Agreement except to the extent, if any, that any Owner elects to receive an Optional Service (being a service not automatically received by all Owners entitled to receive Bundled Services pursuant to the Bundled Services Agreements). Each Owner who receives an Optional Service, if any, shall be responsible for paying for the costs of such Optional Service. The foregoing shall in no way obligate Declarant or the Association to enter into any Bundled Services Agreement.

### **ARTICLE IX** **METHOD OF DETERMINING ASSESSMENTS** **AND ALLOCATION OF ASSESSMENTS**

#### 9.1. Determining Amount of Assessments.

The total anticipated Operating Expenses for each calendar year shall be set forth in the budget ("Budget") prepared by the Board as required under the Governing Documents. Each Completed Lot and Incomplete Lot shall be assessed its *pro rata* portion of the total anticipated Operating Expenses, which shall be the "Individual Lot Assessment" as to each Lot. Operating Expenses for the Common Area shall be divided by the number of Completed Lots. The Individual Lot Assessment shall be based upon the level of service to each Lot and upon the state of the Lot's development, with the Owners of Completed Lots paying the Operating Expenses on a twenty to one ratio (20:1) compared to the Owners of Incomplete Lots as set forth below. Therefore, the Completed Lot Owners and Incomplete Lot Owners shall share the payment of the Operating Expenses on a ratio of twenty to one (20:1). The total anticipated Operating Expenses (other than those expenses which are properly the subject of Special Assessment) shall be divided by the total number of Completed Lots multiplied by twenty (20) plus the number of Incomplete Lots, with the quotient thus arrived at being the "Individual Lot Assessment" for an Incomplete Lot. Said quotient multiplied by twenty (20) shall be the Individual Lot Assessment for a Completed Lot. The number of Completed Lots and Incomplete Lots shall be adjusted quarterly, as needed, as hereinafter set forth. At such time as Declarant has conveyed all of the Homes on all of the Lots, each Lot shall be a Completed Lot and the Individual Lot Assessment shall be equal for each Lot. Notwithstanding anything in the Governing Documents to the

contrary, any Assessment for Legal Fees incurred by the Association for lawsuits shall be deemed an Operating Expense which is properly the subject of Special Assessment and not the subject of an Individual Lot Assessment so long as approved pursuant to Section 9.3 except the Legal Fees incurred by the Association in connection with the collection of assessments or other charges which Owners are obligated to pay pursuant to the Governing Documents or the enforcement of the use and occupancy restrictions contained in the Governing Documents.

#### 9.2. Assessment Payments.

Individual Lot Assessments shall be payable quarterly, in advance, on the first day of January, April, July and October of each year, provided, however, at the Association's option, Individual Lot Assessments may be payable monthly. Individual Lot Assessments, and the quarterly or monthly installments thereof, may be adjusted from time to time by the Board to reflect changes in the number and status of Completed Lots (thus apportioning all such Assessments and installments thereof among all Completed Lots at the time such installment is due) or changes in the Budget or in the event the Board determines that an Assessment or any installment thereof is either less than or more than the amount actually required.

#### 9.3. Special Assessments.

"Special Assessments" include, in addition to other Assessments designated as Special Assessments in the Governing Documents and whether or not for a cost or expense which is included within the definition of "Operating Expenses," those Assessments which are levied for capital improvements which include the costs (whether in whole or in part) of constructing or acquiring Improvements for, or on, the Common Area or the cost (whether in whole or in part) of reconstructing or replacing such Improvements. In addition, Special Assessments may be levied against particular Lots and/or Owners to the exclusion of others. Notwithstanding anything to the contrary herein contained, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, any Individual Lot Assessment. Any Special Assessments assessed against Lots and the Owners thereof shall be paid by such Owners in addition to any other Assessments and shall be assessed in the same manner as the Individual Lot Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. Notwithstanding the foregoing, the levying of any Special Assessment after the Turnover Date shall require the affirmative assent of at least two-thirds (2/3) of all Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws, however, and notwithstanding anything in this Declaration to the contrary, the Board acting alone and without the consent of Members may levy Special Assessments for the following: (a) repair, reconstruction, or replacement of damaged or destroyed Improvements previously existing on Common Area (including, without limitation, landscaping), (b) capital improvements necessary or desirable for the sole purpose of preservation of, or prevention of damage to, Common Area, or (c) uprighting or removing any fallen or dislodged trees as set forth in Section 5.1.(d) above; which shall not require such affirmative assent of at least two-thirds (2/3) of the Members. Prior to the Turnover Date, a Declarant controlled Board may make a Special Assessment without such vote of the Members.

#### 9.4. Liability of Owners of Individual Lot Assessments.

By the acceptance of a deed or other instrument of conveyance of a Lot in the Property, each Owner thereof acknowledges that each Lot and the Owners thereof are jointly and severally liable for their own Individual Lot Assessments and their applicable portion of any Special Assessments, as well as for any and all other Assessments for which they are liable, as provided for herein. Such Owners further recognize and covenant that they are jointly and severally liable with the Owners of all Lots for the Operating Expenses (subject to any specific limitations provided for herein such as, but not limited to, the limitation with respect to matters of Special Assessment and the limitations on the liability of Institutional Mortgagees and their successors and assigns). Accordingly, subject to such specific limitations, it is recognized and agreed by each Owner, for such Owner and such Owner's heirs, executors, successors and assigns, that in the event any Owner fails or refuses to pay such Owner's Individual Lot Assessment or any portion thereof, or such Owner's respective portion of any Special Assessment or any other Assessment, then the other Owners may be responsible for increased Individual Lot Assessments or Special Assessments or other Assessments due to the nonpayment by such other Owner, and such increased Individual Lot Assessment or Special Assessment or other Assessment can and may be enforced by the Association and Declarant in the same manner as all other Assessments hereunder as provided in the Governing Documents.

#### 9.5. Benefited Assessments.

The Association may levy Benefited Assessments against one or more particular Lots as follows:

(a) to cover costs incurred in bringing a Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests, including, without limitation, Legal Costs, subject to the limitations of Section 7.4, as applicable;

(b) to cover the costs and expenses charged to the Association under the Bundled Services Agreements shall be apportioned equally, but only amongst those Homes with respect to which the Association is being charged under or pursuant to the Bundled Services Agreement; and

(c) to cover the costs and expenses charged to the Association pursuant to any contract for Lot landscape maintenance.

#### 9.6. Budgeting for Reserves.

The Board shall prepare and periodically review separate reserve budgets for the Common Area for which the Association maintains capital items which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of capital items under each budget. The Board may include in the Operating Expense budget adopted pursuant to Section 9.1, as appropriate, a capital contribution to fund reserves in an amount which the Board, in the exercise of its business judgment, deems sufficient



to meet the projected needs under each budget with respect to both amount and timing by annual contributions over the budget period.

Reserve funds, if collected, shall be held in a separate account or accounts from the operating and other funds of the Association.

The reserve funds held in each account may be expended only for major maintenance, repair, or replacement of those assets covered by the reserve budget pursuant to which they were collected. Subject to such limitation, the Board may adopt resolutions regarding the expenditure of any reserve funds including, without limitation, policies designating the nature of assets for which reserve funds may be expended. Neither the Association membership nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent during the Development and Sale Period.

9.7. Assessments Payable by Declarant; Declarant Subsidies.

Each Owner acknowledges and agrees that because Individual Lot Assessments and Special Assessments are allocated as set forth in this Article IX above, it is possible that the Association may collect more or less than the amount budgeted for Operating Expenses in the Budget of the Association. Except as may be limited by applicable law, Declarant has the right (at its sole election) to: (i) pay Individual Lot Assessments for the Lots owned by Declarant in the same manner as other Owners (but at the 20:1 ratio described above), (ii) pay the Deficit (as hereinafter defined), and/or (iii) subsidize the Budget of the Association as provided below by making voluntary contributions in amounts determined by Declarant in Declarant's sole discretion.

During the period of time that Declarant is offering Homes for sale in Estero Pointe and/or based on the number of Homes owned by Owners other than Declarant, Declarant may seek to keep Assessments lower than they otherwise may be by subsidizing the Budget of the Association by making voluntary contributions in amounts determined by Declarant. The amount of any such voluntary contributions may vary from time to time or may be discontinued and recommenced by Declarant from time to time. The determination to subsidize the Budget of the Association, the amount of any such voluntary contribution, the discontinuance and/or commencement of any such voluntary contributions shall all be made by Declarant in Declarant's sole discretion and in no event shall Declarant have any obligation whatsoever to make any such voluntary contributions. Each Owner shall be solely responsible to review the Budget of the Association then in effect to determine if and to what extent Declarant is making any voluntary contributions to subsidize the Budget and thus lower the Assessments payable by the Owners that would otherwise be higher based on the Operating Expenses of the Association.

9.8. Working Fund Contribution.

Each subsequent Owner of a Lot (meaning any Owner who purchases a Lot from a previous Owner other than Declarant) shall pay to the Association a Working Fund Contribution at the time legal title is conveyed to such Owner by the previous Owner. The Working Fund Contribution shall be One Thousand Five Hundred and No/100 Dollars (\$1,500.00) for each Lot

and each subsequent conveyance of the Lot. The amount of the Working Fund Contribution is subject to change in the Board's sole discretion, however, the Board may not change the Working Fund Contribution amount without Declarant's written consent so long as Declarant owns any Lot in Estero Pointe. The purpose of the Working Fund Contribution is to ensure that the Association will have cash available for initial start-up expenses, to meet unforeseen expenditures and to acquire additional equipment and services deemed necessary or desirable by the Board. Working Fund Contributions are not advance payments of Individual Lot Assessments and shall have no effect on future Individual Lot Assessments, nor will they be held in reserve. To further ensure that the Association will have sufficient cash available to pay for start-up expenses, Operating Expenses and other expenses, Declarant may from time to time advance to the Association the Working Fund Contribution applicable to any Lot(s) prior to the time legal title to such Lot(s) is conveyed to the Owner(s) thereof. In the event Declarant advances the Working Fund Contribution applicable to any Lot, then, at the time legal title to such Lot is conveyed to the Owner thereof, the Working Fund Contribution to be paid by such Owner to the Association pursuant to this Section 9.8 shall be paid directly to Declarant in reimbursement of the advance, instead of to the Association. Working Fund Contributions (whether paid by Owner or advanced by Declarant) may also be used to offset Operating Expenses.

#### 9.9. Declarant's Option to Fund Budget Deficits.

To the extent permitted by Florida law, until the Turnover Date, Declarant may satisfy the obligation for Assessments on Lots which it owns either by paying Assessments in the same manner as any other Owner (but at the 20:1 ratio described above) or by funding the Budget deficit. The budget deficit is the difference between (i) the amount of assessments levied on Owners' Lots plus any other income received by the Association during the period during which Declarant has elected to fund the deficit, and (ii) the amount of the Association's actual expenditures during that time period and excluding Special Assessments arising as a result of any unusual loss or liability. The calculation of Declarant's deficit funding obligation shall be done on a cumulative basis (from the inception of the election to fund the deficit until Declarant's election to cease funding the deficit) although Declarant will fund the Association to meet its cash flow obligations as they arise during the deficit funding period.

Regardless of Declarant's election, Declarant's assessment obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these, the value of which shall be reasonably determined by Declarant. After the Turnover Date, Declarant shall pay assessments on Lots which it or its Affiliates own in the same manner as any other Owner.

Declarant's obligation to deficit fund is not a guarantee of the Assessments as contemplated by Florida Statutes Section 720.308.

#### 9.10. Waiver of Use.

No Owner, other than Declarant, may exempt himself from personal liability for Assessments duly levied by the Association. No Owner may release the Lot owned by such

Owner from the liens and charges hereof either by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of such Owner's Home.

## **ARTICLE X EXPANSION OF THE COMMUNITY/REMOVAL OF PROPERTY**

### **10.1. Annexation by Declarant.**

Declarant may, from time to time, subject to this Declaration any additional property by recording a Supplemental Declaration describing the property being subjected. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant. Until a Supplemental Declaration is recorded, only the Property described in Exhibit "A" is subject to the matters set forth in this Declaration.

Declarant's right to annex property pursuant to this Section expires fifteen (15) years after this Declaration is recorded. Until then, Declarant may transfer or assign this right, in whole or in part, to any Person who is the developer of at least a portion of the Property. Any such transfer shall be memorialized in a recorded instrument executed by Declarant.

Nothing in this Declaration shall require Declarant or any successor to subject additional property to this Declaration.

Declarant intends to develop the Community in accordance with the Development Plan, but hereby reserves the right to modify the Development Plan for the Community from time to time in its sole discretion and at its option. Declarant shall not be required to follow any predetermined order of improvement and development within the Community.

### **10.2. Annexation by the Association.**

The Association also may annex property to the provisions of this Declaration by recording a Supplemental Declaration describing the additional property. Annexation by the Association shall require the affirmative vote or written consent of Members representing more than fifty percent (50%) of the Class "A" votes and the consent of the property owner. In addition, during the Development and Sale Period, Declarant's written consent is required. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property being annexed, and by Declarant, if Declarant's consent is required.

In the event that either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs insures or guarantees any Mortgage encumbering a Lot, and the regulations or procedures of such agency require under such circumstances approval of annexations by such agency or determination by such agency that such annexation is consistent with the general plan of development for the Community, then such approval or determination as described in Section 16.9 shall be a prerequisite to such annexation.

### 10.3. Additional Covenants and Easements.

By Supplemental Declaration, Declarant may impose additional covenants, restrictions and easements on portions of the Community, including, without limitation, covenants obligating the Association to maintain and insure specific property and authorizing the Association to recover its costs through Benefited Assessments. If someone other than Declarant owns the property, then such owner's consent and execution of the Supplemental Declaration is required. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

### 10.4. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon recording. Unless otherwise specified in the Supplemental Declaration, the Lots subjected to this Declaration by such Supplemental Declaration shall have equal voting rights in the Association and equal pro rata liability for Assessments with all other Lots.

### 10.5. Removal of Property.

Declarant reserves the right to amend this Declaration from time to time prior to Turnover, in its sole discretion, without the prior notice or consent of any Person, to remove any portions of the Property then owned by Declarant (or any affiliate of Declarant) or by the Association from the provisions of this Declaration if, and to the extent, such property was originally subjected to this Declaration in error, or if Declarant changes the development plan for the Property; provided, however, that Declarant, concurrently with such removal, shall grant and/or confirm such easements as are necessary for maintenance and/or construction of those Lots theretofore conveyed by Declarant.

## **ARTICLE XI DEVELOPMENT PLAN**

### 11.1. Estero Pointe.

Estero Pointe is a planned community which is planned to be constructed in phases. It is presently anticipated that Estero Pointe, when fully developed, will be comprised of Lots and the property encompassing the Common Area, as more particularly defined by this Declaration. The property declared hereunder is described on Exhibit "A" attached hereto, and may be expanded as described in Article X herein. Notwithstanding the foregoing, however, Declarant reserves the right to modify its plan of development of Estero Pointe (including, without limitation, the right to modify the site plan and the right to change the recreational facilities, amenities, Home product types and the number of Homes to be constructed within Estero Pointe) and/or the right to add land to Estero Pointe or to withdraw land from Estero Pointe in its sole and absolute discretion. Therefore, in the event Declarant modifies its plan of development of Estero Pointe, adds land to Estero Pointe and/or withdraws land from Estero Pointe, the number of Lots, the layout of Lots and/or the size of Lots within Estero Pointe may change and as a result of any

changes in the number of Lots, the Assessments required to be paid pursuant to this Declaration may increase or decrease as appropriate. Declarant's general plan of development further contemplates that such Homes shall be whatever types of structures Declarant may choose which are in conformance with applicable governmental rules and regulations. Declarant's general plan of development of Estero Pointe may also include whatever facilities and amenities Declarant considers in its sole judgment to be appropriate to Estero Pointe, as well as any changes thereto.

Declarant expressly reserves the right as to the property comprising Estero Pointe to (i) commence construction and development of Estero Pointe if and when Declarant desires; (ii) develop Estero Pointe upon such timetable as Declarant, in its sole discretion, chooses; and (iii) modify the Development Plan of Estero Pointe in such manner as it, in its sole discretion, chooses. Nothing contained herein shall be construed as obligating Declarant to construct Estero Pointe according to the present Development Plan.

#### 11.2. Common Area.

The Common Area within Estero Pointe shall consist of: (a) the property indicated on the Plat as Common Areas or as property reserved for or dedicated to the Association, and (b) any other property designated as Common Areas in this Declaration or any Supplemental Declaration.

The Common Area shall be used for ingress/egress, landscaping, Lakes, canals, ponds, walls, drainage, conservation, wetlands, open space, recreational and social purposes as well as other proper purposes by the Association and the Owners and their family members, guests, invitees and lessees in accordance with the Governing Documents. Common Area may not be altered, modified, removed or replaced by Owners or their family members, guests, invitees or lessees. Additional Common Area will be described in Supplement Declaration(s) when such additional Common Area is subjected to the provisions of this Declaration.

The Association and each Owner acknowledges and agrees that Declarant has or will install trees, shrubs, plants and other landscaping consistent with a landscape plan that meets or exceeds the requirements of the applicable governmental requirements and that from the time of such initial installation, such trees, shrubs, plants and other landscaping may mature, expand, decay and/or die from time to time. After the Turnover Date, the Association shall have no claim whatsoever against Declarant and hereby releases any and all claims against Declarant for any trees, shrubs, plants and other landscaping that has decayed or died regardless of the reasons therefor so long as all of the remaining trees, shrubs, plants and other landscaping, when looked at as a whole, exceed the minimum requirements of the applicable governmental requirements for Estero Pointe.

The portions of Estero Pointe described in this Section 11.2 shall constitute Common Area and shall be used solely in accordance with the covenants impressed upon the Common Area as follows:

#### 11.2.1. Entranceway(s) and Entry Gate(s).

Estero Pointe may include an entry gate(s) installed by Declarant or the Association. Such entranceway(s) and/or entry gate(s) shall be deemed Common Area and shall be owned, maintained, repaired or replaced by the Association and the expense thereof shall be included as a Common Expense. All other portions of the entranceway(s) and entry gate(s) shall also be owned and maintained by the Association. Neither Declarant nor the Association makes any representations whatsoever as to the security of the premises or the effectiveness of any entry gate(s). All Owners agree to hold Declarant and the Association harmless from any loss or claim arising within Estero Pointe from the occurrence of a crime or other act. The Owners acknowledge that the entry gate(s) are designed to provide limited access control and to deter crime, not prevent it. Notwithstanding anything herein to the contrary, neither Declarant nor the Association makes any representations whatsoever to commence, complete or construct any entry gate(s) within any specific time period. Declarant, its successors, assigns, employees, contractors, sub-contractors and potential purchasers shall have access to Estero Pointe property at all times and the Association shall not impede any such access. Any gate system installed shall remain open during construction and sales hours to allow Declarant, its successors, assigns, employees, contractors, sub-contractors and potential purchasers access to Estero Pointe. Declarant hereby reserves and grants an easement in favor of itself, its successors and/or assigns throughout all portions of Estero Pointe as may be necessary for the purpose of accessing the Property during the Development and Sale Period and no Owner or the Association shall do any act which may interfere with Declarant having access through the entranceway(s) and entry gate(s). Declarant hereby reserves and grants an easement in favor of the Association throughout all portions of Estero Pointe as may be necessary for the purpose of accessing the Property, maintaining and administering the entranceway(s) and entry gate(s), and no Owner shall do any act which may interfere with the performance by the Association of its obligations hereunder or to interfere with access to through the entranceway(s) and entry gate(s).

The Owners acknowledge that the entry gate(s) are designed to deter crime, not prevent it. IN THAT REGARD, NEITHER DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PREMISES OR THE EFFECTIVENESS OF ANY ENTRY GATE(S), MONITORING SYSTEM OR SECURITY SERVICE WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE. ALL OWNERS, BY ACCEPTANCE OF A DEED OR TITLE TO A LOT, AGREE TO HOLD DECLARANT AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTY, AND NEITHER THE ASSOCIATION, DECLARANT NOR ANY SUCCESSOR DECLARANT GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH MONITORING SYSTEM OR SECURITY SERVICE, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, FIRES, DAMAGE, INJURY, DEATH OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR

INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY, EVEN IF CAUSED BY THE NEGLIGENCE OF THE ASSOCIATION, DECLARANT AND/OR ANY SUCCESSOR DECLARANT. ALL MEMBERS, OWNERS AND OCCUPANTS OF ANY LOT OR HOME, AND TENANTS, GUESTS, AND INVITEES OF ANY OWNER ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD, DECLARANT, AND ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT: (a) ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM (WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE), IF ANY, RECOMMENDED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT OR THE ARCHITECTURAL REVIEW BOARD MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR (b) THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEM (WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE) WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD AND THE ARCHITECTURAL REVIEW BOARD, DECLARANT, AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS OR GUARANTORS AND THAT EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF ANY MEMBER OR OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS OR HOMES, AND TO THE CONTENTS OF LOTS OR HOMES AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD AND THE ARCHITECTURAL REVIEW BOARD, DECLARANT, AND ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS, WARRANTIES AND/OR GUARANTIES, NOR HAS ANY OWNER, MEMBER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS (WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE) RECOMMENDED OR INSTALLED, IF ANY, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

#### 11.2.2. Street Lights.

Any "Street Lights" and any associated facilities placed within the Common Area, shall be repaired, replaced, relocated, maintained and owned by the Association which is also responsible to pay all fees associated with such repair, replacement and maintenance, and for the furnishing of electricity thereto. Notwithstanding the foregoing, the repair, replacement, maintenance and furnishing of electricity of any street light and any associated facilities within the Common Area owned by the electric service provider shall not be the responsibility of the Association to maintain.

#### 11.2.3. Decorative Street Lights.

Declarant reserves the right, but shall not be obligated, to install, "Decorative Street Lights" in or near the entranceway(s) and entry gate to Estero Pointe. The Decorative Street Lights shall be installed by Declarant, and repaired, replaced, relocated, maintained and owned by the Association. Nothing in this Declaration shall be construed to require Declarant to install Decorative Street Lights within Estero Pointe.

#### 11.2.4. Roadways.

The "Roadways" are those portions of Estero Pointe designated on the Plat as Tract "R," and which are reserved for or dedicated to the Association, and includes the entranceway and entry features but specifically excluding any street or roadway dedicated to the public on the Plat. Notwithstanding anything to the contrary on the Plat, the Roadways shall be used as private roads by Declarant, the Association and the Owners, their family members, guests, lessees and invitees in accordance with the provisions of this Declaration. Declarant believes that the roadways will be private and disclaims any responsibility if the roadways are ever determined to be public. The Roadways shall be maintained, administered and owned by the Association. The landscaping features within the Roadways shall be maintained, administered and owned by the Association.

#### 11.2.5. Lake.

The "Lake" is that portion of Estero Pointe designated on the Plat as Tract "W," and shall always be kept and maintained as a Lake for water retention, drainage, irrigation and water management purposes in compliance with all applicable governmental and water management district requirements. The Lake shall be part of the Common Areas and shall be maintained, administered, operated and ultimately owned by the Association. In furtherance of the foregoing, Declarant hereby reserves and grants an easement in favor of the Association, the SFWMD and the County throughout all portions of Estero Pointe as may be necessary for the purpose of accessing, maintaining and administering the Lake, and no Owner shall do any act which may interfere with the performance by the Association, the SFWMD and the County of its obligations hereunder. No swimming, motorized boats or other motorized water vehicle or craft, shall be permitted on such Lake.

#### 11.2.6. Open Space.

The "Open Space" areas are those portions of the Property designated on the Plat as Tracts "01," "02" and "03" and are to be used, kept and maintained as such by Declarant, the Association, and the Owners within Estero Pointe, their family members, guests, invitees and tenants, in accordance with the provisions of this Declaration. The Open Space areas shall be ultimately owned by the Association, and shall be maintained, administered and operated by the Association in accordance with the provisions of this Declaration and the requirements of the appropriate governmental agencies. Declarant hereby reserves and grants an easement in favor of the Association throughout all portions of Estero Pointe as may be necessary for the purpose of accessing, maintaining and administering the Open Space areas, and no Owner shall do any



act which may interfere with the performance by the Association of its obligations hereunder. No Owner may install landscaping or any other improvements in the Open Space areas.

#### 11.2.7. Amenity Center.

Estero Pointe is planned to contain an amenity center which is designated as Tract "A" on the Plat (the "Amenity Center"). The Amenity Center and any Improvements constructed thereon shall be part of the Common Area and shall be used for recreational purposes by the Association, and the Owners and their family members, guests, invitees and tenants. Such portions, if any, of the Amenity Center upon which Declarant has constructed or hereafter constructs Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located or to be located thereon. The Amenity Center shall always be kept and maintained by the Association for recreational uses or beautification and attendant uses (e.g., parking spaces within the Amenity Center Tract shall be used for proper purposes by those using the recreational facilities but only while using such facilities), and shall be used for such purposes and not for residential, commercial or industrial construction of any kind. The Amenity Center Tract shall be maintained, administered, operated and ultimately owned by the Association.

Declarant reserves the right, but shall not be obligated, to construct additional recreational facilities upon the Amenity Center and to modify or reduce the facilities and amenities planned for the Amenity Center. Declarant, at its sole discretion, hereby expressly reserves the right to reduce and/or modify the planned facilities and to determine the timing of construction of the recreational facilities and installation of amenities. The decision as to whether to construct additional recreational facilities or amenities, to modify the planned facilities or amenities, and/or to reduce the planned facilities and the construction thereof shall be in the sole discretion of Declarant.

Notwithstanding anything contained herein, neither Declarant nor the Association makes any representations whatsoever to commence, complete or construct any of the recreational facilities within any specific time period.

#### 11.2.8. Drainage Easements.

The "Drainage Easements" areas are those portions of the Property designated on the Plat as "D.E." and are to be used, kept and maintained as such by Declarant, the Association, and the Owners within Estero Pointe, their family members, guests, invitees and tenants, in accordance with the provisions of this Declaration. The Drainage Easements shall be maintained, administered and operated by the Association in accordance with the provisions of this Declaration and the requirements of the appropriate governmental agencies. Declarant hereby reserves and grants an easement in favor of the Association throughout all portions of Estero Pointe as may be necessary for the purpose of accessing, maintaining and administering the Drainage Easements, and no Owner shall do any act which may interfere with the performance by the Association of its obligations hereunder. No Owner may install landscaping or any other improvements in the Drainage Easements.

#### 11.2.9. Irrigation Easements.

The "Irrigation Easements" areas are those portions of the Property designated on the Plat as "I.E." and are to be used, kept and maintained as such by Declarant, the Association, and the Owners within Estero Pointe, their family members, guests, invitees and tenants, in accordance with the provisions of this Declaration. The Irrigation Easements shall be maintained, administered and operated by the Association in accordance with the provisions of this Declaration and the requirements of the appropriate governmental agencies. Declarant hereby reserves and grants an easement in favor of the Association throughout all portions of Estero Pointe as may be necessary for the purpose of accessing, maintaining and administering the Irrigation Easements, and no Owner shall do any act which may interfere with the performance by the Association of its obligations hereunder. No Owner may install landscaping or any other improvements in the Irrigation Easements.

#### 11.2.10. Landscape Buffer Easements.

The "Landscape Buffer Easements" areas are those portions of the Property designated on the Plat as "L.B.E." and are to be used, kept and maintained as such by Declarant, the Association, and the Owners within Estero Pointe, their family members, guests, invitees and tenants, in accordance with the provisions of this Declaration. The Landscape Buffer Easements shall be maintained, administered and operated by the Association in accordance with the provisions of this Declaration and the requirements of the appropriate governmental agencies. Declarant hereby reserves and grants an easement in favor of the Association throughout all portions of Estero Pointe as may be necessary for the purpose of accessing, maintaining and administering the Landscape Buffer Easements, and no Owner shall do any act which may interfere with the performance by the Association of its obligations hereunder. No Owner may install landscaping or any other improvements in the Landscape Buffer Easements.

#### 11.2.11. Lake Maintenance Easements.

The "Lake Maintenance Easements" areas are those portions of the Property designated on the Plat as "L.M.E." and are to be used, kept and maintained as such by Declarant, the Association, and the Owners within Estero Pointe, their family members, guests, invitees and tenants, in accordance with the provisions of this Declaration. The Lake Maintenance Easements shall be maintained, administered and operated by the Association in accordance with the provisions of this Declaration and the requirements of the appropriate governmental agencies. Declarant hereby reserves and grants an easement in favor of the Association throughout all portions of Estero Pointe as may be necessary for the purpose of accessing, maintaining and administering the Lake Maintenance Easements, and no Owner shall do any act which may interfere with the performance by the Association of its obligations hereunder. No Owner may install landscaping or any other improvements in the Lake Maintenance Easements.

#### 11.2.12. Surface Water and Storm Water Management System and Preserves and Easements .

The Surface Water and Storm Water Management System is that portion of Estero Pointe shown on the plat as "Water Management/Lake, Drainage, Maintenance, L.M.E." and the

“Preserves” are those portions of the Property designated on the Plat as Tracts “P1” and “P2,” and are to be used, kept and maintained as such by Declarant, the Association, and the Owners within Esplanade on Palmer Ranch, their family members, guests, invitees and tenants, in accordance with the provisions of this Declaration. The Surface Water and Storm Water Management System and Preserves shall be part of the Common Area.

Declarant has caused or will cause to be constructed within the geographic area shown on the Site Plan, drainage canals, Lakes and drainage retention/detention ponds (“Surface Water and Storm Water Management System”). The Surface Water and Storm Water Management System is part of the overall drainage plan for Estero Pointe. Declarant may create Preserves and easements encumbering all or part of the Common Area, and/or portions of the Property conveyed to Owners to preserve the natural condition of wetlands, uplands or buffer areas. The Association shall have unobstructed ingress to and egress from all retention/detention ponds and Lakes as well as all Preserves, if any, at all reasonable times to operate and maintain said ponds, Lakes and Preserves, if any in a manner consistent with its responsibilities. No Owner shall cause or permit any interference with such access and maintenance. No Owner shall utilize, in any way, any of the Estero Pointe Surface Water and Storm Water Management System or incorporate such facilities in the Owner’s development plans, without the express prior written consent of Declarant and the Association, or as expressly authorized by this Declaration. The Association shall be responsible for the maintenance of the native habitat Preserves and in existing or restored condition in accordance with the approved resource management plan and the County’s Land Development Regulations.

The Association shall operate and maintain, as part of the Common Area, the Surface Water and Storm Water Management System for the Property, and comply with conditions of the SFWMD Permit for the Surface Water and Storm Water Management System, including, without limitation, perpetual maintenance of all signage required by the SFWMD Permit. The Association shall, when requested by Declarant, accept transfer of the SFWMD Permit(s) applicable to the Property. The conditions of the SFWMD Permit includes monitoring and record keeping schedules and maintenance.

Water quality data for the water discharged from the Property or into the surface waters of the State may be submitted to SFWMD if required by SFWMD. Parameters to be monitored may include those listed in Chapter 17-3 of the Florida Administrative Code. Analyses shall be performed according to procedures outlined in the current edition of Standard Methods for the Examination of Water and Wastewater by American Public Health Association of Methods for Chemical Analyses of Water and Wastes by the U.S. Environmental Protection Agency. If water quality data are required, the Association shall provide data as required on volume of water discharged, including total volume discharged during the days of sampling and total monthly discharge from the Property or into surface waters of the state.

The Association agrees to operate and maintain the system and has sufficient ownership so that it has control over all water management facilities authorized.

The Association shall hold and save SFWMD harmless from any and all damages, claims, or liabilities which may arise by reason of the operation, maintenance or use of any facility authorized by the permit.

The Association shall at all times properly operate and maintain the systems of treatment and control (and related appurtenances) that are installed or used to achieve compliance with conditions of the permit, as required by SFWMD. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by SFWMD rules.

The Association specifically agrees to allow authorized SFWMD personnel, upon presentation of credentials or other documents as may be required by law, access to the Property, at reasonable times, where the permitted activity is located or conducted; for the purposes of inspection and testing to determine compliance with the permit and SFWMD regulations, such as:

- a. Having access to and copying any records that must be kept under the conditions of the permit; and
- b. Inspecting the facility, equipment, practices, or operations regulated or required under the permit; and
- c. Sampling or monitoring any substances or parameters at any location reasonably necessary to assure compliance with the permit or SFWMD rules; and
- d. Gathering of data and information.

Reasonable time may depend on the nature of the concern being investigated.

Establishment and survival of littoral areas provided for storm water quality treatment in wet detention systems shall be assured by proper and continuing maintenance procedures designed to promote viable wetlands plant growth of natural diversity and character. Following as-built approval, perpetual maintenance shall be provided for the permitted system.

The Association shall submit inspection reports in the form required by SFWMD, in accordance with the permit issued by SFWMD.

It shall be the responsibility of each Owner within the Property at the time of construction of a building, residence, or structure, to comply with the construction plans for the Surface Water and Storm Water Management System pursuant to the SFWMD Rules, approved and on file with SFWMD.

Owners are hereby notified that certain Property may be adjacent to wet detention ponds, jurisdictional wetlands, designated mitigation areas, designated Preserves, conservation areas and Conservation Easements. It is the Owner's and Association's responsibility not to remove native vegetation that becomes established within the wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated Preserves, conservation areas and Conservation Easements abutting the Owner's Lot. Removal includes dredging, the application of herbicide and cutting. Owners and the Association should address any question regarding

authorized activities within detention ponds, jurisdictional wetlands, designated mitigation areas or designated Preserves, conservation areas and Conservation Easements to SFWMD, Surface Water Permitting Department. SFWMD may authorize removal of certain exotic or nuisance vegetation upon application by the Owners or the Association.

No Owner of a Lot within the Property may construct or maintain any building, residence, or structure, or undertake or perform any activity in the wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated Preserves, conservation areas and Conservation Easements described in the approved permit and recorded Plats of the Property, unless prior approval is received from the SFWMD, the Association, Declarant so long as Declarant owns a Lot in the Community, and the County, if required.

In the event of the termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Surface Water and Storm Water Management System must be transferred to and accepted by an entity which would comply with the SFWMD Rules, and be approved by SFWMD prior to such termination, dissolution or liquidation.

SFWMD has the right to take enforcement action, including a civil action for an injunction and penalties, against the Association to compel it to correct any outstanding problems with the Surface Water and Storm Water Management System facilities or in mitigation or designated Preserves, conservation areas and Conservation Easements under the responsibility or control of the Association.

Declarant and the Association each reserve the right to grant such drainage and/or use easements and rights as Declarant or the Association may deem necessary or appropriate for accomplishing the drainage needs of the Property and/or lands owned by others provided that such agreements shall not unreasonably interfere with the use of the system by the Owners or unreasonably increase the cost of maintenance of the system by the Association.

The Surface Water and Storm Water Management System is designed to provide drainage for the Property. Neither the Association nor Declarant shall have any liability whatsoever to any Owner for claims for damages alleged by an Owner due to water levels in the Lake being below normal or otherwise unacceptable to the Owner. Aesthetic appearance of the Lake is secondary to its intended drainage function, and during periods of prolonged drought or other unusual weather events water levels in the Lake may recede, and neither the Association nor Declarant shall have any liability for such conditions.

#### 11.2.13. Right to Add Additional Improvements.

Such portions of the Common Area upon which Declarant has constructed, or hereafter constructs, Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located, or to be located, thereon. Declarant reserves the right, but shall not be obligated, to construct additional facilities upon the Common Area. The decision as to whether to construct additional facilities and the construction thereof shall be in the sole discretion of Declarant.

#### 11.2.14. Monument Signs.

Declarant shall have the right, but not the obligation, to install street identification and street directional monument signs (individually, a "Monument Sign," and collectively, "Monument Signs") within the Common Area. Any Monument Signs placed within the Common Area shall be in and of such material, color, height, dimension, configuration, content, and location as Declarant shall determine in its sole and absolute discretion, and shall be repaired, replaced, relocated, maintained and owned by the Association which is also responsible to pay all fees associated with such repair, replacement and maintenance, and for the furnishing of electricity thereto. Nothing in this Declaration shall be construed to require Declarant to install any Monument Signs within Estero Pointe.

### **ARTICLE XII ADDITIONAL RIGHTS RESERVED TO DECLARANT**

#### 12.1. Marketing and Sales Activities.

Notwithstanding anything in the Governing Documents to the contrary, Declarant, its Affiliates, and their assigns and Builders and their Affiliates may construct, maintain, and operate upon portions of the Common Area and property they own, such facilities, activities, and things as, Declarant, in its discretion, may deem to be required, convenient, or incidental to the construction or sale of Lots, including Declarant's rights to utilize the amenities center as a sales office. Such permitted facilities, activities, and things shall include, without limitation, business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, construction offices, service offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant, Declarant's Affiliates, and their assigns, and authorized Builders may park vehicles in areas other than garages or driveways, including, without limitation, on streets. By Owner's acceptance of a deed for a Lot, such Owner agrees and acknowledges that: (i) Declarant and/or any of Declarant's affiliates have a right to operate the amenities center as a sales office during the Development and Sale Period; (ii) Declarant and/or any of its affiliates have an easement over Estero Pointe for ingress and egress to and from the amenities center during the Development and Sale Period; (iii) Declarant, its successors, assigns, employees, contractors, sub-contractors and potential purchasers shall access to the Property at all times and the Association and the Owners shall not impede any such access and any gate system installed shall remain open during construction and sales hours to allow Declarant, its successors, assigns, employees, contractors, sub-contractors and potential purchasers access to the Property; (iv) Declarant and its nominees shall have the right to enter into and transact on the Property any business necessary to consummate the sale, lease or encumbrance of Lots or real property within Estero Pointe, including, but not limited to, the right to maintain models and a sales and/or leasing office, a construction office and/or a service office, place signs, employ sales, leasing, construction and service personnel, use the Property and show homes, and Declarant further reserves the right to make repairs to the Property and to carry on construction activity for the benefit of the Property, and Declarant, and its nominees, may exercise the foregoing rights without notifying the Association. Any such models, sales and/or leasing office, construction office, service office, signs and any other items pertaining to such sales, leasing, construction or service efforts shall not be considered a part of the Property and

shall remain the property of Declarant; (v) Declarant shall have the right to enter upon the Property (including, without limitation, all drainage easements) to final-out and/or close-out any and all approvals, permits, orders, conditions and/or requirements that have been issued or imposed by any governmental entity in connection with the development and construction of Estero Pointe and all improvements therein for Declarant to comply and adhere to the same, and such rights shall survive the date of Turnover and continue for such period of time as is necessary for Declarant to fully comply with all such governmentally issued approvals, permits, orders, conditions and/or requirements; and (vi) Owners shall not interfere in any manner whatsoever in the sales process by Declarant and/or any of its affiliates, including the carrying of signs or other types of demonstrations in Estero Pointe or any public right-of-way adjacent to the Property. Each Owner acknowledges that any such activities interfere with the quiet enjoyment of Estero Pointe by the other Owners, are detrimental to the value of the homes within Estero Pointe, and interfere with Declarant's ability to conduct its business.

This Section 12.1 may not be suspended, superseded or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by Declarant.

For the term of this Declaration, the Common Area is not for the use and enjoyment of the public, but is expressly reserved for the private use and enjoyment of Declarant, the Association, and the Owners, and their family members, guests, invitees and lessees, but only in accordance with this Declaration.

A. Notwithstanding anything in this Declaration to the contrary, however, Declarant hereby expressly reserves the right to use the Common Areas for such period of time as Declarant determines to be necessary in connection with the sale and marketing by Declarant of Homes in Estero Pointe and in any other communities developed or to be developed by Declarant or its affiliates, including, but not limited to, the holding of sales and marketing meetings and engaging in sales promotions and related sales and marketing activities.

B. Except to the extent herein provided, the Common Areas shall be for the sole and exclusive use of the Owners and residents of Estero Pointe and their family members, guests, invitees and lessees.

C. The administration, management, operation and maintenance of the Common Areas shall be the responsibility of the Association, as provided herein and in Estero Pointe Documents.

D. The right to use the Common Areas shall be subject to the rules and regulations established by the Association.

E. Declarant hereby reserves the right to construct and/or operate a "model row(s)" in Estero Pointe. The "model row(s)" may contain models for Estero Pointe or other communities, as Declarant and/or any of Declarant's affiliates may so determine, in their sole discretion. The "model row(s)" may also contain parking, landscaping and fencing across streets, drives, and/or Roadways as Declarant may determine in its sole discretion. In the event that Declarant and/or any of Declarant's affiliates constructs a "model row(s)" in Estero Pointe, such "model row(s)" may be used for such period of time that Declarant and/or any of Declarant's affiliates determines to be necessary in its sole judgment. By Owner's acceptance of

a deed for a Lot in Estero Pointe, such Owner agrees and acknowledges that: (i) Declarant and/or any of Declarant's affiliates have a right to construct and/or operate a "model row(s)"; (ii) Declarant and/or any of its affiliates have an easement over Estero Pointe for ingress and egress to and from the "model row(s)" and to use and show the models to prospective purchasers in Estero Pointe or other communities being developed by Declarant and/or any of Declarant's affiliates, as long as such "model row(s)" exists; and (iii) Owners shall not interfere in any manner whatsoever in the sales process by Declarant and/or any of its affiliates, including the carrying of signs or other types of demonstrations in Estero Pointe or any public right-of-way adjacent to or in the vicinity of the Property. Each Owner acknowledges that any such activities interfere with the quiet enjoyment of Estero Pointe by the other Owners, are detrimental to the value of the Homes within Estero Pointe, and interfere with Declarant's ability to conduct its business.

#### 12.2. Right to Develop.

Declarant and its Affiliates, and their respective employees, agents, and designees, shall have a right of access and use and an easement over, upon, and under all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area and the Property as Declarant deems appropriate in Declarant's discretion.

Each Owner acknowledges that the Community is a planned community, the development of which is likely to extend over a number of years, and agrees and consents to all changes in (a) uses or density of Lots or Homes within the Community, or (b) the Development Plan.

Each Owner acknowledges and agrees that the present plans and themes for the Community's development may change and that such Owner has not relied on any representation, warranty, or assurance by any Person (a) that any Lots, or other property or facilities will be added, modified, or eliminated within the Community; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that it is not entitled to rely upon and has not received or relied upon any representations, warranties, or guarantees whatsoever as to: (a) the design, construction, completion, development, use, benefits, or value of property within the Community; (b) the number, types, sizes, prices, or designs of any residential or non-residential structures or improvements built or to be built in any part of the Community; or (c) as to the use or development (current or future) of any property adjacent to or within the vicinity of the Community.

#### 12.3. Right to Approve Changes in the Community Standards.

No amendment to or modification of any Use Restrictions, rules, or the Architectural Guidelines during the Development and Sale Period shall be effective without prior notice to and the written approval of Declarant.



#### 12.4. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's rights and obligations set forth in this Declaration or the Bylaws may, except to the extent restricted by Florida law, be transferred, in whole or in part, from time to time, to other Persons. No such transfer or assignment shall be effective unless it is in a recorded instrument signed by Declarant. Declarant may allow other Persons to exercise, on a one-time or limited basis, any Declarant right without transferring the entire right. In such case, a recorded instrument is not required.

#### 12.5. Community Systems.

Declarant shall have the right, but not the obligation, to convey, transfer, sell or assign all or any portion of the Community Systems located within the Property, or all or any portion of the rights, duties or obligations with respect thereto to the Association or any other person or entity (including an Owner, as to any portion of a Community System located on/in such Owner's Lot). Without limiting the generality of this Section, if and when any of the aforesaid persons and/or entities receive such a conveyance, sale, transfer or assignment, such person and/or entity shall automatically be deemed vested with such rights of Declarant with regard thereto as are assigned by Declarant in connection therewith; provided, however, that if the Association is the applicable entity, then any Community Systems or portions thereof shall be deemed Common Areas hereunder and the Association's rights, duties and obligations with respect thereto shall be the same as those applicable to other Common Areas unless otherwise provided by Declarant. Any conveyance, transfer, sale or assignment made by Declarant pursuant to this Section: (i) may be made with or without consideration, (ii) shall not require the consent or approval of the Association or any Owner, and (iii) if made to the Association, shall be deemed to have been automatically accepted (with all rights, duties, obligations and liabilities with respect thereto being deemed to have been automatically assumed). In recognition of the intended increased effectiveness and potentially reduced installation and maintenance costs and user fees arising from the connection of all Lots and Common Areas within Estero Pointe to the applicable Community Systems, each Owner and occupant of a Home shall, by virtue of the acceptance of a deed or title to a Lot or other right of occupancy thereof, be deemed to have consented to and ratified any and all agreements to which the Association is a party which is based upon (in terms of pricing structure or otherwise) a requirement that all Lots be so connected. The foregoing shall not, however, prohibit the Association or Community Systems provider from making exceptions to any such 100% use requirement in its reasonable discretion.

Without limiting the generality of any other applicable provisions of this Declaration, and without such provisions limiting the generality hereof, Declarant hereby reserves and retains to itself:

- (a) the title to any Community Systems and a perpetual exclusive easement over, under and across the Property for the placement and location thereof;
- (b) the right to connect, from time to time, the Community Systems to such receiving or intermediary transmission source(s) as Declarant may in its sole discretion deem appropriate, in location(s) on the Property as Declarant may determine in its sole discretion,

including, without limitation, companies licensed to provide CATV or satellite service(s) in the County, for which service(s) Declarant shall have the right to charge any users a fee (which shall not exceed any maximum allowable charge provided for in the applicable ordinances of the County);

(c) the continuing right to air conditioned space within and/or on the Common Areas as Declarant may determine in its sole discretion to install, operate, maintain, repair and replace the equipment serving, providing or running the Community Systems, which location may include, without limitation, room(s) within any clubhouse or other Improvements constructed on the Common Areas; and

(d) the exclusive right to offer and provide from time to time to the Association, the Lots and the Lot Owners, any and all Bundled Services through the Community Systems.

Neither the Association nor any officer, director, employee, committee member or agent thereof (including any management company) shall be liable for any damage to property, personal injury or death arising from or connected with any act or omission of any of the foregoing during the course of performing any duty or exercising any right or privilege (including, without limitation, performing maintenance work which is the duty of the Association or exercising any remedial maintenance or alteration rights under this Declaration) required or authorized to be done by the Association, or any of the other aforesaid parties, under this Declaration or otherwise as required or permitted by law.

#### 12.6. Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate, from time to time, the right to inspect, monitor, test, redesign, modify and correct any structure, improvement, or condition which may exist on any portion of the Community, including Lots, and a nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner in accordance with Section 13.5 below and no entry into a Home or other structure on a Lot shall be permitted without the Owner's consent, which consent shall not unreasonably be withheld, conditioned, or delayed, unless in the case of emergency as provided in Section 13.5 below. The failure or refusal to permit reasonable access to the Lot for the purposes contemplated under this paragraph shall excuse Declarant or its designee from responsibility for repairs or damages relating to defective workmanship or materials. The Person exercising this easement shall promptly repair, and pay for, any resulting damage. The provisions of this paragraph do not impose any obligation on Declarant or any other Person to perform any such inspection, monitoring, testing, redesigning, modification, or correction.

In addition, Declarant hereby has, shall have and hereby reserves the right to enter upon the Lots, Common Areas and other portions of Estero Pointe (including, without limitation, all drainage, buffer and utility easements, whether located on a Lot or Common Areas) in order for Declarant to final-out and/or close-out any and all approvals, permits, orders, conditions and/or requirements that have been issued or imposed by any governmental entity in connection with

the development and construction of Estero Pointe and all Improvements therein, and for Declarant to comply and adhere to the same, and such rights shall survive the date of Turnover and continue for such period of time as is necessary for Declarant to fully comply with all such governmentally issued approvals, permits, orders, conditions and/or requirements. Without limiting the generality of the foregoing, in exercising any such rights, Declarant shall have the right to remove and/or relocate any and all items (including, without limitation, landscape materials, fences and/or other Improvements) that may be required to be removed and/or relocated to final-out and/or close-out any and all such approvals, permits, orders, conditions and/or requirements without compensation to the Association or the Owners. This Section 12.6 may not be suspended, superseded or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by Declarant.

12.7. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant has been first notified in writing and given an opportunity to meet with the property Owner and conduct an inspection.

12.8. Termination of Rights.

Rights granted under this Article shall terminate upon the earlier of (a) the period specified in the particular Section, if any; (b) twenty-five (25) years from the date this Declaration is recorded; or (c) Declarant's recording of a statement that all sales and marketing activity has ceased. Thereafter, Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas. Notwithstanding the above, Declarant reserves for itself and its Affiliates a perpetual, nonexclusive easement of access to and use of the Common Areas in connection with the marketing and sale of other properties in order to show the Community as an example of Declarant's projects. This Article shall not be amended without Declarant's prior written consent.

12.9. Exclusion of Declarant's Other Properties.

By accepting a deed to a Lot, each Owner specifically acknowledges that nothing contained in this Declaration shall, in any way, either expressly or by implication, restrict, limit, or otherwise affect the use or disposition by Declarant or any Declarant Affiliate of any property either of them owns, whether contained within or contiguous to the Community. Declarant and its Affiliates shall have full, free, and unrestricted use of its and their other lands, notwithstanding any incompatibility of such use with restrictions this Declaration imposes upon the Lots. By accepting a deed to a Lot, each Owner, specifically and expressly disclaims any reciprocal negative easement in any property Declarant owns.

## ARTICLE XIII EASEMENTS

### 13.1. Easements in Common Area.

Declarant grants to each Owner a right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying the property to the Association;
- (c) The Board's right to:
  - (i) adopt rules regulating Common Area use, including, without limitation, rules limiting the number of guests who may use the Common Area, and charge use fees for such use;
  - (ii) suspend the right of an Owner and its guests and invitees to use any Common Area amenity (A) for any period during which any assessment or other charge against the Owner's Lot remains delinquent, and (B) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents;
  - (iii) dedicate or transfer all or any part of the Common Area, subject to any approval requirements set forth in this Declaration;
  - (iv) rent any portion of any the Common Area on an exclusive or non-exclusive short-term basis to any Person;
  - (v) permit use by the general public, which use may, but need not, be subject to admission charges, membership fees, or other user fees established in the Board's discretion (except to the extent inconsistent with any easement agreement relating thereto); and
  - (vi) mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 16.9.

Any Owner may extend his or her right to use the Common Area to the members of his or her family, tenants, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Home in accordance with this Declaration shall be deemed to have assigned all such rights to the tenants of such Home for the lease term and shall not have any right to utilize the Common Area during such term, except as necessary to access the Lot.

### 13.2. Easements of Encroachment.

Declarant grants easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots. Such easement shall permit encroachment only by a structure or fixture (i) which has been built by a Builder or approved in accordance with Article IV of this Declaration, and (ii) which is unintentionally constructed on another's property. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement. Such encroachments will likely constitute a violation of County Regulations. Lee County does not expressly or by implication authorize encroachments. This section does not limit Lee County's ability to pursue all available remedies to prevent, remove or extinguish encroachments into any easement dedicated to, or owned by, the public.

### 13.3. Easements for Utilities, Etc..

(a) Installation and Maintenance. Declarant reserves for itself, its successors and assigns, so long as Declarant or any Declarant Affiliate owns any property in the Community and/or Declarant is conducting its activities during the Development and Sale Period, and grants to the Association, subject to Declarant's rights under Section 12.1, 12.2 and 12.6, perpetual, non-exclusive easements throughout the Community (but not through a structure) to: (i) install utilities and infrastructure to serve the Community, including, without limitation, water, sewer, telephone, electric, gas, irrigation, cable and other systems for sending and receiving data and/or other electronic signals, drainage structures, facilities and systems, and security and similar systems and other Community Systems; (ii) install walkways, pathways and trails, curb cuts, driveways and paved areas, street lights, and signage on property which Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a Plat; (iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; (iv) access and read utility meters; and (v) for any other purpose in Declarant's sole discretion. The right, license, or easement granted to a utility supplier shall include the non-exclusive right to ingress and egress over any streets for access and maintenance of its equipment and facilities.

Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to record such specific easements as may be necessary, in Declarant's discretion, to develop the Community. The location of the easement shall be subject to the written approval of the burdened property Owner, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize, to the extent practicable, interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement

shall restore the property, to the extent reasonably practical, to the condition existing prior to the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant pursuant to Section 13.5 below.

#### 13.4. Easements to Serve Additional Property.

Declarant reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area and Lots for enjoyment, use, access, and development of the Property. This easement includes, but is not limited to, a right of ingress and egress over the Common Area and Lots for construction of roads and for connecting and installing utilities.

If the above easement is exercised for permanent access to any property which is not submitted to this Declaration, Declarant, or its successors or assigns, shall enter into an agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder, except to the extent such easement was created prior to the recordation of this Declaration.

#### 13.5. Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over the Community as necessary for the Association to fulfill its maintenance responsibilities under this Declaration and any Supplemental Declaration. The Association shall also have an easement and the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforcing the Governing Documents. Such easement and right may be exercised by the Association through its officers, directors, committee members, employees, contractors, or agents in their capacities as such and by all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours. The exercise of the Association's rights of access to the Home shall be accomplished by providing the Owner with fourteen (14) days' notice of the Association's exercise of its right of entry, with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the Home. The Association must then provide the Owner with a second notice seven (7) days prior to such entry by the Association. In the event of an emergency, whenever possible and prudent to the circumstances, twenty-four (24)-hour notification shall be delivered to the Owner prior to the Association entering the Home.

Declarant grants to the Association, subject to any required notice, an easement and right to enter a Lot to abate a Governing Document violation and/or to remove any structure, thing, or condition that violates the Governing Documents. Any costs incurred, including Legal Costs, shall be assessed against the Lot Owner as a Benefited Assessment.

### 13.6. Easements for Maintenance of Bodies of Water and Flooding.

Declarant reserves for itself, and grants to the Association, the SFWMD, the County and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Common Areas and the Community to (a) install, operate, maintain, repair, and replace pumps and other equipment to supply irrigation water to the Common Areas and Lots; (b) construct, maintain, repair, and replace structures and equipment used for retaining, detaining, and otherwise controlling water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard and applicable legal requirements. Declarant, the Association, the SFWMD, the County, and their successors, assigns, and designees shall have an access easement over and across any portion of the Community which abuts or contains bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not inside a Home or other structure) adjacent to or within fifty feet (50') of bodies of water and wetlands within the Community, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Community; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Common Areas; and (c) maintain and landscape the slopes and banks pertaining to such areas. Anyone exercising these easements shall use reasonable care in and repair any damage resulting from their intentional exercise of the easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to natural occurrences or for other occurrences not reasonably foreseeable or under the control of Declarant or such other Person.

### 13.7. Easements for Cross-Drainage.

All portions of the Community shall be burdened with easements for drainage of storm water runoff from other portions of the Community; however, no Person other than Declarant shall alter the drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Community without the consent of the Owner(s) of the affected property, the Board, the SFWMD, the County, if applicable, and Declarant during the Development and Sale Period.

### 13.8. Rights to Storm Water Runoff, Effluent, and Water Reclamation.

Declarant reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Community, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Community for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. This Section may not be amended without Declarant's consent, and the rights created in this Section shall survive termination of this Declaration.

13.9. Easement for Maintenance of Surface Water and Storm Water Management System.

Declarant, the Association, the SFWMD and the County shall have a perpetual, non-exclusive easement over all portions of the Surface Water and Storm Water Management System for access to operate, maintain, repair, or replace the system. By this easement, Declarant and the Association shall have the right to enter upon any portion of any Lot and the Common Area which is a part of or adjacent to the Surface Water and Storm Water Management System, at a reasonable time and in a reasonable manner, to operate, maintain, repair, or replace the system as the SFWMD or the County or any governmental agency or quasi-governmental body requires or permits. Additionally, Declarant, the Association, the SFWMD and the County shall have a perpetual, non-exclusive easement for drainage over the entire Surface Water and Storm Water Management System, and the owner of the pumps, pipes, and other apparatus comprising the system shall have an easement of access and maintenance as necessary for the operation, maintenance, repair, and replacement of such equipment. No Person other than Declarant shall alter the drainage flow of or over the Surface Water and Storm Water Management System, including, without limitation, buffer areas or swales, without the Association's prior written approval, and, during the Development and Sale Period, Declarant's written consent.

13.10. Sign Easement.

Declarant reserves for itself and the Association an easement (herein referred to as the "Sign Easement") over, upon, and across all areas for erection, installation, operation, maintenance, repair, and replacement of Community signs, walls, monuments, fencing, decorative improvements, and other entry features, together with landscaping, lighting, utility, and irrigation facilities. No Owner shall obstruct access to the Sign Easement, or install or remove any plant or other improvement or installation placed in the Sign Easement by the beneficiaries thereof, or obstruct the view of the Sign Easement from the adjacent street right-of-way. All Community signs, walls, monuments, entry features, landscaping, utility, irrigation and other permanent improvements installed in the Sign Easement by Declarant shall become the Common Area of the Association upon conveyance from Declarant, and the Association shall maintain such Sign Easement and the improvements therein as part of the Common Area. In addition, Declarant shall have the right, without the prior approval of the Association or any Owner, to erect sales and marketing signs within the Sign Easement, and to change, move, remove, repaint, maintain, and otherwise exercise complete and unfettered control over such sales and marketing signs at all times prior to the sale of the last Lot owned by Declarant in the Community, and all such sales and marketing signs shall be and remain the exclusive property of Declarant and shall not be deemed part of the Common Area owned by the Association.

13.11. Easement for Irrigation Equipment.

If there is a master irrigation system for the Community, Declarant and the Association shall have a perpetual, non-exclusive easement over, under and through all exterior portions of each Lot, except any area upon which buildings have been erected by Declarant or otherwise in accordance with Article IV, for the purpose of installing, maintaining, repairing, replacing and operating all irrigation equipment, systems and lines serving all or any portion of the Lots and/or



Common Area. The foregoing easement shall not impose any obligation on the Association and/or Declarant to install any such improvements.

13.12. Private Roadways.

(a) It is intended that the private roadways within the Community ("Roadways"), as depicted on any Plat, shall be owned by the Association as part of the Common Area and shall not be dedicated to the County or to public use by recordation of such Plat. Use of such Roadways shall be subject to and in accordance with any rights and easements, shown on the Plats and such reasonable Use Restrictions and Rules as the Association may adopt from time to time consistent with this Declaration, the Plat, and any law, ordinance, or regulation governing the Community.

(b) Declarant hereby reserves unto itself, its agents, employees, successors, and assigns an easement over the Roadways for the purpose of constructing, maintaining, repairing, or rebuilding any subdivision improvements installed or to be installed in the Community and for performing any other work within the Community (including Lots) which Declarant deems reasonably necessary, in its discretion, or which Declarant is required to perform pursuant to a contract with any Owner or pursuant to the requirements of any government agency having jurisdiction over the Community. With regard to construction on any of the Lots by the Owners thereof, the contractors, subcontractors, laborers, materialmen, and other Persons providing construction services and materials to any such Lots shall have access to such Lots over the Roadways subject to such rules as the Association may adopt; however, during the Development and Sale Period, Declarant shall have the right to prohibit the use of the Roadways by such Persons and to designate alternate access easements for such Persons.

(c) Declarant hereby creates a perpetual, nonexclusive easement for access, ingress, and egress over the Roadways for law enforcement, fire fighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; for utilities (water, wastewater, etc.) and for vehicles, equipment, and personnel providing garbage collection service to the Community provided that such easement shall not authorize any such Persons to enter the Community except while acting in their official capacities.

The existence of this easement shall not preclude the Association from maintaining gates or other devices or systems designed to limit general vehicular access to the Community, provided that the Association at all times maintains systems and/or procedures to permit the uncontested entry of Persons authorized to exercise the easements granted in this subsection without unreasonable interference or delay.

**ARTICLE XIV**  
**CONSERVATION EASEMENTS, NATURAL CONDITIONS AND CONSERVATION**  
**AREAS**

14.1. Conservation Easements.

(a) Establishment of Conservation Easements. The provisions of Section 704.06, Florida Statutes establish the right of the SFWMD and/or the County (the "Easement Grantee") to accept easements for the preservation of the natural habitat (such easements shall be referred to herein as the "Conservation Easements"). There are no Conservation Easements established by this Declaration; however, Declarant reserves unto itself and to the Association the right to grant such easements over and upon portions of the Common Area unto the Easement Grantee pursuant to the provisions of Section 704.06, Florida Statutes. Any Conservation Easements so granted shall be subject to the requirements of Section 704.06, Florida Statutes and the Easement Grantee, and the following provisions. For the purposes of this Declaration, any portion of the Common Area encumbered by a Conservation Easement shall be referred to as the "Conservation Easement Property."

(b) Purpose. The purpose of a Conservation Easement is to assure that the Conservation Easement Property will be retained forever in its existing natural condition and to prevent any use of the Conservation Easement Property that will impair or interfere with the environmental value of the Conservation Easement Property.

(c) Prohibited Acts and Uses. Any activity on or use of the Conservation Easement Property inconsistent with the purpose of a Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(i) constructing or placing buildings, roads, signs, billboards, or other advertising, utilities or other structures on or above the ground;

(ii) dumping or placing soil or other substances or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials;

(iii) removing, mowing, trimming or destroying trees, shrubs, or other vegetation;

(iv) excavating, dredging, or removing loam, peat, gravel, soil, rock, or other material substances in such a manner as to affect the surface;

(v) using the surface area of the Conservation Easement, except for purposes that permit the land or water area to remain predominantly in its natural condition;

(vi) activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;

(vii) acting upon or using the Conservation Easement in a manner detrimental to such retention of land or water areas;

(viii) acting upon or using the Conservation Easement in a manner detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance;

(ix) constructing or installing utilities on, below, or above the ground without appropriate local, state, and federal permits or other authorization; and

(x) applying of herbicides, pesticides, or fertilizers.

(d) Reserved Rights. The owner of record title to the Conservation Easement Property reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Conservation Easement Property, including the right to engage in or permit or invite others to engage in all uses of the Conservation Easement Property that are not expressly prohibited herein and are not inconsistent with the purpose of the Conservation Easement.

(e) Rights of Easement Grantee. To accomplish the purposes stated herein, the owner of record title to the Conservation Easement Property shall, upon the request of Declarant or the Easement Grantee, grant the following rights to the Easement Grantee:

(i) to enter upon and inspect the Conservation Easement Property in a reasonable manner and at reasonable times to determine if the Association, the Owners and Declarant or its successors and assigns are complying with the covenants and prohibitions contained in the Conservation Easement; and

(ii) to proceed at law or in equity to enforce the provisions of the Conservation Easement and the covenants set forth therein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Conservation Easement Property that may be damaged by any activity inconsistent with the Conservation Easement.

(f) Easement Grantee's Discretion. The Easement Grantee may enforce the terms of the Conservation Easement at its discretion, but if the Association, Declarant, or any Owner, breaches any term of the Conservation Easement and the Easement Grantee does not exercise its rights under the Conservation Easement, the Easement Grantee's forbearance shall not be construed to be a waiver by the Easement Grantee of such term, or of any subsequent breach of the same, or any other term of the Conservation Easement, or of any of the Easement Grantee's rights under the Conservation Easement. No delay or omission by the Easement Grantee in the exercise of any right or remedy upon any breach by the Association, Declarant or any Owner shall impair such right or remedy or be construed as a waiver. The Easement Grantee shall not be obligated to Declarant, or to any other person or entity, to enforce the provisions of the Conservation Easement.

(g) Easement Grantee's Liability. The owner of the fee interest in the Conservation Easement Property shall retain all liability for any injury or damage to the person or property of third parties that may occur on the Conservation Easement Property. Neither Declarant, nor any Owner, nor any person or entity claiming by or through Declarant or any Owner, shall hold the Easement Grantee liable for any damage or injury to person or personal property that may occur on the Conservation Easement Property.

(h) Acts Beyond Declarant's Control. Nothing contained in the Conservation Easement shall be construed to entitle the Easement Grantee to bring any action against Declarant or the Association for any injury to or change in the Conservation Easement Property resulting from natural causes beyond Declarant's or the Association's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Declarant under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Easement Property or to persons resulting from such causes.

(i) Recordation. Declarant shall record any Conservation Easement in a timely fashion and the Association shall re-record it by separate instrument at any time the Easement Grantee may require to preserve its rights. The Association shall pay all recording costs and taxes necessary to record the Conservation Easement. Declarant will hold the Easement Grantee harmless from any recording costs or taxes necessary to record the Conservation Easement.

(j) Successors. The covenants, terms, conditions, and restrictions of the Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Conservation Easement Property.

(k) Restrictive Covenants Affecting Conservation Easements. No Owner or other person shall cut, remove, destroy, or otherwise disturb any plant, shrub, tree, or other vegetation within any Conservation Easement created pursuant to this Article, nor shall any person, including, but not limited to any Owner, Declarant, and the Association, deposit dirt, fill, grass clippings, trash, rubbish, tree trimmings, building materials, or other waste within such easements without the prior written consent (as evidenced by any required permit or other official certification) of the Association, Declarant, the County, and the SFWMD.

THE PRESERVES AND CONSERVATION EASEMENTS ARE HEREBY DEDICATED AS COMMON AREAS AND THEY SHALL BE THE PERPETUAL RESPONSIBILITY OF THE ASSOCIATION AND MAY IN NO WAY BE ALTERED FROM THEIR NATURAL STATE. ACTIVITIES PROHIBITED WITHIN THE PRESERVES AND CONSERVATION EASEMENTS INCLUDE, BUT ARE NOT LIMITED TO, CONSTRUCTION OR PLACING OF BUILDINGS ON OR ABOVE THE GROUND; OFF-ROAD VEHICLE USE; DUMPING OR PLACING SOIL OR OTHER SUBSTANCES SUCH AS TRASH; REMOVAL OR DESTRUCTION OF TREES, SHRUBS OR OTHER VEGETATION – WITH THE EXCEPTION OF EXOTIC/NUISANCE VEGETATION REMOVAL; ANY OTHER ACTIVITIES DETRIMENTAL TO DRAINAGE; FLOOD CONTROL, WATER

## CONSERVATION, EROSION CONTROL, OR FISH AND WILDLIFE HABITAT CONSERVATION OR PRESERVATION.

### 14.2. Natural Conditions.

(a) The Community may contain a number of manmade, natural, and environmentally sensitive areas that may serve as habitats for a variety of native plants and wildlife, including, without limitation, insects, venomous and non-venomous snakes and other reptiles, alligators, and other animals, some of which may pose hazards to persons or pets coming in contact with them. Each Owner and occupant of any Lot, and every Person entering the Community (i) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movements within or through the Community; and (ii) assumes all risk of personal injury arising from the presence of such plants and wildlife within the Community. Neither the Association, Declarant, any predecessor Declarant, any Builder, nor the members, partners, affiliates, officers, directors, shareholders, attorneys, agents, or employees of any of the foregoing, shall have any duty to take action to control, remove, or eradicate any plant or wildlife in the Community, nor shall they have any liability for any injury resulting from the presence, movement, or propagation of any plant or wildlife within or through the Community.

(b) The natural areas described in subsection (a) above may also contain creeks, ponds, or intermittent pools of water, muddy areas, and underbrush, among other things, all of which are important to the ecological balance and maintenance of the area as a wildlife habitat. No Owner or occupant of a Lot shall enter upon, or permit their guests or any other person acting on their behalf to enter upon, or disturb such areas in any way without the Association's or Declarant's prior written approval.

### 14.3. Preserves and Conservation Easements.

As may be depicted on any Plat, certain tracts may be identified as "Preserves" and "Conservation Easements." Unless otherwise approved in writing by Declarant, the SFWMD, the County and any other governmental authorities having jurisdiction, the Preserves and Conservation Easements shall be maintained in their natural state in perpetuity. No Owner, member of an Owner's household, or any other Person acting, or purporting to act, on behalf of any Owner, or for whom any Owner shall be responsible pursuant to this Declaration, shall disturb the natural environment of the Preserves and Conservation Easements in any way without first obtaining the written consent of the Board properly approved by the adoption of a resolution describing in detail the exact activities to be conducted within the Preserves and Conservation Easements, the times and dates when such activities are authorized to occur, and the identities of the Persons who are authorized to so act, together with the written consent of Declarant and any governmental authority having jurisdiction over the proposed activity.

This restrictive covenant is intended in the broadest sense, and includes, but is not limited to, trimming, cutting, or mowing grass, shrubs, trees or other plants; placing grass clippings, landscape debris, household trash or other materials; storing materials, equipment, vehicles, boats, motor homes, trailers, or other items; erecting children's playhouses, tree houses, swings,

or other permanent or temporary improvements; planting trees, shrubs, grass, or ground cover; releasing birds, snakes, reptiles, insects, or other animals; grading or excavating; cultivating or gardening; or dumping dirt, sand, rocks, gravel, or other inorganic or organic material on any part of a Preserve. No hunting or animal trapping, carrying or discharging of firearms, overnight camping or campfires, operation of motorcycles or so-called "all-terrain vehicles," "dirt bikes," or other motorized vehicles, implements, equipment, or conveyances are permitted within the Preserves and Conservation Easements at any time.

Any Owner who violates the foregoing restrictive covenants shall be responsible for the cost of restoring the affected Preserves to the satisfaction of the Association, Declarant, and any governmental authority having jurisdiction thereof, and the Association shall have the right to prohibit the offending party from further use or enjoyment of the Preserves and Conservation Easements after prior notice and hearing before the Board. Notwithstanding the foregoing, the Owners shall have the right, without prior notice, to enter the Preserves and Conservation Easements for hiking, birding, and other passive, non-destructive activities during the hours of dawn to dusk.

**BECAUSE THE PRESERVE AREAS AND CONSERVATION EASEMENTS ARE TO BE RETAINED IN THEIR NATURAL STATE, SUCH AREAS SHOULD BE CONSIDERED HAZARDOUS FOR RECREATIONAL ACTIVITIES.**

**NEITHER THE ASSOCIATION, NOR DECLARANT, NOR ANY OF THEIR AFFILIATES, HAS ANY OBLIGATION TO PROVIDE SECURITY OR SUPERVISION FOR ANY PERSON USING A PRESERVE AREA, AND ALL PERSONS USING A PRESERVE AREA DO SO AT THEIR OWN RISK.**

**INSECTS, SNAKES, AND ANIMALS THAT MAY BE DANGEROUS TO HUMANS MAY INHABIT THE PRESERVE AREAS AND CONSERVATION EASEMENTS.**

**OWNERS SHOULD NOT ALLOW CHILDREN OR PETS TO ENTER THE PRESERVE AREAS WITHOUT ADULT SUPERVISION.**

**NEITHER THE ASSOCIATION NOR DECLARANT NOR ANY OF THEIR AFFILIATES SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CONDITION OF A PRESERVE AREA OR CONSERVATION EASEMENT OR ANY INJURY OR DEATH OCCURRING THEREON.**

**THE ASSOCIATION SHALL HAVE THE RIGHT TO IMPOSE ADDITIONAL RULES AND REGULATIONS GOVERNING THE USE OF THE PRESERVE AREAS OR CONSERVATION EASEMENTS OR FOR ANY INJURY OR DEATH OCCURRING THEREON.**

**IF THE PRESERVE AREAS OR CONSERVATION EASEMENTS, OR THE TREES OR VEGETATION THEREON, ARE DAMAGED OR DESTROYED BY FIRE, WINDSTORM, FLOOD, DISEASE, OR OTHER NATURAL OR MANMADE EVENT,**

**NEITHER THE ASSOCIATION, NOR DECLARANT, NOR ANY OF DECLARANT'S AFFILIATES, SHALL HAVE ANY OBLIGATION TO REPAIR OR RESTORE THE DAMAGE OR DESTRUCTION, OR TO REMOVE ANY DEAD OR DAMAGED TREES OR OTHER VEGETATION.**

**14.4. Animal, Reptile and Wildlife Hazards.**

Florida's natural areas, which include conservation areas, Conservation Easement Property, Preserves, Drainage Easement areas, Lakes and wetlands, provide habitat for many wild animals and reptiles, including possible bears, poisonous snakes and alligators. Animals can be upset by human presence and unexpectedly become aggressive or harmed by efforts to avoid you. Always keep your distance and avoid interaction with all wildlife.

All Owners, and their family members, guests, invitees and lessees, should always follow the suggestions listed below to assist in human protection from a potentially unpleasant experience as well as the protection of our wildlife:

- (a) Any wild animal can be dangerous. Always be cautious and observant.
- (b) Do not feed the wildlife. Food meant for human consumption can harm an animal. Animals that get food from humans may become aggressive.
- (c) Help keep wildlife "wild" by keeping your distance. Move away from animals without disturbing them and do not block an animal's path.
- (d) Photograph and observe wildlife from a safe distance, by using binoculars, spotting scopes or telephoto lenses.
- (e) If an animal or reptile approaches you, move away and maintain a safe distance.
- (f) Do not walk pets within or near any natural area, or near any bodies of water.
- (g) Keep young children at a safe distance from natural areas and bodies of water.

**ARTICLE XV  
DISPUTE RESOLUTION**

**15.1. In General.**

This Article XV contains procedures concerning disputes between an Owner and the Association, as well as between (i) an Owner and/or Declarant and (ii) the Association and Declarant, related to the Community or each other. Regarding disputes between an Owner and Declarant, the procedures in this Article XV do not replace Declarant's customer or warranty service procedures, and Owners are encouraged to resolve disputes through those procedures prior to initiating any procedures hereunder.

### 15.2. Disputes Between Association and Owners.

All disputes, controversies, claims and demands between the Association and any Owner pertaining to the subject areas described in Section 15.4 shall be governed by the procedures set forth in Section 15.4.

### 15.3. Disputes Between Association/Owner and Declarant.

Any and all claims, disputes and/or other controversy between the Association or any Owner and Declarant (or any affiliated general contractor or affiliated contractor, or any officer, director, member, shareholder, partner, employee or agent thereof, individually and collectively referred to as "Declarant" for purposes of this Article) or any non-affiliated general contractor, non-affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other person or entity that provided materials, labor or other services to the Property or a Home on behalf of Declarant, relating to this Declaration, the use, condition, design, specifications, surveying, grading, construction, installation, budgeting and/or performance of any Improvements in the Common Area or the Home, whether based in contract, tort or statute violation, shall be subject to the provisions set forth in Section 15.4 of this Article XV of this Declaration, and/or, with respect to any such disputes between an Owner and Declarant, the provisions of the purchase agreement between such Owner and Declarant and/or the provisions of any warranty provided by Declarant to such Owner.

### 15.4. Dispute Resolution.

ANY AND ALL CLAIMS, CONTROVERSIES, BREACHES OR DISPUTES BY OR BETWEEN ANY OWNER AND THE ASSOCIATION AND/OR DECLARANT (COLLECTIVELY REFERRED TO AS THE "BOUND PARTIES" AND INDIVIDUALLY AS A "BOUND PARTY"), ARISING OUT OF OR RELATED TO THE PROPERTY, THE SUBDIVISION OR COMMUNITY OF WHICH THE PROPERTY IS A PART, THE SALE OF THE PROPERTY BY DECLARANT, OR ANY TRANSACTION RELATED THERETO, WHETHER SUCH DISPUTE IS BASED ON CONTRACT, TORT, STATUTE, OR EQUITY, INCLUDING WITHOUT LIMITATION, ANY DISPUTE OVER (a) BREACH OF CONTRACT, (b) NEGLIGENT OR INTENTIONAL MISREPRESENTATION OR FRAUD, (c) NONDISCLOSURE, (d) BREACH OF ANY ALLEGED DUTY OF GOOD FAITH AND FAIR DEALING, (e) ALLEGATIONS OF LATENT OR PATENT DESIGN OR CONSTRUCTION DEFECTS, INCLUDING WITHOUT LIMITATION, PURSUANT TO THE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES, (f) THE PROPERTY, INCLUDING WITHOUT LIMITATION, THE PLANNING, SURVEYING, DESIGN, ENGINEERING, GRADING, SPECIFICATIONS, CONSTRUCTION OR OTHER DEVELOPMENT OF THE PROPERTY, THE PARCEL/TRACT OR THE COMMUNITY OF WHICH THE PROPERTY IS A PART, (g) DECEPTIVE TRADE PRACTICES OR (h) ANY OTHER MATTER ARISING OUT OF OR RELATED TO THE INTERPRETATION OF ANY TERM OR PROVISION OF THIS DECLARATION, OR ANY DEFENSE GOING TO THE FORMATION OR VALIDITY OF THIS DECLARATION, OR ANY PROVISION OF THIS DECLARATION OR ANY EXHIBITS HERETO (EACH A "DISPUTE"), SHALL BE ARBITRATED PURSUANT TO THE FEDERAL ARBITRATION ACT AND SUBJECT TO THE PROCEDURES SET FORTH AS FOLLOWS:



a. THIS AGREEMENT TO ARBITRATION SHALL BE DEEMED TO BE A SELF-EXECUTING ARBITRATION AGREEMENT. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE ENFORCEABILITY OF THIS ARBITRATION AGREEMENT, INCLUDING WITHOUT LIMITATION, ITS REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, ANY CHALLENGES TO THE ENFORCEMENT OF THIS ARBITRATION AGREEMENT, OR THE SCOPE OF ARBITRABLE ISSUES UNDER THIS ARBITRATION AGREEMENT, AND ANY DEFENSE RELATING TO THE ENFORCEMENT OF THIS ARBITRATION AGREEMENT, INCLUDING WITHOUT LIMITATION, WAIVER, ESTOPPEL, OR LACHES, SHALL BE DECIDED BY AN ARBITRATOR IN ACCORDANCE WITH THIS ARBITRATION AGREEMENT AND NOT BY A COURT OF LAW.

b. IN THE EVENT THAT A DISPUTE ARISES BETWEEN THE BOUND PARTIES, SUCH DISPUTE SHALL BE RESOLVED BY AND PURSUANT TO THE ARBITRATION RULES AND PROCEDURES OF JUDICIAL ARBITRATION AND MEDIATION SERVICES ("JAMS") IN EFFECT AT THE TIME THE REQUEST FOR ARBITRATION IS SUBMITTED. IN THE EVENT JAMS IS FOR ANY REASON UNWILLING OR UNABLE TO SERVE AS THE ARBITRATION SERVICE, THE BOUND PARTIES SHALL SELECT ANOTHER REPUTABLE ARBITRATION SERVICE. IF THE BOUND PARTIES ARE UNABLE TO AGREE ON AN ALTERNATIVE SERVICE, THEN EITHER BOUND PARTY MAY PETITION ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED TO APPOINT SUCH AN ALTERNATIVE SERVICE, WHICH SHALL BE BINDING ON THE BOUND PARTIES. THE RULES AND PROCEDURES OF SUCH ALTERNATIVE SERVICE IN EFFECT AT THE TIME THE REQUEST FOR ARBITRATION IS SUBMITTED SHALL BE FOLLOWED.

c. The Bound Parties expressly agree and acknowledge that this Declaration involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. §1 et seq.) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all Disputes shall be arbitrated – which arbitration shall be mandatory and binding – pursuant to the Federal Arbitration Act.

d. This arbitration agreement shall inure to the benefit of, and be enforceable by, each Owner, Declarant and Declarant's Affiliates and related entities, the Association, and each of their respective employees, officers, directors, agents, representatives, contractors, subcontractors, agents, vendors, suppliers, design professionals, insurers and any other person whom any Owner or the Association contends is responsible for any alleged defect in or to the Property or any improvement or appurtenance thereto. The Bound Parties contemplate the inclusion of such Bound Parties in any arbitration of a Dispute and agree that the inclusion of such Bound Parties will not affect the enforceability of this arbitration agreement.

e. In the event any Dispute arises under the terms of this Declaration or in the event of the bringing of any arbitration action by a Bound Party hereto against another Bound Party hereunder by reason of any breach of any of the covenants, agreements or provisions on the Bound Party of the other Bound Party arising out of this Declaration, then in that event the

prevailing party shall be awarded from the other party all costs and expenses in any way related to the Dispute, including actual attorney and paralegal's fees, accounting and engineering fees, and any other professional fees resulting there from as awarded by court or arbitrator.

f. The arbitrator shall be authorized to provide all recognized remedies available in law or in equity for any cause of action that is the basis of the arbitration.

g. The decision of the arbitrator shall be final and binding. The Bound Parties expressly agree that an application to confirm, vacate, modify, or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in the County in which the Property is located.

h. To the extent that any state or local law, ordinance, regulation, or judicial rule is inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

i. The participation by any party, or any party whom the Association or any Owner contends is responsible for a Dispute, in any judicial proceeding concerning this arbitration agreement or any matter arbitrable hereunder shall not be asserted or accepted as a reason to delay, to refuse to participate in arbitration, or to refuse to compel arbitration, including instances in which the judicial proceeding involves parties not subject to this arbitration agreement and/or who cannot otherwise be compelled to arbitrate.

j. Fees and costs of the arbitration and/or the arbitrator shall be borne equally by the Bound Parties to the arbitration; provided, however, that the fees and costs of the arbitration and/or the arbitrator ultimately shall be allocated and borne as determined by the arbitrator. Notwithstanding the foregoing, the Bound Parties shall each be solely responsible for their own attorney fees and expert witness costs.

k. The arbitrator appointed to serve shall be a neutral and impartial individual.

l. The venue of the arbitration shall be in the County where the Property is located unless the parties agree in writing to another location.

m. If any provision of this arbitration agreement shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

n. The parties to the arbitration shall have the right to conduct a reasonable amount of discovery, including written discovery, depositions and inspections and testing, all as approved and coordinated by the arbitrator.

o. Any and all Disputes between Declarant and the Association arising from or related to the Community, this Declaration or any other agreements between Declarant and the Association shall be resolved in accordance with this Declaration.

p. Pre-Arbitration Dispute Resolution Provision: For all Disputes, the Bound Parties agree to follow the pre-arbitration procedures set forth below. The Dispute resolution provisions of this Declaration are intended to grant certain rights to Declarant and/or the Association which are in addition to those rights provided in Chapter 558, Florida Statutes ("Chapter 558 Notice of Claim"), as it exists at the time this Declaration is recorded. If a court of law should determine that any of the terms of this Declaration conflict with any of the terms of Chapter 558 Notice of Claim, the terms of Chapter 558 Notice of Claim shall supersede and control to the extent of such conflict.

i. Notification. The Association and all Owners agree to provide Declarant, with written notice of any matters relating to a Dispute as soon as is reasonably possible after the Association or any Owner becomes aware, or should have become aware, of such matters and Dispute. Additionally, in accordance with the requirements of Chapter 558 Notice of Claim, the Association and all Owners must comply with and is hereby advised of the following:

**ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.**

ii. Cooperation; Access; Repair. The Association and each Owner agree to provide Declarant and its representatives, contractors, and others as Declarant may request, with prompt, reasonable cooperation, which may, for example, include access to all portions of the Property, in order to facilitate Declarant's investigation regarding a Dispute including, without limitation, for purposes of inspecting, testing, repairing, replacing, correcting, or otherwise addressing matters related to the Dispute. If the Dispute arises out of or relates to the planning, surveying, design, engineering, grading, specifications, construction, or other development of the Property, Declarant is hereby granted the irrevocable right, but is under no obligation, to inspect, repair and/or replace any and all affected parts of the Property.

**NOTICE: THE BOUND PARTIES AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS ARBITRATION AGREEMENT (ARTICLE XV OF THIS DECLARATION) ENTITLED, "DISPUTE RESOLUTION - ARBITRATION" DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT, AND THE BOUND PARTIES ARE GIVING UP ANY RIGHTS THE BOUND PARTIES MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. THE BOUND PARTIES ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARBITRATION AGREEMENT. IF ANY OWNER OR DECLARANT AND/OR THE ASSOCIATION REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, THE OWNER OR DECLARANT AND/OR THE ASSOCIATION MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT. THE BOUND PARTIES' AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.**

THIS DECLARATION PROVIDES THAT ALL DISPUTES BETWEEN THE BOUND PARTIES WILL BE RESOLVED BY ARBITRATION IN ACCORDANCE WITH THE PROVISIONS SET FORTH ABOVE. THIS MEANS THAT THE BOUND PARTIES EACH GIVE UP THE RIGHT TO GO TO COURT OR TO A JURY TO ASSERT OR DEFEND RIGHTS UNDER THIS DECLARATION. THE BOUND PARTIES RIGHTS WILL BE DETERMINED BY A NEUTRAL ARBITRATOR AND NOT BY A JUDGE OR JURY. THE BOUND PARTIES ARE ENTITLED TO A FAIR HEARING, BUT THE ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN THE RULES FOLLOWED IN A COURT. ARBITRATOR DECISIONS ARE AS ENFORCEABLE AS ANY COURT ORDER AND ARE SUBJECT TO VERY LIMITED REVIEW BY A COURT.

THE BOUND PARTIES UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT ALL DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS ARTICLE ENTITLED "DISPUTE RESOLUTION - ARBITRATION" TO NEUTRAL, BINDING ARBITRATION.

#### **ARTICLE XVI MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

##### **16.1. Notices of Action.**

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Owner or occupant which is not cured within sixty (60) days;

(c) Any lapse, cancellation, or material modification of any Association insurance policy;

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders; or

(e) If the U.S. Department of Housing and Urban Development is insuring or the U.S. Department of Veterans Affairs is guaranteeing the Mortgage on any Lot, material amendment to the Governing Documents or extraordinary action of the Association, as defined under VA Pamphlet 26-7, as it may be amended or superseded.

Otherwise, no consent from Eligible Holders shall be necessary to enable the Association to accomplish any of its operational duties and responsibilities or to exercise any of its rights.

#### 16.2. Special FHLMC Provision.

If any portion of the Community is a condominium, then to the extent required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the first Mortgagees or Class "A" Members representing at least sixty-seven percent (67%) of the total Association vote consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (any decision or action in accordance with the provisions of this Declaration or any Supplemental Declaration subsequently recorded on any portion of the Community resulting in the levy of Assessments shall not be subject to this provision);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

### 16.3. Other Provisions for First Lien Holders.

To the extent not inconsistent with Florida law:

(a) Any restoration or repair of the Community after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Lots to which more than fifty percent (50%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Lots to which more than fifty percent (50%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

### 16.4. Amendments to Documents.

(a) The consent of at least sixty-seven percent (67%) of the Class "A" votes, and the consent of Declarant, during the Development and Sale Period, and the approval of the Eligible Holders of first Mortgages on Lots to which at least sixty-seven percent (67%) of the votes of Lots subject to a Mortgage appertain, shall be required to terminate the Association.

(b) If and to the extent FHA or VA is insuring or guaranteeing any Mortgage on a Lot, the consent of at least sixty-seven percent (67%) of the Class "A" votes, and the consent of Declarant, during the Development and Sale Period, and the approval of Eligible Holders of first Mortgages on Lots to which more than fifty percent (50%) of the votes of Lots subject to a Mortgage appertain, shall be required materially to amend any provisions of this Declaration, Bylaws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Area;
- (vi) responsibility for maintenance and repair of the Community;
- (vii) expansion or contraction of Community or the addition, annexation, or withdrawal of property to or from the jurisdiction of the Association;

- (viii) boundaries of a Lot;
- (ix) leasing of Lots;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Lot;
- (xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or
- (xii) any provisions included in the Governing Documents which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Lots.

#### 16.5. Construction of Article XVI.

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the Bylaws, or Florida law for any of the acts set out in this Article.

#### 16.6. No Priority.

No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

#### 16.7. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering the Owner's Lot.

#### 16.8. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be conclusively deemed to have irrevocably approved such action if the Association does not receive a written response from the Mortgagee within sixty (60) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified mail, return receipt requested; overnight delivery by a nationally recognized courier that provides tracking and receipt services; or personal delivery.

#### 16.9. HUD/VA Approval.

As long as there is a Class "B" membership, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development ("HUD") or the U.S. Department of Veterans Affairs ("VA"), if either such agency is insuring or guaranteeing the Mortgage on any Lot or has granted project approval for such Mortgages: merger, consolidation, or dissolution of the Association; annexation of additional property; dedication, conveyance (other than to correct errors on property descriptions or other inconsequential or immaterial conveyances), or mortgaging of Common Area; or material amendment of this Declaration or the Bylaws. The granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a conveyance within the meaning of this Section.

#### 16.10. Rights of Declarant and Institutional Mortgagees To Pay Assessments and Receive Reimbursement.

Declarant and any institutional lender(s) shall have the right, but not the obligation, jointly or individually, and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Lot(s). Further, Declarant and any institutional lender shall have the right, but not the obligation, jointly or individually, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association in the event the same are overdue and when lapses in policies or services may occur. Declarant and any institutional lender paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus Interest and any costs of collection including, but not limited to, Legal Costs, and the Association shall execute an instrument in recordable form to this effect and deliver the original of such instrument to each institutional lender who is so entitled to reimbursement and to Declarant if Declarant is entitled to reimbursement.

### ARTICLE XVII DISCLOSURES AND WAIVERS

#### 17.1. No Liability For Third Party Acts.

Owners and occupants of Lots, and their respective guests and invitees, are responsible for their own personal safety and for their property in the Community. The Association may, but is not obligated to, maintain or support certain activities within the Community which are intended to promote or enhance safety or security within the Community. However, the Association and Declarant shall not in any way be considered insurers or guarantors of safety or security within the Community, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken, if any.

No representation or warranty is made that any gate or other mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such gate or other mechanism or system for limiting access to the Community will prevent loss or provide the detection or protection for which the gate or other mechanism or system for limiting



access to the Community is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants and invitees of its Lot that the Association, the Board and its committees, Declarant and any predecessor Declarant are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

Declarant may, but shall not be obligated to, employ or retain, at Declarant's sole cost and expense, a person or persons to staff any entry gate located at the entrance to the Community and perform such functions on behalf of Declarant as Declarant, in its sole discretion, deems appropriate, including, but not limited to, facilitating access by contractors, subcontractors, inspectors, brokers, and salespersons, prospective purchasers and others to Lots that are under construction or for sale. Any such person employed or retained by Declarant shall under no circumstances be responsible for the security or safety of any persons or property within the Community, nor shall the Association or any Owner or occupant of the Community be authorized to direct or request favors of any such person. Neither Declarant nor the Association shall have any obligation to staff any entry gate.

#### 17.2. View Impairment.

Neither Declarant nor the Association guarantee or represent that any view over and across the Lots or any open space within the Community will be preserved without impairment. Neither Declarant nor the Association shall be obligated to relocate, prune, or thin trees or other landscaping. The Association (with respect to the Common Area) and Declarant have the right to relocate, prune, thin, or add trees and other landscaping from time to time subject to applicable law. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

#### 17.3. Notices and Disclaimers as to Community Systems.

In recognition of the fact that interruptions in cable television and other Community Systems will occur from time to time, neither Declarant nor any of Declarant's successors or assigns (and their Affiliates) shall in any manner be liable for, and no Community System and Service user shall be entitled to refund, rebate, discount, or offset in applicable fees, for any interruption in Community Systems, regardless of whether or not such interruption is caused by reasons within the service provider's control. Declarant shall be entitled to retain any rebate, discount, or other compensation received from the provider of any Community Systems in connection with the installation or operation of such system.

#### 17.4. Construction Activities.

All Owners, occupants, and users of Lots are hereby placed on notice that Declarant, any Declarant Affiliate, and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, shall, from time to time, conduct construction activities within the Community. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and/or by using any portion of a Lot or the Community generally,

Owners, occupants and users of Lots, acknowledge, stipulate, and agree (a) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise), any property within or in proximity to the Lot where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that Declarant, any Declarant Affiliate, or predecessor Declarant, and all of their agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable for any losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to any breach of this covenant; (d) that any purchase or use of any Lot has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to Declarant or its Affiliates to sell, convey, lease, and/or allow the use of Lots within the Community.

#### 17.5. Water Management.

Each Owner acknowledges and agrees that some or all of the water features, if any, or wetlands in or adjacent to the Community are designed as water management areas and are not designed solely as aesthetic features. Due to rainfall and fluctuations in water elevations within the immediate area, water levels will rise and fall. Each Owner further acknowledges and agrees that Declarant has no control over such elevations. Therefore, each Owner agrees to release and discharge Declarant and Declarant Affiliates and any predecessor Declarant from and against any and all losses, claims, demands, damages, and expenses of whatever nature or kind, including, without limitation, Legal Costs, related to or arising out of any claim relating to such fluctuations in water elevations. Owners shall not alter, modify, expand, or fill any water features or wetlands located within or in the vicinity of the Community without the prior written approval of Declarant and any local, state, or federal regulatory or permitting authorities as may have relevant jurisdiction over such matters.

#### 17.6. Liability for Association Operations.

The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant and any predecessor Declarant (including their respective Affiliates, successors, and assigns) from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, Legal Costs), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of amenities and other portions of the Common Areas and the collection of assessments.

### ARTICLE XVIII CHANGES IN OWNERSHIP OF LOTS

Any Owner, other than Declarant or any Declarant Affiliate, desiring to sell or otherwise transfer title to his or her Lot shall give the Board written notice at least fourteen (14) days' prior to recording the deed of the name and address of the purchaser or transferee, the date on which transfer of title is to occur, and such other information as the Board may reasonably require.

Notwithstanding the transfer of title, the transferor shall be jointly and severally responsible with the transferee for all future obligations of the Owner, including future assessment obligations, until the date upon which the Board receives such notice, after which the original Owner shall be released from the obligation to pay Assessments levied after the date such notice is received.

## **ARTICLE XIX CHANGES IN COMMON AREA**

### **19.1. Condemnation.**

Whenever any part of the Common Area is taken or conveyed under threat of condemnation by any authority having the power of eminent domain, the Board shall determine, in the exercise of its business judgment, whether each Owner is entitled to notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless, within sixty (60) days after such taking, Members entitled to cast at least seventy-five percent (75%) of the total Class "A" votes and Declarant, during the Development and Sale Period, shall otherwise agree. Any such construction shall be in accordance with plans the Board approves. The provisions of Section 7.3 regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any Common Area improvements, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

### **19.2. Partition.**

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

### **19.3. Transfer or Dedication of Common Area.**

The Association may convey, dedicate, or otherwise transfer portions of the Common Area to the County or to any other local, state, or federal governmental or quasi-governmental entity, with the consent of at least two-thirds of the Owners and such approval as may be required by Section 16.9.

## ARTICLE XX AMENDMENT OF DECLARATION

### 20.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until the first conveyance of a Lot to a Person other than Declarant or a Builder, Declarant may unilaterally amend this Declaration for any purpose.

Thereafter and until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD, or VA, to make, purchase, insure, or guarantee mortgage loans on the Lots; (iv) to satisfy the requirements of any local, state, or federal governmental agency; or (v) for any other purpose which does not materially adversely affect title to any Lot, unless the Owner of such Lot consents to such amendment. Association shall, forthwith upon request of Declarant, join in any such amendments or modifications and execute such instruments to evidence such joinder and consent as Declarant shall, from time to time, request.

### 20.2. By the Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least two-thirds (2/3) of the Class "A" Members voting at a meeting at which a quorum is present. In addition, so long as Declarant owns any Lot and during the Development and Sale Period, Declarant's written consent is required for any amendment. The approval requirements set forth in Section 16.9 also shall be met, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

### 20.3. Approval by South Florida Water Management District and County.

Notwithstanding Sections 20.1 and 20.2, any amendment to this Declaration that alters any provision relating to the Surface Water and Storm Water Management System, beyond maintenance in its original condition, including the water management portions of the Common Areas, or amendment to this Section 20.3, must have the prior approval of the SFWMD and the County Engineer or its authorized designee.

#### 20.4. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that the Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon the earliest of (a) actual notice; (b) recording; or (c) later effective date specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

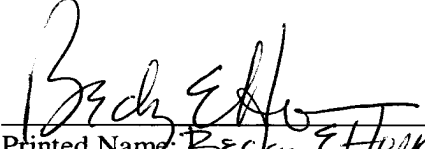
#### 20.5. Exhibits.


Exhibits "A," and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. Exhibit "C" is incorporated by reference and may be amended as provided in Article III. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.


**IN WITNESS WHEREOF**, Declarant has caused this instrument to be executed on the day and year written below.

WITNESSES:

TAYLOR MORRISON OF FLORIDA, INC.,  
a Florida corporation

  
Printed Name: Becky E. Hopkins

  
Printed Name: Megan E. Schroeder

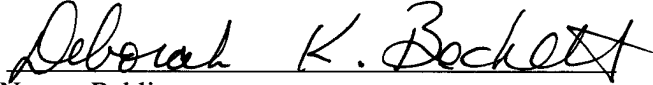
By:   
Printed Name: Tony J. Squitieri  
Title: Vice President

(CORPORATE SEAL)

STATE OF FLORIDA           )  
  ) SS:  
COUNTY OF SARASOTA)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Tony J. Squitieri, as Vice President of TAYLOR MORRISON OF FLORIDA, INC., a Florida corporation, freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation, who is personally known to me.

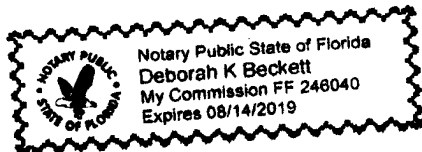
WITNESS my hand and official seal in the County and State last aforesaid this 28 day of September, 2016.

  
Notary Public

**Deborah K. Beckett**

Typed, printed or stamped name of Notary Public

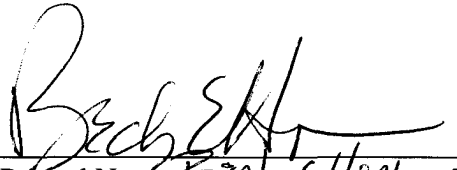
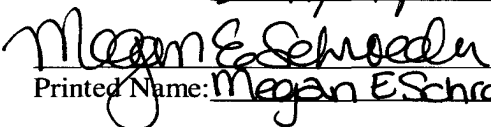
My Commission Expires:

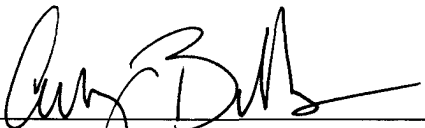


**IN WITNESS WHEREOF**, the Association has joined in this instrument to be executed on the day and year written below.

WITNESSES:

ESTERO POINTE COMMUNITY  
ASSOCIATION, INC.,  
a Florida not-for-profit corporation

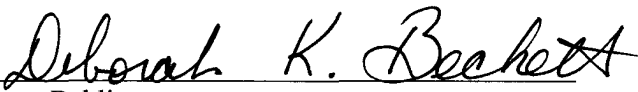
  
Printed Name: Becky E. Hopkins  
  
Printed Name: Megan E. Schroeder

By:   
ANTHONY J. BURDETT, President  
(CORPORATE SEAL)

STATE OF FLORIDA       )  
  ) SS:  
COUNTY OF SARASOTA   )

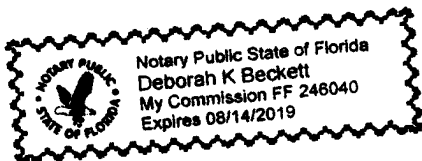
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by ANTHONY J. BURDETT, as President of ESTERO POINTE COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation, who is personally known to me.

WITNESS my hand and official seal in the County and State last aforesaid this 28 day of September, 2016.

  
Notary Public

Deborah K. Beckett  
Typed, printed or stamped name of Notary Public

My Commission Expires:



**EXHIBIT "A"**

**Land Initially Submitted**

ALL THOSE TRACTS OR PARCELS OF LAND SHOWN ON THAT  
CERTAIN PLAT OF ESTERO POINTE, RECORDED AS INSTRUMENT #  
2016000228404 OF THE PUBLIC RECORDS OF LEE COUNTY,  
FLORIDA, LESS AND EXCEPT ANY PROPERTY DEDICATED TO THE  
PUBLIC THEREON.



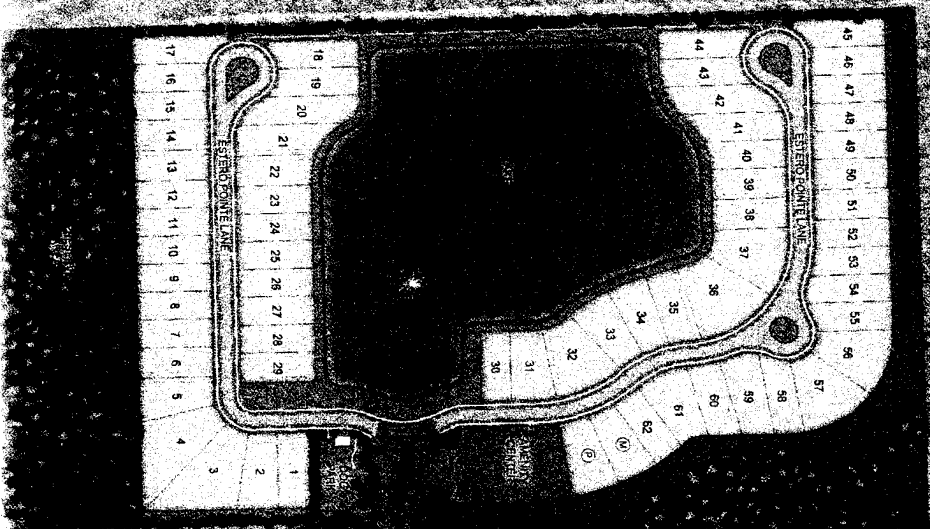
**EXHIBIT "B"**

**SITE PLAN OF ESTERO POINTE**

# ESTERO POINTE

## COMMUNITY MASTER PLAN

- Legend**
- 56 Homesite
  - Model
  - Parking



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**EXHIBIT "C"****INITIAL USE RESTRICTIONS**

For purposes of these Use Restrictions, unless the context otherwise requires, Owner shall also include the family, invitees, guests, licensees, lessees and sublessees of any Owner, and any other permitted occupants of a Home. All the Property shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant in Paragraph 46 hereof:

1. **Single-Family Use.** The Homes shall be for single-family use only. No commercial occupation or activity may be carried on in Estero Pointe except as such occupation or activity is permitted to be carried on by Declarant under the Declaration. A family is defined to mean any number of persons related by blood, marriage or adoption or not more than two (2) unrelated persons living as a single housekeeping unit.

2. **Nuisance.** Subject to allowances for reasonable construction activities, no obnoxious or offensive activity shall be carried on, in or about the Lots or in or about any Improvements, or on any portion of Estero Pointe, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any Owner. No use or practice shall be allowed in or around the Lots which is a source of annoyance to Owners or occupants of Homes or which interferes with the peaceful possession or proper use of the Lots or the surrounding areas. No loud noises or noxious odors shall be permitted in any Improvements or Homes. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or any items which may unreasonably interfere with television or radio reception of any Owner shall be located, used or placed on any Lot, or exposed to the view of other Owners without the prior written approval of the Architectural Review Board ("ARB"). Notwithstanding anything to the contrary herein, so long as any activity which is carried on a Lot is allowable within applicable zoning regulations, no such activity shall be deemed a nuisance hereunder.

3. **No Improper Uses.** No improper, offensive, hazardous or unlawful use shall be made of any Lot or the Home thereon nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any portion of the Property. The Property will be subject to, and the Association and each Owner will conform to and observe, all laws, statutes, ordinances, rules and regulations of the United States of America, the State of Florida, the County, and any and all other governmental and public authorities and boards or officers of the same relating to such Property and any Improvements thereon or the use thereof. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover relating to any Lot or Home shall be corrected by, and at the sole expense of the Owner of such Lot.

4. **Leases.** No portion of a Home (other than an entire Home) may be rented and the lease or sale of any Home on a time-share basis is prohibited. All leases shall provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any

of the provisions of the Declaration, the Articles, the Bylaws, these Use Restrictions, or of any other agreement, document or instrument governing the Lots. The Home may be leased only in its entirety (*e.g.*, separate rooms within the same Home may not be separately leased). All leases must be in writing and shall have a term of no less than thirty (30) days and no Home may be leased more than four (4) times in any twelve (12)-month period, even if a tenant defaults on a lease or abandons the Home before expiration of the lease term. No lease shall provide for an early lease termination which would reduce a lease term to a period of less than said thirty (30) days, except in the event of a default by the tenant. Any lease terminated as a result of a default or otherwise, shall nevertheless still count towards the foregoing rental limitations. The restrictions on lease terms set forth in this paragraph shall not apply to Homes owned or leased by Declarant, its affiliates, or persons Declarant approves, in connection with their development, construction, or sale of property in Estero Pointe. A copy of the lease must be provided to the Association within five (5) days of the execution of the lease. The Owner of a leased Home shall be jointly and severally liable with his or her tenant to the Association to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinated to any lien filed by the Association whether before or after such lease was entered into. Any short-term rental of the Home (less than thirty (30) days) shall be considered a business use of the Home and a violation of the Declaration as well as a violation of the zoning of the Property.

All leases shall include an acknowledgment by the tenant that the tenant and all occupants of the leased Home are bound by and obligated to comply with the Governing Documents and that the tenant has received a copy of the Governing Documents. The Association may require that the lease contain an addendum approved by the Association. The Owner shall be responsible for providing a copy of the Governing Documents to the tenant prior to execution of the lease and shall monitor enforcement and compliance with the Governing Documents by the tenant.

In the event that an Owner is delinquent in the payment of his or her Assessments or other sums due and owing to the Association, the Lot shall not be leased until such amounts are paid in full or unless the Association consents, in writing, to any such lease. If the Lot is leased in violation of this provision, the Association may terminate the lease and evict the tenants in addition to imposing all other available remedies. In the event an Owner is in default in the payment of Assessments or other sums due and owing to the Association and the Owner's Lot is leased, the Association shall have the right and authority to collect the rent to be paid by the tenant to the Owner directly from the tenant. In the event such tenant fails to remit said rent directly to the Association within ten (10) days (but no later than the day the next rental payment is due) from the day the Association notified such tenant in writing that the rents must be remitted directly to the Association, the Association shall have the right to terminate the lease and evict the tenant. All sums received from the tenant shall be applied to the Owner's account for the leased Lot according to the priority established in Section 720.3085, Florida Statutes, until the Owner's account is current. All leases entered into by an Owner shall be deemed to automatically incorporate this provision and all the Owners hereby appoint the Association its agent for such purpose. The Association may, without further approval of the Owner of the leased Lot, terminate the lease for violations of the Declaration by the tenants, or the tenant's family or guests and thereafter evict the tenants from the Lot.

In addition to any notice to a tenant of a Lot permitted to be given by law, an Owner by acceptance of a deed to a Lot, does hereby irrevocably grant to the Association (and its officers, directors, designees, agents, and employees) and to any professional management or accounting firm providing management or accounting services to the Association, the right to notify, in writing, the tenant of the Lot of any delinquency by the Owner of the Lot in payment of any monetary obligations due to the Association, including but not limited to the amount thereof. Further each Owner hereby agrees and acknowledges that the disclosure of any of Owner's delinquent monetary obligations due to the Association, as provided in the preceding sentence, shall not be construed or be deemed to be a violation of the Fair Debt Collection Practices Act ("FDCPA") 15 U.S.C. Section 1692 et. seq.

Each lease shall set forth the name, address, and telephone number of the Home's Owner and of the tenant(s); the date the tenant's occupancy commences and ends; a description of each motor vehicle owned or operated by the tenant or members of the tenant's household; and a description of all pets to be kept at the Home.

Within five (5) days of a lease being signed for a Home, the Owner shall notify the Board or the Association's managing agent of the lease and provide an entire copy of such lease to the Association and such additional information the Board may reasonably require.

If an Owner elects to permit a tenant to sublease during the term of the lease, such sublease shall be subject to the limitations and requirements established in the Declaration to the same extent and effect as the original lease.

The Association shall be deemed a third party beneficiary of all leases of Homes, and shall have the right, but not the obligation, to enforce the terms and conditions of such leases against the tenant or the Owner. Notwithstanding the foregoing, the Association's failure to object to any term or condition of a lease or occupancy arrangement shall not be deemed to be consent or approval of any term or condition of the lease, nor shall the Association have any obligation whatsoever for the performance of any obligation of Owner or tenant contained in the lease or otherwise.

Notwithstanding any condition of any lease to the contrary, each Owner, by acceptance of the deed to a Lot, hereby covenants and agrees with the Association and all other Owners in Estero Pointe, including, but not limited to, Declarant, that the Owner shall be responsible for any violation of the Governing Documents resulting from the acts or omissions of his or her tenant, other occupants of the leased Home, and their respective guests to the same extent that Owner would be liable for such violation if it had resulted from the acts or omissions of the Owner or a member of the Owner's household or guests. The Owner's obligations hereunder shall be deemed a guaranty of performance by his or her tenant, and the Association shall have the right to take any action or seek any remedy for the tenant's failure or refusal to comply with the Governing Documents directly from or against the Owner without first taking such action or obtaining such remedy from or against the tenant.

The Association may, without further approval of the Owner of the leased Home, terminate the lease for violations of the Governing Documents by the tenants, or the tenant's family or guests and thereafter evict the tenants from the Home.

5. Removal of Sod and Shrubbery; Alteration of Drainage, Etc. Except for Declarant's acts and activities with regard to the development of Estero Pointe, no Improvements (including, but not limited to, driveways and landscaping) and no sod, top soil, muck, trees or shrubbery shall be removed from Estero Pointe and no change in the condition of the soil or the level of the land of any of Estero Pointe area shall be made which would result in any permanent change in the flow or drainage of storm water within Estero Pointe without prior written consent of the Association and the ARB.

6. Addition of Landscaping; Alteration of Drainage, Etc. If an Owner receives approval to install additional landscaping to their Lot, the Owner is responsible for increased costs in the maintenance of the additional landscaping and the Association or the landscape maintenance company will bill the Owner directly for the additional maintenance and the Owner is responsible for payment of the increased maintenance. The installation of additional landscaping shall not result in any permanent change in the flow or drainage of storm water within Estero Pointe without prior written consent of the ARB and the Association.

7. Antenna and Aerial. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any portion of the Property or upon any improvements thereon, unless expressly approved in writing by the Association, except that this prohibition shall not apply to those satellite dishes that are one (1) meter (39.37 inches) in diameter or less, and specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association is empowered to adopt rules governing the types of antennae which may be permitted and restrictions relating to safety, location and maintenance of antennae. The Association may also adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to certain specified locations, and integrated with the Property and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and provided the cost of complying with such rules would not unreasonably increase the cost of installation of permissible dishes or antennae. Any permissible dishes or antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. Further, any Owner desiring to install permissible dishes or antennae may, but is not obligated, submit plans and specifications for same to the Association to ensure compliance with the Association's rules governing the types of permissible antennae and restrictions relating to safety, location and maintenance of antennae. This Section 7 shall not apply to Declarant.

8. Trash and Other Materials. Each Owner shall regularly pick up all garbage, trash, refuse or rubbish around his or her Lot, and no Owner or resident shall place or dump any garbage, trash, refuse or other materials on any other portions of Estero Pointe, including any Common Area or any property contiguous to Estero Pointe. No rubbish, trash, garbage, refuse, or other waste material shall be kept or permitted on the Lots and/or Common Area, or other portions of Estero Pointe, except in sanitary containers located in the garage of each Home, and no odor shall be permitted to arise therefrom so as to render Estero Pointe or any portion thereof unsanitary, offensive, detrimental or a nuisance to Owners or to any other property in the vicinity

thereof or to its occupants. No clothing or other household items shall be hung, dried, or aired in such a way as to be visible from the Common Area or another Lot. No stripped vehicles, lumber or other building materials, grass, tree clippings, metals, scrap, automobile pieces or parts, refuse, or trash shall be stored or allowed to accumulate on any portion of Estero Pointe (except when accumulated during construction by Declarant, during construction approved by the Association, or when accumulated by the Association for imminent pick-up and discard). Trash shall be placed in front of each Home no earlier than 5:00 p.m. the night before pick-up and trash receptacles shall be removed no later than midnight on the day of pick-up.

9. Radio Transmission. No ham radios or radio transmission equipment shall be operated or permitted to be operated within Estero Pointe without the prior written consent of the Association.

10. Signs. No sign, display, poster, advertisement, notice or other lettering of any kind whatsoever (including, without limitation, "For Sale," "For Rent" or "By Owner" or any other signs for the sale or renting of homes) shall be exhibited, displayed, inscribed, painted or affixed in public view of any portion of any building, vehicle or other Improvement in Estero Pointe (including, without limitation, a Home) without the prior written approval of the ARB, which approval may be given, withheld, conditioned or denied in the sole and absolute discretion of the ARB. Notwithstanding anything to the contrary contained in these Rules and Regulations, the ARB shall not approve any sign, display, poster, advertisement, notice or other lettering which is or in the nature of a "For Sale," "For Rent," "By Owner" or any other similar sign for the renting or sale of a Home so long as Declarant owns a Lot in Estero Pointe or so long as Declarant or any of Declarant's affiliates (or any of their respective successors or assigns) are conducting sales and marketing of Homes in Estero Pointe or other communities developed or marketed by Declarant or its affiliates, whichever is later. Signs, regardless of size, used by Declarant or a Builder, their successors or assigns, for advertising and marketing during the Development and Sale Period of Estero Pointe or other communities developed and/or marketed by Declarant and/or its Affiliates and other signs authorized by Declarant and/or its Affiliates shall be exempt from these restrictions. Such sign or signs as Declarant and/or its Affiliates and/or a Builder and/or its Affiliates may be required to erect under the terms of an institutional mortgage shall be exempt from this restriction. An Owner may display a security sign, provided by a contractor for security services, as permitted by the HOA Act. This provision may not be amended without the prior written consent of Declarant.

11. Animals and Pets. Each Home is permitted to have three (3) domestic pets (i.e. dogs and cats) in the Home without the prior written permission of the Board. The restriction on the number of pets shall not apply to birds and fish. Permitted pets shall only be kept subject to and in accordance with such rules and regulations as shall be promulgated from time to time by the Association. However, under no circumstances will any dog whose breed is noted for its viciousness or ill-temper, in particular, the "Pit Bull" (as hereinafter defined), Presa Canario, or any crossbreeds of such breeds, be permitted on any portion of the Property. A "Pit Bull" is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying a majority of the physical traits of any one (1) or more of the above breeds, or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club or United Kennel Club for any of the above breeds. No exotic pet or any animal of any kind which has

venom or poisonous defense or capture mechanisms, or if let loose would constitute vermin, shall be allowed on any portion of the Property. Trained seeing-eye dogs will be permitted for those persons holding certificates of blindness and necessity. Other animals will be permitted if such animals serve as physical aides to handicapped persons and such animals have been trained or provided by an agency or service qualified to provide such animals. The guide or assistance animal will be kept in direct custody of the assisted person or the qualified person training the animal at all times when on the Property and the animal shall wear and be controlled by a harness or orange-colored leash and collar. Pets may not be kept, bred or maintained for any commercial purpose. Any pet must be temporarily caged, carried or kept on a leash when outside of a Home. No pet shall be kept outside a Home or on any lanai, unless someone is present in the Home. No dogs will be curbed in any landscaped area or close to any walk, but only in special areas designated by the Association, if any, provided this statement shall not require the Association to designate any such area. An Owner shall immediately pick up and remove any solid animal waste deposited by his or her pet. The Owner shall compensate any person hurt or bitten by his or her pet and shall indemnify the Association and hold it harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having any animal within the Property. If a dog or any other animal becomes obnoxious to other Owners by barking or otherwise, the Owner thereof must cause the problem to be corrected; or, if it is not corrected, the Owner, upon written notice by the Association, will be required to permanently remove the animal from the Property. All pets must be registered, licensed and inoculated as required by law. The Association will promulgate rules and regulations from time to time designating other rules as necessary to regulate pets.

12. Clotheslines. No clothesline or clothes drying which is visible from outside a building shall be undertaken or permitted on any portion of Estero Pointe.

13. Temporary Buildings, Etc. No tents, trailers, sheds, shacks or other temporary buildings or structures shall be constructed or otherwise placed within Estero Pointe except in connection with construction, development, leasing or sales activities permitted under the Declaration or with the prior written consent of the Association. No temporary structure may be used as a residence. No trailer, motor home or recreational vehicle shall be: (a) used as a residence, either temporarily or permanently, or (b) parked upon Estero Pointe.

14. Lake. No docks shall be constructed within or adjacent to the Lake. Owners are prohibited from using the Lake for irrigation purposes. Swimming and watercraft are prohibited in the Lake, however, fishing is permitted in the Lake on a "catch and release" basis only. All tackle, lines or lures must immediately be removed from the fish and the fish is to be returned to the water. Anyone fishing must be licensed to do so as may be required by the State or County.

15. Fences. No fence of any type, including invisible fencing, is permitted to be erected on a Lot without the prior written approval of the ARB.

16. Drainage or Utility Easements. No structures, trees or shrubs shall be placed on any drainage or utility easements, except by Declarant, without the prior written consent of the Association.



17. Slopes and Trees. No Owner may engage in any activity which will change the slope or drainage of a Lot. No additional trees or other landscaping are permitted to be planted on Estero Pointe without the prior written consent of the ARB.

18. Additions and Alterations. No Home shall be enlarged by any addition thereto or to any part thereof, and no Owner shall make any improvement, addition, or alteration to the exterior of his or her Home, or balcony or patio, if applicable, including, without limitation, the painting, staining, or varnishing of the exterior of the Home, including doors, garage doors, gutters, patios, driveways and walkways, without the prior written approval of the ARB as set forth in the Declaration, which approval may be withheld for purely aesthetic reasons, and all applicable governmental entities. Additionally, no Owner shall make any improvement, addition or alteration to the interior of his or her Home that would affect the fire protection, electric, plumbing or other like system without the prior written approval of the ARB.

19. Increase in Insurance Rates. No Owner may engage in any action which may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering or with respect to any portion of the Property not owned by such Owner.

20. Mining, Drilling, or Excavation. There shall be no mining, quarrying or drilling for minerals, oil, gas or otherwise ("Mining Activity") undertaken on the Property. Activities of Declarant, or the Association in dredging, excavating or maintaining drainage or other facilities or easements shall not be deemed Mining Activities nor will the installation of wells or pumps for sprinkler systems in compliance with applicable governmental requirements be deemed a Mining Activity. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

21. Maintenance of Property. The Property and Improvements thereon shall be kept in a good, safe, clean, neat and attractive condition, and all Improvements thereon shall be maintained in a finished, painted and attractive condition. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any portion of the Property, no refuse or unsightly objects shall be allowed to be placed or permitted to remain anywhere thereon, and no grass on said Property shall be permitted to grow to a height in excess of four inches (4") for improved property and ten inches (10") for unimproved property. Excepted from the foregoing shall be all construction debris, refuse, unsightly objects and waste upon any portion of the Property owned by Declarant or its nominee through the period of construction of Homes or other Improvements upon the Property. During construction of a Home or other Improvement upon any portion of the Property, the Owner thereof shall be required to maintain said property in a clean condition and, except for the initial construction of Homes by Declarant or its nominee, to provide receptacles for the disposal of trash and rubbish as well as other construction debris. All such construction debris, refuse, unsightly objects and waste on a portion of the Property must be removed within thirty (30) days after the completion of construction of the Improvement on such portion of the Property, as evidenced by issuance of a certificate of occupancy, if applicable.

Upon the failure of an Owner(s) to (i) maintain the portion of the Property and any Improvement thereon which such party is responsible to maintain in accordance with the requirements of the Declaration and to the satisfaction of the Association and (ii) correct such

deficiencies within fifteen (15) days of written notice by the Association, unless a longer period is authorized by the Association, the Association may enter upon such portion of the Property and make such corrections as may be necessary. The cost of such corrections shall be paid by the Owner who is required to perform such maintenance. If any Owner(s) fails to make payment within fifteen (15) days after requested to do so by the Association, then the payment requested shall be collected as a Benefited Assessment from such Owner and the Association shall be entitled to lien rights upon such Lot requiring such maintenance in accordance with the provisions of the Declaration.

22. Subdivision and Partition. No Lot on the Property shall be subdivided.

23. Casualty Destruction to Improvements. In the event a Home(s) and/or other Improvement(s) upon a Lot(s) is damaged or destroyed by casualty, hazard or other loss then, within a reasonable period of time after such incident, the Owner(s) thereof shall either commence to rebuild or repair the damaged Home(s) or Improvement(s) upon obtaining ARB approval, if required hereunder, diligently continuing such rebuilding or repairing activities to completion or, upon a determination by the Owner(s) thereof that the Home(s) or Improvement(s) will not be repaired or replaced, promptly clear the damaged Home(s) or Improvement(s) and grass over and landscape such Lot(s) as applicable, in a sightly manner consistent with Declarant's plan for beautification of Estero Pointe. Any damaged or destroyed Home(s) and other Improvements shall only be repaired or replaced with Home(s) and other Improvements of a similar size and type as those damaged or destroyed and without substantial alteration from what existed prior to the damage or destruction, unless the prior written approval of the ARB is obtained.

24. Common Area. Nothing shall be stored and/or constructed within or removed from any Common Area other than by Declarant, except with the prior written approval of the Association.

25. Buffer Easement and Drainage Easement. No Improvement on a Lot shall be placed within a Buffer Easement and Drainage Easement, and any Improvement placed within the Buffer Easement and Drainage Easement shall be removed by Declarant or by the Association. The cost of such removal shall be assessed against such Owner(s) as a Benefited Assessment.

26. Boats, Recreational Vehicles and Commercial Vehicles. No motor homes, trailers, recreational vehicles, boats, campers, vans or trucks used for commercial purposes, gas powered scooters, all-terrain vehicles and gas powered recreational vehicles, other than four-wheel passenger automobiles and other four-wheel passenger vehicles determined acceptable by the Association shall be permitted to be parked on any portion of Estero Pointe, except for trucks furnishing goods and services during the daylight hours and except as the Association may designate for such use by appropriate rules and regulations. The Association shall have the right to authorize the towing away of any vehicles in violation of these provisions with the costs to be borne by the owner or violator. In addition, the Board shall adopt rules and regulations from time to time regulating and limiting the size, weight, type and place and manner of operation of vehicles in Estero Pointe.

27. Vehicular Parking. No person, firm or corporation shall park or cause to be parked any vehicle on any portion of the Property other than in driveways or other specifically designated parking areas located on the Property. The foregoing, however, shall not: (i) apply to Owners who have construction in progress on their particular Lot; (ii) prohibit routine deliveries by tradesmen, or the use of trucks or commercial vans in making service calls and short term visits; (iii) apply to a situation where a vehicle becomes disabled and, as a result of an emergency, is required to be parked within Estero Pointe until it can be towed away; and (iv) apply to vehicles used in connection with construction, development or sales activities permitted under the Declaration.

No person, firm or corporation shall maintain or repair any vehicle (including, but not limited to, four-wheel passenger automobiles) upon any portion of the Property; provided, however, Declarant its successors, nominees or assigns and the Association may make, or cause to be made, such repairs if necessary in regard to vehicles used in connection with construction, sales or management at Estero Pointe. Vehicles which are missing one or more wheels, have one or more deflated tires, are not in an operating condition, or do not have current valid license plates shall not remain upon any portion of the Property for more than two (2) consecutive days. No Owner or his or her family members, guests, invitees or lessees or their family members, guests, or invitees shall be permitted to keep any vehicle on the Property which is deemed to be a nuisance by the Association or Declarant.

28. Garages. No garage shall be permanently enclosed so as to make such garage unusable by an automobile, and no portion of a garage originally intended for the parking of an automobile shall be converted into a living space or storage space and no garage opening shall have a screen covering without the consent of the Association. All garage doors shall remain closed when vehicles are not entering or leaving the garage.

29. Window Decor. No newspaper, aluminum foil, sheets or other temporary window treatments shall be permitted, except for periods not exceeding two (2) weeks after an Owner or lessee first moves into a Home or when permanent window treatments are being cleaned or repaired. Window tinting is permitted provided that the type and method of tinting is first approved by the ARB.

30. Hurricane Shutters. No hurricane shutters may be installed, other than the type originally installed by Developer and/or a Builder, without the prior written consent of the ARB, which consent may not be unreasonably withheld. If the installation of hurricane shutters is made which does not conform to the specifications approved by the ARB, then the hurricane shutters will be made to conform by the ARB at the Owner's expense or they shall be removed.

Approved hurricane shutters shall not be installed or closed, as applicable, before the issuance of a hurricane watch by the National Hurricane Center encompassing Estero Pointe location, and shall be removed no later than ten (10) days after the cessation of a hurricane watch or warning for same ("Hurricane Shutter Time Period"), however, if the hurricane shutters are clear in color they shall be allowed to remain installed or closed, as applicable, if the Owners are absent during hurricane season.

Each Owner who plans to be absent from his or her Home during the hurricane season must prepare his or her Lot prior to such Owner's departure by (a) removing all furniture, potted plants and other movable objects from his or her porch, balcony or patio, if any; (b) designating a responsible firm or individual satisfactory to the Association to install and remove hurricane shutters in accordance with the Hurricane Standards and the Hurricane Shutter Time Period requirements; and (c) designating a responsible firm or individual satisfactory to the Association to care for the Home should the Home suffer hurricane damage. Such firm or individual shall contact the Association for clearance to install or remove hurricane shutters pursuant to the Declaration.

31. Landscaping, Lawn Décor, and Improvements. No Improvements of any kind including, without limitation, any building, shed, play structure, basketball hoops, soccer goals, swing sets, athletic/play equipment, wall, topographical feature, mailbox, landscaping, lawn sculpture, fence, swimming pool, tennis court or screened enclosure shall be erected, placed or maintained, and no addition, alteration, modification or change to any such Improvement shall be made without the prior written approval of the ARB, including, but not limited to, painting the Home in a color other than the color originally placed by Declarant on the painted surface.

32. Basketball Backboards. No garage, roof mounted, portable or in-ground mounted basketball backboards are permitted. Portable basketball hoops are permitted subject to application to the Association, approval by the ARB and comply with all guidelines that may be established by the Association and the ARB.

33. Water Supply. No individual water supply system for drinking purposes or household use shall be permitted on any Lot, including for irrigation or sprinkler purposes.

34. Sewage Disposal. No individual sewage disposal system shall be permitted on the Property.

35. Yard Sales. No yard sales or neighborhood sales shall be permitted on any Lot or any other area in Estero Pointe unless approved in writing by the Board.

36. All powered vehicles capable of exceeding five (5) miles per hour are prohibited from use within Estero Pointe uproperty nless they are licensed, registered, and insured. Specifically, any motorcycle, moped, or motorized scooter used in Estero Pointe may only be driven by a licensed driver, and must be registered and insured in accordance with Florida law. Specifically exempted from this regulation are electric personal assistive mobility devices as defined under Florida Statute, Section 316.003(83); and any other bona-fide "assistive technology devices" as defined in Florida Statute, Section 427.802(1); and any special mobile equipment as defined under Florida Statute, Section 316.003(48) provided that such equipment may not be operated in a manner that creates a traffic hazard, or which poses a threat of harm to the user of such equipment.

37. Flags. An Owner may display one portable, removable United States flag in a respectful manner, and one portable, removable official flag in a respectful manner, not larger than 4½ feet by 6 feet, that represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag. An Owner may erect a freestanding flagpole no more than

20 feet high on any portion of the Owner's Lot if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The Owner may further display in a respectful manner from that flagpole, one official United States flag, not larger than 4½ feet by 6 feet, and may additionally display one official flag of the State of Florida or the United States Army, Navy, Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such additional flag must be equal in size to or smaller than the United States flag. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the City and all setback and locational criteria contained in the Declaration.

38. Lighting. Except for seasonal decorative lights, which may be displayed between December 1 and January 10 only, all exterior lights must be approved in writing by the Board.

39. Pools. No above ground pools shall be erected, constructed or installed on any Lot.

40. Unsightly Conditions. All weeds, rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from the Homes and/or Lots, and shall not be allowed to accumulate thereon. All refuse containers (except on scheduled trash pick-up days), all machinery and equipment, and other similar items of personal property shall be obscured from view of adjoining streets, Homes, Lots or Common Area. All Homes and/or Lots shall be kept in a clean and sanitary condition and no rubbish, refuse, or garbage shall be allowed to accumulate, or any fire hazard allowed to exist. In the event an Owner fails to maintain his Home and/or Lot as required, for a period of at least thirty (30) days, the Association shall have the right, exercisable in its discretion, to clear any rubbish, refuse, or unsightly debris and/or growths from any Home and/or Lot deemed by the Association to be a health menace, fire hazard or a detraction from the aesthetic appearance of Estero Pointe; provided, however, that at least fifteen (15) days prior notice shall be given by the Association to the Owner of such Home and/or Lot before such work is done by the Association. In the event the Association, after such notice, causes the subject work to be done, then, and in that event, the costs of such work, together with interest thereon at the maximum rate permitted by the usury laws of the State of Florida, shall be charged to the Owner as a Benefited Assessment and shall become a lien on the Home and/or Lot, which lien shall be effective, have priority and be enforced pursuant to the procedures set forth in the Declaration.

41. Subdivision of Home. Homes shall not be further subdivided or separated by any Owner, and no portion less than all of any such Home, nor any easement shall be conveyed or transferred by an Owner; provided, however, that this shall not prevent corrective deeds, deeds to resolve boundary disputes and other similar corrective instruments. Declarant, however, hereby expressly reserves the right to subdivide, replat, or otherwise modify the boundary lines of any Home or Homes owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable County subdivision and zoning regulations.

42. Energy Conservation Equipment. All solar heating apparatus must conform to the standards set forth in the HUD Intermediate Minimum Property Standards Supplement, Solar Heating, and domestic Water Systems. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and

harmonious part of the architectural design of a structure, as reasonably determined by the ARB. No solar panel, vents, or other roof-mounted, mechanical equipment shall project more than 1.5 feet above the surface of the roof of a Home; and all such equipment shall be painted consistent with the color scheme of the roof of the Home. This provision is not intended to prohibit the use of solar energy devices.

43. Recreation Areas. Any recreational facilities and playgrounds furnished by the Association or erected within the Property, if any, shall be used at the risk of the user, and the Association shall not be held liable to any person or persons for any claim, damage, or injury occurring thereon or related to use thereof.

44. Compliance with Governing Documents. Each Owner and their family members, guests, invitees, and lessees and their family members, guests and invitees shall be bound by and abide by the Governing Documents. The conduct of the foregoing parties shall be considered to be the conduct of the Owner responsible for, or connected in any manner with, such individual's presence within Estero Pointe. Such Owner shall be liable to the Association and shall pay the cost of any maintenance, repair or replacement of any real or personal property located on the Common Area rendered necessary by his or her act, neglect or carelessness, or by that of any other of the foregoing parties as a Benefited Assessment.

45. No Implied Waiver. The failure of the Association or Declarant to object to an Owner's or other party's failure to comply with the covenants or restrictions contained herein or any other Governing Document (including the rules now or hereafter promulgated) shall in no event be deemed a waiver by Declarant, the Association, or of any other party having an interest in the Property of its right to object to same and to seek compliance in accordance with the provisions of the Governing Documents.

46. Certain Rights of Declarant. The provisions, restrictions, terms and conditions of these Use Restrictions shall not apply to Declarant as an Owner.

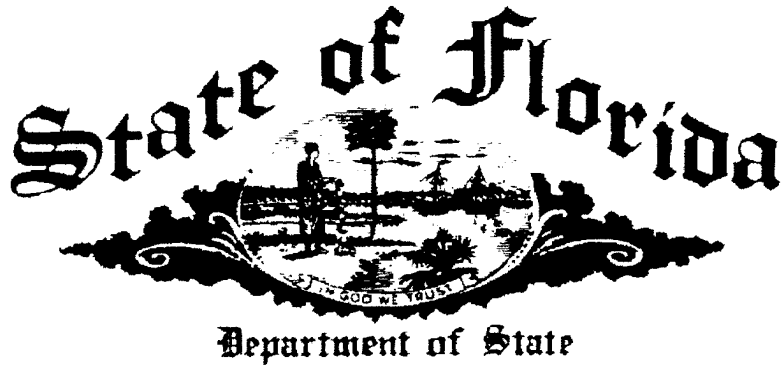
47. Board's Rule-Making Power. The foregoing Use Restrictions shall not be deemed to be all inclusive nor restrict the right of the Association to adopt such reasonable rules and regulations governing the use of Estero Pointe as the Board may determine from time to time, provided that such rules and regulations: (i) are not in conflict with the provisions hereof; (ii) apply equally to all lawful residents of Estero Pointe without discriminating on the basis of whether a Home is occupied by an Owner or his or her lessee; and (iii) for so long as Declarant holds any Homes within Estero Pointe for sale in the ordinary course of its business, have the prior written approval of Declarant. Declarant has the right to approve any rule or modification thereof.

**EXHIBIT "D"**

**ARTICLES OF INCORPORATION OF  
ESTERO POINTE COMMUNITY ASSOCIATION, INC.**

850-617-6381

8/10/2016 10:33:02 AM PAGE 1/003 Fax Server



I certify from the records of this office that ESTERO POINTE COMMUNITY ASSOCIATION, INC. is a corporation organized under the laws of the State of Florida, filed on August 9, 2016.

The document number of this corporation is N16000007828.

I further certify that said corporation has paid all fees due this office through December 31, 2016, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code, 116A00016862-081016-N16000007828-1/1, noted below.

Authentication Code: 116A00016862-081016-N16000007828-1/1



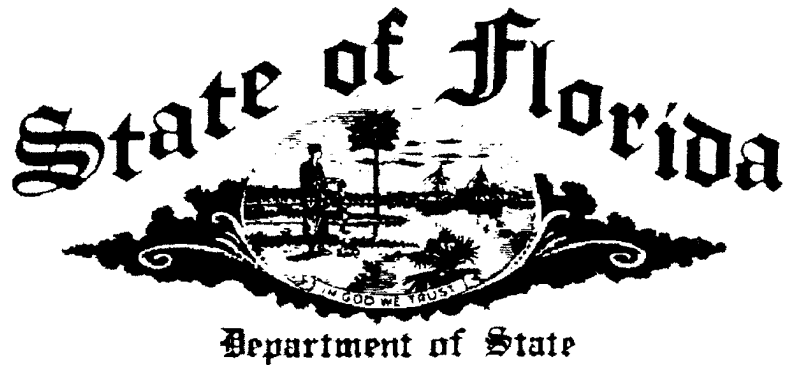
Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Tenth day of August, 2016

*Ken Detzner*  
Ken Detzner  
Secretary of State



850-617-6381

8/10/2016 10:33:02 AM PAGE 2/003 Fax Server



I certify the attached is a true and correct copy of the Articles of Incorporation of ESTERO POINTE COMMUNITY ASSOCIATION, INC., a Florida corporation, filed on August 9, 2016, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H16000195394. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N16000007828.

Authentication Code: 116A00016862-081016-N16000007828-1/1

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Tenth day of August, 2016



*Ken Detzner*  
Ken Detzner  
Secretary of State

850-617-6381

8/10/2016 10:33:02 AM PAGE 3/003 Fax Server



August 10, 2016

FLORIDA DEPARTMENT OF STATE  
Division of Corporations

ESTERO POINTE COMMUNITY ASSOCIATION, INC.  
551 NORTH CATTLEMEN ROAD, SUITE 200  
SARASOTA, FL 34232

The Articles of Incorporation for ESTERO POINTE COMMUNITY ASSOCIATION, INC. were filed on August 9, 2016, and assigned document number N16000007828. Please refer to this number whenever corresponding with this office.

Enclosed is the certification requested. To be official, the certification for a certified copy must be attached to the original document that was electronically submitted and filed under FAX audit number H16000195394.

To maintain "active" status with the Division of Corporations, an annual report must be filed yearly between January 1st and May 1st beginning in the year following the file date or effective date indicated above. It is your responsibility to remember to file your annual report in a timely manner.

A Federal Employer Identification Number (FEI/EIN) will be required when this report is filed. Apply today with the IRS online at:

<https://sa.www4.irs.gov/modiein/individual/index.jsp>.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have questions regarding corporations, please contact this office at (850) 245-6052.

Valerie Herring  
Regulatory Specialist II  
New Filings Section  
Division of Corporations

Letter Number: 116A00016862

P.O BOX 6327 - Tallahassee, Florida 32314

**ARTICLES OF INCORPORATION  
OF  
ESTERO POINTE COMMUNITY ASSOCIATION, INC.  
(A Florida Corporation Not For Profit)**

In order to form a corporation not for profit under and in accordance with the provisions of Chapters 617 and 720 of the Florida Statutes, the undersigned hereby incorporates this corporation not for profit for the purposes and with the powers hereinafter set forth and, to that end, the undersigned, by these Articles of Incorporation, certifies as follows:

**ARTICLE I  
DEFINITIONS**

The following words and phrases when used in these Articles of Incorporation (unless the context clearly reflects another meaning) shall have the following meanings, or if not defined below as defined in the Declaration.

1. "Architectural Guidelines" means those design guidelines, rules and procedures established by Declarant pursuant to Section 4.3 of the Declaration, as may be amended from time to time by the Architectural Review Board (as defined in Article II, Section 2.1, of the Declaration).
2. "Articles" means these Articles of Incorporation and any amendments hereto.
3. "Assessments" means the assessments for which all Owners are obligated to the Association and includes "Individual Lot Assessments," "Benefited Assessments," and "Special Assessments" (as such terms are defined in the Declaration) and any and all other assessments which are levied by the Association in accordance with the Governing Documents.
4. "Association" means Estero Pointe Community Association, Inc., a Florida corporation not for profit. The "Association" is NOT a condominium association and is not intended to be governed by Chapter 718, the Condominium Act, Florida Statutes.
5. "Board" means the Board of Directors of the Association.
6. "Builder" means Taylor Morrison of Florida, Inc., a Florida corporation, or its successors or assigns, and any other entity(ies) Declarant may designate as a Builder. Declarant shall have the right to assign, in whole or in part, any of its rights and/or responsibilities under the Declaration to a Builder(s).
7. "Bylaws" means the Bylaws of the Association and any amendments thereto.
8. "Common Area" means the property more particularly described in Article XI of the Declaration.

9. "Community" or "Estero Pointe" means the real property described in Exhibit "A" to the Declaration together with such additional property as is subjected to the Declaration in accordance with Article X of the Declaration.

10. "County" means Lee County, Florida.

11. "Declarant" means Taylor Morrison of Florida, Inc., a Florida corporation, or any successor or assign that is designated as Declarant in a recorded instrument which the immediately preceding Declarant executes. Any Person who at any time holds the rights of Declarant hereunder and subsequently transfers or assigns the rights of Declarant to another Person shall be known as a "Predecessor Declarant" and, unless otherwise agreed in writing, shall be entitled to the rights of a Predecessor Declarant established in the Declaration. Whether or not specifically stated, a Predecessor Declarant shall be afforded the same protection with respect to matters arising during its tenure as Declarant as the predecessor Declarant would have if it were still Declarant.

12. "Declaration" means the Declaration of Covenants, Conditions, Restrictions and Easements for Estero Pointe, which is intended to be recorded amongst the Public Records of the County, and any amendments thereto.

13. "Director" means a member of the Board.

14. "Governing Documents" means in the aggregate the Declaration, these Articles and the Bylaws and all of the instruments and documents referred to therein, including, but not limited to, any Amendment(s) and Supplemental Declaration(s).

15. "HOA Act" means the homeowners' association act, Chapter 720, Florida Statutes, as amended through the date the Declaration is recorded amongst the Public Records of the County.

16. "Home" means a residential dwelling unit constructed or to be constructed within Estero Pointe, which is designed and intended for use and occupancy as a single family residence. The term "Home" shall include the "Lot" as defined in the Declaration.

17. "Lot" means a portion of the Community, whether improved or unimproved, which may be independently owned and conveyed, and which is improved, or intended to be improved, with a Home. The term shall refer to the land, if any, which is part of the Lot as well as any improvements on the Lot. The boundaries of each Lot are shown on the Plat. Upon completion of construction of the Home on a Lot, such Lot and the improvements thereon shall collectively be considered to be a Home for purposes of these Articles and the other Governing Documents.

18. "Member" means a member of the Association.

19. "Operating Expenses" means the expenses for which Owners are liable to the Association as described in the Declaration and any other Governing Documents and include, but are not limited to, the costs and expenses incurred by the Association in administering, operating,

maintaining, financing, or repairing, but not reconstructing, replacing or improving, the Common Area and improvements thereon and all costs and expenses incurred by the Association in carrying out its powers and duties hereunder or under any other Governing Documents.

20. "Owner" means the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot within Estero Pointe, and includes Declarant for as long as Declarant owns fee simple title to a Lot, but excluding therefrom those having such interest as security for the performance of an obligation.

21. "Property" shall mean the real property subjected to the Declaration from time to time.

Unless otherwise defined herein, the terms defined in the Declaration are incorporated herein by reference and shall appear in initial capital letters each time such terms appears in these Articles.

## ARTICLE II NAME

The name of this corporation shall be ESTERO POINTE COMMUNITY ASSOCIATION, INC. (hereinafter referred to as the "Association"). Its principal office and mailing address is 551 North Cattlemen Road, Suite 200, Sarasota, Florida 34232.

## ARTICLE III PURPOSES

The purpose for which the Association is organized is to take title to, operate, administer, finance, insure, repair, replace, manage and maintain the Common Area in accordance with the terms of, and purposes set forth in, the Governing Documents and to carry out the covenants and enforce the provisions of the Governing Documents.

## ARTICLE IV POWERS

The Association shall have the following powers and shall be governed by the following provisions:

A. The Association shall have all of the common law and statutory powers of a corporation not for profit.

B. The Association shall have all of the powers granted to the Association in the Governing Documents. All of the provisions of the Declaration and Bylaws which grant powers to the Association are incorporated into these Articles.

C. The Association shall have all of the powers reasonably necessary to implement the purposes of the Association, including, but not limited to, the following:

1. To perform any act required or contemplated by it under the Governing Documents.

2. To make, establish, amend, abolish (in whole or in part) and enforce reasonable rules and regulations governing the use of the Common Area.

3. To make, levy and collect Assessments for the purpose of obtaining funds from its Members to pay Operating Expenses and other costs defined in the Declaration and costs of collection, and to use and expend the proceeds of Assessments in the exercise of the powers and duties of the Association.

4. To enforce by legal means the obligations of the Members and the provisions of the Governing Documents.

5. To employ personnel, retain independent contractors and professional personnel, and enter into service contracts to provide for the maintenance, operation, administration, financing, insuring, repairing, replacing and management of the Common Area and to enter into any other agreements consistent with the purposes of the Association, including, but not limited to, agreements with respect to professional management of the Common Area and to delegate to such professional management certain powers and duties of the Association.

6. To enter into the Declaration and any amendments thereto and instruments referred to therein.

7. To provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of things listed above or to carry out the Association mandate to keep and maintain Estero Pointe in a proper and aesthetically pleasing condition and to provide the Owners with services, amenities, controls, rules and regulations and enforcement which will enhance the quality of life at Estero Pointe.

8. To borrow money and to obtain such financing as is necessary to maintain, repair and replace the Common Area, in accordance with the Declaration and, as security for any such loan, to collaterally assign the Association's right to collect and enforce Assessments levied for the purpose of repaying any such loan.

9. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval (at a duly called meeting of the Members at which a quorum is present) of seventy-five percent (75%) of all Members of the Association prior to the engagement of legal counsel by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

(a) the collection of Assessments;

(b) the collection of other charges which Owners are obligated to pay pursuant to the Governing Documents;

- (c) the enforcement of any applicable use and occupancy restrictions contained in the Governing Documents;
- (d) the enforcement of Association rules;
- (e) the enforcement of the Architectural Guidelines;
- (f) the enforcement of a contract entered into by the Association with vendors providing services to the Association;
- (g) dealing with an emergency when waiting to obtain the approval of the Members creates a substantial risk of irreparable injury to the Common Area or to Member(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4) of the Members); or
- (h) filing a compulsory counterclaim.

The costs of any legal proceedings initiated by the Association, which are not included in the above exceptions shall be financed by the Association only with monies that are collected for that purpose by Special Assessment(s) and the Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations.

10. To own, maintain, repair, replace, operate and convey the Common Area in accordance with the Governing Documents and to operate, maintain, and manage the Surface Water and Storm Water Management System in a manner consistent with the requirements of SFWMD Permit (as defined in the Declaration) and applicable rules; to assist in the enforcement of the Declaration's provisions relating to the Surface Water and Storm Water Management System; and to levy and collect adequate Assessments against Owners for the cost of maintenance and operation of the Surface Water and Storm Water Management System.

#### ARTICLE V MEMBERS AND VOTING

The qualification of Members of the Association, the manner of their admission to membership, the manner of the termination of such membership and the manner of voting by Members shall be as follows:

A. Until such time as the first deed of conveyance of a Home from Declarant to an Owner is recorded amongst the Public Records of the County ("First Conveyance"), the membership of the Association shall be comprised solely of Declarant. Until the First Conveyance, Declarant shall be entitled to cast the one (1) and only vote on all matters requiring a vote of the membership.

B. Upon the First Conveyance, Declarant shall be a Member as to each of the remaining Lots until each such Lot is conveyed to another Owner, and thereupon and thereafter each and every Owner, including Declarant as to Lots owned by Declarant, shall be a Member and exercise all of the rights and privileges of a Member.

C. Membership in the Association for Owners other than Declarant shall be established by the acquisition of ownership of fee simple title to a Lot as evidenced by the recording of an instrument of conveyance amongst the Public Records of the County. Where title to a Lot is acquired by conveyance from a party other than Declarant by means of sale, gift, inheritance, devise, judicial decree or otherwise, the person, persons or entity thereby acquiring such Lot shall not be a Member unless or until such Owner shall deliver a true copy of a deed or other instrument of acquisition of title to the Association.

D. The Association shall have two (2) classes of voting membership:

1. Class "A" Members shall be the Owners of Lots in Pebble Point, with the exception of Declarant while Declarant is a Class "B" Member, each of whom shall be entitled to one (1) vote for each Lot owned.

2. "Class B Member" shall be Declarant, who shall be entitled to three times the total number of votes of the Class "A" Members plus one. Class "B" membership shall cease and be converted to Class "A" membership upon the earlier to occur of the following events ("Turnover Date"):

(a) Three (3) months after the conveyance of ninety percent (90%) of the Homes by Declarant, as evidenced by the recording of instruments of conveyance of such Homes amongst the Public Records of the County;

(b) upon the Class "B" Member abandoning or deserting its responsibility to maintain and complete the amenities or infrastructure as disclosed in the Governing Documents;

(c) upon the Class "B" Member filing a petition seeking protection under Chapter 7 of the Federal Bankruptcy Code;

(d) upon the Class "B" Member losing title to the Property through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of developer rights and responsibilities first arising after the date of such assignment;

(e) upon a receiver for the Class "B" Member being appointed by a circuit court and not being discharged within thirty (30) days after such appointment, unless the court determines within thirty (30) days after such appointment that transfer of control would be detrimental to the Association or the Members; or

(f) at such time as Declarant shall designate in writing to the Association.

On the Turnover Date, Class "A" Members, including Declarant, shall assume control of the Association and elect not less than a majority of the Board.



Members other than Developer are entitled to elect at least one (1) member of the Board when fifty percent (50%) of the Homes in all phases of Estero Pointe which will ultimately be operated by the Association have been conveyed to Members.

E. The designation of different classes of membership are for purposes of establishing the number of votes applicable to certain Lots, and nothing herein shall be deemed to require voting solely by an individual class on any matter which requires the vote of Members, unless otherwise specifically set forth in the Governing Documents.

F. No Member may assign, hypothecate or transfer in any manner his or her membership in the Association except as an appurtenance to his or her Lot.

G. Any Member who conveys or loses title to a Lot by sale, gift, devise, bequest, judicial decree or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Lot and shall lose all rights and privileges of a Member resulting from ownership of such Lot.

H. There shall be only one (1) vote for each Lot, except for the Class "B" Member as set forth herein. If there is more than one (1) Member with respect to a Lot as a result of the fee interest in such Lot being held by more than one (1) person, such Members collectively shall be entitled to only one (1) vote. The vote of the Owners of a Lot owned by more than one (1) natural person or by a corporation or other legal entity shall be cast by the person named (the "Voting Member") in a voting certificate signed by all of the Owners of the Lot, or, if appropriate, by properly designated officers, partners or principals of the respective legal entity and filed with the Secretary of the Association, and such voting certificate shall be valid until revoked by a subsequent voting certificate. If such a voting certificate is not filed with the Secretary of the Association, the vote of such Lot shall not be considered for a quorum or for any other purpose.

Notwithstanding the foregoing provisions, whenever any Lot is owned by a husband and wife they may, but shall not be required to, designate a Voting Member. In the event a voting certificate designating a Voting Member is not filed by the husband and wife, the following provisions shall govern their right to vote:

1. When both are present at a meeting, each shall be regarded as the agent and proxy of the other for purposes of casting the vote for each Lot owned by them. In the event they are unable to concur in their decision upon any topic requiring a vote, they shall lose their right to vote on that topic at that meeting, but shall count for purposes of establishing a quorum.

2. When only one (1) spouse is present at a meeting, the person present may cast the Lot vote without establishing the concurrence of the other spouse, absent any prior written notice to the contrary by the other spouse. In the event of prior written notice to the contrary to the Association by the other spouse, the vote of said Lot shall not be considered, but shall count for purposes of establishing a quorum.

3. When neither spouse is present, the person designated in a "Proxy" (as defined in the Bylaws) signed by either spouse may cast the Lot vote, when voting by Proxy is

allowed, absent any prior written notice to the contrary to the Association by the other spouse or the designation of a different Proxy by the other spouse. In the event of prior written notice to the contrary to the Association or the designation of a different Proxy by the other spouse, the vote of said Lot shall not be considered, but shall count for purposes of establishing a quorum.

I. A quorum shall consist of persons entitled to cast at least twenty percent (20%) of the total number of votes of the Members.

#### ARTICLE VI TERM

The term for which this Association is to exist shall be perpetual. In the event of dissolution of the Association (unless same is reinstated), other than incident to a merger or consolidation, all of the assets of the Association shall be conveyed to a similar homeowners association or a public agency having a similar purpose, or any Member may petition the appropriate circuit court of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Association and its properties in the place and stead of the dissolved Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and its properties.

In the event of the Association's termination, dissolution, or final liquidation, the responsibility for the operation and maintenance of the Surface Water and Storm Water Management System must be transferred to and accepted by an entity which complies with Section 40.E F.A.C. and is approved by the South Florida Water Management District ("SFWMD") prior to such termination, dissolution, or liquidation.

#### ARTICLE VII INCORPORATOR

The name and address of the Incorporator of these Articles are: Mark F. Grant, 200 East Broward Boulevard, Suite 1800, Fort Lauderdale, Florida 33301.

#### ARTICLE VIII OFFICERS

The affairs of the Association shall be managed by the President of the Association, assisted by the Vice President(s), Secretary and Treasurer, and, if any, by the Assistant Secretary(ies) and Assistant Treasurer(s), subject to the directions of the Board. Except for officers elected prior to the Turnover Date, officers must be Members, or the parents, children or spouses of Members.

The Board shall elect the President, Secretary and Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall, from time to time, determine. The President shall be elected from amongst the membership of the Board, but no other officer need be a Director. The same person may hold two or more offices, the duties of which are not incompatible; provided, however, the office of President and a Vice President shall

not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary or Treasurer or Assistant Treasurer be held by the same person.

**ARTICLE IX**  
**FIRST OFFICERS**

The names of the officers who are to serve until the first election of officers by the Board are as follows:

President	Anthony J. Burdett
Vice President	Christopher G. Long
Vice President	Cammie Larhae Longenecker
Vice President	Drew Miller
Treasurer	Christopher G. Long
Secretary	Drew Miller

**ARTICLE X**  
**BOARD OF DIRECTORS**

A. The number of Directors on the first Board of Directors of the Association ("First Board") and the "Initial Elected Board" (as hereinafter defined) shall be three (3). The number of Directors elected by the Members subsequent to the "Declarant's Resignation Event" (as hereinafter defined) shall be an odd number of no less than three (3) and no more than seven (7). The Board shall determine the number of Directors to comprise the Board from time to time. Except for Declarant-appointed Directors, Directors must be Members or the parents, children or spouses or shareholders, members, officers or directors of Members. There shall be only one (1) vote for each Director.

B. The names and addresses of the persons who are to serve as Directors on the First Board are as follows:

<u>NAMES</u>	<u>ADDRESSES</u>
Anthony Burdett	551 N. Cattlemen Road, Suite 200 Sarasota, FL 34232
Drew Miller	551 N. Cattlemen Road, Suite 200 Sarasota, FL 34232
Christopher G. Long	551 N. Cattlemen Road, Suite 200 Sarasota, FL 34232

Declarant reserves the right to replace and/or designate and elect successor Directors to serve on the First Board for so long as the First Board is to serve, as hereinafter provided.

C. Declarant intends that Estero Pointe, if and when ultimately developed, will contain approximately sixty-four (64) Lots with Homes constructed thereon (collectively, "Total Developed Lots"). Notwithstanding the foregoing, however, Declarant has reserved the right in the Declaration to modify the Development Plan (as defined in the Declaration) for Estero Pointe, to add land to and withdraw land from Estero Pointe and the change the number of types of Homes to be constructed therein.

D. Upon the Turnover Date, the Members (including Declarant) shall be entitled to elect all the Directors. The election shall occur at a special meeting of the membership to be called by the Board for such purpose ("Initial Election Meeting"). The First Board shall serve until the Initial Election Meeting.

E. The Board shall continue to be so designated and elected, at each subsequent "Annual Members' Meeting" (as defined in the Bylaws).

F. A Director (other than a Declarant-appointed Director) may be removed from office upon the affirmative vote or the agreement in writing of a majority of the voting interests of Members for any reason deemed to be in the best interests of the Members. A meeting of the Purchaser Members to so remove a Director (other than a Declarant-appointed Director) shall be held upon the written request of ten percent (10%) of the Members. Any such recall shall be effected and a recall election shall be held, if applicable, as provided in the HOA Act.

G. The Initial Election Meeting shall be called by the Association through the Board, within sixty (60) days after the Members other than Declarant are entitled to elect a majority of Directors as provided in Paragraph D hereof. A notice of meeting shall be forwarded to all Members in accordance with the Bylaws; provided, however, that the Members shall be given at least fourteen (14) days' notice of such meeting. The notice shall also specify the number of Directors which shall be elected by the Members.

H. At the Initial Election Meeting, a "staggered" term of office of the Board shall be created as follows:

1. a number equal to fifty percent (50%) of the total number of Directors rounded to the nearest whole number is the number of Directors whose term of office shall be established at two (2) years and the Directors serving for a two (2) year term will be the Directors receiving the most votes at the meeting; and

2. the remaining Directors' terms of office shall be established at one (1) year.

At each Annual Members' Meeting thereafter, as many Directors of the Association shall be elected as there are Directors whose regular term of office expires at such time, and the term of office of the Directors so elected shall be for two (2) years, expiring when their successors are duly elected and qualified.

F. The Board shall continue to be so designated and elected, at each subsequent "Annual Members' Meeting" (as defined in the Bylaws).

G. A Director (other than a Declarant-appointed Director) may be removed from office upon the affirmative vote or the agreement in writing of a majority of the voting interests of Members for any reason deemed to be in the best interests of the Members. A meeting of the Purchaser Members to so remove a Director (other than a Declarant-appointed Director) shall be held upon the written request of ten percent (10%) of the Members. Any such recall shall be effected and a recall election shall be held, if applicable, as provided in the HOA Act.

H. The resignation of a Director who has been designated by Declarant or the resignation of an officer of the Association who has been elected by the First Board shall be deemed to remise, release, acquit, satisfy and forever discharge such officer or Director of and from any and all manner of action(s), cause(s) of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the Association or the Members had, now have or will have or which any personal representative, successor, heir or assign of the Association or the Members hereafter can, shall or may have against said officer or Director for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of such resignation, except for such Director's or officer's willful misconduct or gross negligence.

#### ARTICLE XI INDEMNIFICATION

Each and every Director and officer of the Association shall be indemnified by the Association against all costs, expenses and liabilities, including attorney and paralegal fees at all trial and appellate levels and postjudgment proceedings, reasonably incurred by or imposed upon him or her in connection with any negotiation, proceeding, arbitration, litigation or settlement in which he or she becomes involved by reason of his or her being or having been a Director or officer of the Association, and the foregoing provision for indemnification shall apply whether or not such person is a Director or officer at the time such cost, expense or liability is incurred. Notwithstanding the above, in the event of any such settlement, the indemnification provisions provided in this Article XI shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the costs and expenses of such settlement as being in the best interest of the Association, and in the event a Director or officer admits that he or she is or is adjudged guilty of willful misconduct or gross negligence in the performance of his or her duties, the indemnification provisions of this Article XI shall not apply. The foregoing right of indemnification provided in this Article XI shall be in addition to and not exclusive of any and all rights of indemnification to which a Director or officer of the Association may be entitled under statute or common law.

#### ARTICLE XII BYLAWS

The Bylaws shall be adopted by the First Board, and thereafter may be altered, amended or rescinded in the manner provided for in the Bylaws. In the event of any conflict between the

provisions of these Articles and the provisions of the Bylaws, the provisions of these Articles shall control.

### ARTICLE XIII AMENDMENTS

A. Prior to the First Conveyance, these Articles may be amended only by an instrument in writing signed by Declarant and filed in the Office of the Secretary of State of the State of Florida.

B. After the First Conveyance, and prior to the Turnover Date, these Articles may be amended solely by a majority vote of the Board, without the prior written consent of the Members, at a duly called meeting of the Board.

C. After the Turnover Date, these Articles may be amended in the following manner:

1. (a) The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the Members, which may be at either the Annual Members' Meeting or a special meeting. Any number of proposed amendments may be submitted to the Members and voted upon by them at one (1) meeting.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each Member within the time and in the manner provided in the Bylaws for the giving of notice of meetings.

(c) At such meeting, a vote of the Members shall be taken on the proposed amendment(s). The proposed amendment(s) shall be adopted upon receiving the affirmative vote of a majority of the number of Members in the Association.

2. An amendment may be adopted by a written statement (in lieu of a meeting) signed by all Members and all members of the Board setting forth their intention that an amendment to the Articles be adopted.

D. These Articles may not be amended without the written consent of a majority of the members of the Board.

E. Notwithstanding any provisions of this Article XIII to the contrary, these Articles shall not be amended in any manner which shall abridge, prejudice, amend or alter the rights of: (i) Declarant, without the prior written consent thereto by Declarant, for so long as Declarant holds either a leasehold interest in or title to at least one (1) Lot; and (ii) any "Institutional Mortgagee" (as such term is defined in the Declaration) without the prior written consent of such Institutional Mortgagee.

F. Notwithstanding the foregoing provisions of this Article XIII to the contrary, no amendment to these Articles shall be adopted which shall abridge, prejudice, amend or alter the rights of Declarant hereunder, including, but not limited to, Declarant's right to designate and select members of the First Board or otherwise designate and select Directors as provided in

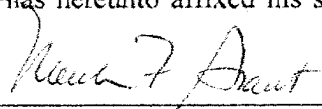
Article X hereof, nor shall any other amendment be adopted or become effective without the prior written consent of Declarant.

G. Any instrument amending these Articles shall identify the particular article or articles being amended and shall provide a reasonable method to identify the amendment being made. A certified copy of each such amendment shall be attached to any certified copy of these Articles, and a copy of each amendment certified by the Secretary of State shall be recorded amongst the Public Records of the County.

ARTICLE XIV  
REGISTERED OFFICE AND REGISTERED AGENT

The street address of the initial registered office of the Association is 1200 South Pine Island Road, Plantation, Florida 33324, and the initial registered agent of the Association at that address shall be NRAI Services, Inc.

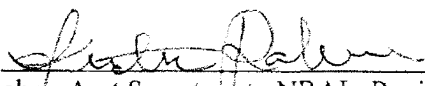
IN WITNESS WHEREOF, the Incorporator has hereunto affixed his signature, this 9<sup>th</sup> day of August, 2016.

  
\_\_\_\_\_  
MARK F. GRANT, Incorporator

The undersigned hereby accepts the designation of Registered Agent as set forth in Article XIV of these Articles of Incorporation, and acknowledges that he/she is familiar with and accepts the obligations imposed upon registered agents under the Florida Not For Profit Corporation Act.

REGISTERED AGENT:

NRAI SERVICES, INC.

By:   
Kristen Rahm, Asst Secretary to NRAI, Registered Agent  
Dated: August 9<sup>th</sup>, 2016



**EXHIBIT "E"**  
**BYLAWS**  
**OF**  
**ESTERO POINTE COMMUNITY ASSOCIATION, INC.**

**Section 1. Identification of Association**

These are the Bylaws of Estero Pointe Community Association, Inc. ("Association") as duly adopted by its Board of Directors ("Board"). The Association is a corporation not for profit, organized pursuant to Chapters 617 and 720, Florida Statutes.

1.1. The principal office and mailing address of the Association shall be for the present at 551 North Cattlemen Road, Suite 200, Sarasota, Florida 34232, and thereafter may be located at any place designated by the Board.

1.2. The fiscal year of the Association shall be the calendar year.

1.3. The seal of the Association shall bear the name of the Association, the word "Florida" and the words "Corporation Not For Profit."

**Section 2. Explanation of Terminology**

The terms defined in the Articles of Incorporation of the Association ("Articles") as well as in the Declaration of Covenants, Conditions, Restrictions and Easements for Estero Pointe ("Declaration") are incorporated herein by reference and shall appear in initial capital letters each time such terms appear in these Bylaws.

**Section 3. Membership; Members' Meetings; Voting and Proxies**

3.1. The qualification of Members, the manner of their admission to membership in the Association, the manner of termination of such membership and the voting by Members shall be as set forth in the Articles.

3.2. The Members shall meet annually ("Annual Members' Meeting"). The Annual Members' Meeting shall be held at the office of the Association or at such other place in the County as the Board may determine and on such day and at such time as designated by the Board in the notice of such meeting commencing with the year following the year in which the Articles are filed with the Secretary of State. The purpose of the Annual Members' Meeting shall be to hear reports of the officers, elect members of the Board (when that shall be appropriate as determined by the provisions of the Articles) and transact any other business authorized to be transacted at such Annual Members' Meeting.

3.3. Special meetings (meetings other than the Annual Members' Meeting) of the Members shall be held at any place within the County whenever called by the President or Vice President or by a majority of the Board. A special meeting must be called by such President or Vice President upon receipt of a written request from Members having the right to

vote at least one-third (1/3) of the total number of votes entitled to be cast by Members at any such special meeting.

3.4. Except as otherwise provided in the Articles, a written notice of each Members' meeting, whether an Annual Members' Meeting or a special meeting (collectively "Meeting"), shall be given to each Member entitled to vote thereat at the address of the Home owned by such Owner, or such other address as the Owner shall notify the Association of in writing and shall be mailed to the said address not less than fourteen (14) days nor more than forty-five (45) days prior to the date of the Meeting. Proof of such mailing shall be given by the affidavit of the person giving the notice. Any notice given hereunder shall state the time and place of the Meeting and the purposes for which the Meeting is called. The notices of all Annual Members' Meetings shall, in addition, specify the number of Directors of the Association to be designated by Declarant and the number of Directors to be elected by the Members, if applicable. Notwithstanding any provisions hereof to the contrary, notice of any Meeting may be waived before, during or after such Meeting by a Member or by the person entitled to vote for such Member by signing a document setting forth the waiver of such notice.

3.5. The Members may, at the discretion of the Board, act by written response in lieu of a Meeting provided written notice of the matter or matters to be agreed upon is given to the Members or duly waived in accordance with the provisions of these Bylaws. Unless some greater number is required under the Governing Documents and except as to the election of Directors, which shall be accomplished by plurality vote, the decision of a majority of the votes cast by Members as to the matter or matters to be agreed or voted upon shall be binding on the Members provided a quorum is either present at such Meeting or submits a response if action is taken by written response in lieu of a Meeting, as the case may be. The notice with respect to actions to be taken by written response in lieu of a Meeting shall set forth the time period during which the written responses must be received by the Association.

3.6. (a) A quorum of the Members shall consist of Members entitled to cast thirty percent (20%) of the total number of votes of the Members. Limited "Proxies" and general "Proxies" (as hereinafter defined in Paragraph 3.10) may be used to establish a quorum.

(b) When a quorum is present at any Meeting and a question which raises the jurisdiction of such Meeting is presented, the holders of a majority of the voting rights present in person or represented by written Proxy shall be required to decide the question. However, if the question is one upon which a vote other than the majority vote of a quorum is required by express provision of the Governing Documents or by law, then such express provision shall govern and control the required vote on the decision of such question.

3.7. At any Annual Members' Meeting when elections of Directors are to occur, written ballots are to be supplied to Members for such purposes. The Board shall adopt a procedure to be followed for each election, which procedure shall specify if nominations for Directors shall be submitted before the meeting so that absentee ballots may be used or if nominations for Directors will be taken at the Meeting and in which case absentee ballots may not be used. Any procedure adopted by the Board shall require the use of secret ballots. Members may not vote for Directors by Proxy, but Proxies may be used to establish a quorum. Furthermore, at any Annual Members' Meeting at which Directors are to be elected, the

“Chairman” (as hereinafter defined in Paragraph 7.2) shall appoint an “Election Committee” consisting of three (3) Members to supervise the election, count and verify ballots, disqualify votes if such disqualification is justified under the circumstances and certify the results of the election to the Board. The Election Committee shall be able to determine questions within its jurisdiction by plurality vote of all three (3) members, but matters resulting in deadlocked votes of the Election Committee shall be referred to the entire Board for resolution.

3.8. If a quorum is not in attendance at a Meeting, the Members who are present, either in person or by Proxy, may adjourn the Meeting from time to time until a quorum is present with no further notice of such adjourned Meeting being required unless otherwise determined by the Board.

3.9. Minutes of all Meetings shall be kept in a businesslike manner and be available for inspection by the Members and Directors at all reasonable times. The Association shall retain minutes for at least seven (7) years subsequent to the date of the meeting the minutes reflect.

3.10. Voting rights of Members shall be as stated in the Articles with respect to the election of all Boards other than the First Board. Such votes may be cast as provided in Section 3.7 above. Proxies may be used to vote on other agenda items at meetings at which Directors are to be elected, and may also be used to establish a quorum. "Proxy" is defined to mean an instrument containing the appointment of a person who is substituted in the place and stead of the person or authorized representative of an entity entitled to vote. Proxies shall be in writing signed by the person or authorized representative of an entity giving the same and shall be valid only for the particular Meeting designated therein and, if so stated in the Proxy, any adjournments thereof, provided, however, any proxy automatically expires ninety (90) days after the date of the meeting for which it was originally given. A Proxy must be filed with the Secretary of the Association before the appointed time of the Meeting in order to be valid. Any Proxy may be revoked prior to the time a vote is cast in accordance with such Proxy.

3.11. The voting on any matter at a Meeting shall be by secret ballot upon request of the holders of twenty percent (20%) of the votes represented at such Meeting and entitled to be cast on such matter, if such request is made prior to the vote in question.

#### Section 4. Board; Directors' Meetings

4.1. The business and administration of the Association shall be by its Board.

4.2. The election and, if applicable, designation of Directors shall be conducted in accordance with the Articles. Except for Declarant-appointed Directors, Directors must be Members or the parents, children or spouses of Members, except that if a Lot is owned by an entity and not an individual, such entity may only appoint a partner, shareholder, member, manager, director or officer of such entity or any of its constituent entities on its behalf to be eligible to serve on the Board.

4.3. (a) Any person elected or designated as a Director shall have all the rights, privileges, duties and obligations of a Director of the Association.

(b) The term of a Director's service shall be as stated in the Articles and, if not so stated, shall extend until the next Annual Members' Meeting and thereafter until his or her successor is duly elected and qualified or until he or she resigns or is removed in the manner elsewhere provided.

4.4. The organizational meeting of a newly elected Board shall be held within ten (10) days of its election at such place and time as shall be fixed by the Directors at the meeting at which they were elected. Provided the organizational meeting is held directly following the Annual Members' Meeting, no further notice of the organizational meeting shall be necessary; if not, however, notice of the organizational meeting shall be given in accordance with the HOA Act.

4.5. Regular meetings of the Board may be held at such times and places in the County as shall be determined from time to time by a majority of the Directors. Special meetings of the Board may be called at the discretion of the President or the Vice President. Special meetings must be called by the Secretary at the written request of at least one-third (1/3) of the Directors. Any such special meeting may be held in the County at such time and place as determined by the Directors requesting such meeting or in such other place as all of the Directors shall agree upon.

4.6. Notice of the time and place of regular and special meetings of the Board, or adjournments thereof, shall be given to each Director personally, by mail, telephone or electronically transmitted if correctly directed to an electronic mail address at which the Director has consented to receive notice at least three (3) days prior to the day named for such meeting unless such notice is waived before, during or after such meeting. Any Director may waive notice of the meeting in writing before, during or after a meeting and such waiver shall be deemed equivalent to the receipt of notice by such Director.

4.7. Notice of all Board meetings shall be given to the members in accordance with the HOA Act.

4.8. A quorum of the Board shall consist of the Directors entitled to cast a majority of the votes of the entire Board. Matters approved by a majority of the Directors present at a meeting at which a quorum is present shall constitute the official acts of the Board, except as may be otherwise specifically provided by law, by the Articles or elsewhere herein. If at any meeting of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any meeting that takes place on account of a previously adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. In the case of the adjournment of a meeting, no further notice of the adjourned meeting need be given unless otherwise determined by the Board.

4.9. The presiding officer at all Board meetings shall be the President. In the absence of the President, the Directors shall designate any one of their number to preside.

4.10. Directors' fees, if any, shall be determined by the Members.

4.11. Minutes of all meetings of the Board shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times.

4.12. Meetings of the Board shall be open to all Members on such terms as the Board may determine but at all times pursuant to, and as limited by, the HOA Act. The Board may also hold closed meetings to the extent permitted by applicable law, including, by way of example but not by way of limitation, when the discussion at a meeting is governed by attorney-client privilege. Members shall have the right to participate in meetings with reference to all designated agenda items in accordance with, and as limited by, the HOA Act and any rules and regulations promulgated by the Association. In the event a Member conducts himself or herself in a manner detrimental to the carrying on of the meeting, then any Director may expel said Member from the meeting by any reasonable means which may be necessary to accomplish said Member's expulsion. Also, any Director shall have the right to exclude from any meeting of the Board any person who is not able to provide sufficient proof that he or she is a Member or a duly authorized representative, agent or proxy holder of a Member, unless said person has been specifically invited by any of the Directors to participate in such meeting.

4.13. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, specifically setting forth the action to be taken, shall be signed by all the Directors entitled to vote with respect to the subject matter thereof and such consent shall have the same force and effect as a unanimous vote of the Directors, provided, however, whenever assessments are to be considered, they may be considered only at a meeting of the Directors properly noticed in accordance with the HOA Act.

## Section 5. Powers and Duties of the Board

5.1. All of the powers and duties of the Association shall be exercised by the Board. Such powers and duties of the Board shall include, but not be limited to, all powers and duties set forth in the Governing Documents, as well as all of the powers and duties of a director of a corporation not for profit not inconsistent therewith.

5.2. The Association may employ a manager to perform any of the duties, powers or functions of the Association. Notwithstanding the foregoing, the Association may not delegate to the manager the power to conclusively determine whether the Association should make expenditures for capital additions or improvements chargeable against the Association funds. The members of the Board shall not be personally liable for any omission or improper exercise by the manager of any duty, power or function delegated to the manager by the Association.

## Section 6. Late Fees

An Owner who fails to timely pay any Assessment shall be charged a late charge of Twenty-Five and No/100 (\$25.00) Dollars or five percent (5%) of the past due amount, whichever is greater, by the Association to defray additional collection costs. This amount is subject to change in the Board's sole discretion. Owners shall be responsible to pay all legal fees (including, but not limited to, attorney and paralegal fees and court costs) incurred in connection

with the collection of late Assessments whether or not an action at law to collect said Assessments and foreclose the Association's lien has been commenced.

#### Section 7. Officers of the Association

7.1. Executive officers of the Association shall be the President, who shall be a Director, one or more Vice Presidents, a Treasurer and a Secretary, all of whom shall be elected annually by the Board. Any officer may be removed without cause from office by vote of the Directors at any meeting of the Board. The Board may, from time to time, elect such other officers and assistant officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association. One person may hold any two offices simultaneously, except when the functions of such offices are incompatible, but no person shall hold the office of President and any of the following offices simultaneously: Vice President, Secretary or Assistant Secretary or Treasurer or Assistant Treasurer.

7.2. The President shall be the chief executive officer of the Association. He or She shall have all of the powers and duties which are usually vested in the office of the President of an association or a corporation not for profit, including, but not limited to, the power to appoint such committees from among the Members at such times as he or she may, in his or her discretion, determine appropriate to assist in the conduct of the affairs of the Association. If in attendance, the President ("Chairman") shall preside at all meetings of the Board and the Members; provided, however, that the President may appoint a substitute.

7.3. In the absence or disability of the President, the Vice President shall exercise the powers and perform the duties of the President. If there is more than one (1) Vice President, the Board shall designate which Vice President is to perform which duties. The Vice President(s) shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board. In the event there shall be more than one Vice President elected by the Board, then they shall be designated as "First Vice President", "Second Vice President", etc., and shall exercise the powers and perform the duties of the presidency in such order.

7.4. The Secretary shall keep the minutes of all meetings of the Board and the Members, which minutes shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times. The Secretary shall have custody of the seal of the Association and affix the same to instruments requiring such seal when duly authorized and directed to do so. The Secretary shall be custodian for the corporate records of the Association, except those of the Treasurer, and shall perform all of the duties incident to the office of Secretary of the Association as may be required by the Board or the President. The Assistant Secretary, if any, shall perform the duties of the Secretary when the Secretary is absent and shall assist the Secretary under the supervision of the Secretary.

7.5. The Treasurer shall have custody of all of the monies of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep the assessment rolls and accounts of the Members and shall keep the books of the Association in accordance with good accounting practices and he or she shall perform all of the duties incident to the office of the Treasurer. The Assistant Treasurer, if any, shall perform the duties of the

Treasurer when the Treasurer is absent and shall assist the Treasurer under the supervision of the Treasurer.

7.6. The compensation, if any, of the officers and other employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from hiring a Director as an employee of the Association or preclude contracting with a Director or a party affiliated with a Director for the management or performance of contract services for all or any part of Estero Pointe.

#### Section 8. Resignations

Any Director or officer may resign his or her post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Lots owned by any Director or officer (other than appointees of Declarant) shall constitute a written resignation of such Director or officer.

#### Section 9. Accounting Records; Fiscal Management

9.1. The Association shall prepare financial reports and maintain accounting records in accordance with the HOA Act. The accounting records of the Association shall be open to inspection by Members and Institutional Mortgagees or their respective authorized representatives at reasonable times and in accordance with, but subject to the limitations of, the HOA Act. Such authorization as a representative of a Member must be in writing and signed by the person giving the authorization and dated within sixty (60) days of the date of the inspection. Such records shall include, but not be limited to: (i) a record of all receipts and expenditures; (ii) an account for each Lot within Estero Pointe which shall designate the name and address of the Owner thereof, the amount of Individual Lot Assessments and all other Assessments, if any, charged to the Lot, the amounts and due dates for payment of same, the amounts paid upon the account and the dates paid, and the balance due; (iii) any tax returns, financial statements and financial reports of the Association; and (iv) any other records that identify, measure, record or communicate financial information.

9.2. The Board shall adopt a Budget (as defined and provided for in the Declaration) of the anticipated Operating Expenses for each forthcoming calendar year (the fiscal year of the Association being the calendar year) at a special meeting of the Board ("Budget Meeting") called for that purpose to be held prior to the end of the fiscal year preceding the year to which the Budget applies. Prior to the Budget Meeting, a proposed Budget for the Operating Expenses shall be prepared by or on behalf of the Board. Within thirty (30) days after adoption of the Budget, a copy thereof shall be furnished to each Member, upon request, and each Owner shall be given notice of the Individual Lot Assessment applicable to his or her Lot(s). The copy of the Budget, if requested, shall be deemed furnished and the notice of the Individual Lot Assessment shall be deemed given upon its delivery or upon its being mailed to the Owner at the address of the Home owned by such Owner, or such other address as the Owner shall notify the Association of in writing.

9.3. In administering the finances of the Association, the following procedures shall govern: (i) the fiscal year shall be the calendar year; (ii) any monies received by the Association in any calendar year may be used by the Association to pay expenses incurred in the same calendar year; (iii) there shall be apportioned between calendar years on a *pro rata* basis any expenses which are prepaid in any one calendar year for Operating Expenses which cover more than such calendar year; (iv) Assessments shall be made quarterly in advance in amounts no less than are required to provide funds in advance for payment of all of the anticipated current Operating Expenses and for all unpaid Operating Expenses previously incurred; and (v) items of Operating Expenses incurred in a calendar year shall be charged against income for the same calendar year regardless of when the bill for such expenses is received. Notwithstanding the foregoing, the Assessments for Operating Expenses and any periodic installments thereof shall be of sufficient magnitude to insure an adequacy and availability of cash to meet all budgeted expenses in any calendar year as such expenses are incurred in accordance with the accrual basis method of accounting.

9.4. Individual Lot Assessments shall be payable as provided in the Declaration.

9.5. No Board shall be required to anticipate revenue from Assessments or expend funds to pay for Operating Expenses not budgeted or which shall exceed budgeted items, and no Board is required to engage in deficit spending. Should there exist any deficiency which results from there being greater Operating Expenses than monies from Assessments, then such deficits shall be carried into the next succeeding year's Budget as a deficiency or shall be the subject of a Special Assessment or an upward adjustment to the Individual Lot Assessment.

9.6. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board in which the monies of the Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Board.

9.7. A report of the accounts of the Association shall be made in compliance with the financial reporting requirements set forth in Chapter 720, Florida Statutes.

#### Section 10. Rules and Regulations

The Board may at any meeting of the Board adopt rules and regulations or amend, modify or rescind, in whole or in part, then existing rules and regulations for the operation of Estero Pointe; provided, however, that such rules and regulations are not inconsistent with the terms or provisions of the Governing Documents. Copies of any rules and regulations promulgated, amended or rescinded shall be mailed or delivered to all Members at the last known address for such Members as shown on the records of the Association at the time of such delivery or mailing and shall not take effect until forty-eight (48) hours after such delivery or mailing, or, in the event both forms of notification are used, whichever is later. Notwithstanding the foregoing, when rules and regulations are to regulate the use of a specific portion of the Common Area, same shall be conspicuously posted at such facility and such rules and regulations shall be effective immediately upon such posting. Care shall be taken to insure that posted rules and regulations are conspicuously displayed and easily readable and that posted



signs or announcements are designed with a view toward protection from weather and the elements. Posted rules and regulations which are torn down or lost shall be promptly replaced.

#### Section 11. Parliamentary Rules

The then latest edition of Robert's Rules of Order shall govern the conduct of all meetings of the Members and the Board; provided, however, if such rules of order are in conflict with any of the Governing Documents, Robert's Rules of Order shall yield to the provisions of such instrument.

#### Section 12. Roster of Owners

Each Owner shall file with the Association a copy of the deed or other document showing his or her ownership of a Lot in Estero Pointe. The Association shall maintain such information. The Association may also maintain the electronic mailing addresses designated by Owners for receiving notices sent by electronic transmission of those Owners consenting to receive notice by electronic transmission. The electronic mailing address and numbers provided by Owners to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. The Association may rely on the accuracy of such information for all purposes until notified in writing of changes therein.

#### Section 13. Amendment of the Bylaws

13.1. These Bylaws may be amended as hereinafter set forth in this Section 13.

13.2. After the Turnover Date, any Bylaw of the Association may be amended or repealed, and any new Bylaw of the Association may be adopted by either:

(i) a majority vote of the Members at any Annual Members' Meeting or any special meeting of the Members called for that purpose or by majority action of the Members who have acted by written response in lieu of a Meeting as permitted by these Bylaws; or

(ii) by the affirmative vote of a majority of the Directors then in office at any regular meeting of the Board or at any special meeting of the Board called for that purpose or by written instrument signed by all of the Directors as is permitted by these Bylaws, provided that the Directors shall not have any authority to adopt, amend or repeal any Bylaw if such new Bylaw or such amendment or the repeal of a Bylaw would be inconsistent with any Bylaw previously adopted by the Members.

13.3. Notwithstanding any of the foregoing provisions of this Section 13 to the contrary, until the Turnover Date, all amendments or modifications to these Bylaws and adoption or repeal of Bylaws shall only be made by action of the First Board as described in the Articles, which First Board shall have the power to amend, modify, adopt and repeal any Bylaws without the requirement of any consent, approval or vote of the Members.

13.4. Notwithstanding the foregoing provisions of this Section 13, there shall be no amendment to these Bylaws which shall abridge, prejudice, amend or alter the rights of: (i)

Declarant, without the prior written consent thereto by Declarant for so long as Declarant holds title to at least one (i) Home; or (ii) any Institutional Mortgagee (as said term is defined in the Declaration) without the prior written consent of such Institutional Mortgagee.

13.5. Any instrument amending, modifying, repealing or adding Bylaws shall identify the particular section or sections affected and give the exact language of such modification, amendment or addition or of the provisions repealed. A copy of each such amendment, modification, repeal or addition attested to by the Secretary or Assistant Secretary of the Association shall be recorded amongst the Public Records of the County.

#### Section 14. Mediation

Pursuant to the HOA Act, mandatory mediation before the Department of Business and Professional Regulation ("Department") shall be required prior to institution of court litigation for disputes involving certain actions or inactions, as described therein.

#### Section 15. Recall of Board Members and Election Disputes

Pursuant to the HOA Act, mandatory binding arbitration before the Department shall be required for election disputes and disputes involving the recall of any member of the Board. Any member of the Board may be recalled and removed from office as provided for and described in the HOA Act.

#### Section 16. Interpretation

In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; and in the event of any conflict between the Articles and the Declaration, the Declaration shall control.

#### Section 17. Notice and Hearing Procedure.

In those instances which specifically provide an Owner the right of Notice and a Hearing, the following procedures and provisions shall apply:

A. Notice. The Association shall notify the Owner in writing of the noncompliance and set forth the corrective action to be taken. A fine or suspension of use rights may not be imposed without notice of at least fourteen (14) days to the Owner sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director, or employee of the Association. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. At the Association's option, any fine may be levied on a daily basis in the event of a continuing violation without the necessity of a new hearing and without any limitation on the amount of such fine.

B. Hearing. Should the Owner still be in noncompliance, the noncompliance shall be presented to the Board after which the Board shall hear reasons why a fine should or should not be imposed. A written decision of the Board shall be submitted to the Owner, as applicable, not later than twenty-one (21) days after said meeting.

C. Payment. A fine shall be paid not later than thirty (30) days after notice of the imposition of the fine.

D. Fines. A fine shall be treated as an Assessment subject to the provisions of the collection of Assessments as otherwise set forth herein. All monies received from fines shall be allocated as directed by the Board, subject always to the provisions of the Declaration.

E. Failure to Pay Assessments. Notice and Hearing as provided in Subparagraphs A and B above shall not be required with respect to the imposition of suspension of use rights or fines upon any Owner because of such Owner's failure to pay Assessments or other charges when due.

F. Access. Suspension of use rights to Common Areas shall not impair the right of an Owner or tenant of a Lot and/or Home to have vehicular and pedestrian ingress to and egress from such Lot and/or Home, including, but not limited to, the right to park.

*The foregoing Bylaws of Estero Pointe Community Association, Inc. were adopted by the Board of Directors as of the date of filing of the Articles of Incorporation for the Association.*

**EXHIBIT "F"**

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT PERMIT**



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
ENVIRONMENTAL RESOURCE PERMIT NO. 36-08550-P  
DATE ISSUED: May 19, 2016**

**PERMITTEE:** TAYLOR MORRISON  
9401 CORKSCREW PALMS CIRCLE  
ESTERO, FL 33928

**PROJECT DESCRIPTION:** This Environmental Resource Permit authorizes construction and operation of a storm water management system serving 33.02 acres of residential development for a project known as Hideaway Cove.

**PROJECT LOCATION:** LEE COUNTY, SEC 20 TWP 46S RGE 25E

**PERMIT DURATION:** See Special Condition No:1.

This is to notify you of the District's agency action for Permit Application No. 150105-5, dated January 5, 2015. This action is taken pursuant to the provisions of Chapter 373, Part IV, Florida Statutes (F.S.).

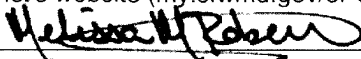
Based on the information provided, District rules have been adhered to and an Environmental Resource Permit is in effect for this project subject to:

1. Not receiving a filed request for a Chapter 120, Florida Statutes, administrative hearing.
2. the attached 18 General Conditions (See Pages : 2 - 4 of 6),
3. the attached 13 Special Conditions (See Pages : 5 - 6 of 6) and
4. the attached 3 Exhibit(s)

Should you object to these conditions, please refer to the attached "Notice of Rights" which addresses the procedures to be followed if you desire a public hearing or other review of the proposed agency action. Please contact this office if you have any questions concerning this matter. If we do not hear from you in accordance with the "Notice of Rights," we will assume that you concur with the District's action.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT this written notice has been mailed or electronically transmitted to the Permittee (and the persons listed in the attached distribution list) this 19th day of May, 2016, in accordance with Section 120.60(3), F.S. Notice was also electronically posted on this date through a link on the home page of the District's website ([my.sfwmd.gov/ePermitting](http://my.sfwmd.gov/ePermitting)).

BY:   
Melissa M. Roberts, P.E.  
Regulatory Administrator  
Lower West Coast Service Center

### **NOTICE OF RIGHTS**

As required by Sections 120.569 and 120.60(3), Fla. Stat., the following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all of the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

#### **RIGHT TO REQUEST ADMINISTRATIVE HEARING**

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a SFWMD decision which affects or may affect their substantial interests shall file a petition for hearing with the Office of the District Clerk of the SFWMD, in accordance with the filing instructions set forth herein, within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: (1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or (2) within 14 days of service of an Administrative Order pursuant to Section 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of written notice through mail, electronic mail, or posting that the SFWMD has or intends to take final agency action, or publication of notice that the SFWMD has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

If the District takes final agency action which materially differs from the noticed intended agency decision, persons who may be substantially affected shall, unless otherwise provided by law, have an additional Rule 28-106.111, Fla. Admin. Code, point of entry.

Any person to whom an emergency order is directed pursuant to Section 373.119(2), Fla. Stat., shall comply therewith immediately, but on petition to the board shall be afforded a hearing as soon as possible.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for an extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

#### **FILING INSTRUCTIONS**

A petition for administrative hearing must be filed with the Office of the District Clerk of the SFWMD. Filings with the Office of the District Clerk may be made by mail, hand-delivery, or e-mail. Filings by facsimile will not be accepted. A petition for administrative hearing or other document is deemed filed upon receipt during normal business hours by the Office of the District Clerk at SFWMD headquarters in West Palm Beach, Florida. The District's normal business hours are 8:00 a.m. – 5:00 p.m., excluding weekends and District holidays. Any document received by the Office of the District Clerk after 5:00 p.m. shall be deemed filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the District Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.

- Filings by hand-delivery must be delivered to the Office of the District Clerk. Delivery of a petition to the SFWMD's security desk does not constitute filing. It will be necessary to request that the SFWMD's security officer contact the Office of the District Clerk. An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by e-mail must be transmitted to the Office of the District Clerk at [clerk@sfwmd.gov](mailto:clerk@sfwmd.gov). The filing date for a document transmitted by electronic mail shall be the date the Office of the District Clerk receives the complete document. A party who files a document by e-mail shall (1) represent that the original physically signed document will be retained by that party for the duration of the proceeding and of any subsequent appeal or subsequent proceeding in that cause and that the party shall produce it upon the request of other parties; and (2) be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed.

#### **INITIATION OF AN ADMINISTRATIVE HEARING**

Pursuant to Sections 120.54(5)(b)4. and 120.569(2)(c), Fla. Stat., and Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, SFWMD file number or any other SFWMD identification number, if known.
2. The name, address, any email address, any facsimile number, and telephone number of the petitioner and petitioner's representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the SFWMD's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's proposed action.

#### **MEDIATION**

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401-.405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

#### **RIGHT TO SEEK JUDICIAL REVIEW**

Pursuant to Section 120.68, Fla. Stat., and in accordance with Florida Rule of Appellate Procedure 9.110, a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal with the Office of the District Clerk of the SFWMD in accordance with the filing instructions set forth herein within 30 days of rendition of the order to be reviewed, and by filing a copy of the notice with the clerk of the appropriate district court of appeal.

**GENERAL CONDITIONS**

1. All activities shall be implemented following the plans, specifications and performance criteria approved by this permit. Any deviations must be authorized in a permit modification in accordance with Rule 62-330.315, F.A.C. Any deviations that are not so authorized shall subject the permittee to enforcement action and revocation of the permit under Chapter 373, F.S.
2. A complete copy of this permit shall be kept at the work site of the permitted activity during the construction phase, and shall be available for review at the work site upon request by the Agency staff. The permittee shall require the contractor to review the complete permit prior to beginning construction.
3. Activities shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management practices shall be installed immediately prior to, and be maintained during and after construction as needed, to prevent adverse impacts to the water resources and adjacent lands. Such practices shall be in accordance with the "State of Florida Erosion and Sediment Control Designer and Reviewer Manual" (Florida Department of Environmental Protection and Florida Department of Transportation June 2007), and the "Florida Stormwater Erosion and Sedimentation Control Inspector's Manual" (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008), unless a project-specific erosion and sediment control plan is approved or other water quality control measures are required as part of the permit.
4. At least 48 hours prior to beginning the authorized activities, the permittee shall submit to the Agency a fully executed Form 62-330.350(1), "Construction Commencement Notice" indicating the expected start and completion dates. If available, an Agency website that fulfills this notification requirement may be used in lieu of the form.
5. Unless the permit is transferred under Rule 62-330.340, F.A.C., or transferred to an operating entity under Rule 62-330.310, F.A.C., the permittee is liable to comply with the plans, terms and conditions of the permit for the life of the project or activity.
6. Within 30 days after completing construction of the entire project, or any independent portion of the project, the permittee shall provide the following to the Agency, as applicable:
  - a. For an individual, private single-family residential dwelling unit, duplex, triplex, or quadruplex- "Construction Completion and Inspection Certification for Activities Associated With a Private Single-Family Dwelling Unit"[Form 62-330.310(3)]; or
  - b. For all other activities- "As-Built Certification and Request for Conversion to Operational Phase" [Form 62-330.310(1)].
  - c. If available, an Agency website that fulfills this certification requirement may be used in lieu of the form.
7. If the final operation and maintenance entity is a third party:
  - a. Prior to sales of any lot or unit served by the activity and within one year of permit issuance, or within 30 days of as- built certification, whichever comes first, the permittee shall submit, as applicable, a copy of the operation and maintenance documents (see sections 12.3 thru 12.3.3 of Applicant's Handbook Volume I) as filed with the Department of State, Division of Corporations and a copy of any easement, plat, or deed restriction needed to operate or maintain the project, as recorded with the Clerk of the Court in the County in which the activity is located.
  - b. Within 30 days of submittal of the as- built certification, the permittee shall submit "Request for Transfer of Environmental Resource Permit to the Perpetual Operation Entity" [Form 62-330.310(2)] to transfer the permit to the operation and maintenance entity, along with the documentation requested in the form. If available, an Agency website that fulfills this transfer requirement may be used in lieu of the form.
8. The permittee shall notify the Agency in writing of changes required by any other regulatory agency that



**GENERAL CONDITIONS**

require changes to the permitted activity, and any required modification of this permit must be obtained prior to implementing the changes.

9. This permit does not:
  - a. Convey to the permittee any property rights or privileges, or any other rights or privileges other than those specified herein or in Chapter 62-330, F.A.C.;
  - b. Convey to the permittee or create in the permittee any interest in real property;
  - c. Relieve the permittee from the need to obtain and comply with any other required federal, state, and local authorization, law, rule, or ordinance; or
  - d. Authorize any entrance upon or work on property that is not owned, held in easement, or controlled by the permittee.
10. Prior to conducting any activities on state-owned submerged lands or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund, the permittee must receive all necessary approvals and authorizations under Chapters 253 and 258, F.S. Written authorization that requires formal execution by the Board of Trustees of the Internal Improvement Trust Fund shall not be considered received until it has been fully executed.
11. The permittee shall hold and save the Agency harmless from any and all damages, claims, or liabilities that may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any project authorized by the permit.
12. The permittee shall notify the Agency in writing:
  - a. Immediately if any previously submitted information is discovered to be inaccurate; and
  - b. Within 30 days of any conveyance or division of ownership or control of the property or the system, other than conveyance via a long-term lease, and the new owner shall request transfer of the permit in accordance with Rule 62-330.340, F.A.C. This does not apply to the sale of lots or units in residential or commercial subdivisions or condominiums where the stormwater management system has been completed and converted to the operation phase.
13. Upon reasonable notice to the permittee, Agency staff with proper identification shall have permission to enter, inspect, sample and test the project or activities to ensure conformity with the plans and specifications authorized in the permit.
14. If any prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time within the project site area, work involving subsurface disturbance in the immediate vicinity of such discoveries shall cease. The permittee or other designee shall contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section, at (850) 245-6333 or (800) 847-7278, as well as the appropriate permitting agency office. Such subsurface work shall not resume without verbal or written authorization from the Division of Historical Resources. If unmarked human remains are encountered, all work shall stop immediately and notification shall be provided in accordance with Section 872.05, F.S.
15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under Rule 62-330.201, F.A.C., provides otherwise.
16. The permittee shall provide routine maintenance of all components of the stormwater management system to remove trapped sediments and debris. Removed materials shall be disposed of in a landfill or other

### **GENERAL CONDITIONS**

uplands in a manner that does not require a permit under Chapter 62-330, F.A.C., or cause violations of state water quality standards.

17. This permit is issued based on the applicant's submitted information that reasonably demonstrates that adverse water resource-related impacts will not be caused by the completed permit activity. If any adverse impacts result, the Agency will require the permittee to eliminate the cause, obtain any necessary permit modification, and take any necessary corrective actions to resolve the adverse impacts.
18. A Recorded Notice of Environmental Resource Permit may be recorded in the county public records in accordance with Rule 62-330.090(7), F.A.C. Such notice is not an encumbrance upon the property.

**SPECIAL CONDITIONS**

1. The construction phase of this permit shall expire on May 19, 2021.
2. Operation and maintenance of the stormwater management system shall be the responsibility of HOMEOWNER ASSOCIATION. Within one year of permit issuance or concurrent with the engineering certification of construction completion, whichever comes first, the permittee shall submit a copy of the recorded deed restrictions (or declaration of condominium, if applicable), a copy of the filed articles of incorporation, and a copy of the certificate of incorporation for the association.
3. Discharge Facilities:  
  
 Structure: CS-1  
 1-10" W X 9.2" H RECTANGULAR ORIFICE with invert at elev. 6.3' NAVD 88.  
 1-37" W X 49" L drop inlet with crest at elev. 9.8' NAVD 88.  
 Receiving body : FlowWay  
 Control elev : 6.3 feet NAVD 88.
4. Lake side slopes shall be no steeper than 4:1 (horizontal:vertical) to a depth of two feet below the control elevation. Side slopes shall be nurtured or planted from 2 feet below to 1 foot above control elevation to insure vegetative growth, unless shown on the plans.
5. A stable, permanent and accessible elevation reference shall be established on or within one hundred (100) feet of all permitted discharge structures no later than the submission of the certification report. The location of the elevation reference must be noted on or with the certification report.
6. The following are exhibits to this permit. Exhibits noted as incorporated by reference are available on the District's ePermitting website (<http://my.sfwmd.gov/ePermitting>) under this application number.  
  
 Exhibit No. 1.0 Location Map  
 Exhibit No. 2.0 Plans  
 Exhibit No. 2.1 Stormwater Pollution Prevention Plan  
 Exhibit No. 2.2 Urban Stormwater Management Program  
 Exhibit No. 3.0 FLUCCS Map  
 Exhibit No. 3.1 Wetland Impact Map  
 Exhibit No. 3.2 Letter of Credit Reservation  
 Exhibit No. 3.3 WRAP Scores  
 Exhibit No. 3.4 Work Schedule
7. Prior to initiating construction activities associated with this Environmental Resource Permit (ERP), the permittee is required to hold a pre-construction meeting with field representatives, consultants, contractors, District Environmental Resource Compliance (ERC) staff, and any other local government entities as necessary.  
  
 The purpose of the pre-construction meeting is to discuss construction methods, sequencing, best management practices, identify work areas, staking and roping of preserves where applicable, and to facilitate coordination and assistance amongst relevant parties.  
  
 To schedule a pre-construction meeting, please contact ERC staff from the Lower West Coast Service Center at (239) 338-2929 or via e-mail at: [pre-con@sfwmd.gov](mailto:pre-con@sfwmd.gov). When sending a request for a pre-construction meeting, please include the application number, permit number, and contact name and phone number.
8. Minimum building floor elevation: BASIN: Basin A - 11.50 feet NAVD 88.

**SPECIAL CONDITIONS**

9. Minimum road crown elevation: Basin: Basin A - 7.60 feet NAVD 88.
10. The District reserves the right to require remedial measures to be taken by the permittee if monitoring or other information demonstrates that adverse impacts to off-site wetlands, upland conservation areas or buffers, or other surface waters have occurred due to project related activities.
11. Activities associated with the implementation of the mitigation plan shall be completed in accordance with the work schedule attached as Exhibit No. 3.4. Any deviation from these time frames must be coordinated with the District's Environmental Resource Compliance staff, and may require a minor modification to this permit. Such requests must be made in writing and shall include (1) reason for the change, (2) proposed start/finish and/or completion dates; and (3) progress report on the status of the project development or mitigation effort.
12. Prior to commencement of construction and in accordance with the work schedule in Exhibit No. 3.4, the permittee shall submit documentation that 1.34 freshwater transitional credits have been deducted from the official ledger for Big Cypress Mitigation Bank.
13. Prior to the commencement of construction, the perimeter of off-site wetlands and upland preservation areas shall be staked/roped/fenced to prevent encroachment into the protected areas. Using Global Positioning System (GPS) technology, the perimeter of the preserve area(s) shall be identified for future reference. The data shall be differentially corrected and accurate to less than a meter (+/- one meter or better). Electronic copies of the GPS data shall be provided to the District's Environmental Resource Compliance staff. The permittee shall notify the District's Environmental Resource Compliance staff in writing upon completion of staking/roping/fencing and schedule an inspection of this work. The staking/roping/fencing shall be subject to District staff approval. The permittee shall modify the staking/roping/fencing if District staff determines that it is insufficient or is not in conformance with the intent of this permit. The staking/roping/fencing shall remain in place until all adjacent construction activities are complete.

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Last Date For Agency Action: May 30, 2016

**INDIVIDUAL ENVIRONMENTAL RESOURCE PERMIT STAFF REPORT****Project Name:** Hideaway Cove**Permit No.:** 36-08550-P**Application No.:** 150105-5**Associated File:** 150112-12 WU Concurrent  
150112-11 WU Related**Application Type:** Environmental Resource (New Construction/Operation)**Location:** Lee County, S20/T46S/R25E**Permittee :** Taylor Morrison**Operating Entity :** Homeowner Association**Project Area:** 33.02 acres**Permit Area:** 33.02 acres**Project Land Use:** Residential**Drainage Basin:** ESTERO BAY**Sub Basin:** MULLOCK CREEK**Receiving Body:** Existing Flowway**Class:** OFW**Special Drainage District:** NA**Total Acres Wetland Onsite:** 1.61**Total Acres Impacted Onsite :** 1.61**Offsite Mitigation Credits-Mit.Bank:** 1.34 Big Cypress**Conservation Easement To District :** No**Sovereign Submerged Lands:** No**PROJECT SUMMARY:**

This Environmental Resource Permit authorizes construction and operation of a storm water management system serving 33.02 acres of residential development for a project known as Hideaway Cove.

This project is to construct a residential development with the associated infrastructure and storm water management system. Plans are attached as Exhibit No. 2.0.

Issuance of this permit constitutes certification of compliance with state water quality standards in accordance with Rule 62-330.062 Florida Administrative Code (F.A.C.).

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**PROJECT EVALUATION:****PROJECT SITE DESCRIPTION:**

The site is located at the end of Pine Road in Fort Myers, Lee County, Florida. The site is bordered by Estero Bay Buffer Preserve to the west and southeast, Shady Acres Travel Park to the north, and vacant private property to the northeast and south. Please note that the portion of Estero Bay Buffer Preserve located to the southeast contains wetlands within the Mullock Creek Slough system. The wetlands to the east of the project site are part of a tributary to Mullock Creek, and are considered Outstanding Florida Waters. The access to the property is via a roadway easement which extends from Pine Road to the eastern boundary of the subject property. A location Map is attached as Exhibit No. 1.0.

There are no permitted water management facilities within the project area. The 32.0-acre project site is undeveloped, and consists of 30.39 acres of uplands and 1.61 acres of wetlands. The 1.02-acre access easement adjacent to the subject property consists of 0.66 acres of uplands and 0.36 acres of wetlands.

For information on the wetlands and surface waters within the project, please refer to the Wetlands and Surface Waters section of this staff report.

**BACKGROUND:**

A permit application on the subject property was previously submitted in 2005. The permit application was withdrawn prior to permit approval in 2009. The proposed development includes construction approval for 33.02 acres consisting of sixty-four single family units, internal roads, and the storm water management system. The storm water management system consists of a single wet detention area that discharges off-site to an existing flowway.

**LAND USE:****Construction****Project:**

	<b>This Phase</b>	<b>Total Project</b>	
Building Coverage	7.29	7.29	acres
Lake	7.52	7.52	acres
Pervious	11.71	11.71	acres
Roadway	6.50	6.50	acres
<b>Total:</b>	<b>33.02</b>	<b>33.02</b>	

**WATER QUANTITY :****Discharge Rate :**

As shown in the table below, the project discharge is within the allowable limit for the area.

Discharge Storm Frequency : 25 YEAR-3 DAY

Design Rainfall : 11 inches

<b>Basin</b>	<b>Allow Disch (cfs)</b>	<b>Method Of Determination</b>	<b>Peak Disch (cfs)</b>	<b>Peak Stage ( ft, NAVD 88)</b>
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Basin	Allow Disch (cfs)	Method Of Determination	Peak Disch (cfs)	Peak Stage ( ft, NAVD 88)
Basin A	3.6	Discharge Formula	3.4	9.8

**Finished Floors :**

Building Storm Frequency : 100 YEAR-3 DAY

Design Rainfall : 14 inches

Basin	Peak Stage ( ft, NAVD 88)	Proposed Min. Finished Floors ( ft, NAVD 88)	FEMA Elevation ( ft, NAVD 88)
Basin A	10.3	11.5	11

**Road Design :**

Road Storm Frequency : 5 YEAR-1 DAY

Design Rainfall: 5.5 inches

Basin	Peak Stage ( ft, NAVD 88)	Proposed Min. Road Crown ( ft, NAVD 88)
Basin A	7.6	7.6

**Control Elevation :**

Basin	Area (Acres)	Ctrl Elev ( ft, NAVD 88)	WSWT Ctrl Elev ( ft, NAVD 88)	Method Of Determination
Basin A	33.32	6.3	6.30	Wet Season Soil Borings

**Receiving Body :**

Basin	Str.#	Receiving Body
Basin A	CS-1	FlowWay

**Discharge Structures:** Note: The units for all the elevation values of structures are ( ft, NAVD 88)**Inlets:**

Basin	Str#	Count	Type	Width	Length	Dia.	Crest Elev.
Basin A	CS-1	1	Fdot Mod D Drop Inlet	37"	49"		9.8

**Water Quality Structures:** Note: The units for all the elevation values of structures are ( ft, NAVD 88)**Bleeders:**

Basin	Str#	Count	Type	Width	Height	Length	Dia.	Invert Angle	Invert Elev.
Basin A	CS-1	1	Rectangular Orifice	10"	9.2"				6.3

**WATER QUALITY :**

Water quality treatment will be provided in wet detention. The project provides 4.13 acre-feet of water quality treatment volume. The required water quality treatment volume is 2.75 acre-feet, based on one inch over the basin area.

Pursuant to Appendix E of Volume II, the water quality treatment volume provided includes an additional 50% treatment volume above the requirements in Section 4.2 of Volume II to provide reasonable assurance that the project will not have an adverse impact on the quality of the downstream receiving

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body.

In addition to the required water quality treatment volume, as an additional best management practice, the applicant provided site specific pollutant loading calculations to demonstrate that the storm water management system will not have an adverse impact on the quality of the downstream receiving body based on nutrients.

The project also includes implementation of an Urban Stormwater Management Program (Exhibit 2.2) and a Stormwater Pollution Prevention Plan (Exhibit 2.1) as additional reasonable assurance of compliance with water quality criteria during construction and operation.

Basin	Treatment Method		Vol Req.d (ac-ft)	Vol Prov'd
Basin A	Treatment	Wet Detention	2.75	4.13

## **WETLANDS:**

### **Wetlands And Other Surface Waters:**

The project area contains 1.61 acres of on-site wetlands and 0.36 acres of off-site wetlands totaling 1.97 acres. Please see Exhibit 3.0 for wetland locations. The on-site wetlands can be generally described as wetland hardwoods with nearly 100% exotic coverage and hydric pine flatwoods with between 51-75% exotic coverage. The off-site wetlands, located within the access easement to the east of the subject property, can generally be described as cypress with between 10-25% exotic coverage, freshwater marsh, wet prairie with between 26-50% exotic coverage, and hydric disturbed land. Additional wetland descriptions are located in the e-permitting file. Except for wetlands within the access road easement area, the majority of the on-site wetlands are isolated within the site and do not extend off-site.

The project will result in impacts to 1.61 acres of on-site wetlands and 0.36 acres of off-site wetlands, totaling 1.97 acres, as described in the table below. Exhibit 3.1 identifies the locations of the wetlands that will be impacted. The quality of the on-site wetlands proposed for impact is low, and would have minimal functional value if preserved and surrounded by residential development. On-site wetland impacts are unavoidable due to the location of the wetlands within the property and the feasibility of construction of the proposed project. In addition, the off-site wetland impacts cannot be avoided. The property has only one legal access point, and the wetlands within that access easement must be impacted in order to provide reasonable access to the site. The applicant is proposing to mitigate for the functional loss of the unavoidable on-site and off-site wetland impacts by purchasing credits at a mitigation bank. This proposed mitigation provides greater long-term ecological value than the wetlands to be impacted by the proposed project. Based on these factors and the proposed mitigation plan, the project meets the reduction/elimination criteria of Section 10.2.1 of the Applicant's Handbook Volume I (Volume I).

Pursuant to Section 10.2.7 of Volume I, there are 1.72 acres of secondary wetland impacts associated with the lack of a sufficient 25-foot native upland buffer located north and south of the proposed access road. The secondary wetland impacts are depicted on Exhibit 3.1.

To mitigate for the direct and secondary on-site and off-site wetland impacts, the applicant will purchase 1.34 freshwater transitional credits from Big Cypress Mitigation Bank (see the Letter of Credit Reservation attached as Exhibit 3.2). The amount of mitigation was determined by using the Wetland Rapid



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Assessment Procedure (WRAP). The final scores are attached as Exhibit 3.3.

To ensure that the hydrology of the off-site wetlands adjacent to the proposed access road is maintained, the applicant is proposing to install a series of six 29" x 45" ERCP (36" RCP equivalent) culverts below the access road within a large portion of the area of Mullock Creek Slough wetlands that intersect with the access road. The stormwater management system also outfalls to the wetlands/tributary of Mullock Creek to the east.

The applicant is also proposing to construct a structural buffer along all property lines that are adjacent to the Estero Bay Buffer Preserve to ensure that adverse impacts, including clearing and encroachment, will not take place within the Estero Bay Buffer Preserve. The structural buffer may include, but is not limited to, a continuous double staggered hedge of native shrubs, a three-foot high berm, or a four-foot high fence. Please see the construction plans attached as Exhibit 2.0 for details.

The proposed mitigation is not located within the same drainage basin (East Collier Basin) as the proposed impacts (Estero Bay Basin). The applicant provided a cumulative impact analysis for the Estero Bay Basin which can be found in the e-permitting file. In summary, no cumulative impacts are expected as a result of the construction of the project within the Estero Bay Drainage Basin, with associated mitigation credits purchased from the Big Cypress Mitigation Bank, located within the East Collier Drainage Basin. Therefore pursuant to Section 10.2.8 of Volume I, the project will not result in unacceptable cumulative impacts to the Estero Bay Basin.

#### **Wetland Inventory:**

Please note the FLUCCS Code 600 on the table below corresponds to FLUCCS Code 619 on the WRAP analysis (Exhibit 3.3).

Please note the FLUCCS Code 610 on the table below corresponds to FLUCCS Code 740H on the WRAP analysis (Exhibit 3.3).

Please note that Wetland ID Wet 2-2 on the table below corresponds to Wet-1 with FLUCCS Code 625E3 on the WRAP analysis (Exhibit 3.3).

Please note that Wetland ID Wet 3-2 on the table below corresponds to Wet-1 with FLUCCS Code 740H on the WRAP analysis (Exhibit 3.3).

Please note that Wetland ID Wet 9-2 on the table below corresponds to Wet-8 with FLUCCS Code 740H on the WRAP analysis (Exhibit 3.3).

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**Wetland Inventory :****CONSTRUCTION NEW -Hideaway Cove**

Site Id	Site Type	Pre-Development				Post-Development						
		Pre Fluc cs	AA Type	Acreage (Acres)	Current Wo Pres	With Project	Time Lag (Yrs)	Risk Factor	Pres. Adj. Factor	Post Fluc cs	Adj Delta	Functional Gain / Loss
Wet 1-2	OFF	621	Secondary	.28							.000	.000
Wet 2-2	OFF	625	Secondary	.13							.000	.000
Wet 3-2	OFF	610	Secondary	.05							.000	.000
Wet 4-2	OFF	600	Secondary	.24							.000	.000
Wet 6	OFF	643	Direct	.06							.000	.000
Wet 6-2	OFF	643	Secondary	.26							.000	.000
Wet 7	OFF	621	Direct	.11							.000	.000
Wet 7-2	OFF	621	Secondary	.21							.000	.000
Wet 8	OFF	641	Direct	.14							.000	.000
Wet 8-2	OFF	610	Direct	.05							.000	.000
Wet 8-2	OFF	641	Secondary	.41							.000	.000
Wet 9-2	OFF	610	Secondary	.14							.000	.000
Wet 1	ON	625	Direct	.07							.000	.000
Wet 2	ON	600	Direct	.90							.000	.000
Wet 3	ON	600	Direct	.24							.000	.000
Wet 4	ON	600	Direct	.31							.000	.000
Wet 5	ON	600	Direct	.09							.000	.000
Total:				3.69								.00

<b>Fluc cs Code</b>	<b>Description</b>
600	Wetlands
610	Wetland Hardwood Forests
621	Cypress
625	Hydric Pine Flatwoods
641	Freshwater Marshes
643	Wet Prairies

**MITBANK****BIG CYPRESS**

<b>Type Of Credits</b>	<b>Number Of Credits</b>
Freshwater Transitional	Mitigation Bank Cr Used 1.34
<b>Total:</b>	<b>1.34</b>

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**Fish And Wildlife Issues:**

The project site does not contain significant habitat for wetland-dependent endangered or threatened wildlife species or species of special concern. No wetland-dependent endangered/threatened species or species of special concern were observed on site, and submitted information indicates that potential use of the site by such species is minimal, pursuant to the Protected Species Assessment dated December 2014.

This permit does not relieve the applicant from complying with all applicable rules and any other agencies' requirements if, in the future, endangered/threatened species or species of special concern are discovered on the site.

**CERTIFICATION, OPERATION, AND MAINTENANCE:**

Pursuant to Chapter 62-330.310 Florida Administrative Code (F.A.C.), Individual Permits will not be converted from the construction phase to the operation phase until construction completion certification of the project is submitted to and accepted by the District. This includes compliance with all permit conditions, except for any long term maintenance and monitoring requirements. It is suggested that the permittee retain the services of an appropriate professional registered in the State of Florida for periodic observation of construction of the project.

For projects permitted with an operating entity that is different from the permittee, it should be noted that until the construction completion certification is accepted by the District and the permit is transferred to an acceptable operating entity pursuant to Sections 12.1-12.3 of the Applicant's Handbook Volume I and Section 62-330.310, F.A.C., the permittee is liable for operation and maintenance in compliance with the terms and conditions of this permit.

In accordance with Section 373.416(2), F.S., unless revoked or abandoned, all stormwater management systems and works permitted under Part IV of Chapter 373, F.S., must be operated and maintained in perpetuity.

The efficiency of stormwater management systems, dams, impoundments, and most other project components will decrease over time without periodic maintenance. The operation and maintenance entity must perform periodic inspections to identify if there are any deficiencies in structural integrity, degradation due to insufficient maintenance, or improper operation of projects that may endanger public health, safety, or welfare, or the water resources. If deficiencies are found, the operation and maintenance entity will be responsible for correcting the deficiencies in a timely manner to prevent compromises to flood protection and water quality. See Section 12.4 of Applicant's Handbook Volume I for Minimum Operation and Maintenance Standards.

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**RELATED CONCERNS:****Water Use Permit Status:**

The applicant has indicated that on-site lakes and a groundwater well will be used as a source for irrigation water for the project. Water Use Application No. 150112-11 has been submitted and is being processed concurrently for this project.

The applicant has indicated that dewatering is required for construction of this project. Dewatering Application No. 150112-12 has been submitted and is being reviewed concurrently for this project.

This permit does not release the permittee from obtaining all necessary Water Use authorization(s) prior to the commencement of activities which will require such authorization, including construction dewatering and irrigation.

**CERP:**

The proposed project is not located within or adjacent to a Comprehensive Everglades Restoration Project component.

**Potable Water Supplier:**

Lee County Utilities

**Waste Water System/Supplier:**

Lee County Utilities

**Right-Of-Way Permit Status:**

A District Right-of-Way Permit is not required for this project.

**Historical/Archeological Resources:**

The District received a letter dated January 26, 2015 from the Florida Department of State, Division of Historical Resources (DHR) requesting the applicant to perform a systematic, professional archaeological and historical survey. The applicant performed the requested archaeological and historical survey for the property in March and April of 2015. No cultural resources were identified within the project area, and it was concluded that the proposed project will not have an effect on cultural resources listed, or eligible for listing in the National Register of Historic Places. The District received a subsequent letter dated May 12, 2015 from DHR stating that they were in concurrence with the applicant's determination, and found that the submitted archaeological report was complete and sufficient in accordance with Chapter 1A-46, F.A.C. Please see the e-permitting file for complete details. This permit does not release the permittee from compliance with any other agencies' requirements in the event that historical and/or archaeological resources are found on the site.

**DEO/CZM Consistency Review:**

The issuance of this permit constitutes a finding of consistency with the Florida Coastal Management Program.

**Third Party Interest:**

The District has received comments from Mr. Frank Gumpert, an interested third party, regarding concerns about potential flooding in the adjacent neighborhoods located east of the proposed project

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area. A meeting was conducted between Mr. Gumpert, the applicant, the engineering and environmental consultants, and District staff on February 25, 2016. After discussing the concerns, the applicant submitted information that demonstrated that the project meets the public interest test criteria, pursuant to Section 10.2.3, Volume I (please see the e-permitting file). The applicant also provided design modifications to the conveyance system on Pine Road (access road) to address the potential flooding concerns (please see Exhibit 2.0). The District has determined that the project meets State rules outlined in 62-330, F.A.C. and the Applicant's Handbook, Volumes I and II.

**Enforcement:**

There has been no enforcement activity associated with this application.

**STAFF REVIEW:****DIVISION APPROVAL:****NATURAL RESOURCE MANAGEMENT:**

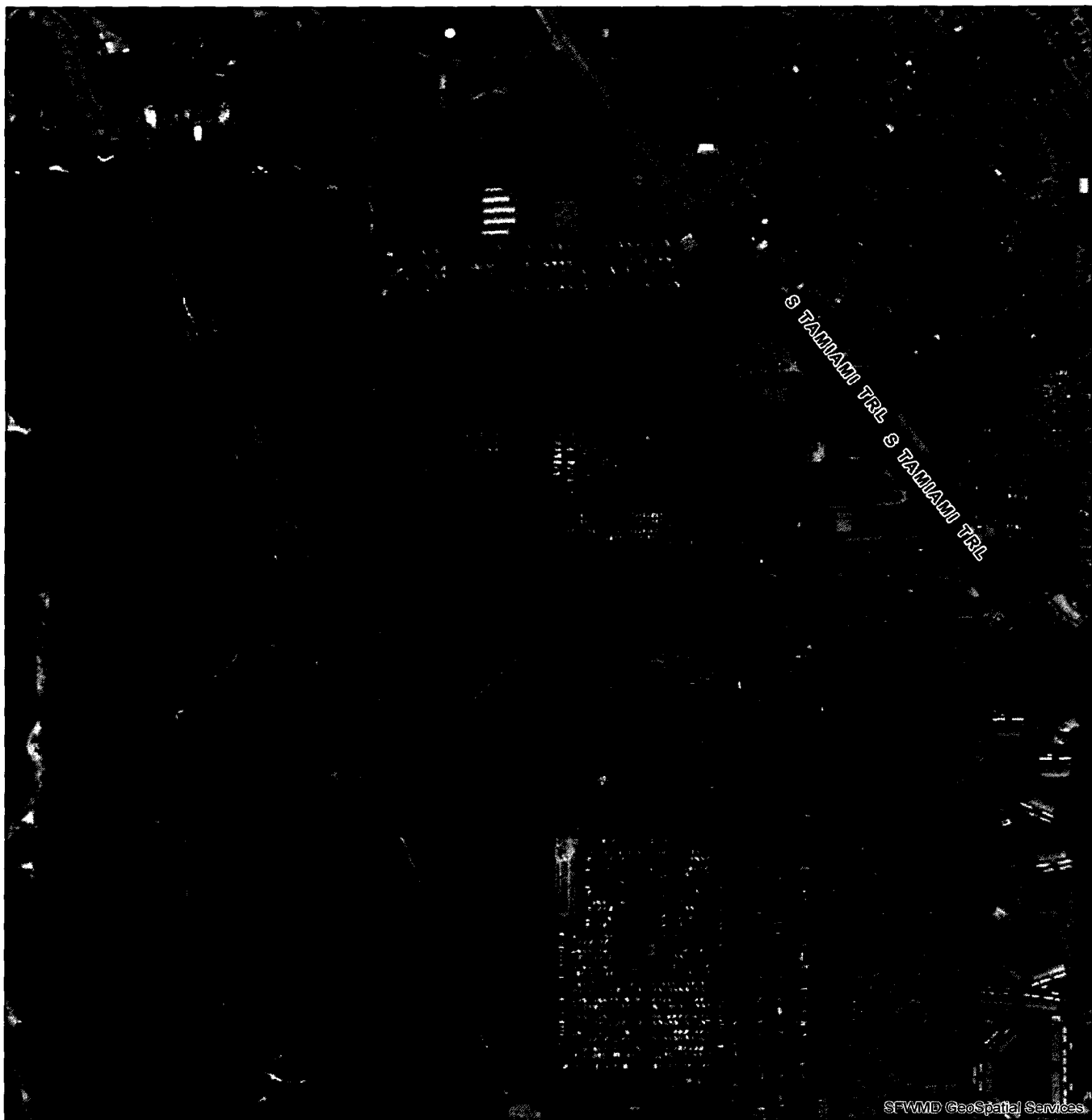
  
\_\_\_\_\_  
Laura Layman

DATE: 5/19/16






**SURFACE WATER MANAGEMENT:**

  
\_\_\_\_\_  
Brian Rose, P.E.

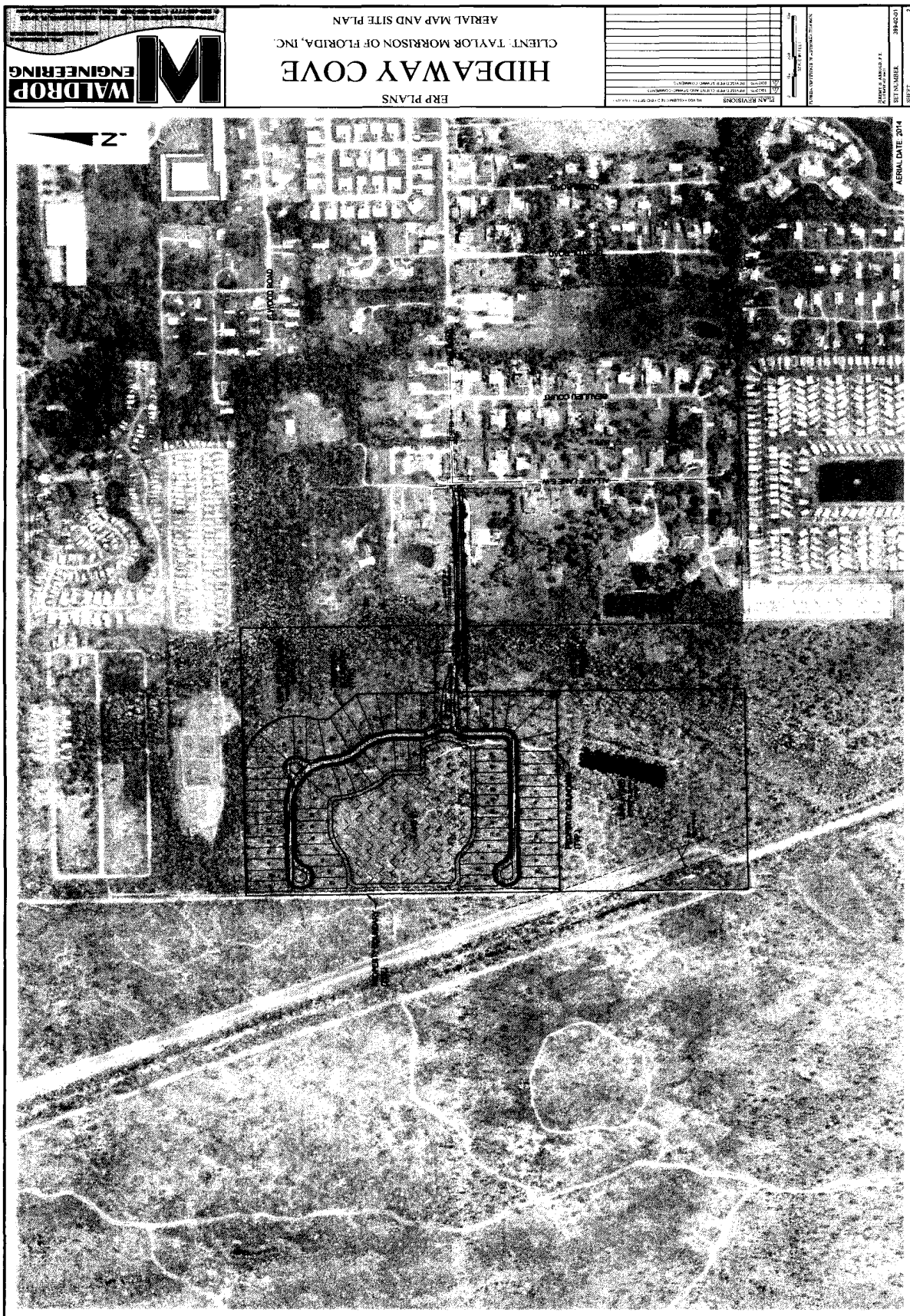
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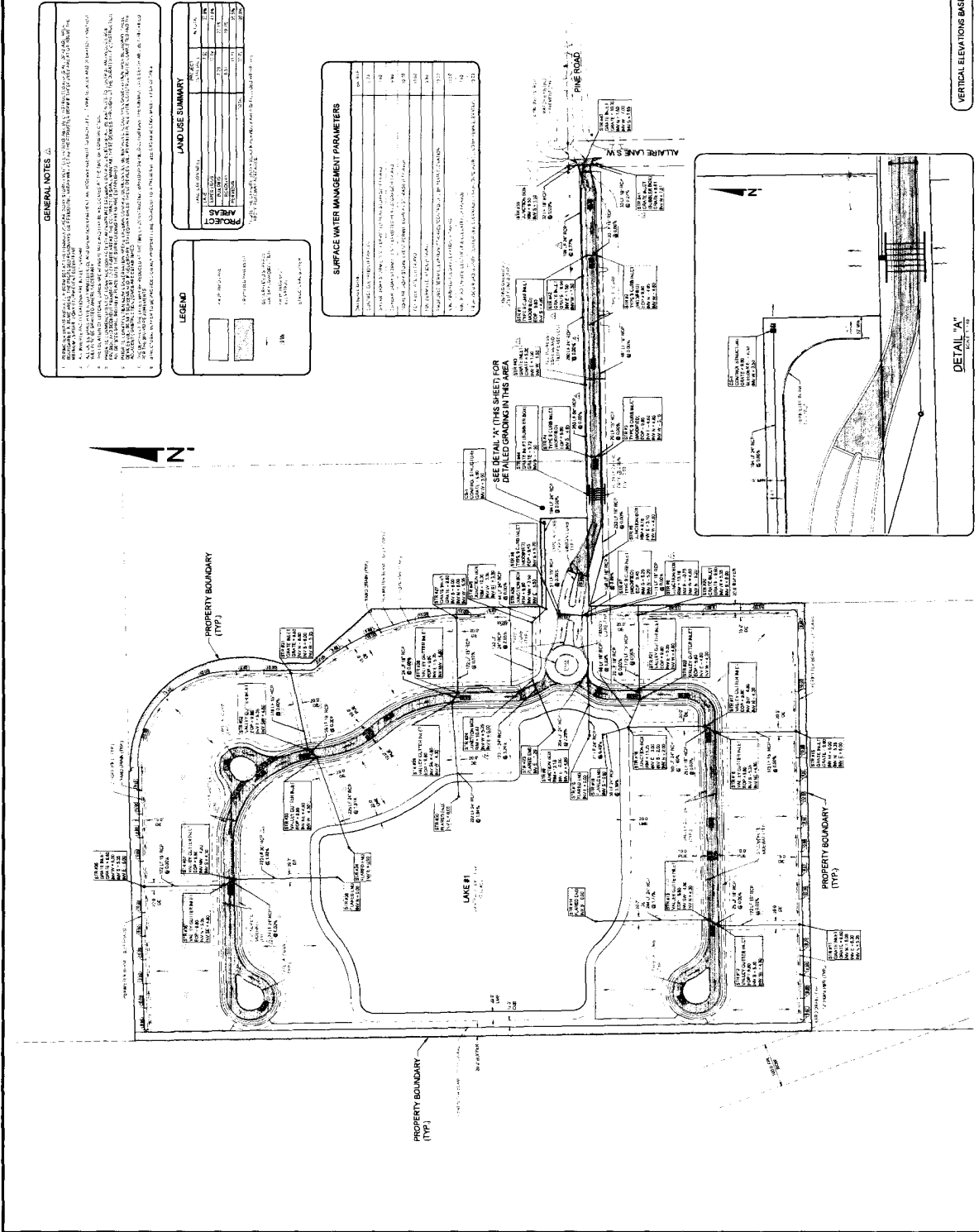
SFWMD GeoSpatial Services

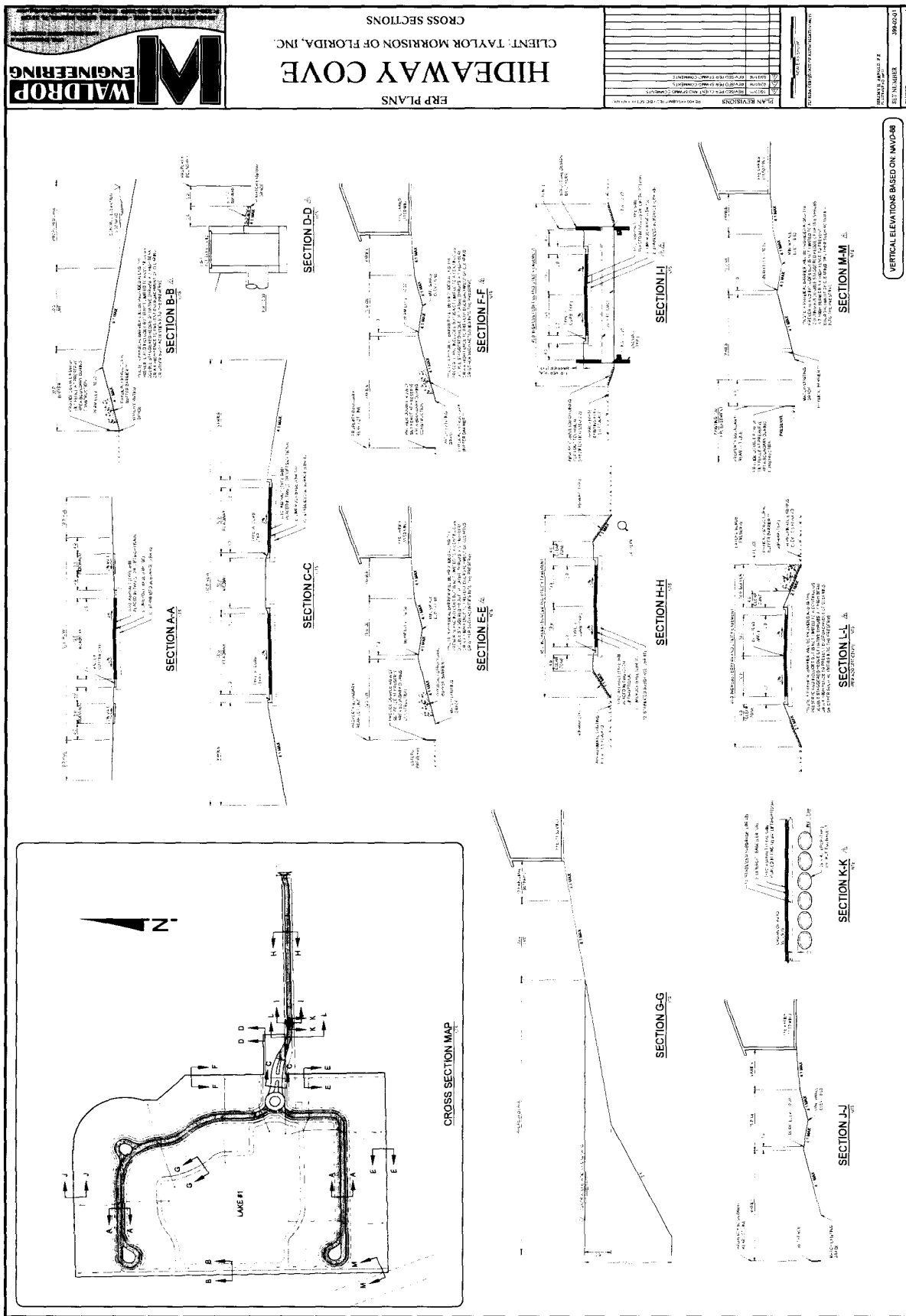
Exhibit No: 1	Exhibit Created On: 2016-05-18	COUNTY, FL	 Application
REGULATION DIVISION Project Name: HIDEAWAY COVE			Permit No: 36-08550-P Application Number: 150105-5
 <div style="display: flex; align-items: center;"> <div style="flex: 1;"> <p>0      0.175      0.35</p>  <p>Miles</p> </div> <div style="flex: 0.2; text-align: center;"> <p>N</p>  </div> </div>			Created by  South Florida Water Management District

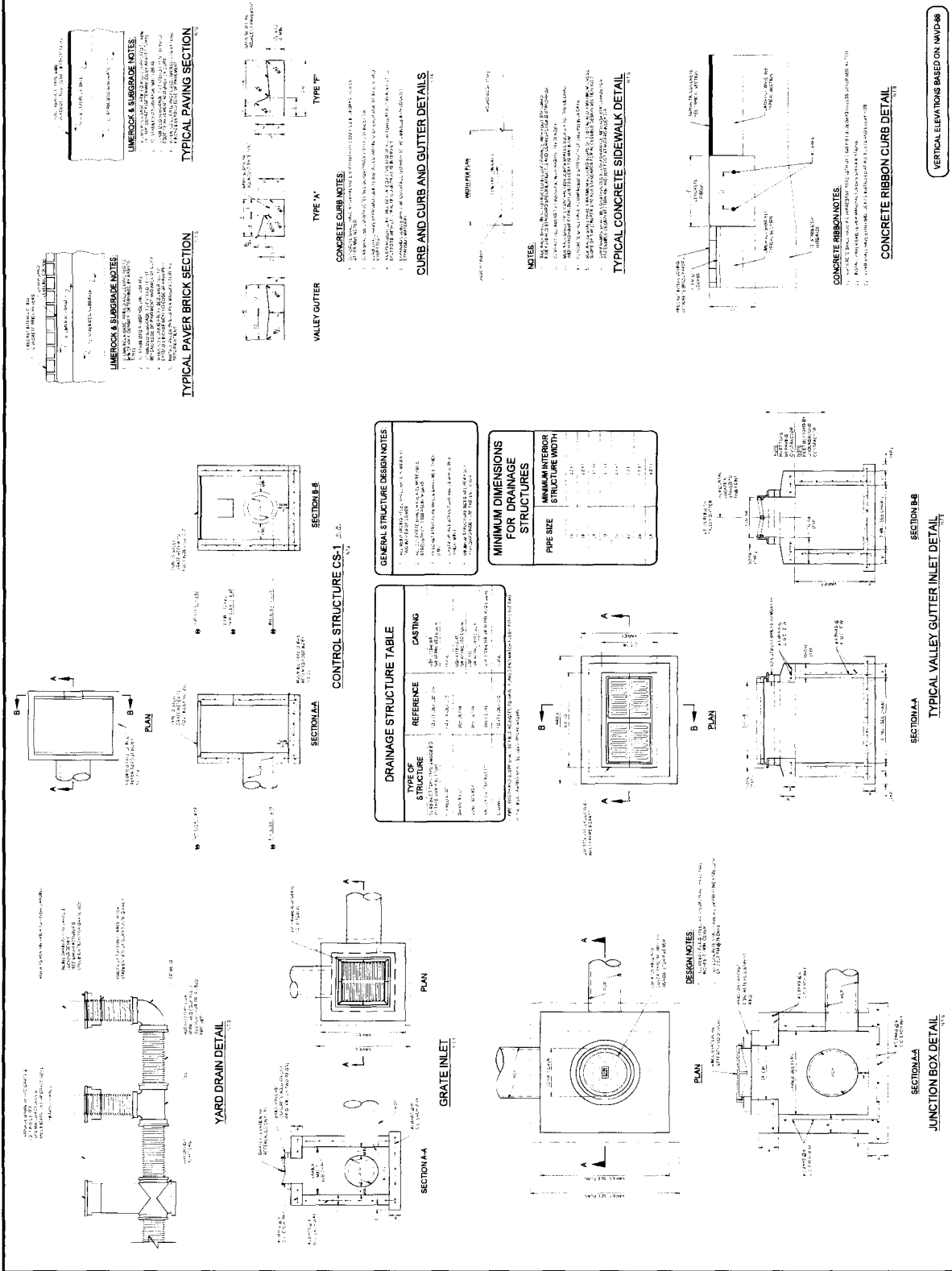














## Stormwater Pollution Prevention Plan Hideaway Cove

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

\_\_\_\_\_  
Name (Operator and/or Responsible Authority)

\_\_\_\_\_  
Date

<b>Project Name and Location</b>	Hideaway Cove Located at the end of Pine Rd Fort Myers, FL 33908
----------------------------------	--

**A site map must be developed and must contain, at a minimum, the following information:**

1. Drainage patterns,
2. Approximate slopes after major grading activities,
3. Areas of soil disturbance,
4. Outline all areas that are not to be disturbed,
5. Location of all major structural and non-structural controls,
6. The location of expected stabilization practices,
7. Wetlands and surface waters, and
8. Locations where stormwater may discharge to a surface water or MS4.

**Site Description**

Describe the nature of the construction activity:	Construction 90 single family units and supporting infrastructure.
Describe the intended sequence of major soil disturbing activities:	<ol style="list-style-type: none"> <li>1. Install Erosion Control around wetlands/ROW/property line and as needed to prevent soil from leaving the site.</li> <li>2. Clear and grade uplands and impacted wetlands.</li> <li>3. Construct detention lakes and stockpile excavated material.</li> <li>4. Continue clearing and grade roadways.</li> <li>5. Install wastewater collection system.</li> <li>6. Install storm sewer system.</li> <li>7. Install water distribution system.</li> <li>8. Construct roadway and sidewalks.</li> <li>9. Final grade and install permanent grasses and plantings. All disturbed areas are to be reseeded or sodded.</li> <li>10. Remove Erosion Control when stabilization has been established to prevent soil from leaving the site.</li> </ol>
Total area of the site:	32.02 Acres
Total area of the site to be disturbed:	32.02 Acres
Existing data describing the soil or quality of any stormwater discharge from the site:	<p>Subsurface soils generally consist of poorly-graded sands, silty sand, sandy silt, and weathered and/or fractured limestone.</p> <p>Groundwater was found to be at elevation 6.3' NAVD, which is approx. 1.2' below existing grade.</p>
Estimate the drainage area size for each discharge point:	1. 32.02 acres
Latitude and longitude of each discharge point and identify the receiving water or MS4 for each discharge point:	<p>1. LAT: 26°27'18.47"N LON: 81°50'2.53"W Discharges into an existing drainage ditch</p>

Give a detailed description of all controls, Best Management Practices (BMPs) and measures that will be implemented at the construction site for each activity identified in the intended sequence of major soil disturbing activities section. Provide time frames in which the controls will be implemented.

NOTE: All controls shall be consistent with performance standards for erosion and sediment control and stormwater treatment set forth in s. 62-40.432, F.A.C., the applicable Stormwater or Environmental Resource Permitting requirements of the Department or a Water Management District, and the guidelines contained in the State of Florida Erosion and Sediment Control Designer and Reviewer Manual, FDOT, FDEP (2007) and any subsequent amendments.

- Prior to clearing, a silt fence (trenched 4 inches deep and backfilled on the uphill side), shall be installed around the perimeter of the site. A double row of silt fence reinforced with field fencing shall be placed around the vegetative buffers and wetland area as shown on site plan.
- During the clearing, grubbing and site grading stages, areas that are disturbed more than 7 days shall be stabilized with rye grass or other appropriate temporary vegetation applied at manufacturer's recommendations. After seeding, each area shall be mulched with 4,000 pounds of straw per acre. On all exposed slopes that are equal to or greater than 5%, an erosion blanket shall be used until the area achieves final stabilization. A rock entrance road (that is 50ft long with a 6 inch depth of FDOT #1 stone and lined with filter fabric) shall be constructed to minimize the effects of truck traffic and sedimentation tracking both on and off of the site. There will be only one construction entrance at this site.
- After the initial site grading work, all proposed inlet(s)/outfalls, once installed, shall be protected from erosion and sediment runoff as specified in the plans. Disturbed portions of the site where construction activities have permanently ceased shall be stabilized with sod or other permanent stabilization methods (if other methods are used, this SWPPP will be modified) no later than 14 days after the last construction activity. Seeding shall be the same as in temporary seeding. All drop inlets shall be protected by either a fabric inlet filter or a prefabricated filter bag. All proposed curb inlets shall be protected by gravel filled sand bags or filter sock.
- All BMPs shall be installed and maintained as specified on the "typical" sheet.

To be completed by Contractor/Subcontractor(s):

Describe all temporary and permanent stabilization practices. Stabilization practices include temporary seeding, mulching, permanent seeding, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, vegetative preservations, etc.

- Temporary seeding shall be rye grass or other appropriate ground covers depending upon season of installation that is applied at manufacturer's recommendations to any disturbed areas that are inactive more than 7 days.
- Mulching practices and sod shall be applied to the parking lot island.
- Sod shall be used to stabilize the sides of the retention basin.
- Filter fabric shall be placed under the rock entrance/exit, the swale outfall and the stormwater detention pond outfall.

To be completed by Contractor/Subcontractor(s): TBD

Describe all structural controls to be implemented to divert stormwater flow from exposed soils and structural practices to store flows, retain sediment on-site or in any other way limit stormwater runoff. These controls include silt fences, earth dikes, diversions, swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, coagulating agents and temporary or permanent sediment basins.

- A silt fence (with the same installation as indicated under the Best Management Practices heading) shall be placed around the entire perimeter. A double row of silt fence reinforced with field fence (with the same installation as indicated under the Best Management Practices heading) shall be placed around the vegetative buffers and wetland area.
- Detention basins shown in plans may be used as temporary sediment basins (prior to being connected to a discharge structure) if needed. Care shall be taken to assure the removal of accumulated fine sediments and that the excessive compaction of soil by construction machinery is avoided.
- Inlet(s)/Outfalls shall be protected as indicated under the Best Management Practices heading.
- Rock outlet protection lined with filter fabric shall be installed at all outfall points.

To be completed by Contractor/Subcontractor(s): TBD

Describe all sediment basins to be implemented for areas that will disturb 10 or more acres at one time. The sediment basins (or an equivalent alternative) should be able to provide 3,600 cubic feet of storage for each acre drained. Temporary sediment basins (or an equivalent alternative) are recommended for drainage areas under 10 acres.

Not applicable, may use the retention basin (prior to being connected to a discharge structure) as a temporary sediment basin if needed.

Describe all permanent stormwater management controls such as, but not limited to, detention or retention systems or vegetated swales that will be installed during the construction process.

- Stormwater detention basins shall be constructed per the approved ERP permit.

To be completed by Contractor/Subcontractor(s): TBD



**Describe in detail controls for the following potential pollutants**

<p>Waste disposal, this may include construction debris, chemicals, litter, and sanitary wastes:</p>	<p>All waste materials will be collected and stored. Removal will be by a licensed solid waste management company in Lee County. The dumpsters will meet all state and local solid waste management regulations. All trash and construction debris from the site will be deposited in the dumpsters. The dumpster will be emptied a minimum of once a week or more often if necessary, and the trash will be hauled to the licensed solid waste disposal facility. No construction waste materials will be buried onsite. All personnel will be instructed regarding the correct procedure for waste disposal. Notices stating these practices will be posted in the office trailer and Project Superintendent will be responsible for seeing that these procedures are followed. In addition, Material Safety Data Sheets will be on site for all items used.</p> <p>All hazardous waste materials will be disposed of in the manner specified by local or State regulations or by the manufacturer. Site personnel will be instructed in these practices and the Project Superintendent will be responsible for seeing that these practices are followed.</p> <p>All sanitary waste will be collected from the portable units by a licensed sanitary waste management contractor in accordance with local regulation.</p> <p>To be completed by Contractor/Subcontractor(s): TBD</p>
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Offsite vehicle tracking from construction entrances/exits:	<p>A stabilized construction entrance has been provided to help reduce vehicle tracking of sediments. The paved street adjacent to the site entrance will be swept as needed, at a minimum weekly, to remove any excess mud, dirt or rock tracked from the site. Dump trucks hauling material from the construction site will be covered with a tarpaulin.</p> <p>To be completed by Contractor/Subcontractor(s): TBD</p>
The proper application rates of all fertilizers, herbicides and pesticides used at the construction site:	<p>Florida-friendly fertilizers and pesticides will be used at a minimum and in accordance with the manufacturer's suggested application rates. The fertilizers and pesticides will be stored in a covered shed away from run off areas. The contents of any partially used bags of fertilizer will be transferred to a sealable plastic bin to avoid spills.</p> <p>To be completed by Contractor/Subcontractor(s): TBD</p>
The storage, application, generation and migration of all toxic substances:	<p>A double walled fuel tank will be placed on a drip plan to contain and prevent any drips or leaks from being discharged in stormwater runoff. All paints and other chemicals will be stored in a locked covered shed away from run off areas. A spill prevention plan is also in place to minimize the number of spills that may occur.</p> <p>To be completed by Contractor/Subcontractor(s): TBD</p>
Other:	<p>All sanitary waste will be collected from the portable units by a licensed sanitary waste management contractor in accordance with local regulation and will be placed away from surface waters, wetlands, and stormwater system. No vehicle maintenance shall be conducted on-site. A washdown area shall be designated at all times and will not be located in any area that will allow for the discharge of polluted runoff. A small-vegetated berm shall be placed around the washdown area.</p> <p>To be completed by Contractor/Subcontractor(s): TBD</p>

Provide a detailed description of the maintenance plan for all structural and non-structural controls to assure that they remain in good and effective operating condition.
<p>Contractor shall provide routine maintenance of permanent and temporary sediment and erosion control features in accordance with the technical specifications or as follows, whichever is more stringent:</p> <ul style="list-style-type: none"> <li>• All control measures will be inspected at least once each week and following any storm event of 0.50 inches or greater.</li> <li>• All measures will be maintained in good working order; if a repair is necessary, it will be initiated within 24 hours of report.</li> <li>• Silt fence will be inspected for depth of sediment, tears, to see if the fabric is securely attached to the fence posts, and to see that the fence posts are firmly in the ground.</li> <li>• Built up sediment will be removed from silt fence when it has reached one-half the height of the fence.</li> <li>• The perimeter berm will be inspected and any breaches promptly repaired.</li> <li>• Temporary and permanent grassing and planting will be inspected for bare spots, washouts, and healthy growth.</li> <li>• Bare areas of the site that have been previously seeded will be reseeded as per the manufacturers' instructions.</li> <li>• Maintenance shall be performed on the construction entrance when any void spaces become full of sediment.</li> </ul> <p>To be completed by Contractor/Subcontractor(s): TBD</p>
<p>Inspections: Describe the inspection and inspection documentation procedures, as required by Part V.D.4. of the permit. Inspections must occur at least once a week and within 24 hours of the end of a storm event that is 0.50 inches or greater (see attached form).</p> <p>Qualified personnel will inspect all points of discharges, all disturbed areas of construction that have not been stabilized, constructed areas and locations where vehicles enter and exit the site, and all BMPs at least once every 7 calendar days or within 24 hours of the end of a rainfall event that is 0.5 inches or greater. Where sites have been finally stabilized, said inspections shall be conducted at least once every month until the Notice of Termination is filed.</p> <p>To be completed by Contractor/Subcontractor(s): TBD</p>

Identify and describe all sources of non-stormwater discharges as allowed in Part IV.A.3. of the permit. Flows from fire fighting activities do not have to be listed or described.

It is expected that the following non-storm water discharges will occur from the site during the construction period:

- Water from waterline flushing
- Pavement wash waters (where no spills or leaks of toxic or hazardous materials have occurred).
- Uncontaminated groundwater (from dewatering excavation if necessary).

All non-storm water discharges will be directed to the detention lakes prior to discharge. Turbid water from the stormwater pond shall not be pumped directly into receiving waters. Any pumped water shall be treated to prevent the discharge of polluted stormwater. Treatment can include but is not limited to settling ponds, silt fences, and the proper use of flocculating agents.

To be completed by Contractors/ Subcontractor(s); TBD

**This SWPPP must clearly identify, for each measure identified within the SWPPP, the contractor(s) or subcontractor(s) that will implement each measure. All contractor(s) and subcontractor(s) identified in the SWPPP must sign the following certification:**

“I certify under penalty of law that I understand, and shall comply with, the terms and conditions of the State of Florida Generic Permit for Stormwater Discharge from Large and Small Construction Activities and this Stormwater Pollution Prevention Plan prepared thereunder.”

Name	Title	Company Name, Address and Phone Number	Date
1. TBD	TBD	TBD	TBD
2. TBD	TBD	TBD	TBD
3. TBD	TBD	TBD	TBD

# Stormwater Pollution Prevention Plan Inspection Report Form

Inspections must occur at least once a week and within 24 hours of the end of a storm event that is 0.50 inches or greater.

Project Name: Hideaway Cove

FDEP NPDES Stormwater Identification Number:

Location	Rain data	Type of control (see below)	Date installed/ modified	Current Condition (see below)	Corrective Action / Other Remarks
All veg buffer areas					
Entrance					
Stormwater pond					
Swale					
Parking Lot Inlet					
Mulch on the Berm					

Condition Code:

G = Good

M = Marginal, needs maintenance or replacement soon

P = Poor, needs immediate maintenance or replacement

C = Needs to be cleaned

O = Other

Control Type Codes

1. Silt Fence	10. Storm drain inlet protection	19. Reinforced soil retaining system	28. Tree protection
2. Earth dikes	11. Vegetative buffer strip	20. Gabion	29. Detention pond
3. Structural diversion	12. Vegetative preservation area	21. Sediment Basin	30. Retention basin
4. Swale	13. Retention Basin	22. Temporary seed / sod	31. Waste disposal / housekeeping
5. Sediment Trap	14. Construction entrance stabilization	23. Permanent seed / sod	32. Dam
6. Check dam	15. Perimeter ditch	24. Mulch	33. Sand Bag
7. Subsurface drain	16. Curb and gutter	25. Geohay inlet filters	34. Other
8. Pipe slope drain	17. Paved road surface	26. Geotextile	
9. Level spreaders	18. Rock outlet protection	27. Rip-rap	

Inspector Information:

Name

Qualification

Date

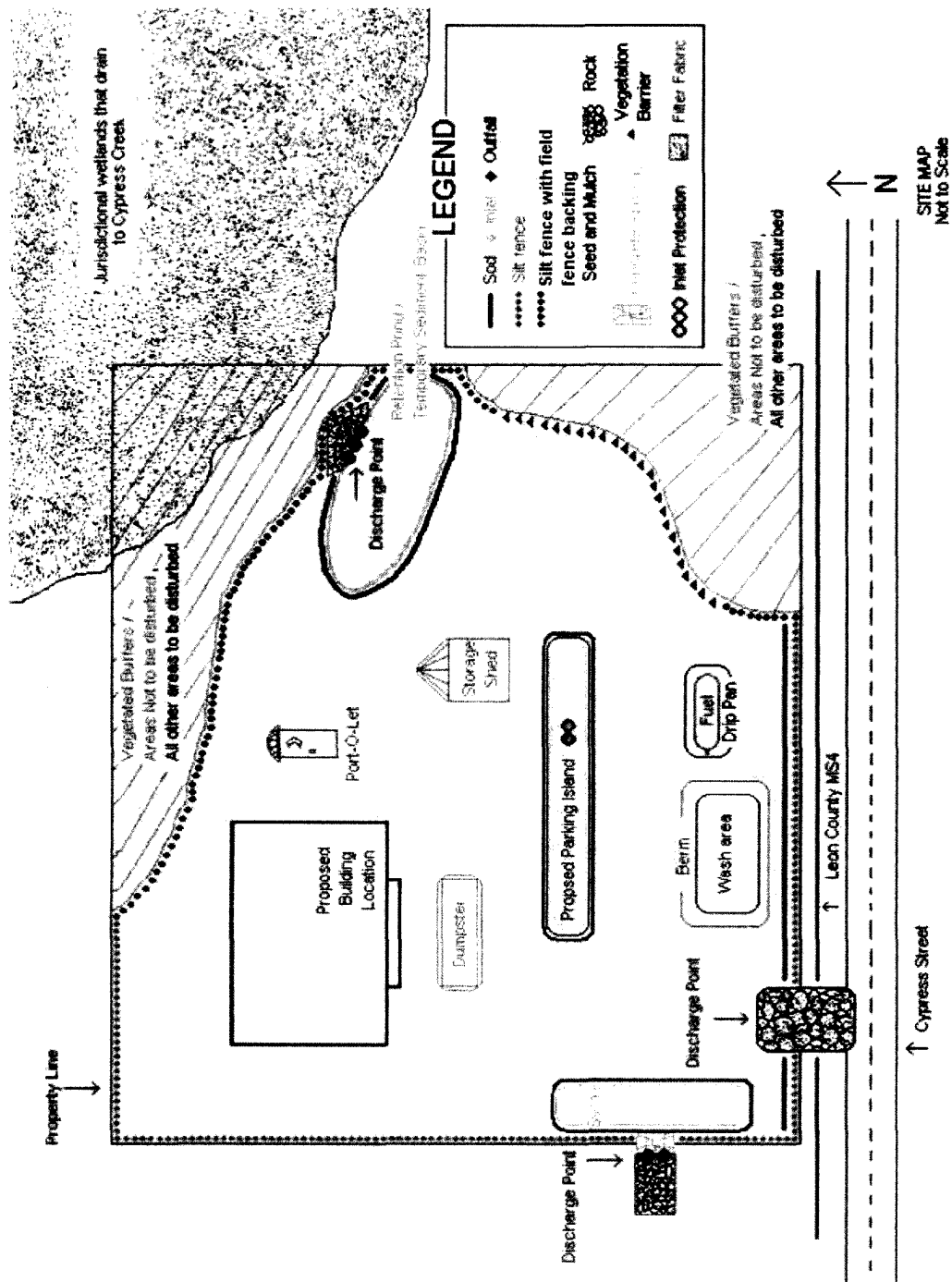
The above signature also shall certify that this facility is in compliance with the Stormwater Pollution Prevention Plan and the State of Florida Generic Permit for Stormwater Discharge from Large and Small Construction Activities if there are not any incidents of non-compliance identified above.

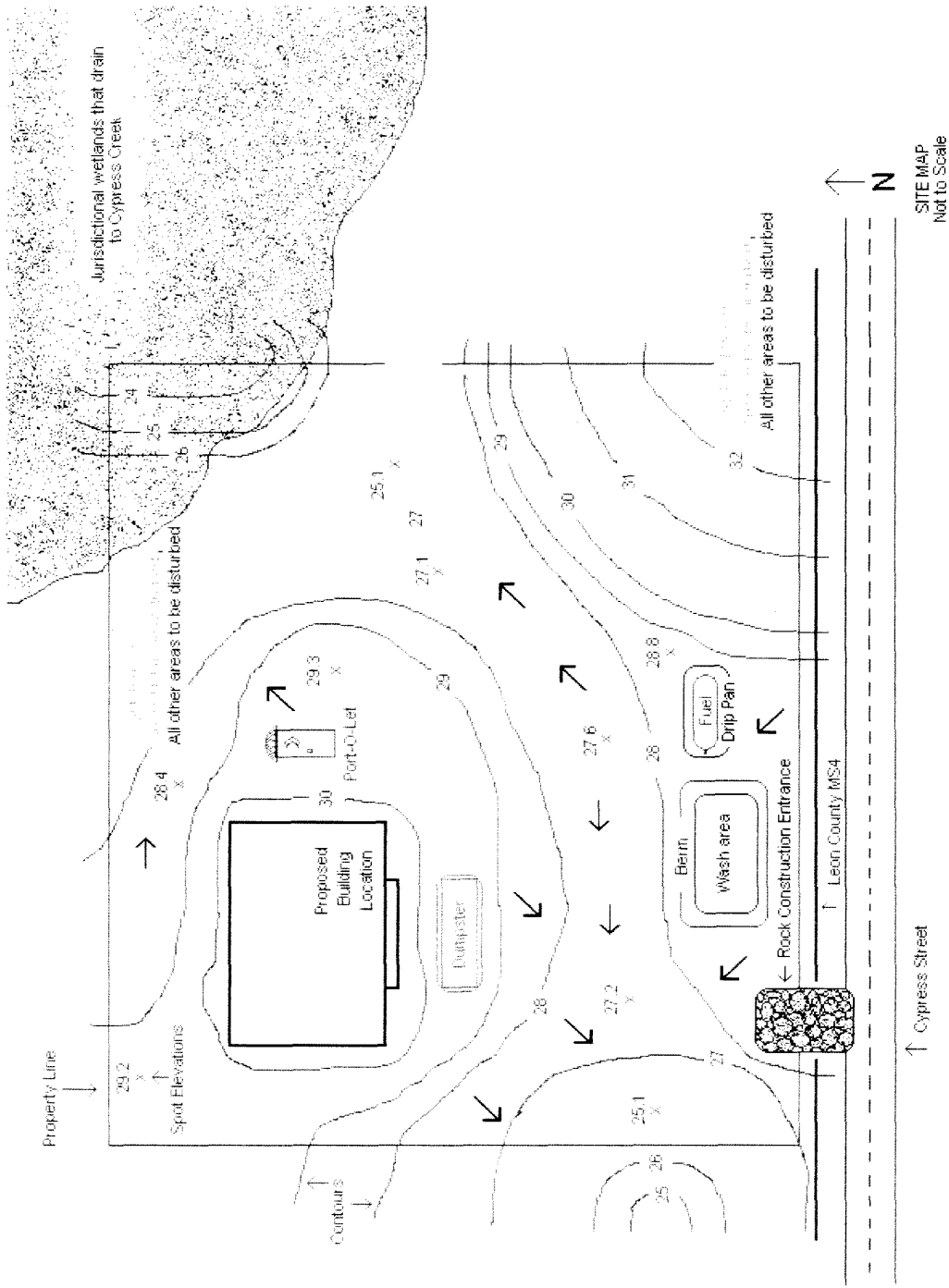
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"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Name (Responsible Authority)

Date





## **URBAN STORMWATER MANAGEMENT PROGRAM**

### **1.0 Introduction**

This document provides details of the Urban Stormwater Management Program for Hideaway Cove in Fort Myers, Florida. This Plan discusses non-structural controls, intended to improve the quality of stormwater runoff by reducing the generation and accumulation of potential stormwater runoff contaminants at or near the respective sources for each constituent, along with significant structural components of the primary stormwater treatment system. Although many of the methodologies and procedures outlined in this document are general Best Management Practices (BMP's) which can be useful in attenuating pollutants in many types of urbanized settings, the implementation of these practices has been optimized, to the maximum extent possible, to reflect the unique character of Hideaway Cove and the surrounding hydrologic features.

Pollution prevention guidelines are provided for the areas of (1) nutrient and pesticide management; (2) street sweeping; (3) solid waste management; (4) operation and maintenance of the stormwater management and treatment system; (5) construction activities. A discussion of each of these activities is given in the following sections.

### **2.0 Nutrient and Pesticide Management**

Nutrient and pesticide management consists of a series of practices designed to manage the use of fertilizers and pesticides so as to minimize loss of these compounds into stormwater runoff and the resulting water quality impacts on adjacent waterbodies. Implementation of a management plan will also maximize the effectiveness of the nutrients and pesticides that are applied.

#### **2.1 General Requirements**

Commercial applicators of chemical lawn products must register with the property owners annually and provide a copy of their current occupational license, proof of business liability insurance, and proof of compliance with applicable education and licensing requirements. Individual employees working under the direction of a licensed commercial applicator are exempt from the educational requirements.

Only registered commercial applicators and individual lot owners are permitted to apply chemicals within the property on a private lot. All chemical products must be used in accordance with the manufacturer's recommendations. The application of any chemical product within five (5) feet of any surface water including but not limited to ponds, lakes, drainage ditches or canals, is prohibited. The use of any chemical product in a manner that will allow airborne or waterborne entry of such products into surface water is prohibited. This rule shall not apply to the use of chemical agents, by certified lake management specialists, for the control of algae and vegetation within the stormwater lakes or ponds.



## **2.2 Nutrient Management Program**

Management and application of nutrients and fertilizers within H will adhere to the following guidelines:

- A. All fertilizers shall be stored in a dry storage area protected from rainfall and ponding.
- B. No fertilizer containing in excess of 2% phosphate/phosphorus ( $P_2O_5$ ) per guaranteed analysis label (as defined by Chapter 576, Florida Statutes) shall be applied to turf grass unless justified by a soil test.
- C. Fertilizer containing in excess of 2% phosphate/phosphorus ( $P_2O_5$ ) per guaranteed analysis label shall not be applied within 5 feet of the edge of water or within 5 feet of a drainage facility.
- D. All fertilizer shall be applied such that spreading of fertilizer on all impervious surfaces is minimized.
- E. Liquid fertilizers containing in excess of 2% phosphate/phosphorus ( $P_2O_5$ ) per guaranteed analysis label shall not be applied through an irrigation system within 10 feet of the edge of water or within 10 feet of a drainage facility.
- F. Liquid fertilizers containing in excess of 2% phosphate/phosphorus ( $P_2O_5$ ) per guaranteed analysis label shall not be applied through high or medium mist application or directed spray application within 10 feet of the edge of water or within 10 feet of a drainage facility.

## **2.3 Pest Management Program**

Proper maintenance of plants and turf areas will minimize the ability of pests to successfully attack landscaping. Several general guidelines follow:

- A. Apply fertilizer and water only when needed and in moderate amounts. Excessive amounts of either can cause rapid growth that is attractive to insects and disease.
- B. Mow St. Augustine grass to a height of 3-4 inches. If cut shorter, the plants may become stressed and more vulnerable to pest infestation. Each mowing should remove no more than one-third of the leaf blade, and those cuttings should remain on the lawn to decompose.
- C. It is recommended that pesticides, fungicides, and herbicides be used only in response to a specific problem and in the manner and amount recommended by the manufacturer to address the specific problem. Broad application of pesticides, fungicides and herbicides as a preventative measure is strongly discouraged.

The use of pesticides, fungicides, or herbicides is limited to products that meet the following criteria:

- A. Must be consistent with the USDA-NRCS Soil Rating for Selecting Pesticides
- B. Must have the minimum potential for leaching into groundwater or loss from runoff
- C. Products must be EPA-approved
- D. The half-life of products used shall not exceed seventy (70) days

### **3.0 Solid Waste Management**

In general, solid waste management involves issues related to the management and handling of urban refuse, litter and leaves that will minimize the impact of these constituents as water pollutants.

Maintenance of adequate sanitary facilities for temporarily storing refuse on private premises prior to collection is considered the responsibility of the individual homeowner. Local requirements for refuse collection will be brought to the attention of every homeowner at closing for the sale of the property. Information will be distributed as necessary stating specifications for containers, separation of waste by type, where to place containers prior to collection, and established collection schedules.

Fallen tree leaves and other vegetation, along with grass clippings, may become direct water pollutants when they are allowed to accumulate in swales and street gutters. All homeowners will receive periodic educational materials that address proper disposal of leaves and other vegetation to minimize water quality impacts.

### **4.0 Stormwater Management and Treatment System**

The stormwater management system for Hideaway Cove is designed to maximize the attenuation of stormwater generated pollutants prior to discharge to the off-site systems. Operational details and maintenance requirements of the various system components are given in the following sections.

#### **4.1 Wet Detention Lakes and Lake Interconnect Pipes**

The basic element of the stormwater management system consists of a series of interconnected wet detention ponds that provide stormwater treatment through a variety of physical, biological, and chemical processes. A wet detention pond acts similar to a natural lake by temporarily detaining stormwater runoff, allowing opportunities for treatment processes to occur, prior to slow controlled discharge of the treated water through the outfall structure. Pollutant removal processes in wet detention systems occur during the quiescent period between storm events. Significant removal processes include gravity settling of particulate matter; biological uptake of nutrients and other ions by aquatic plants, algae and microorganisms; along with natural chemical flocculation and complexation processes.

Maintenance of the wet detention ponds will consist of an annual inspection. During each annual inspection, the following items will be reviewed and corrected as necessary:

- A. Inspect the outfall structure and orifices to ensure free-flowing conditions and overall engineering stability of the outfall system.
- B. Review the banks of the lakes and canals to ensure proper side slope stabilization and inspect for signs of excessive seepage that may indicate areas of excessive groundwater flow and possible subsurface channeling.
- C. Physically evaluate each of the lakes and canals for evidence of excessive sediment accumulation or erosion.

- D. Inspect the planted aquatic vegetation in the littoral zone to ensure that the desired vegetation species, percent coverage, and density are maintained.

At the completion of the inspections, a written inspection report will be prepared, listing any deficiencies that need to be addressed or corrected by the Homeowners Association.

#### **4.2 Stormwater Inlets, Pipes and Culverts**

The grates should be unobstructed and the bottom, inside the inlet, should be clean. Check for any accumulation of sediment, trash such as garbage bags, or debris in the culverts connecting these inlets. Flushing out with a high-pressure hose may clean some sediment. Any noted blockage (due to a possible obstruction, or broken pipe, etc.) should prompt further investigation. Crushed or corroded culverts should be replaced with new ones of the same size.

#### **4.3 Swales and Grassed Water Storage Areas**

These provide for conveyance and/or above-ground (or surface) storage of stormwater. With age, these areas usually fill in with vegetation and sediment. Swales may need to be regraded and/or revegetated. It is a good idea to compare the existing slope and dimensions of the swale with the permitted design plans prior to the removal of excess sediment or regrading. Areas that show erosion should be stabilized with appropriate material such as sod, planting, rock, sand bags, or other synthetic geotextile material.

Regular mowing of grass swales is essential. These areas also improve water quality by catching sediment and assimilating nutrients, and recharge the underground water table. Remove any undesirable exotic vegetation. Culverts underneath driveways should be checked for blockage, and, if necessary, flushed with a high-pressure hose. After a storm, swales may remain wet for an extended period of time. This is normal and the water will recede gradually.

#### **5.4 Ditches or Canals**

Fill material, yard waste, clippings and vegetation, sediment, trash, appliances, garbage bags, shopping carts, tires, cars, etc. should be completely removed. Also check to make sure there are no dead trees or any type of obstructions which could block the drainage flow way.

Maintenance cleaning/excavation must be limited to the same depth, width and side slope as approved in the current permit. Making a ditch deeper or wider may trigger a need for a permit modification. Provisions must also be made to prevent any downstream silting or turbidity (*Contact the SFWMD Resource Compliance staff if you are unsure or need clarification.*) Be sure to dispose of all removed material properly so it won't affect any other water storage or conveyance system, environmental area, or another owner's property.

#### **5.5 Outfall Structure (also called the Discharged Control Structure or Weir)**

The outfall structure should be routinely inspected to determine if any obstructions are present or repairs are needed. Trash or vegetation impeding water flow through the structure should be removed. The structure should have a "baffle" or trash collector to prevent flow blockage and

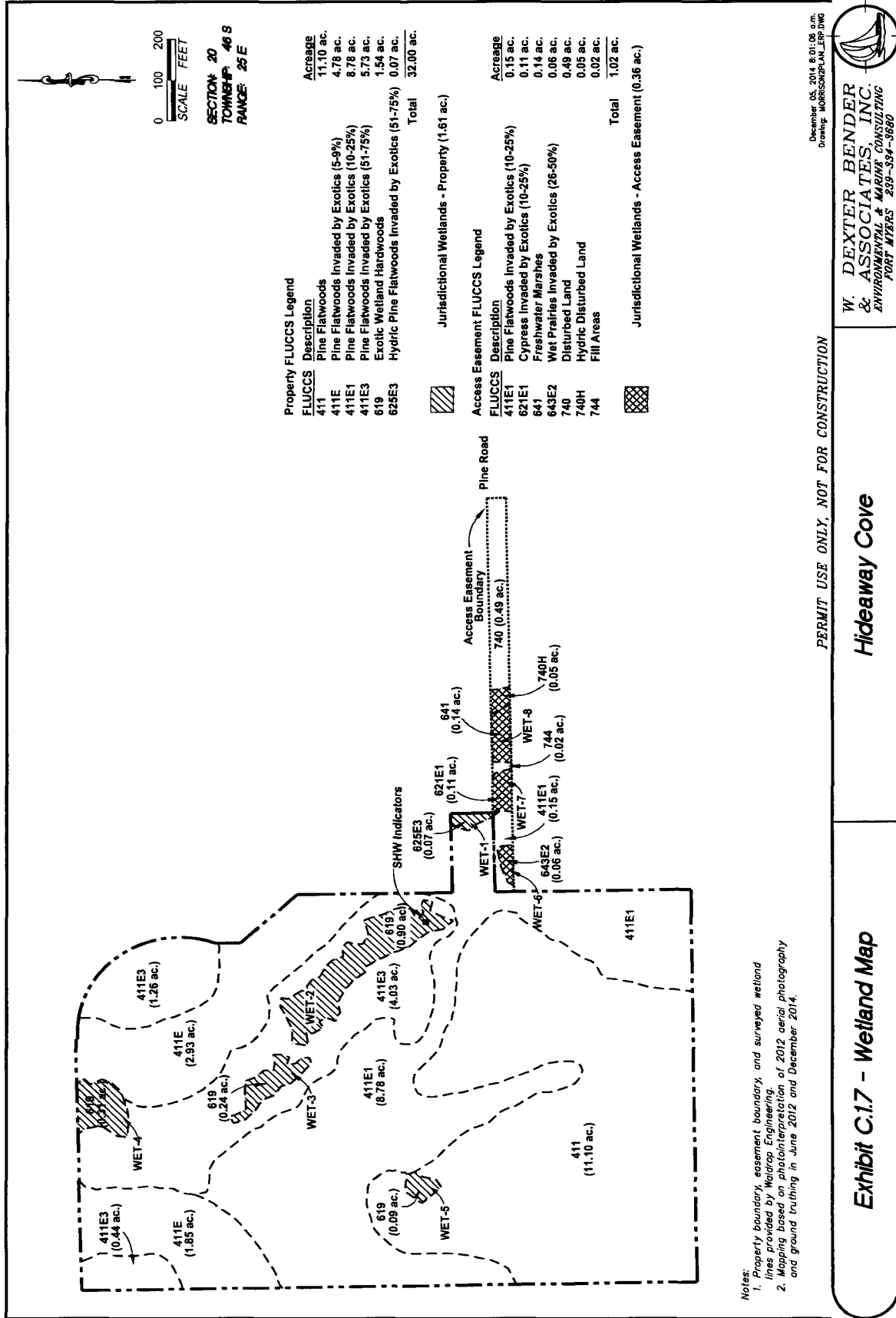
also hold back any floating oils from moving downstream. Elevations and dimensions should be verified annually with all current permit information. Periodic inspections should then be regularly conducted to make sure these structures maintain the proper water levels and the ability to discharge.

#### **5.6 Earthen Embankments (Dikes and Berms)**

Check for proper elevations, width and stabilization. Worn down berms - especially if used by all-terrain vehicles or equestrian traffic – and rainfall – created washouts should be immediately repaired, compacted and re-vegetated.

#### **5.0 Construction Activities**

A Stormwater Pollution Prevention Plan (SWPPP) has been prepared for construction activities to minimize activities contamination that may be caused by erosion and sedimentation during the construction process. The plan includes provisions related to soil stabilization, structural erosion controls, waste collection disposal, offsite vehicle tracking, spill prevention and maintenance and inspection procedures. A copy of the SWPPP is attached hereto and made a part of hereof.



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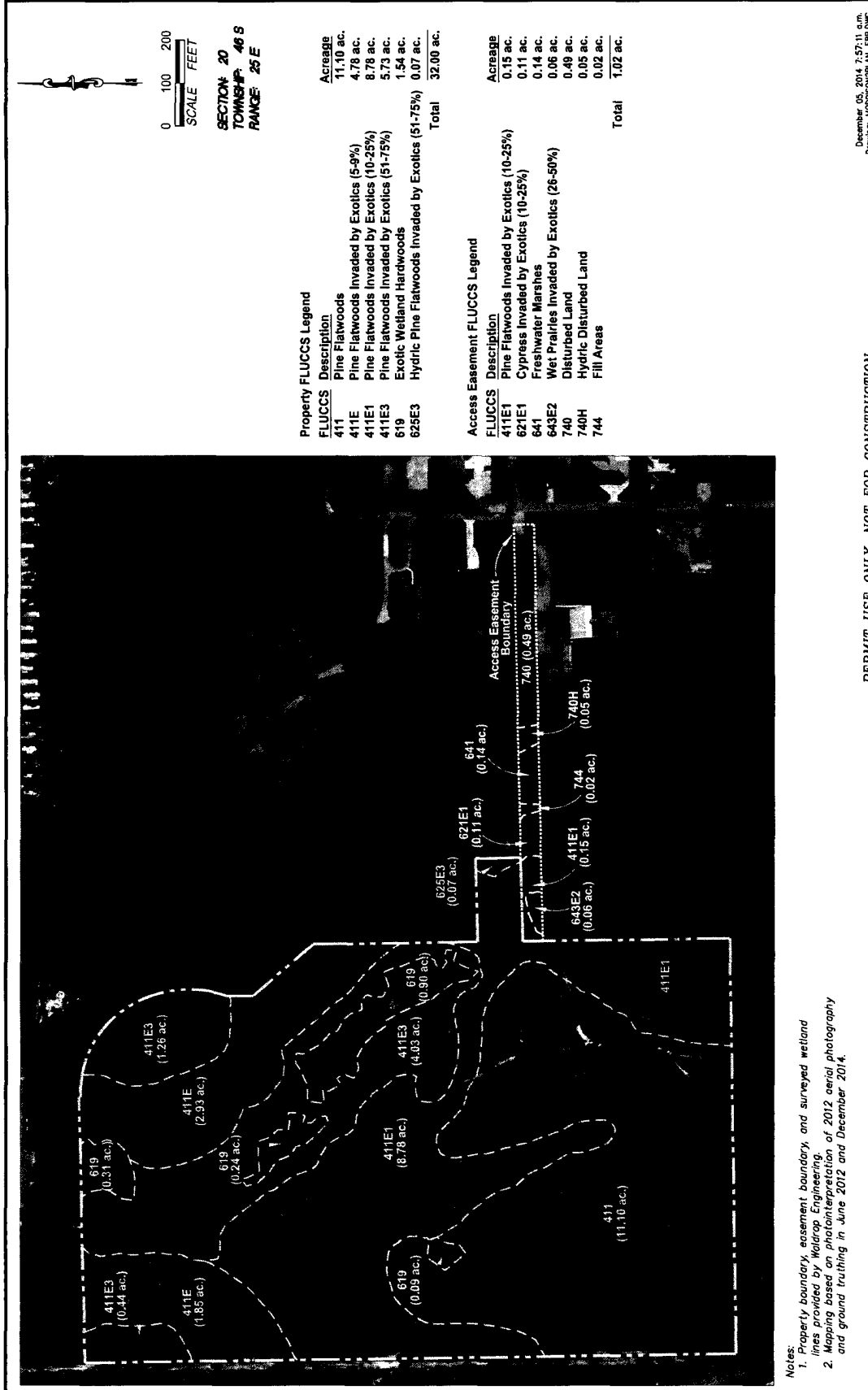


**W. DEXTER BENDER  
& ASSOCIATES, INC.**  
 ENVIRONMENTAL & MARINE CONSULTING  
 PORT WILBURS 259-384-3660

PERMIT USE ONLY, NOT FOR CONSTRUCTION

**Hideaway Cove**

**Exhibit C.1.7 - Wetland Map**



December 05, 2014 7:57:11 a.m.  
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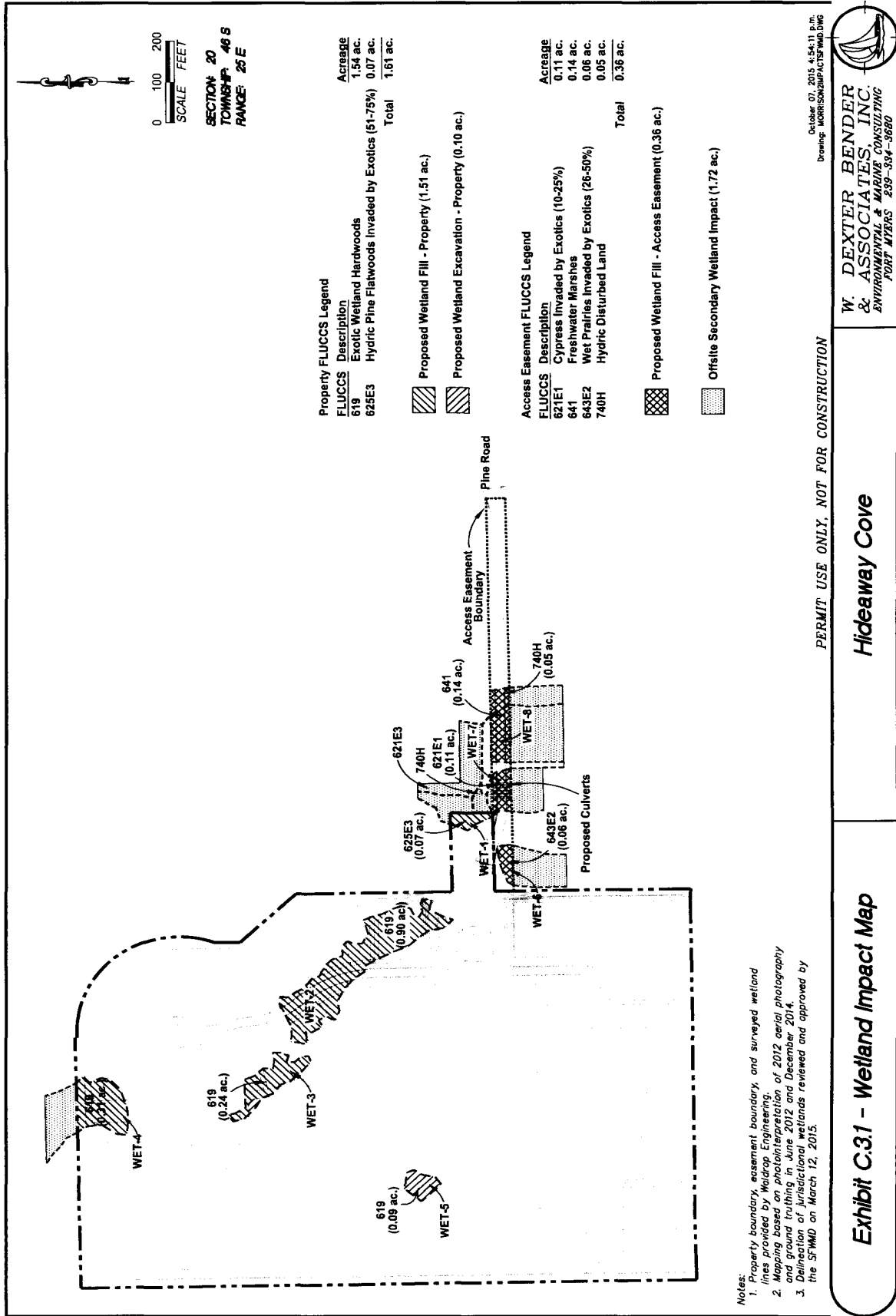
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PORT WILBURS 239-334-3680

**Hideaway Cove**

**Exhibit C.19 - Vegetation Map**





**Earthmark Southwest Florida Mitigation, LLC**

PO Box 621990, Oviedo, FL 32762-1990

239-245-7457

[Lynn@LZMitigation.com](mailto:Lynn@LZMitigation.com)

February 24, 2016

Justin Hojnacki  
South Florida Water Management District  
2301 McGregor Blvd.  
Fort Myers, FL 33905

Re: Mitigation Credit Letter of Reservation  
Hideaway Cove  
Permit Application No.: 150105-5

Dear Mr. Hojnacki,

This letter confirms the reservation of 1.34 Freshwater Transitional wetland credits from Big Cypress Mitigation Bank on behalf of Taylor Morrison.

Do not hesitate to contact me for any questions or concerns at (239) 633-8775.

Sincerely,  
Lynn Zenczak  
Earthmark SW Florida Mitigation, LLC

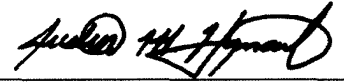
Sincerely,

A handwritten signature in cursive script, appearing to read "Lynn Zenczak". The signature is written in dark ink and is positioned above the printed name and company.

Lynn Zenczak  
Earthmark SW Florida Mitigation, LLC



WRAP Scores Approved By:



**Exhibit C.2.10.a.ii. Hideaway Cove Direct Wetland Impact WRAP Analysis**  
(February 2016)

Polygon No.	WET-1		WET-2		WET-3		WET-4	
	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed
FLUCCS	62%	100%	61%	100%	64%	100%	64%	100%
Wildlife	1.50	0.00	1.00	0.00	1.00	0.00	1.00	0.00
Canopy/Shrub	1.50	0.00	0.50	0.00	0.50	0.00	0.50	0.00
Ground Cover	2.00	0.00	1.00	0.00	1.00	0.00	1.00	0.00
Buffer	2.50	0.00	2.00	0.00	2.00	0.00	1.88	0.00
Hydrology	1.50	0.00	2.00	0.00	2.00	0.00	2.00	0.00
Water Quality	3.00	0.00	3.00	0.00	3.00	0.00	3.00	0.00
<b>total</b>	<b>12.00</b>	<b>0.00</b>	<b>9.50</b>	<b>0.00</b>	<b>9.50</b>	<b>0.00</b>	<b>9.38</b>	<b>0.00</b>
<b>WRAP Score</b>	<b>0.67</b>	<b>0.00</b>	<b>0.53</b>	<b>0.00</b>	<b>0.53</b>	<b>0.00</b>	<b>0.52</b>	<b>0.00</b>
Acreage	0.07	0.00	0.90	0.00	0.24	0.00	0.31	0.00
FCU	0.05	0.00	0.48	0.00	0.13	0.00	0.16	0.00
<b>Credits</b>	<b>-0.05</b>		<b>-0.48</b>		<b>-0.13</b>		<b>-0.16</b>	

Polygon No.	WET-5		WET-6		WET-7		WET-8	
	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed
FLUCCS	64%	100%	64% <sup>12</sup>	84%	62% <sup>21</sup>	84%	64%	84%
Wildlife	1.00	0.00	2.50	0.00	2.50	0.00	2.00	0.00
Canopy/Shrub	0.50	0.00	0.50	0.00	2.50	0.00	N/A	0.00
Ground Cover	1.00	0.00	2.50	0.00	3.00	0.00	2.50	0.00
Buffer	3.00	0.00	3.00	0.00	3.00	0.00	2.40	0.00
Hydrology	2.00	0.00	1.50	0.00	2.00	0.00	2.00	0.00
Water Quality	3.00	0.00	3.00	0.00	3.00	0.00	3.00	0.00
<b>total</b>	<b>10.50</b>	<b>0.00</b>	<b>13.00</b>	<b>0.00</b>	<b>16.00</b>	<b>0.00</b>	<b>11.90</b>	<b>0.00</b>
<b>WRAP Score</b>	<b>0.58</b>	<b>0.00</b>	<b>0.72</b>	<b>0.00</b>	<b>0.89</b>	<b>0.00</b>	<b>0.79</b>	<b>0.00</b>
Acreage	0.09	0.00	0.06	0.00	0.11	0.00	0.14	0.00
FCU	0.05	0.00	0.04	0.00	0.10	0.00	0.11	0.00
<b>Credits</b>	<b>-0.05</b>		<b>-0.04</b>		<b>-0.10</b>		<b>-0.11</b>	

Polygon No.	WET-9	
	Existing	Proposed
FLUCCS	74% <sup>15</sup>	84%
Wildlife	2.00	0.00
Canopy/Shrub	N/A	0.00
Ground Cover	2.50	0.00
Buffer	1.80	0.00
Hydrology	1.50	0.00
Water Quality	1.25	0.00
<b>total</b>	<b>9.05</b>	<b>0.00</b>
<b>WRAP Score</b>	<b>0.60</b>	<b>0.00</b>
Acreage	0.05	0.00
FCU	0.03	0.00
<b>Credits</b>	<b>-0.03</b>	

Existing wetland acreage: 1.97

Proposed wetland acreage: 0.00

Credits: -1.15

**ORIGINAL SUBMITTAL****FEB 23 2016****LWC SERVICE CENTER**

**Hideaway Cove Secondary Wetland Impact WRAP Analysis**  
(February 2016)

Polygon No.	WET-1		WET-1		WET-1		WET-4	
	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed
POLYGS	6241-3	6241-3	6241-3	6241-3	7401-1	7401-1	619	619
Wildlife	1.50	0.75	1.50	0.75	2.00	1.00	1.00	0.50
Canopy/Strata	1.50	1.50	1.50	1.50	N/A	N/A	0.50	0.50
Ground Cover	2.00	2.00	2.00	2.00	2.50	2.50	1.00	0.50
Buffer	2.00	2.00	2.00	1.60	2.00	1.40	1.88	1.38
Hydrology	1.50	2.00	1.50	1.50	1.50	1.50	2.00	2.00
Water Quality	2.50	2.19	3.00	2.69	2.00	1.69	3.00	2.75
Total	11.00	10.44	11.50	10.04	10.00	8.09	9.38	7.63
WRAP Score	<b>0.61</b>	<b>0.58</b>	<b>0.64</b>	<b>0.56</b>	<b>0.67</b>	<b>0.54</b>	<b>0.52</b>	<b>0.42</b>
Acreage	0.28	0.28	0.13	0.13	0.05	0.05	0.24	0.24
FCU	0.17	0.16	0.08	0.07	0.03	0.03	0.13	0.10
Credits	<b>-0.01</b>		<b>-0.01</b>		<b>-0.01</b>		<b>-0.02</b>	

Polygon No.	WET-6		WET-7		WET-8		WET-8	
	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed
POLYGS	6231-2	6231-2	6241-1	6241-1	641	641	7401-1	7401-1
Wildlife	2.50	1.25	2.50	1.25	2.00	1.00	2.00	1.00
Canopy/Strata	0.50	0.50	2.50	2.50	N/A	N/A	N/A	N/A
Ground Cover	2.50	2.50	3.00	3.00	2.50	2.50	2.50	2.50
Buffer	3.00	2.00	3.00	2.15	3.00	2.38	2.40	2.10
Hydrology	1.50	1.50	2.00	2.00	2.00	2.00	1.50	1.50
Water Quality	3.00	2.69	3.00	2.69	3.00	2.69	2.00	1.69
Total	13.00	10.44	16.00	13.59	12.50	10.56	10.40	8.79
WRAP Score	<b>0.72</b>	<b>0.58</b>	<b>0.89</b>	<b>0.75</b>	<b>0.83</b>	<b>0.70</b>	<b>0.69</b>	<b>0.59</b>
Acreage	0.26	0.26	0.21	0.21	0.41	0.41	0.14	0.14
FCU	0.19	0.15	0.19	0.16	0.34	0.29	0.10	0.08
Credits	<b>-0.04</b>		<b>-0.03</b>		<b>-0.05</b>		<b>-0.02</b>	

Existing wetland acreage: 1.72

Proposed wetland acreage: 1.72

Credits: -0.19

**South Florida Water Management District  
Work Schedule Requirements**

**Application No** : 150105-5

Page 1 of 1

**Mitigation Plan ID:** HIDEAWAY COVE

<b>Activity</b>	<b>Due Date</b>
SUBMIT MITIGATION BANK DOCUMENTATION	01-AUG-16

## STAFF REPORT DISTRIBUTION LIST

HIDEAWAY COVE

**Application No:** 150105-5

**Permit No:** 36-08550-P

### **INTERNAL DISTRIBUTION**

- X Errol Noel
- X Justin M.Hojnacki
- X Laura Layman
- X Brian Rose, P.E.
- X A. Waterhouse, P.E.

### **EXTERNAL DISTRIBUTION**

- X Permittee - Taylor Morrison
- X Agent - Waldrop Engineering
- X Env Consultant - W. Dexter Bender
- X Other Interested Party - Frank And Theresa Gumpert

### **GOVERNMENT AGENCIES**

- X Div of Recreation and Park - District 4 - Chris Becker, FDEP

### **OTHER INTERESTED PARTIES**

- X Audubon of Florida - Charles Lee

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