

This Instrument prepared by:  
Peter J. Gravina, Esquire  
PAVESE, HAVERFIELD, DALTON,  
HARRISON & JENSEN, L.L.P.  
1833 Hendry Street  
Fort Myers, Florida 33901  
(239) 334-2195

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
PORPOISE POINT TOWNHOMES**

THIS DECLARATION is made this 28th day of August, 2009  
by COASTAL LAND AND HOMES, L.L.C., a Florida limited liability company, (the  
"Declarant") for itself and its successors, grantees and assigns.

**PREMISES:**

**WHEREAS**, Declarant is the owner of the real property described in Exhibit "A"  
("Property") to this Declaration, and desires to create thereon a residential community of  
townhomes ("Community"); and

**WHEREAS**, Declarant desires to provide for the preservation of the values and to create  
a corporate entity to which will be delegated and assigned the powers of administering and  
enforcing this Declaration of Covenants, Conditions, and Restrictions, maintaining the Common  
Areas including the permitted surface water management system, insuring the Properties,  
maintaining and collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, Declarant wishes to provide for the operation of the Common Properties  
and Amenities as hereinafter defined for the benefit of the unit owners, their guest, tenants and  
invitees; and

**WHEREAS**, an owner of a unit in such townhome may acquire a boat dock space with  
the acquisition of its unit; and

**WHEREAS**, Declarant wishes to provide for the operation of the boat docks for the  
benefit of the townhome owners, as well as for itself in the future; and

**WHEREAS**, Declarant has created, under the laws of the State of Florida, a corporation  
not for profit known as Porpoise Point Townhome Association, Inc., for the purpose of  
exercising the aforesaid functions;

**NOW, THEREFORE**, the Declarant declares that the real property described in Exhibit "A" to this Declaration, as it may be amended from time to time, shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth. All provisions of this Declaration shall be equitable servitudes which run with the land, and which bind and inure to the benefit of all present and future owners of Lots and living units. The acquisition of any ownership interest in the Properties, or the lease, occupancy, or use of any portion of a Townhome unit, shall constitute an acceptance and ratification of all provisions of this Declaration as amended from time to time, and indicate agreement to be bound by its terms.

## **ARTICLE I** **DEFINITIONS**

**1.01    "Amenities"** shall mean the pool, pool deck, cabana and boardwalks that are available for the use of the Declarant and Residential Unit Owners, and their respective, guests and invitees all as depicted on attached Exhibit "B".

**1.02    "Architectural Review Committee" or "ARC"** means the committee described in Article V of this Declaration.

**1.03    "Association"** means Porpoise Point Townhome Association, Inc., a Florida corporation not for profit.

**1.04    "Bay Bottom Lease"** means the submerged land lease that Declarant or Association has entered into with the State of Florida and its agency, the Florida Department of Environmental Protection.

**1.05    "Board"** means the Board of Directors of the Association.

**1.06    "Boat Dock Space or Dock Space or Boat Slip"** means those Boat Dock Spaces created by the Declarant which may be assigned to Unit Owners together with a townhome unit or may be operated by the Association, which Boat Dock Spaces are shown in Exhibit "C" to this Declaration. Boat Dock Spaces assigned in conjunction with a townhome unit shall be appurtenances to such a Residential Unit and shall not be separated by deed, lease or otherwise.

**1.07    "Common Areas or Common Properties"** means all portions of the Properties exclusive of the Lots. The Common Areas shall include, but not be limited to the roadways, surface water management system, conservation areas, wetland mitigation areas, common utilities (if any) and any other property dedicated to the Association on the subdivision plat for Porpoise Point.

**1.08 “County”** A reference in any of the Governing Documents to "the County" or to any County other than Lee County, Florida, is unintentional and shall be construed as intended to mean and refer to Lee County.

**1.09 “Declarant” or “Developer”** means COASTAL LAND AND HOMES, L.L.C. wherever either term is used in this Declaration, or in the Articles or Bylaws of the Association, it shall always be deemed to include any successor in interest to the Declarant's development rights and obligations.

**1.10 “Declaration”** means this Declaration of Covenants, Conditions and Restrictions for Porpoise Point Townhomes, as amended from time to time.

**1.11 “Docks”** as used herein shall refer to those areas adjacent to the pier structures to be constructed by the Developer as well as any dockage facilities constructed by the Developer along the portions of the property that border the internal canal.

**1.12 “Electronic Transmission”** means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmissions of images, and text that is sent via electronic mail between computers.

**1.13 “Family” or “Single Family”** means any one of the following:

- A. One natural person.
- B. Two or more natural persons who commonly and regularly reside together as a single housekeeping unit, each of whom is related by blood, marriage, or adoption to each of the others.
- C. Two or more natural persons meeting the requirements of (B) above, except that there is among them not more than one person who is not so related to some or all of the others.

**1.14 “Governing Documents”** means this Declaration for the Porpoise Point Townhomes and all recorded exhibits hereto, as the same may be amended from time to time.

**1.15 “Guest”** means a person who is physically present in, or occupies a Townhome on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.

**1.16 “Guest Suite”** refers to the one bedroom portion of each unit which can be rented separately from the rest of the living unit.

**1.17 “Ingress-Egress Area”** shall mean and refer to those portions of the Common Properties and Amenities legally described on Exhibit “D” attached hereto and made a part hereof.

**1.18 “Institutional Mortgagee”** means the holder of a mortgage against a Lot or Living Unit, which mortgagee or assignee is a bank, savings and loan association, mortgage company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any other institutional lender providing financing of acquisition, development or construction, or any agency of the United States of America. The term also refers to any holder of a mortgage against a Lot or Living Unit which mortgage is guaranteed or insured (as evidenced by a recorded instrument) by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private agency engaged in the business of purchasing, guaranteeing or insuring residential mortgage loans, and their successors and assigns. An "Institutional Mortgage" is a mortgage held by an Institutional Mortgagee encumbering a Living Unit.

**1.19 “Lease”** means the grant by a Townhome Owner of a right to occupy the Owner's Townhome for valuable consideration.

**1.20 “Living Unit”, “Townhome” or “Residence”** means any or all of the Townhome residences which will be constructed on the Lots, each designed for use and occupancy as a single-family residence. Wherever either term is used, it shall be interpreted as though it were followed by the words "and the Lot on which it is constructed," unless the context clearly requires another meaning.

**1.21 “Lot”** means one or more of the numbered parcels of land, into which the Properties have been subdivided, upon each of which a Living Unit has been, or is intended to be, constructed. Wherever "Lot" is used, it shall be interpreted as though it were followed by the words "and the Living Unit constructed thereon," unless the context clearly requires another meaning.

**1.22 “Lee County Historic Preservation Board”** means that Board embodied by Lee County to pass on development improvement in the Historic District known as Matlacha Historic District or any similar or substitute organization appointed in the future.

**1.23 “Occupant”** when used in connection with a Townhome, means a person who is physically present in the Townhome on two or more consecutive days, including staying overnight. "Occupy" means the act of being an occupant.

**1.24 “Owner” “Unit Owner” or “Member”** means a person who is the record owner of legal title to a Lot.



**1.25 “Porpoise Point Townhomes”** means, and is the name of, the Properties.

**1.26 “Porpoise Point Townhomes Documents”** means this Declaration and all recorded exhibits hereto, as the same may be amended from time to time.

**1.27 “Primary Occupant”** means the natural person approved for occupancy, together with that person's family, when legal title to a Townhome is held in the name of more than two persons, or by a Director or a corporation or other entity which is not a natural person, as further provided in Section 18.01 below.

**1.28 “Property” or “Properties”** means all real property which is subject to this Declaration, and includes both Common Areas and Lots.

**1.29 “Rules and Regulations”** means the administrative rules and regulations governing use of the Common Areas and procedures for operating the Association and the Properties, as adopted, amended and rescinded from time to time by resolution of the Board of Directors.

**1.30 “Service Charge”** means a fee or charge against one or more Owners, Lots or Living Units for any service, material or combination thereof which may be provided by the Association for the use and benefit of the Owner on a voluntary basis, such as contracting in bulk for repairs, services, materials or maintenance. The amount paid or incurred by the Association on behalf of the Owners accepting or receiving such material or service shall be a service charge against the Lots or Living Units so benefited. The Owner(s) are deemed to agree to such assessment by subscribing, requesting, or accepting the material or service.

**1.31 “South Florida Water Management District”** is sometimes herein referred to as “the District” or “District”.

**1.32 “South Florida Water Management Easement”** shall mean and refer to that certain Easement granted to the South Florida Water Management District in conjunction with the issuance of its Permit to construct the Boat Docks attached hereto as Exhibit “E”.

**1.33 “South Florida Water Management Permit”** means the permits obtained from the South Florida Water Management District for the Project, the Boat Docks, Surface Water Management System and Bay Bottom Lease, attached hereto as Exhibit “F”.

**1.34 “Supplemental Declaration”** shall mean and refer to an instrument, whether or not identified as a “supplemental declaration” or “amendment” executed by the Declarant and recorded in the Public Records of Lee County, Florida for the purpose of adding to the property, withdrawing any portion(s) thereof from the effect of this Declaration or altering the provisions as Declarant is entitled to do so involving the Common Properties and these restrictions.

**1.35 Surface Water Management System ("SWMS")** shall mean to include, but are not limited to all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, conservation areas, wetlands and any associated buffer areas and wetland mitigation areas.

## **ARTICLE II**

### **CONTINUING DEVELOPMENT**

This Community is being developed by the Declarant into Lots intended for fee simple ownership townhome dwellings. Each Lot will be sold and title will be conveyed in fee simple. Incident to the development process, the quiet enjoyment of the Properties may be unavoidably interfered with to some extent by construction and sales operations.

## **ARTICLE III**

### **ASSOCIATION; MEMBERSHIP; VOTING RIGHTS**

The operation of the Community and the management and ownership of the Common Areas shall be by Porpoise Point Townhomes Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

**3.01 Articles of Incorporation.** A copy of the Articles of Incorporation of the Association is attached as Exhibit "G"

**3.02 Bylaws.** The initial Bylaws of the Association shall be the Bylaws as attached as Exhibit "H" to this Declaration, as they are amended from time to time.

**3.03 Delegation of Management.** The Association may contract for the management and maintenance of the Properties and authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules, and maintenance of the Common Areas, with funds made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties provided in the Governing Documents and Sections 720.301 through 720.312, inclusive, Florida Statutes (2006), as amended.

**3.04 Board of Directors.** Except as expressly otherwise provided by law or by the Porpoise Point Townhomes Documents, the Association shall act through its Board of Directors and its officers, and no vote of the members shall be required. The officers and Directors of the Association have a fiduciary relationship to the members. An Owner does not have the authority to act for the Association by virtue of being an Owner.

**3.05 Members.** Every person or entity who is a record owner of a fee simple interest in any Lot shall be a member of the Association. Membership is appurtenant to, runs with, and shall not be separated from, the real property interest upon which membership is based. The

burden of notifying the Association of a change of membership shall be borne by the new member; and the Association shall not be required to recognize a change of membership until the new member furnishes satisfactory proof of ownership.

**3.06 Membership Roster.** The Association shall maintain a current roster of names and mailing addresses of unit owners. A copy of the roster shall be made available to any member upon request.

Additionally, the Association shall maintain the electronic mailing addresses and the numbers designated by members for receiving notice by electronic transmission of those members consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by members to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. The Association, however, is not liable for an erroneous disclosure of the electronic mailing address or the number for receiving electronic transmission of notices.

**3.07 Limitation on Liability.** Notwithstanding the duty of the Association to maintain and repair the Common Areas, and certain parts of the Townhomes, the Association is not liable to Owners for property damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or Owners or other persons.

**3.08 Powers and Duties.** The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. If the Association has the authority to maintain a class action, the Association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual owner or class of owners to bring any action which may otherwise be available.

**3.09 Member Approval of Certain Litigation.** Notwithstanding any other provisions of the Governing Documents, the Association must obtain the prior approval of at least two-thirds (2/3rds) of its voting interests before paying or obligating itself to pay legal fees to any person engaged by the Association for the purpose of commencing any lawsuit, other than for the following purposes:

- A. the collection of assessments;
- B. the collection of other charges which members are obligated to pay;
- C. the enforcement of the Governing Documents;

- D. the enforcement of the rules and regulations of the Association;
- E. in an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members; or
- F. filing a compulsory counterclaim.

**3.10 Official Records.** The Association shall maintain its official records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

The Association shall not be required to provide a prospective purchaser or lienholder with information about the Association other than information or documents required by law to be made available or disclosed.

Notwithstanding the foregoing, the Association shall be entitled to charge a reasonable fee to the prospective purchaser, lienholder, or member for its time in providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, unless otherwise required by law.

**3.11 Voting Interests.** Each Member other than the Declarant shall have one (1) vote per Lot owned until turnover, the Declarant shall have two (2) votes for each vote of all other Members. After turnover, the Declarant shall only have one (1) vote for each Lot that it owns.

#### **ARTICLE IV** **ASSESSMENTS**

The Association has the authority to levy annual and special assessments to pay common expenses. Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the Common Areas and Association property and specifically the maintenance of the dock and pier structure and any associated improvements, the maintenance and replacement of the SWMS, the expenses of insurance for the Association and/or Directors and officers; the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as common expense by this Declaration or the Bylaws. If the Association enters into a contract for broadband telecommunication service or bulk service cable television, the cost of such service(s) obtained pursuant to a bulk contract(s) shall be a common expense.

**4.01 Covenants to Pay Assessments.** Declarant, for each Lot within the Community, hereby covenants, and each subsequent owner of a Lot (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- A. the Lot's share of annual assessments based on the annual budget of common expenses adopted by the Association;
- B. the Lot's share of special assessments for Association expenditures not provided for in the annual budget; and
- C. any special charge against one or more Lots specifically authorized in this Declaration or the Bylaws.

Assessments and charges shall be established and collected as provided herein and in the Bylaws. The obligation to pay the assessments provided for herein commences as to each Lot on the day of the first conveyance of the Lot to an owner other than the Developer, except that no Lot shall be subject to assessment until a certificate of occupancy or like authorization has been issued by the county as to the Townhome located on the Lot. The annual assessments, special assessments and special charges, together with interest, late payment fees, costs, and reasonable attorney's fees, shall be the personal obligation of the owner, his heirs, devisees, personal representatives, successors and assigns. A Lot owner, regardless of how his or her title to property has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments that come due while he or she is the Lot owner. The Lot owner's liability for assessments may not be avoided by waiver or suspension of the use or enjoyment of any Common Area or by abandonment of the Lot upon which the assessments are made. A Lot owner is jointly and severally liable with the previous Lot owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the present Lot owner may have to recover any amounts paid by the present owner from the previous owner. Except as provided in Section 4.03 below as to the Developer, no owner may be excused from the payment of assessments and charges unless all owners are similarly excused.

**4.02 Share of Assessments.** Each Lot and its owner(s) are liable for a share of all annual and special assessments levied by the Association, which share shall be a fraction of the whole, the numerator of which is the number "one" (1) and the denominator of which is 20. Notwithstanding the foregoing, the Developer reserves the unilateral right to add additional Townhome units to this Declaration and, when and if added, the denominator shall be conclusively presumed to be the total number of Townhome units subject to this Declaration.

**4.03 Developer's Guarantee of Assessments and Share for Lots Owned By It.** During the period that Declarant membership exists, the Declarant may opt to subsidize the general operating expenses of the Association as opposed to paying assessments on Lots owned by the Declarant. The Declarant shall meet its subsidy by contributing the difference, if any, between net operating expenses and all income of the Association including but not limited to assessment income from members other than the Declarant. Declarant, however, shall not be obligated to contribute to or pay for funding any reserves for capital expenditures or deferred maintenance, capital improvement fund, or special assessment. Declarant's rights and obligations hereunder may be assigned in whole or in part.

**4.04 Establishment of Liens to Secure Payment.** Any and all assessments and charges levied by the Association, together with interest at the highest rate allowed by law, and other costs of collection (including, but not limited to attorney's fees) are hereby declared to be a continuing lien upon the Lot and Living Unit against which each such assessment or charge is made. The lien relates back to the date of recording this Declaration, and is superior to any Homestead rights any owner may acquire. No owner may exempt himself from personal liability, or release the Lot owned by him from the liens and charges hereof by waiving the use and enjoyment of the Common Areas, or by abandoning the Townhome. The lien is perfected by recording a Claim of Lien in the Public Records of the County, setting forth the amount and due date of each unpaid assessment or charge. To be valid the Claim of Lien must be signed by an officer or authorized agent of the Association, and must contain the legal description of the Lot. A recorded Claim of Lien secures payment of all assessments or charges due at the time of recording, as well as all assessments or charges coming due subsequently, including all interest, late payment fees, attorney's fees and costs incident to the collection process, until the Claim is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by the Claim of Lien, the party making payment is entitled to a satisfaction.

**4.05 Priority of Lien.** Except as may be otherwise expressly provided below or by law, the Association's lien for unpaid assessments shall have priority over all mortgages or other liens regardless of when recorded. A lease of a Townhome shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed.

**4.06 Subordination of Lien to Existing Mortgage.** The Association's lien for unpaid assessments shall be subordinated to, and shall not have priority over, that certain Mortgage Deed dated October 18, 2005 from Declarant to ORION BANK as recorded in Instrument No. 2005000084632, of the Public Records of Lee County, Florida, as modified by that certain Mortgage Modification Agreement and Receipt of Future Advance dated June 13, 2006 as recorded in Instrument No. 2006000246728, Public Records of Lee County, Florida, as modified by that certain Mortgage Modification Agreement and Receipt of Future Advance dated February 22, 2007 as recorded in Instrument No. 2007000075127, Public Records of Lee County, Florida, as modified by that certain Mortgage Modification Agreement dated February 22, 2009, as recorded in Instrument No. 2009000102172, Public Records of Lee County, Florida (referred to herein as the "Mortgage"), which Mortgage encumbers the real property described on Exhibit "A" attached hereto. Any lien for unpaid assessments filed by the Association shall not in any way affect the rights of ORION BANK under the Mortgage.

**4.07 Collection of Assessments.** If the owner of any Townhome fails to pay any charge or assessment, or installment thereof, within ten (10) days after the due date, the Association shall have any or all of the following remedies, to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Association:

**A.** To charge interest on the unpaid amount, from the date payment is due until paid, at the highest rate allowed by law, as well as to impose a late payment fee of up to five percent (5 %) of the delinquent amount or \$25, whichever is greater. This fee shall not be considered a "fine" as provided for in Section 16.03 below, and the procedural requirements for levying fines shall not apply to the imposition of late payment fees.

**B.** To accelerate the due date for any and all remaining unpaid installments of the annual assessment against the owner's Townhome for the fiscal year.

**C.** To file an action in equity to foreclose its lien. Unless otherwise required by law, the lien may be foreclosed by an action in the name of the Association in the same manner as provided in Section 720.3085 of the Florida Statutes, as it may be amended from time to time, for the foreclosure of liens for unpaid homeowners' Association assessments.

**D.** To bring an action at law for a money judgment against the owner, without waiving any lien foreclosure rights. The Association may refuse to accept any tendered payment that bears a restrictive endorsement, and such will be the equivalent of no payment. Payment by check is not deemed received until the check has cleared.

**4.08 Certificate As To Assessments.** Within fifteen (15) days after request by a unit owner, unit purchaser or mortgagee, the Association shall provide a certificate stating whether all assessments and other monies owed to the Association by the unit owner with respect to the condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby. The Association may charge a reasonable fee for the preparation of the certificate.

## **ARTICLE V**

### **ARCHITECTURAL AND AESTHETIC CONTROL**

The Developer is seeking to create a Community of architecturally harmonious homes. Among the techniques employed to accomplish this result is the use of certain carefully chosen colors for exterior paint and roof materials. In order to protect the integrity of the development plan and preserve the values of the Townhomes, after the initial construction of the Townhomes by the Developer, no owner shall make any material change whatsoever in the exterior color of any portion of his Residence or any appurtenant structure, nor in the color or style of roofing materials used on the Residence or appurtenant structure, without prior written approval of Architectural Review Committee of the Association (the "ARC") and where required the approval of the Matlacha Historic Committee. Except for the initial construction of Townhomes and related improvements by the Developer, no building, structure or other improvement shall be erected or altered on any Lot, nor shall any grading, excavation, landscaping, or other work which in any way materially alters the exterior appearance of any structure, Lot or Common Area be performed without the prior written approval of the Board of Directors, as well as the

ARC and where required the approval of the Matlacha Historic Committee. In obtaining the written approval, owner, or any other person applying, shall comply with all applicable requirements and procedures of the Governing Documents. Refusal to approve proposed changes may be based on purely aesthetic reasons. The membership, term of office, composition, compensation (if any), qualifications and procedures of the ARC shall be as provided in the Association Articles and Bylaws of the Association.

## **ARTICLE VI**

### **APPURTENANCES; PROPERTY RIGHTS; EASEMENTS.**

**6.01 Appurtenances to Each Lot.** The owners of each Lot have certain rights and obligations appurtenant to such ownership, including without limitation the following:

- A.** Membership in the Association, and the right to cast one (1) vote in Association affairs, which rights shall be acquired and exercised as provided herein, and in the Articles of Incorporation and the Bylaws of the Association.
- B.** The non-exclusive right to use the Common Areas for the purposes intended, subject to the restrictions and limitations provided in the Governing Documents.
- C.** Beneficial ownership of an undivided share of the assets and common surplus of the Association equal to the owner's share of liability for the assessments levied by the Association as set forth in Section 4.02 above. The ownership of an undivided share of the common surplus does not entitle the owner to a distribution of the common surplus.
- D.** Other appurtenances as may be provided in the Governing Documents. The appurtenances to a Lot and Living Unit automatically pass with the title, whether separately described or not, and cannot be separated from the title to the Lot and Living Unit. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the Townhomes.

**6.02 Use and Possession.** An owner is entitled to exclusive use and possession of his Lot and Living Unit and the exclusive use as an appurtenant to such Unit of any dock space assigned to that Unit at the initial closing. An Owner is entitled to non-exclusive use of the Common Areas in accordance with the purposes for which they are intended, but no use of any Lot, Townhome or Common Area may unreasonably interfere with the rights of other owners or residents. No Lot or Townhome may be sub-divided or any part separately sold, leased or otherwise transferred. Every owner, and his tenants, guests and invitees, shall have a perpetual non-exclusive easement for ingress, egress and access in, to and over the walkways and private roads laid out on the Association Common Areas for use in common with all other owners, their tenants, guests and invitees. The portions of the Common Areas not used for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the owners and



each owner shall have a permanent and perpetual easement for the use and enjoyment of such lands as common open space, subject to recorded restrictions and regulation by the Association. These easements shall be appurtenant to and shall pass with the title to every Lot subject to the following:

- A. The right and duty of the Association to levy assessments against each Lot for the upkeep, maintenance, repair or betterment of the Common Areas and improvements thereon.
- B. The right of the Association to dedicate or transfer or grant an easement covering all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be determined by the Board. No such easement shall materially interfere with the rights of the owners to use the Common Areas for the purposes intended.
- C. The right of an owner to the non-exclusive use and enjoyment of the Common Areas and facilities thereon shall extend to the members of his immediate family who reside with him, and to his tenants, guests and invitees, subject to regulation from time to time by the Association.
- D. Declarant, each Owner and their respective families, guests, tenants and invitees shall have a non-exclusive permanent and perpetual easement over and across the Common Properties and Amenities for the intended use and enjoyment thereof in common with all such other owners, their respective families, guests (subject to limitations on Tenants or guests hereinafter set forth), tenants and invitees and along with the Declarant and its respective families, guests, tenants and invitees, all of such rights to be subject to reasonable regulations by the Association including:
  - 1. The right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Properties and Amenities and any facilities located thereon in compliance with the provisions of this Declaration.
  - 2. The right of the Association to suspend the Owner's rights to use the Amenities or Pier and Dock Facilities for a period during which any assessment against such Owner remains unpaid for more than thirty (30) days and for a period not to exceed sixty (60) days from any infraction of this Declaration or the Association's lawfully adopted rules and regulations.
  - 3. The right of the Association to adopt at any time and from time to time and enforce rules and regulations governing the use of the Common Properties and Amenities and all facilities at any time situated thereon, including the right to fine members as hereinafter provided. Any rule and/or regulation so adopted by the Association shall apply until rescinded or modified as if originally set forth at length in this Declaration.

4. The right of the Declarant to permit such persons as Declarant shall designate to use the Common Properties and Amenities and all recreational facilities now or hereinafter constructed thereon
5. The right of Declarant and/or the Association to retain, grant and use general and specific easements over and through the Common Properties and Amenities.
6. The right of the Association, by a two-thirds (2/3) affirmative vote of all voting interest of the membership voting through their voting designee to dedicate or convey portions of the Common Properties and Amenities to any other association having similar function.
7. The right of the Declarant to withdraw portions of the Common Properties and add to the Common Properties as provided herein.

E. Rights in Common Properties and Amenities. Subject to all the provisions of the Declaration, each Owner shall have limited rights to the use, benefit and enjoyment of the Common Properties and Amenities for their intended purposes in common with all other such Owners and their respective families, guests, tenants and invitees but in such manner as may be regulated by the Declarant and Association after turnover of control. Notwithstanding the foregoing, at all times the number of adults entitled to use the Amenities shall not exceed six (6) people, the maximum number of persons entitled to occupy a Townhome which number would include occupants of the Guest Suite. Without limiting the foregoing, such rights of use and enjoyment are hereby made subject to the following:

(1) The right and duty of the Association to levy assessments against each Owner for the purpose of maintaining the Common Properties and Amenities and any facilities located thereon.

(2) The right of the Association to suspend the Owner's right to use the Common Properties and Amenities, other than the Ingress-Egress Area, for any period during which any assessment against his/her/its Lot and Dock, if any, remains unpaid for more than thirty (30) days; and for a period not to exceed sixty (60) days for any infraction of this Declaration or the Association's rules and regulations. Such suspension shall also suspend the rights of the Owners their families, guests, tenants, and invitees of the Owners.

(3) The right of the Association to adopt at any time and from time to time and enforce rules and regulations governing the use of the Common Properties and Amenities and all facilities at any time situated thereon, including the right to fine Owners as hereinafter provided.

(4) The right of the Declarant to permit such persons as the Declarant shall designate to use the Common Properties and Amenities and all recreational facilities located thereon (if any).

(5) The right of the Declarant to have, grant, and use general and specific easements over, under and through the Common Properties and Amenities.

(6) The rights of the Declarant to withdraw portions of the Common Properties as provided herein.

**6.03 Title to Common Areas.** On or before the date when Owners other than the Developer first elect a majority of the Board of Directors, the Developer shall convey the Common Areas to the Association by Quit-Claim Deed, and the Association shall accept such conveyance, subject to taxes for the year of conveyance and to restrictions, limitations, conditions, reservations and easements of record. Said conveyance shall also be subject to the Mortgage, as defined in Section 4.06, between the Developer and ORION BANK; however, it is not the intent of the Developer to deed the Common Areas to the Association until the Mortgage is paid in full or released. From the date this Declaration is recorded, the Association shall be responsible for the maintenance and operation of the Common Areas, and any improvements and personal property thereon. The Developer shall have the right from time to time to enter upon the Common Areas during periods of construction upon adjacent properties and for the purpose of construction of any facilities on the Common Areas that the Developer elects to build.

**THE ASSOCIATION AND THE MEMBERS ARE OBLIGATED TO ACCEPT TITLE TO THE COMMON AREAS AND FACILITIES, IN THEIR "AS IS" CONDITION, WITHOUT RECOURSE, WHEN CONVEYED TO THE ASSOCIATION BY THE DEVELOPER. TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEVELOPER DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, IN LAW OR IN FACT, WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND REPRESENTATIONS OR WARRANTIES REGARDING THE CONSTRUCTION, DESIGN, ADEQUACY OF SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS, FURNITURE OR EQUIPMENT WHICH WILL BE USED IN, THE COMMON AREAS AND FACILITIES.**

**6.04 Partition; Separation of Interests.** There shall be no judicial partition of the Common Areas, except as expressly provided elsewhere herein, nor shall the Developer, or any owner or any other person acquiring any interest in the Community, or any part thereof, seek judicial partition thereof. Nothing herein shall be construed to prevent judicial partition of any Lot and Living Unit owned in co-tenancy. The ownership of any Lot and the ownership of the Townhome constructed thereon may not, however, be separated or separately conveyed, nor may

any person who does not have an ownership interest in at least one Lot and Living Unit hold membership in the Association.

**6.05 Easements.** Each of the following easements and easement rights is reserved through the Properties and is a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Properties. Any lien encumbering these easements shall automatically be subordinate to the rights of the owners with respect to such easements. Each Lot shall be subject to an easement in favor of all other portions of the Properties for the location of utilities, for the location of, and access for the operation, maintenance, repair and replacement of plumbing, electrical, mechanical and HVAC equipment (including but not limited to air conditioning compressors, conduits, lines, and other apparatus) which may be situated on certain Lots but serves neighboring Lots, for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of party walls, and shared structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Properties.

**A. Utility and other Easements.** The Association has the power, without the joinder of any owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, in any portion of the Properties, and to relocate any existing easements in any portion of the Properties, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Properties. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.

**B. Encroachments.** If for any reason other than the intentional act of the owner or the Association, any Townhome encroaches upon any of the Common Areas, upon any other Lot, or any Common Areas encroaches upon any Lot, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

**C. Ingress and Egress.** A non-exclusive easement shall exist in favor of each owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Common Areas as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the Common Areas as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways. The ingress and egress corridor is described in attached Exhibit "D".

**D. Drainage.** A perpetual, non-exclusive easement shall exist in favor of Declarant, the Association and their employees or other designees for the use of drainage areas established throughout the Community, and an easement for ingress, egress, and access to enter any portion of the Community in order to construct, maintain or repair, as necessary, any drainage areas and facilities thereon and appurtenances thereto, specifically including without limitation, access over and across portions of the Common Areas by utility companies to utilize such areas for facilities for the transporting of treated effluents for irrigation purposes. No structure, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage areas or otherwise interfere with any easement provided for in this Section or the use rights set forth elsewhere in the Governing Documents. Said easement shall not be removed from its intended use by subsequent owners or other parties.

**E. Construction; Maintenance.** The Developer and its agents, employees and contractors shall have the right to enter the Properties and take any action reasonably necessary or convenient for the purpose of completing the construction thereof, provided such activity does not prevent or unreasonably interfere with the use or enjoyment by the owners of their property.

**F. Sales Activity.** The Developer and its agents, employees and contractors shall have an easement to use, without charge, any Townhomes owned or leased by the Developer, and the Common Areas (including, but not limited to, all recreational facilities and other areas located outside the Townhomes owned by third parties), in order to establish modify, maintain and utilize, as it and they deem appropriate, model Townhomes and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show model Townhomes or the Common Areas to prospective purchasers or tenants, erect signs On the Properties, and take all other action helpful for sales, leases and promotion of the Properties.

**G.** The easements and rights described in (E) and (F) above shall terminate upon the sale of all Townhomes to purchasers other than a successor Developer.

**6.06 Assignment of Easements.** The easements and easement rights reserved hereunder to the Developer may be assigned by the Developer in whole or in part to the Association, any town, county or state government or agency thereof, or duly licensed or franchised public or private utility, or any other designee of the Developer.

## **ARTICLE VII BOAT DOCK SPACE**

**7.01 Boat Dock Spaces.** Declarant has constructed Boat Dock Spaces. However, Piers and Boat Dock Spaces shall be prohibited along the area adjacent to the Matlacha Canal Channel located adjacent to the westerly boundary of the Property and no Boat Dock facilities,

structures or spaces shall be located between that channel and the westerly boundary of the Exhibit "A" Property, all as depicted on the attached Exhibit "C". The prohibition against construction of Boat Docks in this area is a material consideration to the South Florida Water Management District in agreeing to permit Boat Docks in other areas adjacent to the Community and may not be amended without the consent of the South Florida Water Management District or any other agency which in the future shall have the authority to permit Boat Dock Space locations. The South Florida Water Management Easement attached as Exhibit "E" evidences this prohibition without the District's consent. Some Townhome Unit Owners will be assigned a Boat Dock Space which shall thereafter be appurtenant to that unit and may not be leased or conveyed except with the unit, including, if applicable, the non-exclusive right to the use of the finger pier that is shared with the adjoining Boat Dock Space. Each finger pier and the piling in the submerged land supporting the finger pier shall be used exclusively by the Owners of the Boat Dock Spaces contiguous to such pier and piling. Declarant shall have the right at any time and from time to time to alter the length or other configuration of Boat Dock Spaces except for Boat Dock Spaces previously assigned to Unit Owners. Until Declarant assigns the last Boat Dock Space, Declarant shall have the right to adjust the size, configuration and location of Boat Dock Spaces within the Common Areas in its absolute discretion. It is the intent of such right for the Declarant to have maximum flexibility in determining the size and location of Boat Dock Spaces. The Association shall have no right or claim to any assignment fee or other consideration paid to Declarant in connection with the assignment of a Boat Dock Space. Declarant may designate one or more Boat Docks for use in common by owners without a dock space according to rules to be adopted by the Declarant and after turnover by the Association. Except for Declarant, all Unit Owners and others authorized to use Boat Dock Spaces shall be subject to the restrictions in this Declaration, easement rights as provided in this Declaration, and all rules and regulations adopted by the Association from time to time, including, without limitation, the right to restrict the type and size of boats in order to prohibit the unreasonable obstruction of the view from Residential Units; provided, however, no vessel shall be greater than thirty feet (30') in length and shall be limited to vessels with a draft that provides clearance of at least 2 feet above the submerged bottom. The waters in the vicinity of the boat docks and as well under the docks are shallow water and may not, at any tide, be sufficient to allow navigation of boats with a draft that provides clearance of at least 2 feet above the submerged bottom. A permanent sign shall be installed at the Facility entrance to notify boat owners of boat size restrictions. All boat owners, by acceptance of their Boat Dock Space, hereby acknowledge that they have been advised that they should become familiar with the local waters, that draft is an issue for all boats and that they have assumed the risk that the waters and facilities shall be a sufficient depth to accommodate their boat. There shall be no obligation whatsoever of the Association or Developer to dredge or channelize any of the nearby waters, including the waters physically located under and adjacent to the pier structure. Dredging activities may not be allowed under the applicable permits and law. No substantial above gunwale or deck structure or protrusion of any structure located on or attached to the deck, stern or bow of the boat shall exceed a height of twelve feet (12'). Boat Dock Spaces, once assigned in conjunction with a townhome, shall be appurtenant to that townhome and shall not be separated by Bill of Sale, conveyance deed, lease or otherwise. No lease of the boat dock may be made except in

conjunction with the lease of a unit and then for a time period co-extensive with the lease of the unit.

Notwithstanding that Boat Dock Spaces are assigned to Residential Unit Owners, the maintenance of the docks, pilings and other components of the Boat Dock Spaces shall be maintained, as a Common Expense, by the Association in perpetuity.

**7.02 Use and Occupancy of Boat Dock Space.** Boat Dock Spaces shall be used exclusively for docking one vessel, subject to the reasonable regulation of the Association. In its absolute discretion, Declarant or the Association may permit more than one vessel to be docked within a Boat Dock Space. However, at no time shall more than twenty (20) boats be permitted to occupy the Boat Dock Spaces in the aggregate.

(a) No structure of any kind may be constructed on or in a Boat Dock Space without the prior consent of the Association.

(b) All uses for Boat Dock Spaces are subject to the provisions of the South Florida Water Management District Permit, the Army Corp. of Engineer Permit and the Bay Bottom Lease and reasonable regulation by the Association, provided that such limitations shall not unreasonably restrict the safe use of the docking capabilities of the Boat Dock Space and recreational boating purposes.

(c) No Boat Dock Space or any vessel docked at a Boat Dock Space shall be used for residential purposes, whether on a temporary overnight stay or permanent basis.

(d) The Association shall provide recycling bins for the separation and recycling of monofilament line.

(e) The Association shall maintain the existing shoreline in a natural condition free and clear of manmade trash, debris, flotsam and jetsam for the term of the lease and any subsequent renewal periods. Natural seagrass litter, mangrove litter or detritus shall not be removed.

(f) The Association shall install and maintain, during the term of the lease and all subsequent renewal periods, reflective markers and lighted aids to navigation at the ends of each pier, and shall operate said lights at night or in condition of reduce visibility.

(g) A permanent sign shall be installed at the facility entrance to notify boat owners of boat size restrictions.

(h) Boat moorings at the docking facilities shall be limited to no more than a total of 20 vessels and shall be limited to vessels no more than thirty feet (30') in length and shall be limited to vessels with drafts that provide clearance of at least two feet (2') above the submerged bottom at all times while mooring at the docking facility.

(i) Dock and walkway pilings shall be constructed of plastic, concrete or greenheart, non-CCA treated wood or wood wrapped in 30 to 60 mil pvc.

(j) No fueling or fish cleaning facilities shall be installed or operated on the docking facilities that are authorized herein for the life of the facility.

(k) No liveaboards shall be allowed to dock at the docking facilities authorized by this permit for the life of the facility. A liveaboard shall be defined as a vessel docked at the facility that is inhabited by a person or persons for any two consecutive days or a total of seven days within a 30 day period.

(l) No mooring shall be permitted on the landward side of the docking facilities.

(m) The docking facilities are for the private use of residents of the Porpoise Point Townhomes development. The Developer, and after turnover the Association, shall ensure that the docking facilities are not subleased for revenue generating or liveaboard purposes.

Items (h) through (m) may not be amended without the modification of the South Florida Water Management Permit.

**7.03 Additional Restrictions Regarding Boat Dock Space and Vessels.** The following obligations shall apply to all Boat Dock Space Owners, Townhome Owners and their guests and invitees:

A. Boat Dock Space Owners, Townhome Owners and their guests and invitees shall be solely responsible for any loss or damage to their private property used or stored in vessels or within Boat Dock Spaces.

B. Boat Dock Space Owners, Townhome Owners and their guests and invitees must comply with all governmental regulations.

C. The navigation laws of the United States, the State of Florida and all signs posted by the Association shall be obeyed at all times.

D. Each Boat Dock Space Owner and Townhome Owner is solely responsible for the proper mooring of any vessel and is required to maintain vessel mooring cleats and mooring lines in good condition and sufficiently strong to secure the vessel at all times. Any special mooring rules or procedures adopted by the Association shall be complied with at all times.

E. During hurricanes and other high velocity wind threats, Boat Dock Space Owners and Townhome Owners are responsible for following all safety precautions that may be issued or recommended by the National Hurricane Center, National Weather Service, U.S. Coast Guard, the Association or any other applicable agency. Boat Dock Space Owners are required to file a



“Hurricane Plan” with the Association each year prior to June 1<sup>st</sup>, which shall include emergency phone numbers.

F. If a vessel sinks for any reason, the Boat Dock Space Owner and Townhome Owners as applicable must remove or cause the vessel to be removed from the Property immediately. If the Boat Dock Space Owner or Townhome Owners as applicable does not remove the vessel within thirty (30) days after the sinking, the Association may remove the vessel at the Boat Dock Space Owner’s or and Townhome Owner’s expense as applicable. Any such cost shall be collectible as if it were an unpaid assessment against that Townhome Owner’s Unit.

G. No open fires shall be permitted on any vessel, Boat Dock Space, or any Common Areas, except in an area, if any, which may be approved for such use by the Association.

H. Garbage, refuse, trash and rubbish shall be deposited in Association approved trash receptacles or discarded off premises by the owners.

I. Oil, spirits and inflammables are not permitted in refuse containers. Boat Dock Space Owners shall provide the proper method of disposing of waste oil lubricants. Illegal substances, fuel and sewage may not be discharged into waters over or adjacent to Boat Dock Spaces.

J. The handling, storage, transpiration and disposal of hazardous or toxic materials is prohibited within Boat Dock Spaces; provided, however, that this shall not prohibit the proper handling, storage and transportation of petroleum, cleaning of similar products used by a Boat Dock Space Owner in connection with the operation of vessels. The Association shall have the right to immediately remove, or cause the immediate removal of, any hazardous or toxic material within Boat Dock Spaces.

K. Each Boat Dock Space Owner and Townhome Owners, and their guests and invitees are responsible to ensure that any bilge water pumped into the open waters within or adjacent to Boat Dock Spaces does not contain any petroleum or hazardous or toxic materials. For purposes of this paragraph, hazardous and toxic materials shall be defined by federal, Florida and common law.

L. Vessels may be repaired within Boat Dock Spaces provided such repairs are undertaken in a manner so as to minimize any disturbance to others.

M. The Association shall have the right to inspect any vessel in Boat Dock Spaces to determine its seaworthiness and compliance with all applicable city, county, state and federal fire, safety and other regulations, including those promulgated by the Association, as well as to determine whether the vessel fits within the boundaries of the Boat Dock Space. The Association may remove any vessel from Boat Dock Spaces that fails to comply with any of those regulations or fails to fit within the Boat Dock Space. The cost of removing such boat shall be a charge

against the Townhome Owner's Unit that is assigned the Boat Dock Space and shall be collectible as if it were an unpaid assessment.

N. All vessels equipped with sanitary equipment shall be required by all applicable federal, state and local authorities. Holding tanks must be used for discharge of all heads aboard the vessel. Federal regulations prohibit discharging of vessel's sanitary facilities within Boat Dock Spaces or surrounding waters. The Association is authorized to board vessels to inspect holding tanks and to test their operation with dye if necessary. No person shall discharge into waters within the docking portion of a Boat Dock Space or dispose into garbage containers any oil, spirits, oily bilge water, storage batteries, or coolants. All such substances are the responsibility of the owner of the vessel to be removed from Boat Dock Spaces and disposed of per state and federal regulations.

O. Unless approved by the Association, in addition to the restrictions on vessel size set forth in 7.01 and 7.02(h), each vessel must fit within the boundaries of its Boat Dock Space, including all bowsprits, booms, pulpits, and other projections and overhangs, and must not be of such a size or height so as to unreasonably obstruct the view of adjacent Unit Owners.

P. From time to time, the Association may require that all vessels be removed for maintenance, repair and dredging of the bay bottom.

Q. Subject to any provision of this Declaration specifically permitting same, no Boat Dock Owner, Townhome Owners or their guests and invitees shall cause any sign or any other thing to be affixed or attached to, hung, displayed or placed on or within any Boat Dock Space (including signage on vessels advertising the sale or lease of any Unit or vessel) without the prior written consent of the Association. Developer shall be exempt from this restriction and no amendment to this provision shall be made without the consent of the Developer.

R. In order to facilitate access to Boat Dock Spaces by the Association for the purposes permitted in this Declaration, the owner of any docked vessel irrevocably grants the Association the right to temporarily remove such vessel.

S. All piers, captain walks and other docks, structures and walkways adjacent to Boat Dock Spaces shall remain free of debris, boating equipment, or other materials at all times except for the temporary placement of items being placed upon or removed from vessels docked within a Boat Dock Space.

T. Developer will install a manatee educational program and a literature display in accordance with the permit requirements of the South Florida Water Management District. The Developer, until turnover and thereafter the Association, shall be responsible for maintaining the manatee educational program and literature display in accordance with the South Florida Water Management Permit. The program shall include the distribution of laminated booklets of the county speed zones to each unit owner and other users of the docks, at no charge, as long as same are available free of charge from the Florida Inland Navigation District.

U. The Developer has installed permanent education manatee signs in accordance with the Florida Fish & Wildlife Commission Guidelines ("FWC") including FWC approval for the number, type and location of the signs. The Developer, and after turnover the Association, shall be responsible for the maintenance and replacement of signs in the event the signs fade, become damaged or outdated, and shall maintain these signs for the life of the facility.

**7.04 Navigational Access for Vessels Across Canals and Adjacent Water.** Each Boat Dock Space Owner, its guests and invitees, shall have a non-exclusive right to navigate vessels to and from the Owner's Boat Dock Space along the waterways within the Property and over the property described in the Bay Bottom Lease, but only to the extent provided in the Bay Bottom Lease. In addition, all Owners, their guests and invites, shall have the right to temporarily and reasonably use the waterway across other portions of Boat Dock Spaces for the purpose of providing clear passage for vessel traffic to and from all Boat Dock Spaces, as deemed appropriate by the Association in its sole but reasonable discretion. No vessel may be berthed or docked so that any portion of that vessel protrudes beyond the boundary limits of the Owner's Boat Dock Space, except for such limited duration and on such terms as the Association may from time to time permit. In order to assure that vessels will have unobstructed access to each Boat Dock Space and that each vessel will have a way of passage to and from the Boat Docks, no structure shall be erected, lines placed, nor any vessel(s) moored, in any place or manner that results in an obstruction to, or undue burden on, navigation between any Boat Dock Space and the Navigational Easement.

**7.05 Support Easements for Wood Dock: Access Easement Across Boat Dock Spaces.** Each Boat Dock Space having a portion of the rip rap and/or wood dock (as depicted in Exhibit "C") within the boundaries of the Boat Dock Space shall have an easement of support in every portion of adjacent Boat Dock Spaces that contributes to the support of the rip rap and wood dock, and it shall be the obligation of each Boat Dock Space Owner to maintain that portion of the rip rap lying within the Boat Dock Space Owner's Unit at all times in order to protect the support of the rip rap lying within adjacent Boat Dock Spaces; provided, however, it is the general obligation of the Association to maintain the rip rap and Boat Dock Spaces. All Boat Dock Spaces are encumbered by an access easement permitting all Dock Space Owners, Unit Owners, Unit Owners' guests and invitees, parties authorized by the Association and Association personnel, Declarant and other authorized person to traverse any portion of the wood dock within a designated Boat Dock Spaces. No impediment to such use shall be placed within the wood dock of a Boat Dock Space without the consent of the Association.

## **ARTICLE VIII**

### **MAINTENANCE; IMPROVEMENTS**

**8.01. Townhomes.** The Association shall clean and provide ordinary maintenance, repair and replacement of the roofs, structural components and the exterior walls and other surfaces of the Townhomes and appurtenant structures such as privacy walls and garages, the need for which is caused by normal wear and tear and weathering keeping the appearance of the

same in a condition comparable to the condition of such improvements at the time of their initial construction, except for normal weathering, wear and tear. The cost shall be a common expense. Painting the outside of exterior doors, door and window frames and exterior caulking, are Association responsibilities. Maintenance, repair and replacement of mailboxes and street lighting is the Association's responsibility. Otherwise the maintenance, repair and replacement of the Townhomes is the responsibility of the owners thereof. The owner of each Townhome shall maintain, repair and replace, at his own expense, all portions of his Townhome except those portions specifically required to be maintained, repaired and replaced by the Association. Specifically it is the owner's responsibility to repair, reconstruct or replace all damage resulting from windstorm, fire, flood, hail, hurricanes, sinkholes, and other natural disasters, acts of God, and casualties that are or could be covered by property insurance carried by the owner under Section 10.01 below. The owner is responsible for any deductibles. By way of illustration, and not limitation, the owner's responsibilities include:

1. Windows, glass and screens, doors, door and window frames, hardware and locks.
2. All wiring, plumbing, and electrical or mechanical equipment or fixtures which serve only the Townhome, regardless of location. The bulbs for the coach light fixtures shall be supplied by the Association and the Association shall have the right to maintain the coach lights if an owner has failed to do so.

Each unit has attached a coach light which shall be maintained by the owner in an operational condition and shall remain on as required by rules and regulations adopted by the Association.

Each owner shall maintain his Townhome and all fixtures and appliances located therein in good condition and repair at all times. Garages and storage areas shall be maintained in an orderly condition, and the storage of combustibles or explosives other than ordinary household materials and gas grill propane tanks is prohibited. Each owner is prohibited from painting or otherwise decorating or changing the appearance of his Townhome except as permitted in the Declaration.

**8.02 Maintenance of Common Areas.** The Association shall at all times maintain in good repair and manage, operate, and insure, and shall replace as often as necessary, the Common Areas, and to the extent not otherwise provided for, any such work required to be done with regard to the paving, drainage structures, landscaping, improvements, and other Structures (except public utilities and those improvements to be maintained by Owners) situated on the Common Areas, if any, shall be done as ordered by the Board of the Association. All work pursuant to this Section and all expenses incurred by or allocated to the Association pursuant to this Declaration shall be paid for by the Association through Assessments (either general or special) imposed in accordance herewith. The Association shall have the power to incur, by way of contract or otherwise, expenses general to all the Property, or appropriate portions thereof. No Owner may waive or otherwise escape liability for Assessments by non-use (whether voluntary

or involuntary) of the Common Areas and Amenities or abandonment of the right to use the Common Areas or Amenities.

Notwithstanding anything herein contained to the contrary, any and all maintenance obligations of either the Association or an Owner must be undertaken in such a manner to assure that the portions being maintained by the Association and/or Owner are consistent with and in no event at a level which is below the operating standards for a first-class resort.

Except as otherwise provided herein, the Association shall maintain, repair and replace any and all improvements constructed on the Common Areas, including without limitation all landscaping, the components of the irrigation systems, including but not limited to the tap into the main line, timers, switching devices and heads, drainage structures, utility lines, walkways, light fixtures (except coach lights on each unit which shall be maintained and kept operational by each Unit Owner), and other structures.

The mowing of lawns and all outside maintenance, repair and replacement of landscaping and sprinkler systems is the Association's responsibility, and is a common expense. No person may add to or change the plantings, trees or landscaping without the prior approval of the Association.

All landscaping, including without limitation, trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be maintained by the Association. No landscaping shall be added, augmented, replaced, cut down, destroyed or removed without the prior written approval of the Association. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon any Lot outside of the Townhome and the Townhome's privacy walls, unless approved by the Association and when required by the Matlacha Historic Committee.

The Developer has implemented a Maintenance Program in accordance with the South Florida Water Management District Permit requirements for mangrove planting areas designated in the Permit on a regular basis to insure the integrity and viability of those areas as permitted. The Developer, and after turnover the Association, shall conduct required maintenance in perpetuity to insure that the planted mangrove areas are maintained free from Category 1 exotic vegetation (as defined by the Florida Exotic Pest Plant Council at the issuance of the South Florida Water Management District Permit). Coverage of exotic and nuisance plant species shall not exceed 5% of total cover between maintenance activities. In addition, the area shall be managed such that exotic / nuisance plant species do not dominate any one section of the designated areas. No trimming of mangroves shall occur without obtaining all appropriate permit approvals. Developer makes no representation that trimming will be allowed or permitted.

**8.03 Street Lights.** The Association shall be responsible for the operation, maintenance, repair, and replacement of all street lighting fixtures, including Dock lights, installations and equipment located within the Properties, even if same are located within the common areas/elements owned or administered by the Porpoise Point Townhome Association,

and said fixtures, installations, and equipment shall be deemed Common Properties and Amenities for the aforesaid purposes.

**8.04 Utility Easements.** Use of the Common Areas for utilities, as well as use of the other utility easements as shown on relevant plats, shall be in accordance with the applicable provisions of this Declaration and said plats. Declarant and its affiliates and their designees shall have a perpetual easement over, upon, and under the Common Areas and the Lots for the installation, operation, maintenance, repair, replacement, alteration, and expansion of utilities.

**8.05 Public Easements.** Fire, police, health and sanitation, and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Lots in the performance of their respective duties.

**8.06 Ownership.** The Common Areas are hereby dedicated non-exclusively to the joint and several uses, in common, of Declarant; the Owners and the families, guests, tenants, and invitees of all Owners, and Declarant, all as provided and regulated herein or otherwise by the Association. The Common Areas will be conveyed to the Association upon the later of completion of the Improvements thereon or the date when the last Lot within The Properties has been conveyed to a purchaser (or at any time and from time to time sooner at the sole election of Declarant), by quit claim deed to the Association, which shall be deemed to have automatically accepted such conveyance. Beginning from the date this Declaration is recorded, the Association shall be responsible for the maintenance, insurance, and administration of such Common Areas (whether or not then conveyed or to be conveyed to the Association), all of which shall be performed in a continuous and satisfactory manner. It is intended that any and all real estate taxes and assessments assessed against the Common Areas shall be (or have been, because the purchase prices of the Lots and Structures have already taken into account their proportionate shares of the values of the Common Areas) proportionally assessed against and payable as part of the taxes of the applicable Lots within The Properties. However, in the event that, notwithstanding the foregoing, any such taxes are assessed directly against the Common Areas, the Association shall be responsible for the payment (subject to protest or appeal before or after payment) of same, including taxes on any improvements and any personal property located thereon, which taxes accrue from and after the date this Declaration is recorded, and such taxes shall be prorated between Declarant and the Association as of the date of such recordation.

Declarant and its affiliates and designees shall have the right from time to time to enter upon the Common Areas and other portions of The Properties (including, without limitation, Lots) for the purpose of the installation, construction, reconstruction, repair, replacement, operation, expansion, and/or alteration of any improvements or facilities on the Common Properties or elsewhere on The Properties that Declarant and its affiliates or designees elect to effect and the right to use, without charge, the Common Areas and other portions of The Properties for sales, displays and signs, or for any other purpose during the period of construction and sale of any portion thereof or of other portions of adjacent or nearby property. Without limiting the generality of the foregoing, Declarant and its affiliates and designees shall have the specific right to maintain upon any portion of The Properties sales, administrative,

construction, or other offices and appropriate exclusive and non-exclusive easements of access and use are expressly reserved unto Declarant and its affiliates and designees, and the successors, assigns, employees, and contractors of any of them, for this purpose. Any obligation (which shall not be deemed to be created hereby) to complete portions of the Common Properties shall, at all times, be subject and subordinate to these rights and easements and to the above-referenced activities. Accordingly, Declarant shall not be liable for delays in such completion to the extent resulting from the need to complete any of the above-referenced activities prior to such completion.

**8.07 Enforcement of Maintenance.** If the owner of a Townhome fails to maintain it as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the Lot, with or without consent of the owner. The Association may repair, replace, or maintain any item which constitutes an immediate hazard to other property or residents, or which has a material adverse effect on the appearance of the Community. Any expenses so incurred by the Association shall be assessed against the owner, together with reasonable attorney's fees and other expenses of enforcement.

**8.08 Negligence; Damage Caused by Condition in Townhome.** The owner of each Townhome shall be liable for the expenses of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his guests, employees, agents, or lessees, only to the extent that such expense is not met by proceeds of insurance. Each owner has a duty to maintain his Townhome, and the personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other Townhomes, the Common Areas or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other Townhomes, the Common Areas, Association property or property within other Townhomes, the owner of the offending Townhome shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the Townhomes involved is not occupied at the time the damage is discovered, the Association may enter the Townhome without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

**8.09 Alterations and Additions.** Funds necessary for material alterations or substantial additions to the Common Areas by the Association may be levied as special assessments by the Association only upon prior approval by a majority of the whole Board of Directors and approval by two-thirds (2/3rds) of the voting interests present and voting at a meeting called for the purpose. Prior to the commencement of any such project relating to the Common Areas or to the buildings, the Association shall obtain the written approval of the ARC. However, if changes that are necessary to enable the Association to perform its legal duty to protect, insure, maintain, repair or replace the Properties also happen to constitute material alterations or substantial additions, no prior approval by the owners is necessary.

**8.10 Pest Control.** The Association may elect to supply pest control services for the inside of each Townhome, with the cost thereof being part of the common expenses. An owner has the option to decline such service unless the Association determines that such service is necessary for the protection of other Townhomes, in which case the owner must either permit the Association's pest control company to enter his Townhome, or employ a licensed pest control company of his own selection to enter his Townhome on a regular basis to perform pest control services and furnish written evidence thereof to the Association. The cost of pest control provided by the Association is a common expense, so the election of an owner not to use the service will not reduce the owner's assessments.

**8.11 Hurricane Shutters.** Notwithstanding anything to the contrary above, the Board of Directors shall adopt, with the approval of the ARC and when required by the Matlacha Historical District, a model, style and color of hurricane shutter as a standard for use in the Properties. No hurricane or storm shutters except the standard model, color and style adopted by the Board of Directors and approved by the ARC shall be used. No shutters shall be maintained on windows at anytime except when a storm with at least tropical storm force winds is located within five hundred (500) miles of the property and shall be removed within a reasonable time after any storm is no longer within five hundred (500) miles of the property. The Association shall have the authority to enter on the property to remove such shutters, at the owner's expense at the Association's election, in the event that an owner does not remove them within a reasonable time after the passing of any storm or should such shutters be placed on the property when not consistent with the provisions of this document. Failure to remove such shutters shall be an item subjecting the respective owner to special assessments and fines which may be secured by a claim of lien.

## ARTICLE IX COMPLETION OF COMMUNITY

**9.01 Completion of Community.** The Developer shall undertake the work of developing all Lots and Townhomes within the Community. The completion of that work, or the sale, lease, or other disposition of Townhomes, is essential to the establishment and welfare of the Community as an ongoing residential community. In order that such work may be completed and the Community established as a fully-occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent the Developer, or the employees, contractors or sub-contractors of Developer, or of Developer's transferees, from doing whatever in their judgment is reasonably necessary or advisable for the completion of the work and the establishment of the Community as a residential community. As used in this paragraph, the words, "Developer's transferees" specifically do not include purchasers of Lots improved with completed Townhomes.



## **ARTICLE X**

### **INSURANCE; DUTY TO RECONSTRUCT**

**10.01 Duty to Insure and to Reconstruct.** Each owner shall at all times maintain property insurance on his residence and all other insurable improvements in an amount equal to the full replacement cost thereof. If any Living Unit or other improvements located on any Lot are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the owner of such improvements shall cause repair or replacement to be commenced within six (6) months from the date that such damage or destruction occurred, and shall complete the repair or replacement within nine (9) months thereafter. All such repairs or replacements must restore the improvements to substantially their original character, design and appearance, and shall utilize and conform with the original foundation and appearance of the original improvements, except as otherwise approved by the ARC. Both the insurance requirement and the duty to reconstruct, as set forth in this Section 10, shall not apply to any Living Units or Lots owned by ORION BANK which were acquired by a foreclosure of the Mortgage, as defined in Section 4.06, or by a deed in lieu of foreclosure.

**10.02 Failure to Reconstruct.** If the owner of any Lot fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 10.1 above, the Association shall give written notice to the owner of his default. If the owner has not notified the Association of satisfactory arrangements to meet his obligations within thirty (30) days after the Association mailed such notice, the Association shall be deemed to have been granted the right by the owner, as such owner's attorney-in-fact, to remove all debris and damaged improvements, or to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this Section, which shall be in the sole discretion of the Board of Directors, the owner of the Lot shall be deemed to have assigned to the Association any right he may have to insurance proceeds that may be available because of the damage or destruction of the improvements. The Association shall have the right to recover from the owner any costs not paid by insurance, and shall have a lien on the Lot and residence to secure payment.

**10.03 Failure to Insure; Association as Additional Insured.** For the purpose of this Section 10, each owner of a Lot within the Community agrees that the Association shall be an additional insured under any contract of property insurance and/or flood insurance relating to his Lot and improvements constructed thereon. Further, the Association may require that all such policies be in an amount sufficient to finance the repair or replacement of the improvements, taking into account local construction costs and property values as they may, from time to time exist. The Association has the right to require each owner to produce proof of insurance. If an owner fails or refuses to maintain such insurance coverage deemed reasonably necessary by the Association, or if the owner allows the required insurance coverage to lapse, or for some other reason, causes the same to become ineffective, the Association may but is not obligated to, purchase whatever coverage it deems reasonably necessary for the Association's benefit. The

costs incurred by the Association in procuring insurance shall become due and payable by the owner in all respects, together with interest, reasonable attorney's fees and costs of collection, immediately upon the Association notifying the owner, in writing, that it has procured such insurance, and the costs thereof.

**10.04 Association's Right of Entry.** For the purpose of performing the duties authorized by this Section 10, the Association, through its duly authorized agents and employees, shall have the right, after reasonable notice to the owner, to enter upon the Lot at reasonable hours.

**10.05 Association Insurance: Duty and Authority to Obtain.** The Board of Directors shall obtain and keep in force at all times the insurance coverage which it is required to carry, and may obtain and keep in force any or all of such other or additional insurance coverage as it may deem necessary. The premiums shall be a common expense. The name of the insured shall be the Association as agent for the owners without naming them, and their mortgagees.

**10.06 Required Coverage.** The Association shall maintain adequate insurance covering the buildings and other improvements on all Association property, in such amounts, and with such deductibles, as is determined annually by the Board of Directors to be reasonable in the exercise of its good business judgment, such insurance to afford at least the following protection:

**A. Property.** Loss or damage by fire, extended coverage (including windstorm) vandalism, and malicious mischief, and other hazards covered by what is commonly referred to as an "all risk" property contract.

**B. Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as shall be required by the Board of Directors, with cross liability endorsement to cover liabilities of the owners as a group to any single owner.

**C. Automobile.** Automobile liability for bodily injury and property damage for owned and/or non-owned motor vehicles, in such limits of protection and with such coverage as shall be required by the Board of Directors.

**10.07 Optional Coverage.** The Association may purchase and carry such other insurance coverage as the Board of Directors may determine from time to time to be in the best interest of the Association and owners. Some common examples are:

- A.** Flood insurance.
- B.** Broad Form Comprehensive General Liability Endorsement.
- C.** Directors and Officers Liability.
- D.** Medical Payments.

**10.08 Description of Coverage.** A detailed summary of the coverage included in the Association's policies shall be available for each owner upon request. All Association insurance policies shall be available for inspection by owners upon request.

**10.09 Waiver of Subrogation.** If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogate as to any claim against owners, the Association, or their respective servants, agents or guests, except for any claim based primarily upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

**10.10 Insurance Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association, and all proceeds shall be payable to the Association.

**10.11 Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be used to defray the cost of repair or reconstruction. Any proceeds remaining after defraying costs shall become part of the Association's common surplus.

**10.12 Association as Agent.** The Association is hereby irrevocably appointed agent for each owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Living Units.

**10.13 Common Properties.** The Association shall keep all improvements, facilities, and fixtures located within the Common Properties, which shall include, when assigned, the Bay Bottom Lease and all structures constructed thereon, 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. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by all-risks and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance for and on behalf of itself and all Members. The insurance coverage with respect to the Common Properties shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses included in the Master Assessments made by the Association.

To the extent obtainable at reasonable rates, the insurance policy(ies) maintained by the Association shall contain provisions, or be accompanied by endorsements, for: replacement costs, 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 Association shall also maintain flood insurance on the insurable improvements on the Common Properties in an amount equal to the lesser of one hundred percent (100%) of the replacement costs of all insurable improvements (if any) within the Common Properties or the maximum amount of coverage available under the National Flood Insurance Program, in either case if the insured improvements are located within an "A" flood zone.

**10.14 Replacement or Repair of Property.** In the event of damage to or destruction of any portion of the Common Properties, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of this Declaration.

**10.15 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, and the 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.

**10.16 Liability and Other Insurance.** The Association shall have the power to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, with coverage of at least \$1,000,000.00 (if available at reasonable rates and upon reasonable terms) for any single occurrence, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross liability endorsement insuring each Member against liability to each other Member and to the Association and vice versa and coverage for legal liability resulting from lawsuits related to employment contracts shall also be maintained. The Association may also obtain Worker's Compensation insurance and other liability insurance as it may deem desirable, insuring each Member and the Association and its Board and officers, from liability in connection with the Common Properties, the premiums for which shall be Common Expenses and included in the Master Assessments made against the Members. The Association may also obtain such other insurance as the Board deems appropriate. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board or any management company engaged by the Association against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or any committee thereof. At a minimum, however, there shall be blanket fidelity bonding of anyone (compensated or not) who handles or is responsible for funds held or administered by the Association, with the Association to be an obligee thereunder. Such bonding shall cover the maximum funds to be in the hands of the Association or management company during the time the bond is in force.

**10.17 "Blanket" Insurance.** The requirements of this Article may be met by way of the Association being an insured party under any coverage carried by the Declarant, the Declarant, and/or the Association as long as such coverage is in accordance with the amounts and other standards stated in this Article.

**10.18 Right to Notice.** The Association shall make available for inspection upon request, during normal business hours or under reasonable circumstances, this Declaration (and all supplements or amendments hereto), the Articles, Bylaws, rules and regulations, and the books, records, and financial statements of the Association to Owners, and the holders, insurers, or guarantors of any first mortgages encumbering a Lot or Dock . In addition, evidence of insurance shall be issued to each Owner and mortgagee holding a mortgage encumbering a Unit or Dock upon written request to the Association.

**10.19 Rights of Listed Mortgagee.** Upon written request to the Association identifying the name and address of the Listed Mortgagee of a mortgage encumbering a Lot or Dock and the legal description of same, the Association shall provide such Listed Mortgagee with timely written notice of the following:

10.19.1. Any condemnation, loss, or casualty loss which affects any material portion of the Common Properties encumbered by a first mortgage held, insured or guaranteed by such Listed Mortgagee;

10.19.2. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

10.19.3. Any proposed action which would require the consent of mortgagees holding a mortgage encumbering a Lot or Dock; and

10.19.4. Any failure by an Unit Owner encumbered by a mortgage held, insured, or guaranteed by such Listed Mortgagee to perform his or her obligations under this Declaration or the Articles or Bylaws of the Association, including, but not limited to, any delinquency in the payment of Assessments, or any other charge owed to the Association by said Owner where such failure or delinquency has continued for a period of sixty (60) days.

**10.20 Right of Listed Mortgagee to Receive Financial Statement.** Any Listed Mortgagee shall, upon written request made to the Association, be entitled free of charge to financial statements from the Association for the prior fiscal year and the same shall be furnished within a reasonable time following such request.

**10.21 Right to Cover Cost.** Declarant, until turnover of the Association in accordance with the Articles, and any Listed Mortgagee shall have the right, but not the obligation, jointly or singularly, 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 Unit or Dock. Further, Declarant, until turnover of the Association in accordance with the Articles, and any Listed Mortgagees shall have the right, but not the obligation, jointly or singularly, and at their sole option, to pay insurance premiums or fidelity bond premiums or any taxes or other charges on behalf of the Association where, in regard to insurance premiums, the premiums are overdue and where lapses in policies may or have occurred or, in regard to the taxes or other charges, where such tax is in default and which

may or has become a charge against a Unit. Declarant and any Listed Mortgagees paying insurance premiums or any tax or other charge on behalf of the Association as set forth above shall be entitled to immediate reimbursement from the Association plus any costs of collection, including, but not limited to, legal fees and costs.

## ARTICLE XI CONDEMNATION

**11.1 Deposit of Awards with Insurance Trustee.** The taking of portions of the Common Properties by the exercise of the power of eminent domain shall be deemed to be a casualty, and, the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to an Owner, the Owner shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Declarant, a charge shall be made against a defaulting Owner in the amount of his or her award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.

**11.2 Taking of Common Properties.** Awards for the taking of Common Properties shall be used to render the remaining portion of the Common Properties usable in the manner approved by the Declarant; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Properties. The balance of the awards for the taking of Common Properties, if any, shall be distributed to the Owners in accordance with their Allocated Interests. If there is a mortgage on a Unit or Dock, the distribution shall be paid jointly to the Owner(s) and the mortgagee holding a mortgage on the Unit or Dock.

## ARTICLE XII ENCROACHMENTS; EASEMENTS

**12.1 Encroachment.** If (a) any portion of the Common Properties (or improvements constructed thereon) encroaches upon any other portion of a Lot or upon any Structure; (b) any portion of a Lot (or improvements constructed thereon) encroaches upon the Common Properties or any other Lot; or (c) any encroachment shall hereafter occur as the result of (i) construction of any improvement; (ii) settling or shifting of any improvement; (iii) any alteration or repair to the Common Properties (or improvements thereon) after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any improvement or portion of the Common Properties, then, in any such event, a valid easement is granted and shall exist for such encroachment and for the maintenance of the same so long as the structure causing said encroachment shall stand.

**12.2 Pipes, Wires, Ducts, Cables, Conduits, Public Utility Lines, Etc.** Each portion of the Common Properties shall have an easement in common with all other portions thereof to use, maintain, repair, alter and replace all pipes, wires, ducts, vents, cables, conduits, utility lines, and similar or related facilities located in the Lots and Common Properties and serving such

portion thereof. Each portion of the Lots and Common Properties shall be subject to an easement in favor of all other portions thereof to install, use, maintain, repair, alter and replace the pipes, wires, ducts, vents, cables, conduits, utility lines and other similar or related facilities located in such portion of the Lots and Common Properties and serving other portions thereof.

Without limiting the generality of the foregoing, each portion of the Common Properties shall have an easement in common with all other portions thereof to use, maintain, repair, alter, and replace all pipes, wires, ducts, vents, cables, conduits, utility lines, and similar or related facilities located in any other Lot and/or included within the Common Properties and serving either of same.

**12.3 Easements of Support.** Whenever any structure on any Lot or included in the Common Properties adjoins any structure included in any other portion of The Properties, each said structure shall have and be subject to an easement of support and necessity in favor of the other structure.

**12.4 Construction and Sales.** The Declarant (and its agents, employees, contractors, subcontractors and suppliers including its designated rental agent) shall have an easement of ingress and egress over and across the Lots for construction purposes and to erect, maintain, repair, and replace, from time to time, one or more signs on the Common Properties for the purposes of advertising the sale or lease of Structures and to permit operation of rental programs, Declarant may assign this easement in whole or in part.

### ARTICLE XIII DEVELOPMENT PLAN

**13.1 Development Plan.** The property described in Exhibit "A" herein is being developed as a residential community to be known as Porpoise Point, consisting of twenty (20) homes (each, a "Living Unit") and up to twenty (20) Docks, each of which shall have the right to use the Common Properties for ingress and egress purposes, open parking spaces and similar general use. Each Living Unit shall include the non-exclusive right to use the Amenities by up to six adults as set forth in 6.02E. Reference herein to properties within Porpoise Point shall not create any right, title or interest therein or constitute constructive notice thereof of any right, title or interest by an person or persons claiming by, through, under or against Declarant unless and until said property, or any portion thereof, has been deeded by the Declarant to an Owner. Notwithstanding that an Owner may have acquired a Living Unit as then depicted in any materials given to an Owner, same shall not prohibit Declarant from modifying the Master Site Plan for Porpoise Point. Specifically, Declarant reserves all rights and powers provided in this Declaration, including, without limitation, the right to amend the Master Site Plan for any reason and those additional rights, reservations and exemptions more particularly enumerated herein.

## **ARTICLE XIV**

### **PARTY WALLS**

**14.01 Definition.** Any wall which is built as part of the original construction of any Townhome subject to this Declaration and placed on the dividing line between adjoining Townhomes and Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section 14, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

**14.02 Cost of Repairs.** The cost of reasonable repair and maintenance of a party wall shall be shared equally by the owners who share the wall.

**14.03 Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any owner who uses the wall may restore it, and if any other owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions. This paragraph shall be deemed to be in addition to, and not in lieu of or to the exclusion of, the repair obligations of the Association under Section 10.02 above.

**14.04 Weatherproofing.** Notwithstanding any other provision of this Section 14, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**14.05 Contribution.** The right of any owner to contribution from any other owner(s) under this Declaration shall be appurtenant to the land and shall pass to such owner's successors in title.

**14.06 Binding Arbitration.** Any dispute concerning a party wall shall be submitted to arbitration under Chapter 682, Florida Statutes. Each party shall choose one arbitrator, and the arbitrators shall choose one additional arbitrator. The decisions of a majority of the arbitrators shall bind the parties.

## **ARTICLE XV**

### **GENERAL COVENANTS AND USE RESTRICTIONS**

**15.01 Occupancy and Use.** This townhome community is being established to be operated and to allow the property to be made available for resort style rental and activities. Each townhome unit has a main portion encompassing two bedrooms and two baths and an additional adjacent portion including a bedroom and a bath (the Guest Suite). Access to both portions can be obtained through a common entry vestibule included within each townhome unit and separate access can be allowed or denied to the respective portions. The two bedroom, two bath portion of each townhome unit shall be available for rental from time to time at the election



of the owner for minimum periods of not less than five (5) days. The one bedroom, one bath portion of each townhome (Guest Suite) shall be available for rental at the owner's option for minimum period of one (1) night. All rentals must be consistent with all legal requirements. The occupancy of each townhome unit shall be limited as provided by law but in any event, shall not exceed six (6) people per townhome unit. Small infants under 3 years old shall not be counted against the foregoing limits. All rentals shall utilize the rental agent designated by the Developer for so long as this Declaration remains in effect. All parties accepting conveyance of a Unit, subject to the Declaration, acknowledge that this reservation is irrevocable and is material consideration to the Developer in its agreement to sell the Unit. This rental obligation may not be amended without consent of the Developer or its successors or assigns. No other rental agent may be used by any owner for the rental of a unit nor may a unit owner rent the Guest Suite portion of a unit without employing the designated rental agent. Except as provided herein, no timesharing business or commercial activity shall be conducted in or from any townhome. No person may publicly advertise the address of a Townhome as the address of any business. This Section 15.01 shall not be construed to prohibit any Townhome occupant from maintaining a personal or professional library, from keeping his personal, business or professional records in his Townhome, or from handling his personal, business or professional telephone calls, written correspondence, or other communications in and from his Townhome. Such uses are expressly declared customarily incident to residential use. This Section 15.01 is, however, intended to prohibit commercial or business activity by an owner which would noticeably change the resort ambiance of the Community, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Community by persons making deliveries or pick-ups, or by employees and business associates, or by customers and clients.

All of the provisions of Porpoise Point Townhomes Documents and the Rules and Regulations of the Association pertaining to use and occupancy of the Townhomes shall be applicable to and enforceable against any person occupying a Townhome as a lessee or guest, to the same extent as against an Owner, and a covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of Porpoise Point Townhomes Documents, designating the Association as the owner's agent, with the authority to terminate any lease and evict the tenant in the event of violations by the tenant of such covenant, shall be deemed to be included in every lease whether oral or written, and whether specifically expressed in such lease or not.

**15.02 Occupancy of Townhome when Owner is not in Residence.** An owner may occasionally allow family, friends or business associates in reasonable numbers to temporarily occupy his Townhome in his absence. Except as otherwise provided in Section 15.01 above and 18.01 below, this provision is not intended to allow any owner to use his Townhome as short-term transient accommodations for several individuals or families. The owner must register all guests with the designated rental agent and the Association in advance, giving such information about the guests and the period of their stay as the rental agent or Board may reasonably require. The owner is responsible for the conduct of his guests. In any event, no more than six (6) overnight occupants are allowed at any time.

**15.03 Leasing.** Townhomes may be leased only through the Developer's designated rental agent as provided in 15.01 above. All leases are subject to the following restriction, the lease must be written and on a form previously approved by the designated rental agent, with all required information in such format completed as such information may be reasonably required.

**15.04 Rentals.** It is intended that the Units may be used for rentals. As such, leasing or renting of Units or portions thereof shall not be subject to the approval of the Association and/or any other limitations, other than as expressly provided herein except for rules and regulations which may be adopted from time to time dealing with use of the Common Properties and Amenities including the dock and pier structures and prohibiting activities which interfere with others reasonable enjoyment of the Property. All leases shall be on approved forms and any lease by a Unit Owner for a term of one (1) year or more shall be subject to the prior approval of the Association. Accordingly, except as provided in 15.01 there shall be no minimum lease term nor any maximum number of times that a Unit may be leased or rented. Notwithstanding the foregoing, any all leases whether or not subject to the approval of the Association shall remain subject to any and all the covenants, terms, conditions, and restrictions of this Declaration (and all Exhibits hereto), and any and all rules and regulations adopted by the Association and/or the Declarant, without limitation, any and all regulations and/or procedures adopted regarding mandatory check-in for Owners and residents, coordination of any charging privileges which the Declarant may elect to afford Owners, their families, guests, invitees, or tenants, and other matters reasonably necessary to allow Owners and families to be well integrated into a unified structure and operation and to ensure that the Units and related property and the use and occupancy of Owners and their families, guests, invitees, and tenants of their respective facilities are integrated to the extent contemplated by this Declaration and to ensure that all operations may be conducted in an efficient manner. The Owner will be jointly and severally liable with the tenants to the Association for any amount which is required by the Association and the Declarant, as applicable, to repair any damage to Property resulting from acts or omissions of guests, tenants, and invitees (as determined in the sole discretion of the Association) and to pay any claim for injury or damage to property caused by the negligence of the guest, tenants, and invitees and special charges may be levied against the Unit therefor. All tenancies are hereby made subordinate to any lien filed by the Association, whether prior or subsequent to such lease. By this provision, it is expressly understood and agreed that rental of Units, for any term, is expressly authorized and permitted, subject to the limitations contained in Section 15.01 hereof.

There shall be no amendment to this Section 15.04, or to any other provision of the Declaration which shall impair the rights established in this Section 15.04, without the prior approval of ninety five percent (95%) of the entire voting interests of the Association.

**THE DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE FINANCIAL FEASIBILITY OF RENTING TOWNHOMES OR THE INCOME TO BE DERIVED THEREFROM. ANY OWNER WHO DESIRES OR INTENDS TO RENT A TOWNHOME MUST INDEPENDENTLY DETERMINE AND ASSUME RESPONSIBILITY FOR THE FEASIBILITY OF RENTING, AND SHOULD**

**CONSULT HIS OR HER OWN ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES AND ECONOMIC ADVANTAGE OF OWNERSHIP.**

**15.05** Occupancy and use of any part of the property is hereby prohibited by any party who is a convicted sex offender or who has been convicted of a violent crime.

**15.06 Nuisance.** No member shall use or permit a Townhome to be used in any manner which would be unreasonably disturbing, detrimental or a nuisance to the occupant of another Townhome or which would not be consistent with the maintenance of the highest standards for the first class residential development, nor permit the premises to be used in a disorderly or unlawful way. The use of each Townhome and the Common Areas shall be consistent with existing laws and the Governing Documents, and residents shall at all times conduct themselves in a peaceful and orderly manner. No unlawful, disorderly or offensive activity shall be carried on upon the Properties or any portion thereof, including within any Townhome, nor shall any owner permit or condone any activity that is, or may reasonably become, a source of annoyance or nuisance to other residents.

**15.07 Temporary Structures.** Temporary structures, including trucks, trailers, motor homes, recreational vehicles, tents or shacks shall not be used on any Lot at any time as a residence, either temporary or permanent.

**15.08 Signs.** In order to maintain an attractive community, no sign, banner, advertisement or poster (including "open house", "for sale" or "for rent" signs) shall be exhibited, displayed, inscribed, painted, or affixed, in, on or upon any part of the Properties. This provision includes signs inside of Townhome windows or the windows of motor vehicles. This Section shall not apply to signs used by Developer or its agents to market Townhomes owned by Developer.

**15.09 Appearance; Refuse Disposal.** Each owner shall keep his Lot and Townhome free of trash and debris and shall reasonably maintain his Townhome. Personal property of residents shall not be left on the lawns or landscaped areas outside the Townhomes. Trash, garbage or other waste must be kept in appropriate containers suitably screened from view from the street and adjacent Lots. Porches, and lanais shall be used only for the purposes intended, and shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

**15.10 Maintenance.** The Developer may, in its sole discretion, care for unimproved Lots within the Properties at its expense, remove and destroy tall grass, undergrowth, weeds and rubbish therefrom, and do any other things and perform any labor necessary to keep the Lot in reasonable order. The Association shall have the right to repair any structure or improvement on any Lot which, in the opinion of the Board, constitutes a safety hazard or nuisance, or is unsightly, or is in a state of disrepair, provided that the Lot owner is given no less than five (5) days notice of the Association's intent to do so, which reasonably specifies the proposed action. The Association shall charge the expense of same against the owner of the Lot, which charge

shall be a lien on the Lot which may be foreclosed and shall include the Association's attorney fees and other costs in connection with the lien and foreclosure.

**15.11 Awnings and Windows.** Awnings, storm shutters, solar film, and other window coverings shall be subject to the prior approval and control of the ARC.

**15.12 Fences.** No fence, wall, hedge or other physical and visual barrier shall be erected in the Common Areas, except as originally installed by Developer, or as approved by the ARC.

**15.13 Water Supply; Wells; Water Rights.** Each Living Unit shall be equipped with a potable water line, non-potable water will be provided by separate line for irrigation systems which must be connected to the non-potable water line and all outside spigots must be connected to the potable water line. Each owner shall be required to connect the water lines on his Lot to the lines of the utility provider(s) providing service to Porpoise Point. No owner may install or operate a private well for any reason, including operation of a water source heat pump.

**15.14 Pets.** The owner of each Townhome may keep not more than two (2) small pets of up to twenty five pounds (25) each, of a normal domesticated household type (such as a cat or dog) in the Townhome. Reasonable numbers of birds in cages and fish in aquaria are also permitted, subject to reasonable regulation by the Association. Animals must be hand carried or leashed at all times while outside of the Townhome. The owner is responsible for cleaning up after his pet. The ability to keep pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyances to other residents of the Properties. No poultry, swine, reptiles or livestock may be kept on the Properties. The Board of Directors may restrict the locations where pets may be walked.

**15.15 Trucks, Commercial Vehicles, Recreational Vehicles, Motor Homes, Mobile Homes, Boats, Campers, Trailers and Other Vehicles.**

A. **"Motor Vehicles; Parking"**. No motor vehicle (which by definition includes "motorcycles") shall be parked anywhere on the property except within a garage. No trucks or vehicles which are primarily used for commercial purposes, other than service vehicles temporarily present on business, nor any trailers, may be parked on community property, unless fully enclosed within a garage. Boats, boat trailers, trailers, semi-trailers, house trailers, campers, travel trailers, mobile homes, motor homes, recreational vehicles, and the like, and any vehicles not in operable condition or validly licensed, may not be kept within the community unless fully enclosed within a garage. For the purpose of the foregoing sentence, the term "kept" shall mean present for either a period of six (6) consecutive hours or overnight, whichever is less.

B. **"Commercial Vehicles"** means all vehicles of every kind whatsoever, which from viewing the exterior of the commercial markings, signs, displays, equipment, inventory, apparatus or otherwise indicates a commercial use.

C. **"Trucks"** means any motor vehicle which is designed or used principally for the carriage of goods and includes a motor vehicle to which has been added a cabinet box, a bed, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers, whether or not said cabinet box, bed, platform or rack has been enclosed by a cap, "topper" or other enclosure. This shall specifically include "pickup trucks", "El Caminos", "Rancheros" and like vehicles but shall not include passenger "custom" and like vans (provided same are not "commercial" vehicles, as defined above) currently marketed under the following manufacturers name plates: Dodge Caravan, Plymouth Voyager, Chevrolet Astro, Ford Aerostar and all other vehicles of similar design and custom passenger vans. The term truck shall not include "Jeeps" or other SUV's, if same do not have a cabinet box, bed, platform, box or rack, as described above and if same are not "non-passenger" vehicles, as described below such as Ford Broncos, Chevrolet Blazers, Jeep Wagoneers, Jeep Cherokees and the like.

D. **"Boats"** means anything manufactured, designed, marketed or used as a craft for water flotation, capable of carrying one or more persons, or personal property. The Association shall adopt rules governing permitted boats. The rules may restrict boats based on size, appearance, type and under no circumstances shall the following types of boats be permitted:

- i. liveaboards;
- ii. those which exceed a maximum length of thirty feet (30') and vessels that do not have drafts that provide clearance of at least 2 feet above the submerged bottom, as determined by the manufacturer's specifications and for length as measured from the back of the transom to the tip of the bow;

E. **"Campers"** means all vehicles, vehicle attachments, vehicle toppers, trailers or other enclosures or devices of any kind whatsoever, manufactured, designed, marketed or used for the purpose of camping, recreation or temporary housing of people or their personal property.

F. **"Trailers"** means any vehicles or devices of any kind whatsoever which are manufactured, designed, marketed or used to be coupled to or drawn by a motor vehicle.

G. **"Mobile Homes"** means any structure or device of any kind whatsoever, which is not self-propelled but which is transportable as a whole or in sections, which is manufactured, designed, marketed or used as a permanent dwelling.

H. **"Motorcycle"** means any motor vehicle on two or three wheels propelled by an engine of ½ horsepower or more and shall include "ATV's", motorscooters, motorcycles, and mopeds powered by engines of ½ horsepower or more.

I. **“Motor Homes” or “Recreational Vehicle”** means any vehicles which are self-propelled, built on a motor vehicle chassis, and which are primarily manufactured, designed, marketed or used to provide temporary living quarters for camping, recreational or travel use. Vehicles satisfying the foregoing criteria and which contain shower facilities, restroom facilities, and full cooking facilities shall be considered motor homes.

J. No vehicle which is not currently licensed or cannot operate on its own power shall remain on the premises for more than twenty-four (24) hours. As used in this section, the term licensed shall mean that the vehicle displays, at all times, a license plate or license tag to which is affixed a sticker indicating that the vehicle is currently registered with the State of Florida or other state as the case may be.

K. A speed limit of fifteen (15) miles per hour applies through the Association roadway. Unnecessary vehicle noises are to be avoided within the grounds.

L. Vehicle maintenance is not permitted within the community except in garages. For purposes of this section, vehicle maintenance shall include, but not be limited to, changing of oil and other fluids, engine maintenance or repair, body maintenance or repair. Cleaning the exterior and interior of the vehicle, waxing and checking fluid levels is permissible. Emergency repairs to vehicles such as changing a flat tire are allowed.

**15.16 Antennas, Radio Equipment and Flagpoles.** 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 Lot or upon any improvements thereon, unless expressly approved in writing by the ARC, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Federal Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae, restrictions relating to safety, location and maintenance of antennae. The Association may adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to side or rear yard locations, not visible from the street or neighboring properties, and integrated with the residence and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules. Antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. A flagpole, for display of the American Flag only, may be permitted if its design and location are first approved by the ARC. An approved flagpole shall not be used to mount an antenna. It is the intent of this Section to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances which is sometimes caused by ham radios, CB base stations or other high-powered broadcasting

equipment. This Section 15.16 shall not apply to the Developer or its agents to market Townhomes owned by Developer. Notwithstanding the foregoing.

**15.17 Flags.** Any unit owner may display one (1) portable, removable United States flag or official flag of the State of Florida in a respectful way and may display in a respectful way portable, removable official flags, not larger than 4 ½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard or a POW-MIA flag.

**15.18 Open Space.** Any land subjected to this Declaration and designated as open space, landscape buffer, preserve area, or words of similar import on any plat, declaration of covenants and restrictions, site plan, permit or other document shall be preserved and maintained by the owner of such land as open space. If such land or an easement over such land has been conveyed or dedicated to the Association, the Association shall preserve and maintain such land. No development may occur on such land except structures or improvements which promote the use and enjoyment thereof for open space purposes.

## **ARTICLE XVI**

### **ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS**

Every owner, and all guests, tenants and occupants of Townhomes, shall at all times comply with Chapter 720, Florida Statutes, the Governing Documents, and the rules of the Association. Before undertaking any remedial, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in emergencies. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Governing Documents, shall be presented to and determined by the Board of Directors of the Association, whose interpretation of the Governing Documents and/or whose remedial action shall control. Each member and the member's tenants, guests, and invitees, and the Association, are governed by, and must comply with, Chapter 617, Florida Statutes, the governing documents of the Community, and the rules of the Association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the Association or by any member against:

- A. The Association;
- B. A member;
- C. Any Director or officer of the Association who willfully and knowingly fails to comply with these provisions; and
- D. Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This Section does not deprive any person of any; other available right or remedy.

**16.01 Enforcement Action.** Judicial enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**16.02 Self-Help Remedies.** Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Governing Documents shall also give the Declarant, its successors and assigns, and/or the Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the land where such violation or breach exists and summarily abate and remove, at the expense of the Owner of the Lot, any construction or other violation that may be or exist thereon. The Developer, its successors and assigns and/or the Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal.

**16.03 Suspension of Common Area Use Rights; Fines.** The Association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities, and may levy reasonable fines, not to exceed the amount allowed by law, against any member or any tenant, guest, or invitee.

**A.** A fine or suspension may not be imposed without notice of at least fourteen (14) days to the person 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. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

**B.** The requirements of this subsection do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due if such action is authorized by the governing documents.

**C.** Suspension of common area use rights shall not impair the right of an owner or tenant of a Lot to have vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the right to park.

**D.** Collection of Fines. A fine shall be treated as a special charge due to the Association ten (10) days after written notice from the Association to the owner of the imposition of the fine. If not paid by the due date, the fine shall accrue interest at the highest rate allowed by law, and may be the subject of a late payment fee.



**E.** Application. All monies received from fines shall become part of the common surplus.

**F.** Nonexclusive Remedy. Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover at law from such owner.

## **ARTICLE XVII**

### **TRANSFERS OF OWNERSHIP OF TOWNHOMES**

In order to foster a community of congenial, financially responsible residents with the objectives of inhibiting transience, protecting the value of the Townhomes and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a Townhome by an owner other than the Developer shall be subject to the following restrictions, which each owner covenants to observe:

#### **17.01 Forms of Ownership.**

**A. One owner.** A Townhome may be owned by one natural person who has been approved as provided herein.

**B. Co-ownership.** Co-ownership of Townhomes is permitted, but if the proposed co-owners are other than husband and wife, the Board shall condition its approval upon designation of one of the approved co-owners as "primary occupant", and the use of the Townhome by other persons shall be as though the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift, subject to all the provisions of this Section 17.

**C. Ownership by Corporations or Trusts.** A Townhome may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided for other transfers or title. However, the intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Townhome may be used as short term transient accommodations for several individuals or families. The approval of a Trustee or corporation or other entity as an owner shall be conditioned upon designation of one natural person to be the "primary occupant", and the use of the Townhome by other persons shall be as though the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift, subject to all the provisions of this Section 17.

**D. Life Estate.** A Townhome may be subject to a life estate, either by operation of law or by approved voluntary conveyance. In that event, the life tenant shall be the only member from such Townhome, and occupancy of the Townhome shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant and holders of the remainder interest shall be jointly and severally liable for all assessments and charges against the Lot. The life tenant may, by signed agreement, transfer the right to vote in all Association matters to any one remainderman, subject to approval by the Association of such arrangement. Except in the case where such a transfer has been made, if the consent or approval of the owner is required for any purpose, that consent or approval of the holders of the remainder interest shall not be required.

#### **17.02 Transfers.**

**A. Sale or Gift.** No owner may effectively convey title to a Townhome or any interest therein by sale or gift without the prior written approval of the Board of Directors.

**B. Devise or Inheritance.** If any owner acquires his title by devise or inheritance, his right to occupy or use the Townhome shall be subject to the approval of the Association. The approval of the Association shall not be denied to any devisee or heir who was the decedent's lawful spouse or related to the owner by blood or adoption within the first degree.

**C. Other Transfers.** If any person acquires title in any manner not considered in the foregoing subsections, his right to occupy the Townhome shall be subject to the approval of the Association under the procedure outlined in Section 17.03 below.

#### **17.03 Procedures.**

##### **A. Notice to Association.**

**1. Sale or gift.** An owner intending to make a sale or gift of his Townhome or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the date of the proposed transfer, together with the name, and address of the proposed purchaser or donee and such other information as the Board may reasonably require.

**2. Devise, Inheritance, or Other Transfers.** The transferee must notify the Association of his ownership and submit to the Association a certified copy of the instrument evidencing his ownership and such other information as

the Board may reasonably require. The transferee shall have no occupancy right unless approved by the Board, but may sell or lease the Townhome following the procedures provided in this Declaration.

3. **Failure to give Notice.** If no notice is given, the Association at its election may approve or disapprove the transfer without prior notice. If it disapproves, the Association shall proceed as if it received notice on the date of such disapproval; however, the proposed transferee may provide the Board with the required notice and request reconsideration.

B. **Board Action; Approval.** Within twenty (20) days of receipt of the required notice and all information requested, but not later than sixty (60) days after receipt of the notice, whichever occurs first, the Board must approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee or the closing agent if the Board neither approves or disapproves within twenty (20) days, such failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a Certificate of Approval.

C. **Disapproval.**

1. The Board may disapprove a transfer of ownership only if a majority of the whole Board so votes, after receiving a written opinion of counsel that such disapproval is for a good cause. Only the following shall be deemed to constitute good cause:

a. The application for approval on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Properties;

b. The person seeking approval has a history of disruptive behavior or an attitude of disregard for the rights and property of others, as evidenced by his conduct in other social organizations or associations, or by his conduct as a tenant, owner or occupant of a Living Unit in Porpoise Point Townhomes.; or

c. The person seeking approval failed to provide the information and appearance required to process the application in a timely manner or concluded the transaction without obtaining approval.

d. The person seeking approval is a convicted sex offender, or has been convicted of a violent crime.

**17.04 Exception.** The provisions of Sections 17.02 and 17.03 do not require Association approval of transfers of ownership by the Developer or of the acquisition of title by any acquirer who acquires title through an Institutional Mortgagee, whether by foreclosure or deed in lieu of foreclosure; however, Association approval is required for a purchaser from such mortgagee. It is expressly provided that transfers of ownership by ORION BANK of any Living Units or Lots it owns and acquired by a foreclosure on the Mortgage or by a deed in lieu of foreclosure shall not require Association approval as provided in Sections 17.02 and 17.03.

**17.05 Unapproved Transfers.** Any sale or transfer which is not approved pursuant to the terms of this Declaration shall be void or voidable unless subsequently approved by the Board.

## **ARTICLE XVIII**

### **DEVELOPER'S RIGHTS AND DUTIES**

As long as the Developer holds any Lots in the Community for sale in the ordinary course of business, the following shall apply, notwithstanding any other provisions to the contrary:

**18.01 Developer's Use.** Until the Developer has completed all of the contemplated improvements and has sold all of the Lots in the Community neither the owners nor the Association, nor their use of the Lots and Common Areas shall unreasonably interfere with the completion of the contemplated improvements or the sales of Townhomes. The Developer may make any use of the unsold Lots and the Common Areas as may reasonably be expected to facilitate completion and sales, including, but not limited to, maintenance of sales office, display of signs, leasing Townhomes, and showing the Properties to prospective purchasers. The Developer also reserves the right to lease back one or more Townhomes for use as "hospitality suites", providing short term guest accommodations for prospective purchasers or other business guests of the Developer.

**18.02 Assignment of Development Rights.** All or any portion of the rights, privileges, powers and duties of the Developer set forth in the Governing Documents may be assigned by the Developer to any successor developer, without the consent of any other owner or any holder of a mortgage secured by any Lot. In the event of such assignment, the assignee shall assume such rights, powers and duties, and the assignee shall be relieved of further liability or obligation to the extent of the assignment. In the event of the foreclosure of any mortgage owed by the Developer, or deed in lieu of such foreclosure, the person first acquiring title to such interest by reason of such foreclosure, or deed in lieu of foreclosure, shall succeed to all rights, powers, privileges and immunities of the Developer in and to such interest.

**18.03 Amendment of Documents.** In addition to any other right of amendment or modification provided for in the Townhome Documents, the Declarant, or any entity which succeeds to its position as the Developer of the Property described in Exhibit "A" may, in its sole discretion, by an instrument filed of record in the County, unilaterally modify, enlarge, amend,

waive or add to the provisions of this Declaration or any of its recorded exhibits. Declarant's right to amend expressly grants the Declarant the unilateral right to add additional Lots and/or Townhome units and subject those property to this Declaration. The rights set forth in this paragraph shall expire when construction of the Community is completed and the Declarant no longer holds any Lots and Townhomes in the Properties for sale in the ordinary course of business. Any amendment made pursuant to this paragraph may be made without notice to the members or to any other person. However, no amendment shall change the shares of liability for assessments or ownership of the common surplus of the Association, or the voting rights appurtenant to any Townhome, unless the owner of the Townhome and his institutional mortgagee (if any) consent in writing to the amendment.

**18.04 Sales or Leases of Townhomes.** The Developer has the right to sell, lease or transfer ownership of any Townhome owned by it on such terms and conditions as it deems in its own best interest.

## **ARTICLE XIX**

### **TURNOVER OF CONTROL**

**19.01 Time of Turnover.** The turnover of control of the Association by the Developer shall occur not later than ninety (90) days after conveyance of title to at least ninety percent (90%) of the Lots within the Properties. At the Turnover Meeting the members shall elect a Board of Directors and the Directors appointed by the Developer shall resign.

**19.02 Procedure for Calling Turnover Meeting.** No more than 75 days and no less than 60 days prior to the Turnover Meeting, the Association shall notify in writing all members of the date, time and place of the Turnover Meeting.

**19.03 Early Turnover.** The Developer may turn over control of the Association to owners other than the Developer prior to the turnover deadline set forth above by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of owners other than the Developer to elect Directors and assume control of the Association. Provided at least sixty (60) days notice of Developer's decision to cause its appointees to resign is given to the owners, neither the Developer, nor its appointees, shall be liable in any manner for doing so, even if owners other than the Developer refuse or fail to assume control.

**19.04 Developer Representative.** The Developer is entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five percent (5 %) of the Lots. After the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer-owned interests in the same manner as any other member, except for purposes of reacquiring control of the Association or selecting a majority of the Directors.

**ARTICLE XX**  
**SURFACE WATER MANAGEMENT SYSTEM, WETLAND AND WILD LIFE**  
**HABITAT**

**20.01 Surface Water Management System ("SWMS").** The SWMS is defined at Section 1.33. The Association shall be responsible for maintenance of SWMS, including but not limited to ditches, canals, lakes, and water retention ponds in the Properties, which is permitted by the South Florida Water Management District ("District") Pursuant to Permit # 36-07016-P, a copy of which is attached hereto as Exhibit "F". All SWMS within the Properties which are accepted by or constructed by the Association or the Declarant, excluding those areas (if any) normally maintained by Lee County or another governmental agency, will be the ultimate responsibility of the Association, whose agents, employees, contractors and subcontractors may enter any portion of the Common Areas and make whatever alterations, improvements or repairs that are deemed necessary to provide or restore property water management. The Association shall maintain copies of all permitting actions for the benefit of the Association.

A. No construction activities may be conducted relative to any portion of the SWMS. Prohibited activities include, but are not limited to: digging or excavation; depositing fill, debris or any other material or item; constructing or altering any water control structure; or any other construction to modify the SWMS. To the extent there exists within the Properties a wetland mitigation area or a wet detention pond, no vegetation in these areas shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from the District. Construction and maintenance activities which are consistent with the design and permit conditions approved by the District in the Environmental Resource Permit may be conducted without specific written approval from the District.

B. No Owner or other person or entity shall unreasonably deny or prevent access to water management areas for maintenance, repair, or landscaping purposes by Declarant, the Association, or any appropriate governmental agency that may reasonably require access. Nonexclusive easements therefore are hereby specifically reserved and created.

C. No Lot, Parcel or Common Area shall be increased in size by filling in any lake, pond or other water retention or drainage areas which it abuts. No person shall fill, dike, rip-rap, block, divert or change the established water retention and drainage areas that have been or may be created without the prior written consent of the Association. No person other than the Declarant or the Association may draw water for irrigation or other purposes from any lake, pond or other water management area, nor is any boating, swimming, or wading in such areas allowed.

D. All SWMS and conservation areas, excluding those areas (if any) maintained by Lee County or another governmental agency, will be the ultimate responsibility of the Association. The Association may enter any Lot, Parcel or Common Area and make whatever alterations, improvements or repairs are deemed necessary to provide, maintain, or restore proper SWMS. The cost shall be a Common Expense. NO PERSON MAY REMOVE NATIVE

VEGETATION THAT MAY BECOME ESTABLISHED WITHIN THE CONSERVATION AREAS. "REMOVAL" INCLUDES DREDGING, APPLICATION OF HERBICIDE, PULLING AND CUTTING.

E. Nothing in this Section shall be construed to allow any person to construct any new water management facility, or to alter any SWMS or conservation areas, without first obtaining the necessary permits from all governmental agencies having jurisdiction, including South Florida Water Management District, the Association and the Declarant, its successors and assigns.

LOTS MAY CONTAIN OR ABUT CONSERVATION AREAS WHICH ARE PROTECTED UNDER RECORDED CONSERVATION EASEMENTS. THESE AREAS MAY NOT BE ALTERED FROM THEIR PRESENT CONDITIONS EXCEPT IN ACCORDANCE WITH THE RESTORATION PROGRAM INCLUDED IN THE CONSERVATION EASEMENT, OR TO REMOVE EXOTIC OR NUISANCE VEGETATION, INCLUDING, WITHOUT LIMITATION, MELALEUCA, BRAZILIAN PEPPER, AUSTRALIAN PINE, JAPANESE CLIMBING FERN, CATTAILS, PRIMROSE WILLOW, AND GRAPE VINE. THE ASSOCIATION IS RESPONSIBLE FOR PERPETUAL MAINTENANCE OF SIGNAGE REQUIRED BY THE PERMIT ISSUED BY THE DISTRICT, WHICH MAINTENANCE SHALL BE PERFORMED TO THE GREATEST DEGREE LAWFUL BY THE ASSOCIATION.

F. The District has the right to take enforcement measures, including a civil action for injunction and/or penalties, against the Association to compel it to correct any outstanding problems with the SWMS.

G. The Developer has implemented in conjunction with the construction of the development the Urban Stormwater Management Program required under the South Florida Water Management District Permit, a copy of which is attached as Exhibit "I". The Developer, and after turnover the Association, shall be responsible for all maintenance, improvements, reconstruction, replacement and alike necessary to maintain the Urban Stormwater Management Program as permitted in accordance with the permit and functional.

**20.02 Proviso.** Notwithstanding any other provision in this Declaration, no amendment of the governing documents by any person, and no termination or amendment of this Declaration, will be effective to change the Association's responsibilities for the SWMS or any conservation areas, unless the amendment has been consented to in writing by the District. Any proposed amendment which would affect the SWMS or any conservation areas must be submitted to the District for a determination of whether the amendment necessitates a modification of the surface water management permit. If the Association is dissolved or otherwise ceases to exist, the property containing the SWMS and water management portion of the Common Areas shall be conveyed to a local government unit determined to be acceptable to the District; provided, that if the local government unit declines to accept such conveyance then the property containing the SWMS and water management portion of the Common Areas shall

be conveyed to a similar non-profit corporation. The Association shall cause its registered and any successor registered agent to maintain copies of all further permitting actions for the benefit of the Association.

**20.03 Provision for Budget Expense.** In the event the Properties have on site wetland mitigation as defined in the regulations which requires monitoring and maintenance, the Association shall be responsible for the mitigations and monitoring and any financial assurances and shall include in its budget an appropriate allocation of funds for monitoring and maintenance of the wetland mitigation area(s) each year until the District determines that the area(s) is successful in accordance with the Environmental Resource Permit.

**20.04 Wetland Conservation Area.** Some Lots may abut or contain Wetland Conservation Areas. The Association shall be responsible for the perpetual maintenance of the Wetland Conservation Areas. The Wetland Conservation Areas must be permanently retained in a natural state, and may not be altered from their present state, except as may be specifically authorized in writing by the District. Unless authorized in writing by the District, and unless specifically conforming to the Management Plan developed and adopted by the District:

- A. No structures or construction of any kind may be erected.
  - B. No filling, excavation, dredging, prop-dredging, grading, paving, clearing, timbering, ditching, draining, contamination, or other development shall be permitted.
  - C. No activity may be done or performed which would adversely affect or impair (i) endangered or threatened species of special concern as to nesting, reproduction, food source, habitat or cover or affect the vegetation itself; (ii) available habitat for fish and aquatic life or result in emigration from adjacent or associated ecosystems and macro habitats; (iii) existing biosystems or ecosystems; or (iv) recovery of an impaired system.
  - D. No organic or inorganic matter or deleterious substances or chemical compounds may be discharged or placed in the Wetland Conservation Areas.
- In addition to any enforce rights of the District, the Association shall be entitled to take action against Lot owners as necessary to enforce the above provisions and any requirements of the Conservation Easement and the District permit.

**20.05 Non-Liability for Fluctuation of Water Levels.** Neither the Declarant, nor the Association, nor any officer, director, employee or agent of such entities or persons shall have any liability for aesthetic conditions, damage to littoral plantings or direct or consequential damages of any nature or kind caused by the fluctuation of water levels.

**20.06 The SWMS facilities** are located on land that is designated common property on the plat, are located on land that is owned by the Association, or is located on land that is subject to an easement in favor of the Association and its successors.



**ARTICLE XXI**  
**DURATION OF COVENANTS; AMENDMENT OF DECLARATION**

**21.01 Duration of Covenants.** The covenants, conditions, and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, the Developer and any owner, their respective legal representatives, heirs, successors and assigns, for an initial period to expire on the ninety-ninth (99th) anniversary of the date of the recording of the Association Declaration in the public records of the county. Upon the expiration of the initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of potential successive ten (10) year renewal periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, unless during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, at least three-fourths (3/4ths) of the votes cast at a duly held meeting of Members of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal will be considered, shall be given at least forty-five (45) days in advance of the meeting. If the members vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Association the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. The certificate shall be recorded in the public records of the County, and may be relied upon for the correctness of the facts recited therein as they relate to the termination of this Declaration.

**21.02 Proposal.** Amendments to this Declaration may be proposed at any time by the Board of Directors or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests. Any amendments so proposed must be submitted to a vote of the owners not later than the next annual meeting.

**21.03 Vote Required.** Except as otherwise provided by law, or by specific provision of the Porpoise Point Townhomes Documents, this Declaration may be amended at any time if a duly proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests of the Association present in person or by proxy and voting at any annual or special meeting called for the purpose, provided that the text of each proposed amendment has been given to the members with notice of the meeting. However, no amendment shall be effective to change the share of liability for assessments or ownership of the common surplus of the Association, or the voting rights, appurtenant to any Townhome, unless the owner and his institutional mortgagee (if any) consent in writing to the amendment. Until control of the Association has been turned over to owners other than the Developer, this Declaration may also be amended by vote of two-thirds (2/3rds) of the Board of Directors, without need for a vote of the owners.

**21.04 Certificate; Recording.** A copy of each amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where this Declaration is

recorded, and shall be executed by the President or Vice-President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of the county.

**21.05 Amendment of Provision Relating to Developer.** As long as the Developer holds any Lot in the Community for sale in the ordinary course of business, no amendment shall be effective to change any provision relating specifically to the Developer without the Developer's written consent.

## **ARTICLE XXII**

### **GENERAL PROVISIONS**

**22.01 Waiver.** Any waiver by any person of any provisions of this Declaration, or breach thereof, must be in writing to be effective, and shall not operate or be construed as a waiver of any other provision or subsequent breach.

**22.02 Severability.** If any Section, subsection, sentence, clause, phrase or portion of this Declaration or any of its recorded exhibits is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and its invalidity shall not affect the validity of the remaining portions.

**22.03 Headings and Capitalization.** The headings of the sections, subsections, paragraphs and subparagraphs herein, and the capitalization of certain words, are for convenience only, and are not intended to affect the meaning or interpretation of the contents.

**22.04 Notices.** Any notice required to be sent to any owner under this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as owner on the records of the Association at the time of such mailing. The owner bears the responsibility for notifying the Association of any change of address.

**22.05 Interpretation.** The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretations shall be binding upon all parts unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

IN WITNESS WHEREOF, COASTAL LAND AND HOMES, L.L.C., does hereby execute this Declaration of Covenants, Conditions and Restrictions through its undersigned, duly authorized agent, this 28~~th~~ day of August, 2009.

COASTAL LAND AND HOMES, L.L.C., a  
Florida limited liability company

[Signature]  
Witness  
Kimberly A Taylor  
Printed Name of Witness

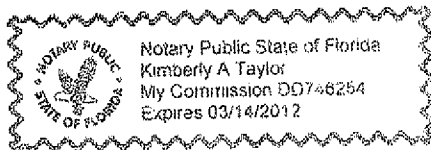
By: [Signature]  
Print Name \_\_\_\_\_  
Title \_\_\_\_\_

Witness  
Peter Gravina  
Printed Name of Witness

STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was acknowledged before me this 28 day of August, 2009, by Robert J. Gleason, Manager of COASTAL LAND AND HOMES, L.L.C. He is personally known to me or did produce \_\_\_\_\_ as identification.

(SEAL)



[Signature]  
Notary Public  
Printed Name of Notary Public

H:\wpdata\pjg\CLIENTS - CURRENT\Coastal Land & Homes\PORPOISE POINT\6-30-09 DECLARATION OF COVENANTS clean 2.doc

This Instrument Prepared By:  
 Peter J. Gravina  
 PAVESE LAW FIRM  
 1833 Hendry Street  
 Fort Myers, Florida 33901

**MORTGAGEE'S CONSENT & JOINDER  
 TO THE DECLARATION OF COVENANTS,  
 CONDITIONS AND RESTRICTIONS FOR  
 PORPOISE POINT TOWNHOMES**

THE UNDERSIGNED, the owners and holders of a certain Mortgage recorded in Official Records Instrument Number 2005000084632; modified by Mortgage Modification Agreement and Receipt of Future Advance recorded in Official Records Instrument Number 2006000246728; modified by Mortgage Modification Agreement and Receipt of Future Advance recorded in Official Records Instrument Number 2007000075127; and modified by Mortgage Modification Agreement recorded in Official Records Instrument Number 2009000102172, all of the Public Records of Lee County, Florida, does hereby join in and consent to the terms, conditions and restrictions as set forth in the Declaration of Covenants, Conditions and Restrictions for Porpoise Point Townhomes, as recorded in the Public Records of Lee County, Florida.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Joinder to be executed this 27<sup>th</sup> day of August, 2009.

Signed, sealed and delivered  
 in the presence of:

Printed name: Samuel D. Hagan IV

Printed name: L. Kristene Guffey

ORION BANK

By: [Signature]  
 Printed name: Jeffrey L. Redcliffe  
 As its: S.V.P.

STATE OF FLORIDA \_\_\_\_\_ )  
 COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this 27 day of August, 2009, by Jeffrey L. Redcliffe, as S.V.P. of Orion Bank, on behalf of the bank. He/She is personally known to me or produced as identification.



(Notary Seal)

Notary Public

Printed Name of Notary Public



Engineering Excellence Since 1942

1400 Colonial Boulevard, Suite 31  
Fort Myers, FL 33907  
TEL: (239)931-0455  
FAX: (239)931-0456  
[www.boyleengineering.com](http://www.boyleengineering.com)

Employee Owned

## EXHIBIT "A" SHEET 1 OF 2

### DESCRIPTION OF PORPOISE POINT TOWNHOUSES

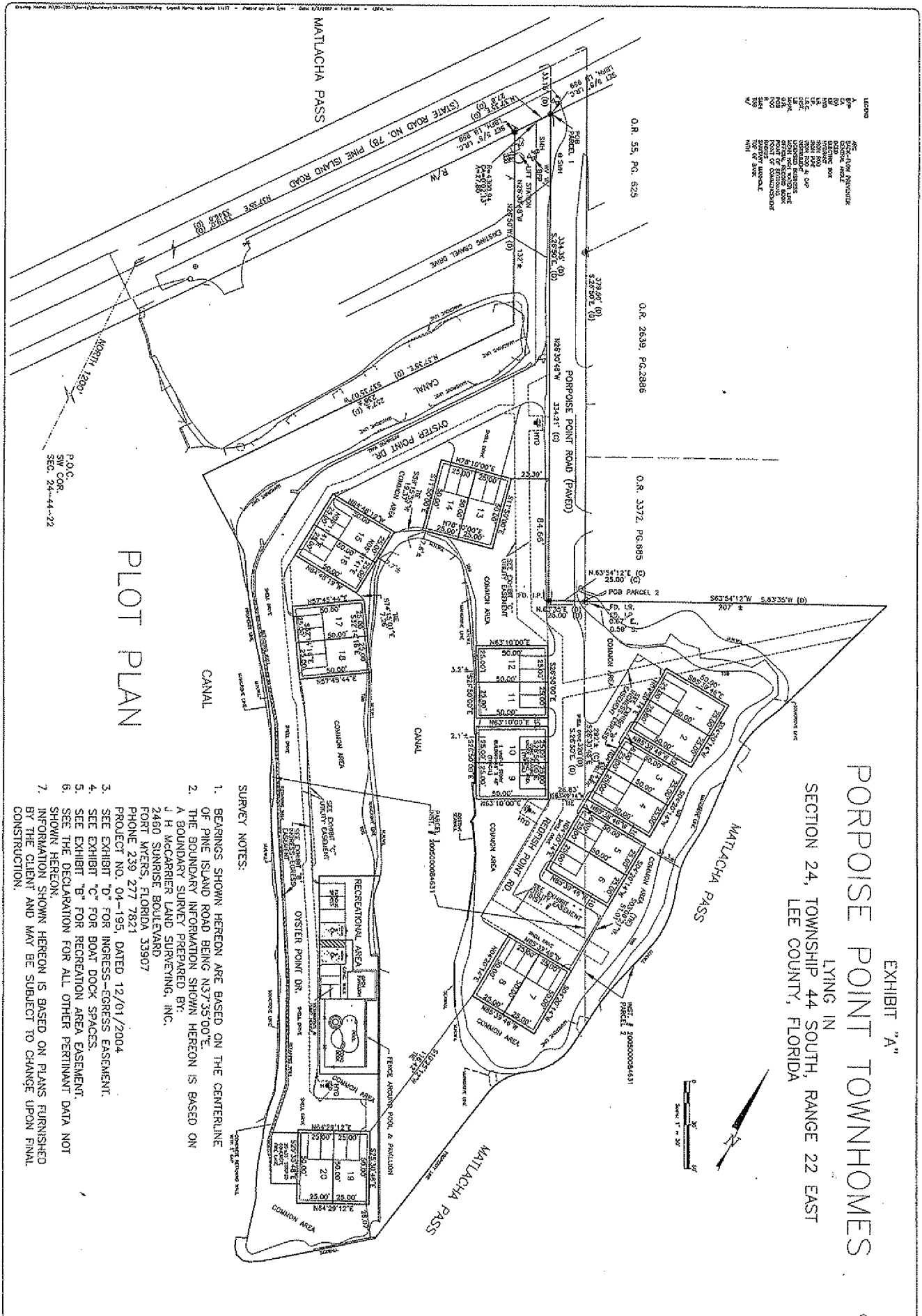
INSTRUMENT NUMBER 2005000084631

#### PARCEL NUMBER 1

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 24, TOWNSHIP 44 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA, THENCE NORTH 1200 FEET MORE OR LESS TO THE CENTER LINE OF STATE ROAD NO. 6 (SAID POINT BEING WITNESSED BY A 3/4 INCH IRON PIPE SET 30 FEET SOUTH OF SAID CENTER LINE); THENCE NORTH 37° 35' EAST ALONG THE CENTERLINE OF STATE ROAD NO. 6, 3319.0 FEET; THENCE SOUTH 26° 50' EAST, 33.15 FEET TO THE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED; THENCE CONTINUE SOUTH 26° 50' EAST, 334.35 FEET; THENCE NORTH 63° 35' EAST, 25 FEET; THENCE SOUTH 26° 50' EAST, 320 FEET TO THE SHORELINE OF "PORPOISE ISLAND"; THENCE SOUTHWESTERLY AND NORTHWESTERLY ALONG SAID SHORELINE TO THE INTERSECTION OF SAID SHORELINE WITH THE SOUTH BOUNDARY OF A TRACT OF LAND DEEDED TO THOMAS BROOKS; THENCE NORTH 37° 35' EAST ALONG SAID SOUTH BOUNDARY OF THE THOMAS BROOKS TRACT 257 FEET, MORE OR LESS; THENCE NORTH 26° 50' WEST, 132.0 FEET; THENCE NORTH 37° 35' EAST, 27.8 FEET TO THE POINT OF BEGINNING. LYING AND BEING IN SECTION 24, TOWNSHIP 44 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA.

#### PARCEL NUMBER 2

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 24, TOWNSHIP 44 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA, THENCE NORTH 1200 FEET MORE OR LESS TO THE CENTER LINE OF STATE ROAD NO. 183 (SAID POINT BEING WITNESSED BY A 3/4 INCH IRON PIPE SET 30 FEET SOUTH OF SAID CENTER LINE); THENCE NORTH 37° 35' EAST ALONG THE CENTERLINE OF SAID STATE ROAD, 3346.8 FEET; THENCE SOUTH 26° 50' EAST, 379.5 FEET TO THE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED, THENCE SOUTH 26° 50' EAST 320 FEET, MORE OR LESS TO THE SHORELINE OF "PORPOISE ISLAND"; THENCE NORTHEASTERLY ALONG SAID SHORE LINE TO A POINT WHICH IS NORTH 63° 35' EAST OF THE POINT OF BEGINNING, THENCE SOUTH 63° 35' WEST 207 FEET MORE OR LESS TO THE POINT OF BEGINNING.



# BOYLE

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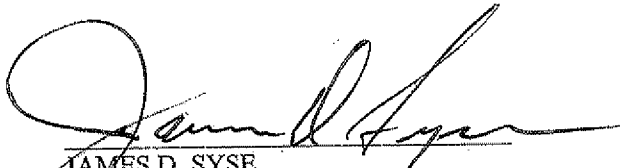
## EXHIBIT "B"

MAY 30, 2007  
JOB # 03-7057 (BOYLE 30058)  
FILE # 03-7057RECLGL  
SHEET 1 OF 2

### LEGAL DESCRIPTION: AMENITIES AREA







COMMENCE AT THE NORTHEAST CORNER OF PARCEL 1 AS RECORDED IN INSTRUMENT NUMBER 2005000084631 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S.26°30'48"E., ALONG THE EAST LINE OF SAID PARCEL 1 FOR 334.21 FEET; THENCE S.13°17'46"W., FOR 247.51 FEET TO THE POINT OF BEGINNING; THENCE S.26°50'00"E., FOR 135.90 FEET; THENCE N.63°10'00"E., FOR 41 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF A CANAL THENCE NORTHWESTERLY ALONG SAID CANAL FOR 137 FEET MORE OR LESS TO A POINT THAT BEARS N.63°10'10"E FROM THE POINT OF BEGINNING; THENCE S.63°10'00"W., FOR 42 FEET MORE OR LESS TO THE POINT OF BEGINNING.

CONTAINING 0.13 ACRES, MORE OR LESS.



JAMES D. SYSE  
PROFESSIONAL SURVEYOR & MAPPER  
FL. CERT. # 4211



PROJECT NO: <b>30056</b>	RECREATION AREA PORPOISE POINT TOWNHOMES LYING IN	CLIENT: COASTAL LAND AND HOMES ADDRESS: 3400 BLOCK LANE CITY: ESTERO, FL 32920 PHONE: 	<b>lbh</b> CONSULTING CIVIL ENGINEERS, SURVEYORS & MAPERS "Fairness For Results, Value By Design"	DATE: 1/24/00 SCALE: AS SHOWN COMPILED BY:  CHECKED BY:  FIELD NO. 56 F.D. PAGE: FIELD DATE: 5/27/02	DATE: 06/07/05 BY:  REVISED EXHIBIT DESIGNATION: BY:  REVISIONS:
SHEET <b>2 OF 2</b>	Section 24, Township 44, Range 22 LEE COUNTY, FLORIDA	PREPARED BY:  SURVEYED BY: JAMES D. DYKE 2004-01-21	A 501(c)(6) NON-PROFIT COMPANY 1400 Cleveland Blvd., Suite 311, Fort Myers, Florida 33907 (239) 931-0455 Fax: (239) 931-0455 800 & TOLPE License Nos. 959 www.lbh.com		





**BOYLE**

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 Fort Myers, FL 33907  
 TEL: (239)931-0455  
 FAX: (239)931-0456  
[www.boyleengineering.com](http://www.boyleengineering.com)

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## EXHIBIT "D"

MAY 30, 2007  
 JOB # 03-7057 (BOYLE 30058)  
 FILE# 03-7057IELGL  
 PAGE 1 OF 2

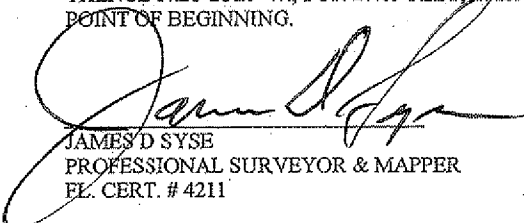
## LEGAL DESCRIPTION: (INGRESS-EGRESS EASEMENT)

A PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 44 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF BEGINNING OF PARCEL 1 OF A TRACT OF LAND DESCRIBED IN INSTRUMENT NUMBER 2005000084631 RECORDED IN THE PUBLIC RECORDS LEE COUNTY, FLORIDA; THENCE S.26°30'48"E ALONG THE EASTTERLY LINE OF SAID PARCEL 1 FOR 152.16 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTHEASTERLY ALONG SAID EASTERLY LINE, FOR 54.96 FEET; THENCE S.63°29'12"W., FOR 3.46 FEET TO A POINT ON A NON TANGENTIAL CURVE TO THE LEFT, HAVING A RADIUS OF 10.00 FEET, A CENTRAL ANGLE OF 116°43'36", A CHORD OF 17.03 FEET, AND A CHORD BEARING OF N.84°21'40"W., THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE FOR 20.37 FEET; THENCE S.37°16'32"W., FOR 139.27 FEET; THENCE S.56°14'05"W., FOR 6.51 FEET; THENCE S.05°11'41"W., FOR 58.67 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 39°20'04"; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE FOR 13.73 FEET; THENCE S.34°08'23"E., FOR 18.06 FEET; THENCE S.67°20'58"E., FOR 5.81 FEET; THENCE S.32°14'16"E., FOR 43.28 FEET; THENCE S.34°52'33"E., FOR 31.72 FEET; THENCE S.28°57'42"E., FOR 105.51 FEET; THENCE S.79°10'39"E., FOR 6.11 FEET; THENCE S.26°50'00"E., FOR 57.67 FEET; THENCE S.05°57'26"E., FOR 3.56 FEET; THENCE S.26°50'00"E., FOR 63.36 FEET; THENCE S.16°40'33"E., FOR 17.65 FEET TO A POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 5.00 FEET AND A CENTRAL ANGLE OF 98°50'15"; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE FOR 8.63 FEET; THENCE N.64°29'12"E., FOR 31.36 FEET; THENCE S.26°35'14"E., FOR 22.00 FEET; THENCE S.64°29'12"W., FOR 47.00 FEET; THENCE S.25°30'48"E., FOR 37.00 FEET; THENCE S.64°29'12"W., FOR 18.00 FEET; THENCE N.29°15'14"W., FOR 29.20 FEET; THENCE N.08°32'43"W., FOR 39.76 FEET; THENCE N.26°03'06"W., FOR 71.02 FEET; THENCE N.29°43'33"W., FOR 109.34 FEET; THENCE N.28°27'17"W., FOR 68.95 FEET; THENCE N.36°43'29"W., FOR 54.65 FEET; THENCE N.35°46'22"W., FOR 38.95 FEET; THENCE N.23°51'40"W., FOR 12.39 FEET; THENCE N.12°47'17"W., FOR 4.50 FEET; THENCE N.07°36'55"W., FOR 10.38 FEET; THENCE N.06°22'39"E., FOR 48.18 FEET; THENCE N.19°48'59"E., FOR 12.81 FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 63.00 FEET AND A CENTRAL ANGLE OF 17°22'38"; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE FOR 19.11 FEET; THENCE N.37°11'37"E., FOR 147.12 FEET TO A POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 64°52'56"; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE FOR 28.31 FEET; THENCE N.63°29'12"E., FOR 2.57 FEET TO THE POINT OF BEGINNING.

## TOGETHER WITH:

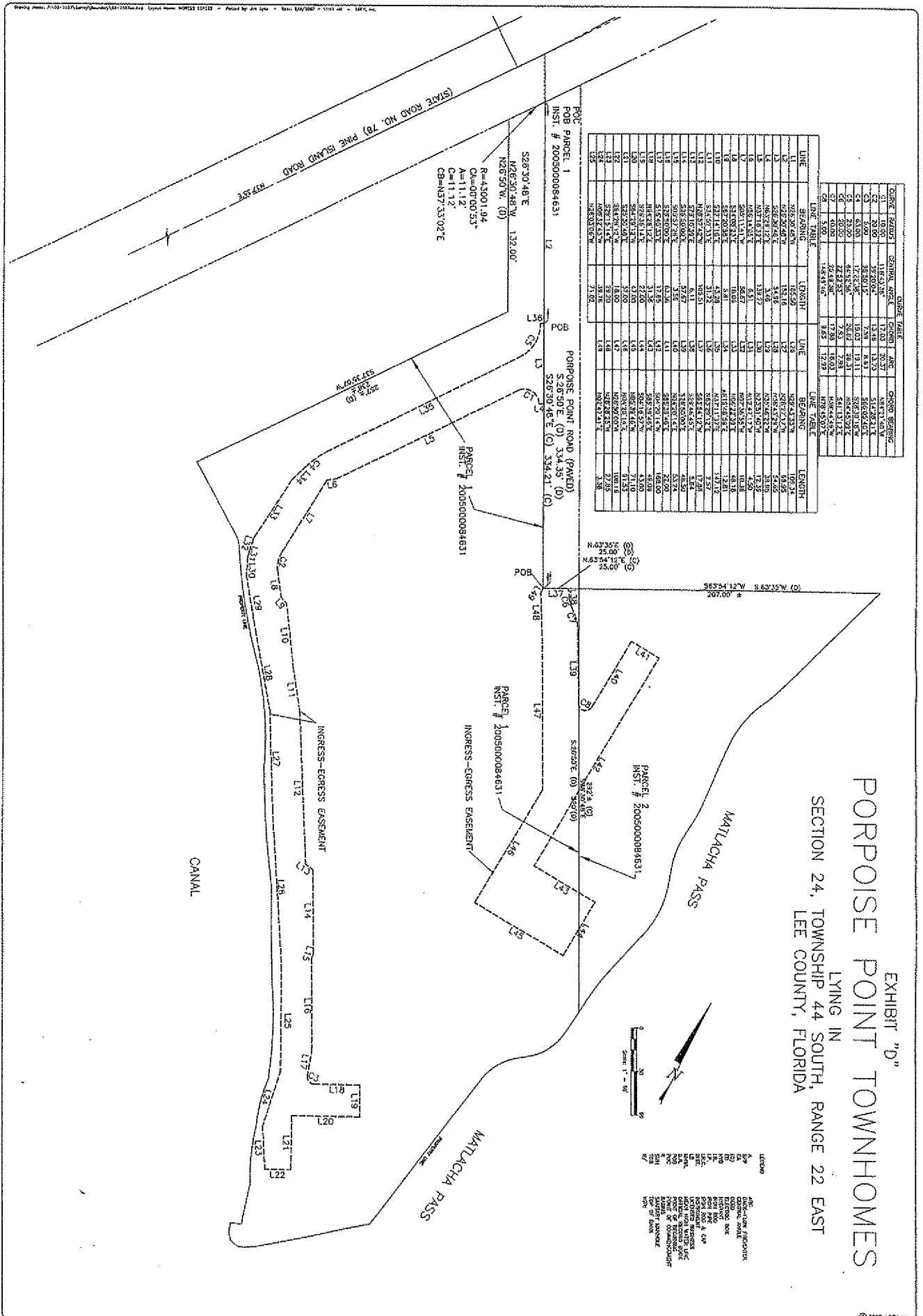
COMMENCING AT THE POINT OF BEGINNING OF PARCEL 1 OF A TRACT OF LAND DESCRIBED IN INSTRUMENT NUMBER 2005000084631, RECORDED IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S.26°30'48"E., FOR 334.21 FEET TO THE POINT OF BEGINNING; THENCE N.63°54'12"E., FOR 17.86 FEET TO THE POINT ON A CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 22°52'53", CHORD 7.93 FEET, CHORD BEARING S.41°13'12"E. THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE FOR 7.99 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 25°49'38"; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 18.03 FEET; THENCE S.26°50'00"E., FOR 48.50 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 5.00 FEET AND A CENTRAL ANGLE OF 148°49'46"; THENCE EASTERLY ALONG THE ARC OF SAID CURVE FOR 12.99 FEET; THENCE N.04°20'14"E., FOR 53.24 FEET; THENCE S.85°39'46"E., FOR 22.00 FEET; THENCE S.04°20'14"W., FOR 168.00 FEET; THENCE S.85°39'46"E., FOR 49.06 FEET; THENCE S.04°16'57"W., FOR 43.00 FEET; THENCE N.85°39'46"W., FOR 71.10 FEET; THENCE N.04°20'14"E., FOR 91.53 FEET; THENCE N.26°50'00"W., FOR 108.16 FEET; THENCE N.28°28'25"W., FOR 27.85 FEET; THENCE N.02°47'41"E., FOR 3.38 FEET; THENCE N.63°54'12"E., FOR 17.86 FEET TO THE POINT OF BEGINNING.

  
 JAMES D SYSE  
 PROFESSIONAL SURVEYOR & MAPPER  
 FL. CERT. # 4211

PA03-7057\SURVEY\BOUNDARY\03-7057IELGL.DOC

BOYLE ENGINEERING CORPORATION

... ..



## EXHIBIT

"E"

Return to:  
 South Florida Water Management District  
 3301 Gun Club Road, MSC 4239  
 West Palm Beach, FL 33406

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is given this 12 day of Dec, 2009, by Coastal Land and Homes, L.L.C., a Florida limited liability company, having an address at 9010 Estero River Circle, Estero, FL 33928 (Grantor) to the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA (BOARD OF TRUSTEES), whose address is Department of Environmental Protection, Division of State Lands, 3900 Commonwealth Boulevard, Mail Station 139, Tallahassee, Florida 32399-3000 (Grantee). As used herein, the term Grantor shall include any and all heirs, successors or assigns of the Grantor, and all subsequent owners of the Property (as hereinafter defined) and the term Grantee shall include any successor or assignee of Grantee.

## WITNESSETH

WHEREAS, the Grantor is the sole owner in fee simple of certain lands situated in Lee County, Florida, more specifically described in Exhibit A attached hereto and incorporated herein (Property);

WHEREAS, the Grantor desires to construct [name of project] Porpoise Point (Project) at a site in Lee County, which requires proprietary authorization from the Board of Trustees in accordance with Chapter 253 of the Florida Statutes, and Chapter 258 of the Florida Statutes if the activity is in an aquatic preserve;

WHEREAS, the Board of Trustees authorization authorizes certain activities that affect waters of the State of Florida; and

WHEREAS, the Board of Trustees' sovereign submerged lands authorization for construction and/or operation of the Project requires a conservation easement so that the future construction of docks, piers, or other structures will not exceed the preemption limitations of Chapter 10-21 of the Florida Administrative Code;

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, together with other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Grantor hereby voluntarily grants and conveys a perpetual conservation easement, as defined in Section 704.08, Florida Statutes, for and in favor of the Grantee upon the Property which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

The scope, nature and character of this conservation easement shall be as follows:

1. Purpose. The purpose of this conservation easement is to prevent the construction and operation of additional docks, piers, or other preemptive structures that would extend through the Property onto sovereignly submerged lands.

2. Rights of Grantee. To carry out this purpose, the following rights are conveyed to Grantee by this easement:

- a. The right to prevent any activity on or use of the Property that is inconsistent with the purpose of this conservation easement, and to require the restoration of areas or features of the Property that may be damaged by any inconsistent activity or use;
- b. The right to enter upon and inspect the Property in reasonable manner and at reasonable times, including the right to use vehicles and all necessary equipment to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this conservation easement; and
- c. The right to enforce this conservation easement by injunction or proceed at law or in equity to enforce the provisions of this conservation easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities hereinafter set forth, and the right to require Grantor to restore such areas or features of the Property that may be damaged by any inconsistent activity or use.

3. Prohibited Uses. The construction or placing of buildings, docks, piers, or other structures on or above the ground, or any other use of the Property inconsistent with the purpose of this conservation easement is expressly prohibited.

4. Reserved Rights. Grantor reserves to itself, its successors or assigns all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein, which are not inconsistent with Florida Statute, any Department or Board of Trustees rule, criteria, permit and the intent and purposes of this conservation easement.

5. Public Access. No right of access by the general public to any portion of the Property is conveyed by this conservation easement.

6. Responsibilities of Parties. Grantor, its successors or assigns, shall take responsibility for any costs or liabilities related to the operation, upkeep or maintenance of the Property. In addition Grantee its successors or assigns, shall have no responsibility for any costs or liabilities related to the operation, upkeep or maintenance of the Property.

7. Taxes. Grantor, its successors or assigns, shall pay before delinquency any and all taxes, assessments, fees and charges of whatever description levied on or assessed by competent authority on the Property, and shall furnish Grantee with satisfactory evidence of payment upon request.

8. Liability. Grantor, its successors or assigns, will assume all liability for any injury or damage to the person or property of third parties which may occur on the Property arising from ownership of the Property by the Grantor, its successors or assigns. Neither Grantor, its successors or assigns, nor any person or entity claiming by or through Grantor its successors or assigns, shall hold Grantee liable for damage or injury to person or personal property which may occur on the Property. Furthermore, the Grantor, its successors or assigns shall indemnify and hold harmless Grantee for all liability, any injury or damage to the person or property of third parties which may occur on the Property.

9. Hazardous Waste. Grantor covenants and represents that no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Property, and that there are not now any underground storage tanks located on the Property. Grantor, its successors or assigns, further indemnify the Grantee for any and all liability arising from any subsequent placement or discovery of hazardous or toxic material on the property. In the event such material is discovered, Grantor, its successors or assigns, shall be responsible for the removal of the materials following coordination and written approval of the Grantee.

10. Enforcement Discretion. Enforcement of the terms, provisions and restrictions of this conservation easement shall be at the reasonable discretion of Grantee, and any forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach by Grantor, shall not be deemed or construed to be a waiver of Grantor's rights.

11. Venue and Enforcement Costs. Venue to enforce the terms of this conservation easement shall be in Leon County, Florida. If the Grantee prevails in the enforcement action, it shall be entitled to recover costs, including expert witness fees, as well as the reasonable cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of the conservation easement or to the vegetative and hydrologic condition required by the aforementioned Permit. These remedies are in addition to any other remedy, fine or penalty which may be applicable under Chapters 373 and 403, Florida Statutes.

12. Assignment of Rights. Grantee will hold this conservation easement exclusively for conservation purposes. Grantor will not assign its rights and obligations under this conservation easement except to another organization qualified to hold such interests under applicable state laws.

13. Recording in Land Records. Grantor shall record this conservation easement and any amendments hereto in a timely fashion in the Official Records of Lee County, Florida. Grantor shall pay all recording costs and taxes necessary to record this conservation easement in the public records.

14. Successors. The covenants, terms, conditions and restrictions of this 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 Property.

15. Notices. All notices, consents, approvals or other communication hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

16. Subsequent Deeds. Grantor shall insert the terms and restrictions of this conservation easement in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in the Property. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty days prior to the date of such transfer. The failure of Grantor to perform any act required by the paragraph shall not impair the validity of this conservation easement or limit its enforceability in any way.

17. Severability. If any provision of this conservation easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this

conservation easement shall not be affected thereby, as long as the purpose of the conservation easement is preserved.

18. Alteration or Revocation. This conservation easement may be amended, altered, released or revoked only by permit modification as necessary and written agreement between the parties hereto or their heirs, assigns or successors-in-interest, which shall be filed in the public records in Lee County.

19. Controlling Law. The interpretation and performance of this conservation easement shall be governed by the laws of the State of Florida.

20. Riparian Rights. This conservation easement shall convey to Grantee any and all riparian rights associated with construction and operation of additional docks on the Property.

21. Acts Beyond Grantor's Control. Nothing in this conservation easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the property resulting from natural causes beyond Grantor's control including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the property or to persons resulting from such causes.

TO HAVE AND TO HOLD unto Grantee forever. The covenants, terms, conditions, restrictions and purpose imposed with this conservation easement shall be binding upon Grantor, and shall continue as a servitude running in perpetuity with the Property.

Grantor hereby covenants with said Grantee that Grantor is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this conservation easement and all mortgages have been joined or subordinated; that Grantor has good right and lawful authority to convey this conservation easement; and that it hereby fully warrants and defends the title to the conservation easement hereby conveyed against the lawful claims of all person whomsoever.

IN WITNESS WHEREOF, the Grantor has executed this Conservation Easement on the day and year first above written.

Signed, sealed and delivered  
in our presence as witnesses:

Signature of Witness

Daniel Underhill  
Printed/Type Name

Signature of Witness

ROBIA SCHAPPERT  
Printed/Type Name

By: Ruben Colson

Print Name:

Title: member

APPLICATION NUMBER  
070130-6



# METRON

SURVEYING & MAPPING

LAND SURVEYORS • PLANNERS

ADDITIONAL REVISED SUBMITTAL

NOV 10 2008

LWC SERVICE CENTER

LEGAL DESCRIPTION  
OF AN EASEMENT LYING IN  
SECTION 10, TOWNSHIP 46 SOUTH, RANGE 24 EAST,  
LEE COUNTY, FLORIDA

(10 FOOT SHORELINE CONSERVATION EASEMENT)

A 10 FOOT SHORELINE CONSERVATION EASEMENT TO PRECLUDE ANY ADDITIONAL DOCKING OTHER THAN A 20 SLIP PROPOSED WOOD DOCK LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, IN SECTION 24, TOWNSHIP 44 SOUTH, RANGE 22 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 24; THENCE N.00°00'00"E. FOR A DISTANCE OF 1,200.00 FEET; THENCE N.37°35'00"E. FOR A DISTANCE OF 244.93 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 34,377.48 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°20'00", A CHORD BEARING OF N.37°28'00"E., A CHORD DISTANCE OF 200.00 FEET, AN ARC DISTANCE OF 200.00 FEET; THENCE N.37°15'00"E. FOR A DISTANCE OF 1,626.13 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 85,943.14 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°20'00", A CHORD BEARING OF N.37°25'00"E., A CHORD DISTANCE OF N.37°28'00"E., AN ARC DISTANCE OF 500.00 FEET; THENCE N.37°35'00"E. FOR A DISTANCE OF 433.19 FEET; THENCE S.26°59'11"E. FOR A DISTANCE OF 33.22 FEET TO THE EASTERLY RIGHT OF WAY OF PINE ISLAND ROAD; THENCE N.37°35'00"E. FOR A DISTANCE OF 316.09 FEET TO THE NORTHEAST CORNER OF PARCEL AS DESCRIBED AT INSTRUMENT NUMBER 2005000084631; THENCE S.26°30'48"E. FOR A DISTANCE OF 334.36 FEET; THENCE N.63°54'12"E. FOR A DISTANCE OF 73.71 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N.63°54'12"E. FOR A DISTANCE OF 17.28 FEET; THENCE S.60°44'27"E. FOR A DISTANCE OF 84.87 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 86°35'41", A CHORD BEARING OF S.37°26'37"E., A CHORD DISTANCE OF 34.28 FEET, AN ARC DISTANCE OF 37.78 FEET; THENCE S.05°51'13"W. FOR A DISTANCE OF 69.06 FEET; THENCE S.05°51'41"E. FOR A DISTANCE OF 91.55 FEET; THENCE S.00°00'00"E. FOR A DISTANCE OF 14.98 FEET; THENCE S.14°38'58"W. FOR A DISTANCE OF 75.10 FEET; THENCE S.06°49'44"W. FOR A DISTANCE OF 20.78 FEET; THENCE S.12°05'24"W. FOR A DISTANCE OF 8.37 FEET; THENCE S.29°18'34"W. FOR A DISTANCE OF 42.66 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 48.00 FEET; THENCE ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 88°41'45", A CHORD BEARING OF N.65°28'10"W., A CHORD DISTANCE OF 67.11 FEET, AN ARC DISTANCE OF 74.31 FEET; THENCE N.21°07'26"W. FOR A DISTANCE OF 122.78 FEET; THENCE N.27°49'43"W. FOR A DISTANCE OF 170.72 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 23.30 FEET; THENCE ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 171°33'15", A CHORD BEARING OF S.65°17'54"W., A CHORD DISTANCE OF 46.47 FEET, AN ARC DISTANCE OF 89.76 FEET; THENCE S.24°21'44"E. FOR A DISTANCE OF 111.89 FEET; THENCE S.36°51'11"E. FOR A DISTANCE OF 28.67 FEET; THENCE S.26°42'36"E. FOR A DISTANCE OF 118.25 FEET; THENCE S.28°45'30"E. FOR A DISTANCE OF 178.49 FEET; THENCE S.13°37'28"W. FOR A DISTANCE OF 20.10 FEET; THENCE S.63°07'48"W. FOR A DISTANCE OF 87.13 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 9.73 FEET; THENCE ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 89°13'43", A CHORD BEARING OF N.73°56'43"W., A CHORD DISTANCE OF 14.02

SHEET 1 OF 3

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Exhibit 3.3  
Application No. 070130-6  
Page 5 of 7

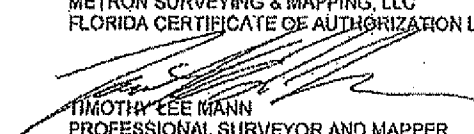


FEET, AN ARC DISTANCE OF 18.85 FEET; THENCE N.26°49'56"W. FOR A DISTANCE OF 17.10 FEET; THENCE N.11°19'40"W. FOR A DISTANCE OF 98.62 FEET; THENCE N.28°19'59"W. FOR A DISTANCE OF 248.93 FEET; THENCE N.36°21'11"W. FOR A DISTANCE OF 122.58 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 45.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 73°25'56", A CHORD BEARING OF N.00°21'47"E., A CHORD DISTANCE OF 63.61 FEET, AN ARC DISTANCE OF 67.07 FEET; THENCE N.37°04'44"E. FOR A DISTANCE OF 195.77 FEET; THENCE N.24°04'14"W. FOR A DISTANCE OF 10.60 FEET; THENCE N.37°35'07"E. FOR A DISTANCE OF 9.93 FEET; THENCE S.24°04'14"E. FOR A DISTANCE OF 21.90 FEET; THENCE S.37°04'44"W. FOR A DISTANCE OF 200.24 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 35.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 73°25'56", A CHORD BEARING OF S.00°21'47"W., A CHORD DISTANCE OF 41.85 FEET, AN ARC DISTANCE OF 44.88 FEET; THENCE S.36°21'11"E. FOR A DISTANCE OF 123.28 FEET; THENCE S.28°19'59"E. FOR A DISTANCE OF 248.13 FEET; THENCE S.11°19'40"E. FOR A DISTANCE OF 98.75 FEET; THENCE S.26°49'56"E. FOR A DISTANCE OF 15.83 FEET; THENCE N.63°07'48"E. FOR A DISTANCE OF 82.63 FEET; THENCE N.13°37'28"E. FOR A DISTANCE OF 12.83 FEET; THENCE N.26°45'30"W. FOR A DISTANCE OF 174.82 FEET; THENCE N.26°42'36"W. FOR A DISTANCE OF 117.35 FEET; THENCE N.36°51'11"W. FOR A DISTANCE OF 28.88 FEET; THENCE N.24°21'44"W. FOR A DISTANCE OF 113.29 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 33.30 FEET; THENCE ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 172°22'07", A CHORD BEARING OF N.65°04'13"E., A CHORD DISTANCE OF 68.45 FEET, AN ARC DISTANCE OF 100.18 FEET; THENCE S.27°49'43"E. FOR A DISTANCE OF 171.39 FEET; THENCE S.21°07'26"E. FOR A DISTANCE OF 123.37 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 38.00 FEET; THENCE ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 69°21'27", A CHORD BEARING OF S.62°48'08"E., A CHORD DISTANCE OF 50.54 FEET, AN ARC DISTANCE OF 55.28 FEET; THENCE N.29°18'34"E. FOR A DISTANCE OF 37.17 FEET; THENCE N.12°05'24"E. FOR A DISTANCE OF 6.57 FEET; THENCE N.08°49'44"E. FOR A DISTANCE OF 21.01 FEET; THENCE N.14°38'58"E. FOR A DISTANCE OF 74.32 FEET; THENCE N.00°00'00"W. FOR A DISTANCE OF 43.19 FEET; THENCE N.05°51'41"W. FOR A DISTANCE OF 82.06 FEET; THENCE N.05°51'13"E. FOR A DISTANCE OF 70.09 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 15.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 86°35'41", A CHORD BEARING OF N.37°28'37"W., A CHORD DISTANCE OF 20.57 FEET, AN ARC DISTANCE OF 22.87 FEET; THENCE N.80°44'27"W. FOR A DISTANCE OF 78.97 FEET TO THE POINT OF BEGINNING.

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

BEARINGS BASED ON THE EASTERLY RIGHT OF WAY OF SR 78 PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAPS SECTION 12080-2504 AS BEARING N.37°35'00"E.

METRON SURVEYING & MAPPING, LLC  
FLORIDA CERTIFICATE OF AUTHORIZATION LB# 7071

  
TIMOTHY LEE MANN  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA CERTIFICATE NO. 5838

SHEET 2 OF 3

1114SK.doc

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Exhibit 3.3  
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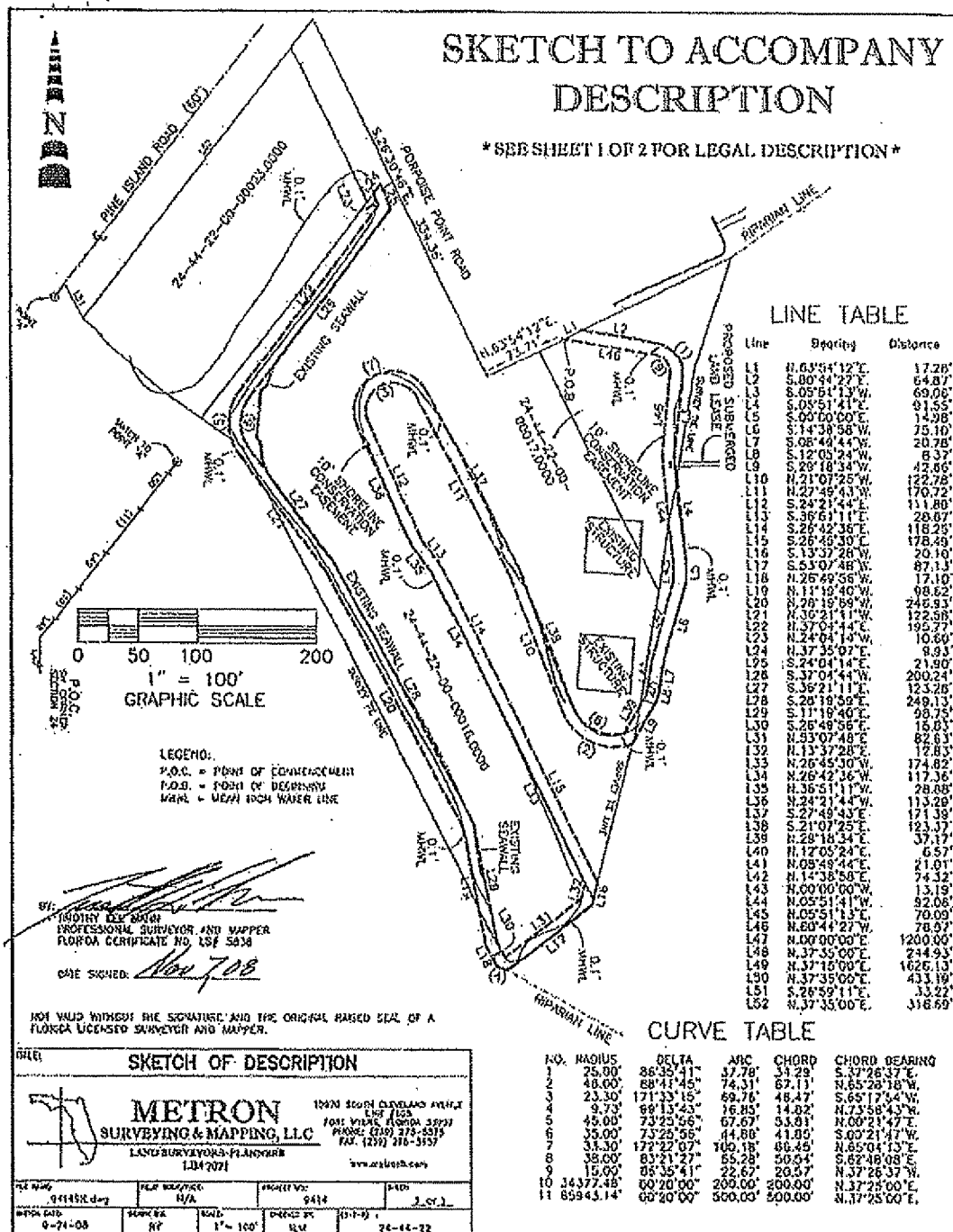


EXHIBIT "F"



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
ENVIRONMENTAL RESOURCE PERMIT NO. 36-07016-P**

**DATE ISSUED: FEBRUARY 12, 2009**

FORM 62143  
Rev. 11/11

**PERMITTEE** COASTAL LAND AND HOMES L L C  
(PORPOISE POINT TOWNHOMES F K A PORPOISE POINT SINGLE FAMILY)  
9010 ESTERO RIVER CIR,  
ESTERO, FL 33928

**PROJECT DESCRIPTION** CONSTRUCTION AND OPERATION AUTHORIZATION OF AN ENVIRONMENTAL RESOURCE PERMIT FOR A DOCK STRUCTURE WHICH INCLUDES 20 WET SLIPS AND A SOVEREIGN SUBMERGED LAND LEASE FOR 15,353 SQUARE FEET (0.35 ACRES) SERVING A 3.74-ACRE RESIDENTIAL PROJECT KNOWN AS PORPOISE POINT WITH DISCHARGE TO THE EXISTING CANAL VIA THE SURFACE WATER MANAGEMENT SYSTEM.

**PROJECT LOCATION:** LEE COUNTY, SECTION 24 TWP 44S R6E 22E

**PERMIT DURATION:** See Special Condition No.1. See attached Rule 40E-4.321, Florida Administrative Code.

This Permit is issued pursuant to Application No. 070130-6, dated November 19, 2006. Permittee agrees to hold and save the South Florida Water Management District and its successors harmless from any and all damages, claims or liabilities which may arise by reason of the construction, operation, maintenance or use of activities authorized by this Permit. This Permit is issued under the provisions of Chapter 373, Part IV Florida Statutes (F.S.), and the Operating Agreement Concerning Regulation Under Part IV, Chapter 373 F.S., between South Florida Water Management District and the Department of Environmental Protection. Issuance of this Permit constitutes certification of compliance with state water quality standards where necessary pursuant to Section 401, Public Law 92-500, 33 USC Section 1341, unless this Permit is issued pursuant to the net improvement provisions of Subsections 373.414(1)(b), F.S., or as otherwise stated herein.

This Permit may be transferred pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-1.6107(1) and (2), and 40E-4.351(1), (2), and (4), Florida Administrative Code (F.A.C.). This Permit may be revoked, suspended, or modified at any time pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-4.351(1), (2), and (4), F.A.C.

This Permit shall be subject to the General Conditions set forth in Rule 40E-4.381, F.A.C., unless waived or modified by the Governing Board. The Application, and the Environmental Resource Permit Staff Review Summary of the Application, including all conditions, and all plans and specifications incorporated by reference, are a part of this Permit. All activities authorized by this Permit shall be implemented as set forth in the plans, specifications, and performance criteria as set forth and incorporated in the Environmental Resource Permit Staff Review Summary. Within 30 days after completion of construction of the permitted activity, the Permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual, pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-4.381 and 40E-4.381, F.A.C.

In the event the property is sold or otherwise conveyed, the Permittee will remain liable for compliance with this Permit until transfer is approved by the District pursuant to Rule 40E-1.6107, F.A.C.

**SPECIAL AND GENERAL CONDITIONS ARE AS FOLLOWS:**

SEE PAGES 2 - 6 OF 9 (30 SPECIAL CONDITIONS).

SEE PAGES 7 - 9 OF 9 (18 GENERAL CONDITIONS).

**SOUTH FLORIDA WATER MANAGEMENT  
DISTRICT, BY ITS GOVERNING BOARD**

On \_\_\_\_\_ ORIGINAL SIGNED BY: \_\_\_\_\_

By ELIZABETH VEGUILLA  
DEPUTY CLERK

PERMIT NO: 36-07016-P  
PAGE 2 OF 9

### SPECIAL CONDITIONS

1. The construction phase of this permit shall expire on February 12, 2014.
2. Operation of the surface water management system and docking facilities shall be the responsibility of HOMEOWNERS 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. The permittee shall be responsible for the correction of any erosion, shoaling or water quality problems that result from the construction or operation of the surface water management system.
4. Measures shall be taken during construction to insure that sedimentation and/or turbidity violations do not occur in the receiving water.
5. The District reserves the right to require that additional water quality treatment methods be incorporated into the drainage system if such measures are shown to be necessary.
6. Facilities other than those stated herein shall not be constructed without an approved modification of this permit. The permittee acknowledges through the placement of a proprietary easement along the shoreline that additional docking facilities are not authorized or anticipated and that due to very shallow water depths and the presence of seagrasses at the site, any proposal for additional docking facilities in the future may not be permissible.
7. 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.
8. The permittee shall provide routine maintenance of all of the components of the surface water management system in order to remove all trapped sediments/debris. All materials shall be properly disposed of as required by law. Failure to properly maintain the system may result in adverse flooding conditions.
9. This permit is issued based on the applicant's submitted information which reasonably demonstrates that adverse water resource related impacts will not be caused by the completed permit activity. Should any adverse impacts caused by the completed surface water management system occur, the District will require the permittee to provide appropriate mitigation to the District or other impacted party. The District will require the permittee to modify the surface water management system, if necessary, to eliminate the cause of the adverse impacts.
10. The permittee acknowledges, that pursuant to Rule 40E-4.101(2), F.A.C., a notice of Environmental Resource or Surface Water Management Permit may be recorded in the county public records. Pursuant to the specific language of the rule, this notice shall not be considered an encumbrance upon the property.
11. A permanent sign shall be installed at the facility entrance to notify boat owners of boat size restrictions.  
  
Boat mooring at the docking facilities shall be limited to no more than a total of 20 vessels and shall be limited to vessels no more than 30 feet in length and shall be limited to vessels with drafts that provide clearance of at least 2 feet above the submerged bottom at all times while mooring at the docking facility.
12. Dock and walkway pilings shall be constructed of plastic, concrete or greenheart, non-CCA treated wood or wood wrapped in 30 to 60 mil pvc.
13. No fueling or fish cleaning facilities shall be installed or operated on the docking facilities that are authorized herein for the life of the facility.
14. No liveaboards shall be allowed to dock at the docking facilities authorized by this permit for the life of the facility. A

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liveaboard shall be defined as a vessel docked at the facility that is inhabited by a person or persons for any two consecutive days or a total of seven days within a 30 day period.

15. No mooring shall be permitted on the landward side of the docking facilities.
16. The docking facilities authorized by this permit are for the private use of residents of the Porpoise Point Townhomes development. The permittee shall ensure that the docking facilities are not subleased for revenue generating or liveaboard purposes.
17. Prior to the commencement of any site activity authorized by this permit, a pre-construction meeting shall be held with District Environmental Resource Compliance staff from the Lower West Coast service center at 239-338-2929.
18. All contractors must be provided with a copy of the staff report and permit conditions prior to the commencement of construction. The permittee is responsible for ensuring that all contractors adhere to the project construction details and methods indicated on the attached permit Exhibits and described herein.
19. No construction associated with the proposed docking facilities described by this permit may commence until a sovereign submerged lands lease, which is authorized by the Governing Board, has been issued by the Florida Department of Environmental Protection. However, construction of the upland facilities may continue as previously authorized.
20. A manatee educational program shall be implemented and a literature display installed in accordance with Exhibit No. 3.2. The requirements for these items shall be incorporated into the property owners association documents. The program shall include distribution of laminated booklets of the county speed zones to each unit owner and other users of the docks, at no charge. The booklets are available free of charge from the Florida Inland Navigation District (561-627-3386).
21. Within 30 days prior to the completion of construction, the permittee shall install permanent education manatee signs in accordance with FWC guidelines, including FWC approval for the number, type, and location of signs. In addition, FWC requires the permittee to agree to replace the signs in the event the signs fade, become damaged or outdated, and maintain these signs for the life of the facility. The guidelines for installation can be found at:  
  
<http://www.myfwc.com/manatee/signs/>, or can be obtained by contacting the FWC, Imperiled Species Management Section at: 620 South Meridian Street, 6A, Tallahassee, Florida 32399-1600 (telephone 1-888-404-3922).
22. The permittee shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel are responsible for observing water-related activities for the presence of manatee(s).

The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act of 1972, The Endangered Species Act of 1973, and the Florida Manatee Sanctuary Act.

Siltation barriers shall be made of material in which manatees cannot become entangled, are properly secured, and are regularly monitored to avoid manatee entrapment. Barriers must not block manatee entry to or exist from essential habitat.

All vessels associated with the construction project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.

If manatee(s) are seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions shall be implemented to ensure protection of the manatee. These precautions shall include the

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operation of all moving equipment no closer than 50 feet of a manatee. Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment. Activities will not resume until the manatee(s) has departed the project area of its own volition.

Any collision with and/or injury to a manatee shall be reported immediately to the FWC Hotline at 1-888-404-FWCC. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-232-2580) for north Florida or Vero Beach (1-772-562-3909) in south Florida.

Temporary signs concerning manatees shall be posted prior to and during all construction/dredging activities. All signs are to be removed by the permittee upon completion of the project. A sign measuring at least 3 ft. by 4 ft. which reads Caution: Manatee Area will be posted in a location prominently visible to water related construction crews. A second sign should be posted if vessels are associated with the construction, and should be placed visible to the vessel operator. The second sign should be at least 8 1/2" by 11" which reads Caution: Manatee Habitat. Idle speed is required if operating a vessel in the construction area. All equipment must be shutdown if a manatee comes within 50 feet of operation. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-232-2580) for north Florida or Vero Beach (1-772-562-3909) in south Florida.

23. A turbidity control plan shall be implemented in accordance with Exhibit No. 3.5. Prior to the commencement of construction in the Matlacha pass, floating turbidity curtains with weighted skirts that extend to the bottom of the Matlacha Pass shall be properly installed to isolate adjacent waters from the work area. The floating turbidity curtains shall be maintained and shall remain in place until all construction is complete and turbidity levels in the project area are within zero NTUs of background levels (OFW standards). The permittee shall be responsible for ensuring that turbidity control devices are inspected daily and maintained in good working order so that there are no violations of state water quality standards outside of the turbidity screens.
24. A water quality monitoring program shall be implemented as outlined below:

Turbidity expressed in nephelometric turbidity units (ntu). Background samples shall be taken 200 feet upstream of any construction activity within adjacent surface waters. Compliance samples shall be taken 200 feet downstream. Samples shall be taken twice daily, with at least a four-hour interval, during all work authorized by this permit.

Monitoring shall begin on the first day of construction for all activities within or adjacent to surface waters. The monitoring data must demonstrate that turbidity 200 feet downstream of all proposed activities is less than or equal to zero NTU's above natural background turbidity (OFW standards) and 200 feet upstream of each proposed activity for a period of 7 consecutive days after completion of construction. If monitoring shows such levels to be exceeded, construction shall cease and District compliance staff shall be notified immediately. Work shall not resume until District staff is satisfied that adequate corrective measures have been taken and turbidity has returned to acceptable levels.

All monitoring data shall be maintained on site and be available to District staff during regular business hours. The content of the data shall include:

1) permit and application number; (2) dates of sampling and analysis; (3) statement describing the methods used in collection, handling, storage and analysis of the samples; (4) a map indicating the sampling locations and (5) a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data.

Monitoring reports shall also include the following information for each sample that is taken:

- (a) time of day samples taken;
- (b) depth of water body;
- (c) depth of samples;
- (d) antecedent weather conditions;
- (e) wind direction and velocity;
- (f) direction of tide.

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25. Prior to the commencement of construction of the docking facilities and in accordance with the work schedule in Exhibit No. 3.9, the permittee shall submit two certified copies of the recorded proprietary easement for the 10' wide easement area. The data shall be supplied in a digital ESRI Geodatabase (mdb), ESRI Shapefile (shp) or AutoCAD Drawing Interchange (dxf) file format using Florida State Plane coordinate system, East Zone (3601), Datum NAD83, HARN with the map units in feet. This data shall be submitted as a paper map depicting the Proprietary Easement over the best available satellite or aerial imagery. This data shall also reside on a CD or floppy disk and be submitted to the District's Environmental Resource Compliance Division in the service area office where the application was submitted.

The recorded easement shall utilize the form attached as Exhibit 3.3. Any proposed modifications to the approved form must receive prior written consent from the District and the Florida Department of Environmental Protection. The easement must be free of encumbrances or interests in the easement which the District determines are contrary to the intent of the easement. In the event it is later determined that there are encumbrances or interests in the easement which the District determines are contrary to the intent of the easement, the permittee shall be required to provide release or subordination of such encumbrances or interests.

26. The Permittee shall utilize the criteria contained in the Construction Pollution Prevention Plan (Exhibit No. 4.0) and on the applicable approved construction drawings for the duration of the projects construction activities.
27. The Urban Stormwater Management Program (Exhibit No. 5.0) shall be included as part of the (Homeowners documents/Articles of Incorporation/Property Owners association documents) prior to being recorded. Prior to recording of the Home Association Documents the amended documents shall be submitted to the ERP Compliance section at the Fort Myers Lower West Coast Service Center for approval.
28. A maintenance program shall be implemented in accordance with Exhibit No. 3.6 for the mangrove planting areas on a regular basis to ensure the integrity and viability of those areas as permitted. Maintenance shall be conducted in perpetuity to ensure that the planted mangrove areas are maintained free from Category 1 exotic vegetation (as defined by the Florida Exotic Pest Plant Council at the time of permit issuance) immediately following a maintenance activity. Coverage of exotic and nuisance plant species shall not exceed 5% of total cover between maintenance activities. In addition, the permittee shall manage the mangrove areas such that exotic/nuisance plant species do not dominate any one section of those areas. No trimming of mangroves shall occur without notifying the District and obtaining appropriate permit approvals.
29. Activities associated with the recordation of the proprietary easement, mangrove planting plan and purchasing of water quality monitoring equipment for the Matlacha Aquatic Preserve, funding for the associated pilings and donation of \$15,000 to Lee County for the removal of derelict vessels in the Matlacha Pass Aquatic Preserve shall be completed in accordance with the work schedule attached as Exhibit No. 3.9. The applicant shall provide \$55,000 in funding overall for public interest projects in the Matlacha Pass Aquatic Preserve. In the event that Lee County is unable to accept the donation for derelict vessel removal and/or the future cost of some of the water quality monitoring equipment exceeds what was originally expected, then the applicant retains the flexibility to work with the Matlacha Pass Aquatic Preserve and DEP State Lands staff to revise the donations so that the applicant's monetary donations don't exceed \$55,000 but still meet the time schedules set forth in Exhibit 3.9. In such an event, the applicant would provide a letter to the SFWMD from the Matlacha Pass Aquatic Preserve documenting the substitutions. (If, for example, in 2013, the last two datasondes will subsequently cost more than today, the \$2,500 for piling installation could be applied to the funding of the datasondes and the installation of the piling would not occur. So the end result is that the applicant's monetary donations do not exceed \$55,000.) Any deviation from these time frames will require prior approval from the District's Environmental Resource Compliance staff. 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.
30. If 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, the permitted project should cease all activities involving subsurface disturbance in the immediate vicinity of such discoveries. The permittee, or other designee, should contact the Florida Department of State, Division of Historical Resources, Review and Compliance Section at (850) 245-6333 or

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(800) 847-7278, as well as the appropriate permitting agency office. Project activities should not resume without verbal and/or written authorization from the Division of Historical Resources. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.

In addition, the applicant shall coordinate with the Division of Historical Resources in the event that any of the historical bulkhead pilings along the project seawall are proposed to be relocated or removed.



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## GENERAL CONDITIONS

1. All activities authorized by this permit shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit and Part IV, Chapter 373, F.S.
2. This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by District staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
3. Activities approved by this permit shall be conducted in a manner which does not cause violations of State water quality standards. The permittee shall implement best management practices for erosion and pollution control to prevent violation of State water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), incorporated by reference in Rule 40E-4.091, F.A.C., unless a project-specific erosion and sediment control plan is approved as part of the permit. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.
4. The permittee shall notify the District of the anticipated construction start date within 30 days of the date that this permit is issued. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District an Environmental Resource Permit Construction Commencement Notice Form Number 0960 indicating the actual start date and the expected construction completion date.
5. When the duration of construction will exceed one year, the permittee shall submit construction status reports to the District on an annual basis utilizing an annual status report form. Status report forms shall be submitted the following June of each year.
6. Within 30 days after completion of construction of the permitted activity, the permittee shall submit a written statement of completion and certification by a professional engineer or other individual authorized by law, utilizing the supplied Environmental Resource/Surface Water Management Permit Construction Completion/Certification Form Number 0881A, or Environmental Resource/Surface Water Management Permit Construction Completion Certification - For Projects Permitted prior to October 3, 1995 Form No. 0881B, incorporated by reference in Rule 40E-1.659, F.A.C. The statement of completion and certification shall be based on onsite observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the District that the system is ready for inspection. Additionally, if deviation from the approved drawings are discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations noted. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawings. All surveyed dimensions and elevations shall be certified by a registered surveyor.
7. The operation phase of this permit shall not become effective; until the permittee has complied with the requirements of condition (6) above, and submitted a request for conversion of Environmental Resource Permit from Construction Phase to Operation Phase, Form No. 0920; the District determines the system to be in compliance with the permitted plans and specifications; and the entity approved by the District in accordance with Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, accepts responsibility for operation and maintenance of the system. The permit shall not be transferred to such approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall initiate transfer of the permit to the approved

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responsible operating entity if different from the permittee. Until the permit is transferred pursuant to Section 40E-1.6107, F.A.C., the permittee shall be liable for compliance with the terms of the permit.

8. Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of the phase or portion of the system to a local government or other responsible entity.
9. For those systems that will be operated or maintained by an entity that will require an easement or deed restriction in order to enable that entity to operate or maintain the system in conformance with this permit, such easement or deed restriction must be recorded in the public records and submitted to the District along with any other final operation and maintenance documents required by Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit applications within the South Florida Water Management District, prior to lot or units sales or prior to the completion of the system, whichever comes first. Other documents concerning the establishment and authority of the operating entity must be filed with the Secretary of State, county or municipal entities. Final operation and maintenance documents must be received by the District when maintenance and operation of the system is accepted by the local government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system and any other permit conditions.
10. Should any other regulatory agency require changes to the permitted system, the permittee shall notify the District in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.
11. This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40E-4 or Chapter 40E-40, F.A.C..
12. The permittee is hereby advised that Section 253.77, F.S. states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the State, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.
13. The permittee must obtain a Water Use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to Subsection 40E-20.302(3), F.A.C., also known as the "No Notice" Rule.
14. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the permit.
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 Section 373.421(2), F.S., provides otherwise.
16. The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Rules 40E-1.6105 and 40E-1.6107, F.A.C.. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.
17. Upon reasonable notice to the permittee, District authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.

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18. If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the appropriate District service center.
19. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.

EXHIBIT "G"

**ARTICLES OF INCORPORATION  
OF  
PORPOISE POINT TOWNHOMES ASSOCIATION, INC.**

Pursuant to Section 617.01201, Florida Statutes (2006), these Articles of Incorporation (sometimes hereinafter referred to as the "Articles") are created by Peter J. Gravina, 1833 Hendry Street, Fort Myers, Florida 33901, as sole incorporator, for the purposes set forth below.

**ARTICLE I  
NAME**

The name of the corporation is Porpoise Point Townhomes Association, Inc. (sometimes hereinafter referred to as the "Association").

**ARTICLE II  
PRINCIPAL OFFICE**

The initial principal office of the corporation is located at:

9400 Block Lane  
Estero, Florida 33928

**ARTICLE III  
PURPOSE AND POWERS**

The nature of the business to be transacted shall be to engage in any activity or business permitted under the laws of the United States and of the State of Florida, pursuant to Chapters 617 and 720 of the Florida Statutes. The Association is organized for the purpose of providing an entity for the operation of a residential community, located in Lee County, Florida.

The Association is organized and shall exist upon a non-stock basis as a non-profit corporation under the laws of the State of Florida, and no portion of any earnings of the Association shall be distributed or inure to the private benefit of any member, director or officer of the Association. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of an association not for profit under Florida law, except as limited or modified by these Articles, the Bylaws of the Association (sometimes hereinafter referred to as the "Bylaws"), or the Declaration of Covenants, Conditions and Restrictions for Porpoise Point Townhomes (sometimes hereinafter referred to as the "Declaration") and it shall have all of the powers and duties reasonably necessary to operate the community pursuant to the Declaration as it may hereafter be amended including, but not limited to, the following:

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

(A) To levy, collect and enforce assessments against all members of the Association to defray the costs, expenses and losses of the Association, and to use the proceeds of assessments in the exercise of its power and duties.

(B) To own, lease, maintain, repair, replace or operate the common areas of the community.

(C) To purchase insurance upon the common areas of the community for the protection of the Association and its members.

(D) To reconstruct improvements after casualty and to make further improvements of the common areas of the community.

(E) To establish, amend and enforce reasonable rules and regulations governing the use of the common areas of the community and the operation of the Association.

(F) To sue and be sued, and to enforce the provisions of the Declaration, these Articles and the Bylaws.

(G) To contract for services to provide for the management and maintenance of the common areas of the community and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration to be exercised by the Board of Directors or the membership of the Association.

(H) To employ accountants, attorneys, architects or other professional personnel to perform the services required for proper operation of the Association's properties.

(I) To acquire, own and convey real property and to enter into agreements or acquire leaseholds, easements, memberships and other possessory or use interests in lands or facilities including recreational facilities. It has this power whether or not the lands or facilities are contiguous to the lands of the community, if they are intended to provide enjoyment, recreation or other use or benefit to the members.

(J) To borrow or raise money for any purposes of the Association; to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidence of indebtedness; and to secure the payment of any thereof, and of the interest therein, by mortgage pledge, conveyance or assignment in trust, of the whole or any part of the rights or property of the Association.

Except as provided herein, all funds and title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration, these Articles, and the Bylaws.

**ARTICLE IV**  
**MEMBERSHIP AND VOTING RIGHTS**

The qualifications required for membership, and the manner in which members shall be admitted to membership, shall be as stated in the Declaration and/or the Bylaws. Each and every owner of a lot or living unit in the community shall be a member of the Association.

**ARTICLE V**  
**TERM**

The term of the Association shall be perpetual.

**ARTICLE VI**  
**BYLAWS**

The Bylaws may be altered, amended or rescinded in the manner provided therein.

**ARTICLE VII**  
**AMENDMENTS**

Amendments to these Articles shall be proposed and adopted in the following manner:

(A) Proposal. Amendments to these Articles may be proposed by a majority of the Board of Directors of the Association or by petition to the Board signed by at least one-fourth (1/4) of the voting interests.

(B) Procedure. A proposed amendment must be submitted to a vote of the members not later than the next annual meeting for which proper notice can still be given.

(C) Vote Required. Except as otherwise required by Florida law, a proposed amendment to these Articles shall be adopted if it is approved at any annual or special meeting called for the purpose by at least a majority of the voting interests of the Association, or if it is approved in writing by a majority of the voting interests without a meeting, as authorized by the Bylaws, provided that notice of any proposed amendment must be given to the members of the Association, and the notice must contain the full text of the proposed amendment.

(D) Effective Date. An amendment becomes effective upon filing with the Secretary of State and recording a certified copy in the public records of Lee County, Florida, with the same formalities as are required in the Declaration for recording amendments to the Declaration.

**ARTICLE VIII**  
**DIRECTORS AND OFFICERS**

(A) The affairs of the Association will be administered by a Board of Directors consisting of the number of directors set in the Bylaws, but never less than three (3), and in the absence of a Bylaw provision shall consist of three (3) directors.

(B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

(C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected by the Board of Directors at its first meeting after the annual meeting of the members and shall serve at the pleasure of the Board.

**ARTICLE IX**  
**INITIAL DIRECTORS**

The initial directors of the Association shall be:

Robert J. Gleason  
9400 Block Lane  
Estero, Florida 33928

L. Michael Dillard  
6307 Waterford Blvd., Suite 155  
Oklahoma City, OK 73118

J. Roddy Bates  
6307 Waterford Blvd., Suite 155  
Oklahoma City, OK 73118

**ARTICLE X**  
**INITIAL REGISTERED AGENT**

The initial registered office of the Association shall be at:

9400 Block Lane  
Estero, Florida 33928

The initial registered agent at said address shall be:

Robert J. Gleason

# **ARTICLE XI** **INDEMNIFICATION**

To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every director and every officer of the Association against all expenses and liabilities, including attorney's fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a director or officer of the Association. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

(A) Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor.

(B) A violation of criminal law, unless the director or officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe it was lawful.

(C) A transaction from which the director or officer derived or sought to derive an improper personal benefit.

(D) Recklessness, or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for human rights, safety or property, in an action by or in the right of someone other than the association or a member.

(E) Wrongful conduct by directors or officers appointed by the developer of the community, in a proceeding brought by or on behalf of the Association.

In the event of a settlement, there is no right to indemnification unless a majority of the disinterested directors approve such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to, and not exclusive of, all other rights to which a director or officer may be entitled.

WHEREFORE the incorporator has caused these presents to be executed this 11<sup>th</sup> day of July, 2007.

  
Peter J. Gravina



STATE OF FLORIDA  
COUNTY OF LEE

)  
)

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of July, 2007, by Peter J. Gravina, who is personally known to me and did not take an oath.

(Seal)

Notary



Jennifer L Denby  
My Commission DD366216  
Expires November 02 2008

**ACCEPTANCE BY REGISTERED AGENT**

Having been named to accept service of process for Porpoise Point Townhomes Association, Inc., at the place designated in these Articles of Incorporation, I hereby accept the appointment to act in this capacity and agree to comply with the laws of the State of Florida in keeping open said office.

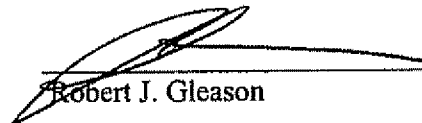
  
Robert J. Gleason

EXHIBIT 11 H 11

**BYLAWS  
OF  
PORPOISE POINT TOWNHOMES ASSOCIATION, INC.**

**ARTICLE I  
GENERAL**

**1.1 Introduction.** These are the Bylaws of Porpoise Point Townhomes Association, Inc., a Florida corporation not for profit (the "Association"), organized for the purpose of serving as a residential community homeowners' association.

**1.2 Principal Office.** The principal office of the Association shall initially be at:

9400 Block Lane  
Estero, Florida 33928

and shall subsequently be at such location as may be determined by the Board of Directors.

**1.3 Seal.** The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not for profit". The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document where a seal is required.

**1.4 Definitions.** The definitions for various terms used in these Bylaws shall be as set forth in the Declaration of Covenants, Conditions and Restrictions for Porpoise Point Townhomes (the "Declaration"), to which these Bylaws are attached as Exhibit "F".

**ARTICLE II  
MEMBERS; VOTING RIGHTS**

**2.1 Members.** Every record owner of legal title to any Lot located in the Properties is a Member. If a Lot is subject to an agreement for deed, whether recorded or not, the purchaser in possession shall be treated as the Owner solely for purposes of determining voting and use rights. Membership is appurtenant to, runs with, and may not be separated from, the real property interest upon which membership is based.

**2.2 Voting Interests.** Each Member other than the Declarant shall have one (1) vote per Lot owned or represented by them and until turnover, the Declarant shall have two (2) votes for each vote of all other Members. After turnover, the Declarant shall only have one (1) vote for each unit that it owns. The vote of a Lot is not divisible. The right to vote may not be denied because of delinquent assessments. If a Lot is owned by one natural person, his right to vote shall be established by the record title. If a Lot is owned jointly by two or more natural persons, that Lot's vote may be cast by any one of the Owners. If two or more Owners do not agree

among themselves how their one vote shall be cast on any issue, that vote shall not be counted on that issue. If a Lot is owned in trust, or the Owner is a corporation, partnership or other entity which is not a natural person, the vote of that Lot shall be cast by the Primary Occupant.

**2.3 Approval or Disapproval of Matters.** Whenever the decision or approval of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision or approval may be expressed by any person who could cast the vote of that Owner's Lot at an Association meeting, as stated in Section 2.2 above, unless the written approval or joinder of record owners is specifically required.

**2.4 Termination of Membership.** Termination of membership in the Association does not relieve or release any former Member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies the Association may have against any former Owner or Member arising out of or in any way connected with such ownership and membership, and the covenants and obligations incident thereto.

### **ARTICLE III MEMBERS' MEETINGS**

**3.1 Annual Meeting.** The annual meeting of the Members shall be held in Lee County, Florida, each year during the first three months of each calendar year, at a day, place and time designated by the Board of Directors, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the Members. The annual meeting is a general meeting, and unless the law or the Governing Documents require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

**3.2 Special Members' Meetings.** Special Members' meetings must be held whenever called by the President or by a majority of the Directors. Business at any special meeting shall be limited to the items specified in the notice of meeting.

**3.3 Notice of Meetings.** Notices of all meetings of the Members must be mailed or hand-delivered to the Members at least fourteen (14) days before the meeting, and must state the time, date, and place of the meeting, and include a detailed agenda. Mailed notices must be sent to each Member at his address as it appears on the books of the Association. Each Member bears the responsibility for notifying the Association in writing of any change of address. A person entitled to receive notice of any meeting may waive notice altogether by written waiver. Notice of any meeting may be hand-delivered if a written waiver of mailing is obtained. If ownership of a Lot is transferred after a notice has been mailed, no separate notice to the new Owner is required. Attendance at any meeting by a Member constitutes a waiver of notice by that Member, unless the Member objects to the lack of notice at the beginning of the meeting.

**3.4 Quorum.** The percentage of voting interests required to constitute a quorum at a meeting of the Members shall be thirty percent (30%) of the total voting interests.

**3.5 Vote Required.** The acts approved by a majority of the votes cast at a meeting of the Members at which a quorum has been attained shall be binding upon all Owners for all purposes, except where a higher vote is required by law or by any provision of the Governing Documents.

**3.6 Proxies.** To the extent lawful, any person entitled to attend and vote at a Members' meeting may establish his presence and cast his vote by proxy. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy is revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by a person authorized to cast the vote for the unit, and specify the date, time and place of the meeting for which it is given. The signed and dated original must be delivered to the Secretary at or before the time of the meeting or continuance thereof. Holders of proxies need not be Members. No proxy is valid if it names more than one person proxy holder, but the proxy holder has the right, if the proxy so provides, to substitute another person to hold the proxy.

**3.7 Adjourned Meetings.** Any duly called meeting of the Members may be adjourned to be reconvened at a later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Unless the Bylaws require otherwise, adjournment of annual or special meeting to a different date, time or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time, or place pursuant to Section 720.303(2), Florida Statutes (2006), as amended. Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting. If a new record date for the adjourned meeting is or must be fixed under Chapter 617, Florida Statutes (2006), as amended, notice of the adjourned meeting must be given to persons who are entitled to vote and are Members as of the new record date but were not Members as of the previous record date.

**3.8 Order of Business.** The order of business meetings shall be substantially as follows:

- (A) Determination of existence of quorum.
- (B) Reading or waiver of reading of minutes of last Members' meeting.
- (C) Reports of Officers.
- (D) Reports of Committees.
- (E) Election of Directors (annual meeting only).
- (F) Unfinished Business.
- (G) New Business.
- (H) Adjournment.

**3.9 Minutes.** Minutes of all meetings of the Members must be maintained in written form, or in another form that can be converted into written form within a reasonable time.

**3.10 Parliamentary Rules.** Robert's Rules of Order (latest edition) shall govern the conduct of an Association meeting when not in conflict with the law, with the Declaration, or with these Bylaws. The Presiding Officer may appoint a Parliamentarian, but the Presiding Officer's decisions on questions of Parliamentary Procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

**3.11 Action by Members Without Meeting.** Except for the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the Members may be taken by mail without a meeting if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by Members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interests were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the Members at a meeting of the Members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all Members who have not consented in writing. Nothing in this paragraph affects the rights of Members to call a special meeting of the membership, as provided for by Section 3.2 above, or by law. If the vote is taken by the method described in this Section 3.11, the list of Owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters. The written consents used to authorize an action without a meeting shall become part of the Association's records.

#### **ARTICLE IV** **BOARD OF DIRECTORS**

**4.1 In General.** The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the Owners only when specifically required.

**4.2 Number and Terms of Service.** The Board of Directors shall initially consist of three (3) Directors, and shall remain at that number unless changed by amendment of this Section 4.2. In order to provide for a continuity of experience by establishing a system of staggered terms of office, in the first election in which Owners other than the Declarant elect at least a majority of the Directors, the two (2) candidates receiving the highest number of votes shall each be elected for a term which expires at the final adjournment of the annual meeting at which his successor is to be elected. The candidate receiving the next highest number of votes shall be elected for a term which expires at the final adjournment of next annual meeting. Thereafter, all Directors shall be elected for two (2) year terms, ending at the final adjournment

of the annual meeting at which successors are to be duly elected, or at such other time as may be provided by law. Directors shall be elected by the Members as described in Section 4.4 below, or in the case of a vacancy, as provided in 4.5 below.

**4.3 Qualifications.** Except for Directors appointed by the Declarant, each Director must be a Member or Primary Occupant, or the spouse of one of them. No person shall be elected or appointed for successive terms totaling more than four (4) consecutive years, unless there occurs a hiatus of at least one (1) year between terms. Initial terms by appointment for less than one year shall be excluded from consideration in determining the total number of years served.

**4.4 Nominations and Elections.** In each annual election the Members shall elect by written secret ballot as many Directors as there are regular terms of Directors expiring, unless the balloting is dispensed with as provided for by law.

(A) First Notice; Candidates. Not less than sixty (60) days before the election, the Association shall mail or deliver, to each Owner entitled to vote, a first notice of the date of the election. The first notice may be given by separate Association mailing or included in another Association mailing or delivery, including a regularly published newsletter. Any Owner or other eligible person desiring to be a candidate may qualify as such by giving written notice to the Association not less than forty (40) days before the annual election.

(B) Second Notice. If there are more qualified candidates than there are Directors to be elected, balloting is required, and at least fourteen (14) days before the election, the Association shall mail or deliver a second notice of election to all Owners entitled to vote in the contested election, together with a ballot listing all qualified candidates in alphabetical order, by surname, and the notice of the annual meeting required by Section 3.3 above.

(C) Balloting. Where balloting is required, Directors shall be elected by a plurality of the votes cast, provided that at least twenty percent (20%) of the eligible voters cast ballots. Proxies may not be used in elections. In the election of Directors, there shall be appurtenant to each Lot as many votes for Directors as there are Directors to be elected, but no Lot may cast more than one vote for any candidate, it being intended that voting for Directors shall be non-cumulative. Tie votes shall be broken by agreement among the candidates who are tied, or if there is no agreement, by lot, or by another method required by law (if any).

**4.5 Vacancies on the Board.** If the office of any Director becomes vacant for any reason, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor to fill the remaining unexpired term.

**4.6 Removal of Directors.** Any Director may be removed from office, with or without cause, by the vote or agreement in writing of a majority of the voting interests. The notice of a meeting of the Owners to recall one or more Directors must name the specific Director(s) sought to be removed, and a separate vote for each Director sought to be removed shall be taken. Where removal is sought by written agreement, a separate agreement is required for each Director to be removed. Any Director who is removed from office is not eligible to stand again for election to the Board, or be appointed to the Board, until the next annual election. A Director who is removed from office shall turn over to the Association within 72 hours any and all records and other property of the corporation in his possession. If a Director who is removed does not relinquish his office or turn over records as required, the circuit court in the county may summarily order the Director to relinquish his office and turn over corporate records upon application of any Owner. In any such action, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

**4.7 Board Meetings.** A meeting of the Board of Directors occurs whenever a quorum of the Board gathers to conduct Association business. All meetings of the Board must be open to all Members, except for meetings between the Board and its legal counsel with respect to proposed or pending litigation, and otherwise where the contents of the discussion would otherwise be governed by the attorney-client privilege. Notices of all Board meetings must be posted in a conspicuous place in the Community at least forty-eight (48) hours in advance of every meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the Community, notice of each Board meeting must be mailed or delivered to each Member at least seven (7) days before the meeting, except in an emergency. An assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessment. Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in the election of officers. Any Owner may tape-record or videotape meetings of the Board of Directors and meetings of the Members. The Board of Directors may adopt reasonable rules governing the taping of meetings of the Board and the membership.

**4.8 Waiver of Notice by Directors.** Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

**4.9 Quorum of Directors.** A quorum at a Board meeting shall exist only when a majority of all Directors are present in person. Directors may participate in any meeting of the Board, or meeting of an executive or other committee by means of a conference telephone call or other similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means is deemed equivalent to presence in person at a meeting.

**4.10 Adjourned Meetings.** The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a



later time. When the meeting is reconvened, provided a quorum is then present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

**4.11 Presiding Officer.** The President of the Association, or in his absence, the Vice-President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of those present.

**4.12 Vote Required.** The acts approved by a majority of those Directors who are present and voting at a Board meeting at which a quorum has been attained shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Governing Documents or by law. A Director who is present at a meeting of the Board shall be deemed to have voted with the majority on any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest.

**4.13 Directors' Fees and Reimbursement of Expenses.** No compensation or fees shall be paid to Directors for their service as Directors. Directors may be reimbursed for all actual and proper out-of-pocket expenses related to the proper discharge of their respective duties.

**4.14 Committees.** The Board of Directors may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Community. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. If at any time the law requires that meetings of a committee, including any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a Member be noticed and conducted with the same formalities as required for meetings of the Board, such requirement shall apply only to the least extent required or permitted by law, it being the intent hereof to exempt as many committees as possible from such a law.

**4.15 Emergency Powers.** In the event of any "emergency" as defined in Section 4.14(G) below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Sections 617.0207, and 617.0303, Florida Statutes, as amended from time to time.

(A) The Board may name as assistant officers persons who are not Directors, which assistant officers shall have the same authority as the executive officers to whom they are assistant during the period of the emergency, to accommodate the incapacity of any officer of the Association.

(B) The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.

(C) During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practicable manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.

(D) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association shall bind the Association; and shall have the rebuttable presumption of being reasonable and necessary.

(E) Any officer, director, or employee of the Association acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.

(F) These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

(G) For purposes of this Section 4.15, an "emergency" may be found to exist only when the Community, or a larger geographic area in which the Community is located, is subjected to:

- (1) a state of emergency declared by law enforcement authorities;
- (2) a hurricane warning;
- (3) a partial or complete evacuation order;
- (4) designation by federal or state government as a "disaster area;" or
- (5) a catastrophic occurrence, whether natural or man-made, which seriously damages or threatens serious damage to the Community, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or acts of terrorism.

## **ARTICLE V**

### **OFFICERS**

**5.1 Election of Officers.** Officers are elected by vote of a majority of the entire Board, and serve at the pleasure of the Board. The executive officers of the Association shall be a President, and a Vice-president, who must be Directors, and a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors. Any officer may be removed from office with or without cause by vote of a majority of all Directors at any meeting. Any person except the President may hold two or more offices. The Board of Directors shall, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find

to be necessary or desirable to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President.

**5.2 President.** The President is the chief executive officer of the Association; presides at all meetings of the Members and Directors, is *ex-officio* a member of all standing committees, has general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts requiring the seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

**5.3 Vice-Presidents.** The Vice-Presidents in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall prescribe.

**5.4 Secretary.** The Secretary shall attend all meetings of the board of Directors and all meetings of the Members and shall be responsible for the recording of all votes, and the minutes of all proceedings, in a book to be kept for the purpose, and shall perform like duties for standing committees when required. He shall give, or cause to be given, notice of all meetings of the Members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one is designated.

**5.5 Treasurer.** The Treasurer shall be responsible for the safekeeping of Association funds and assets, budget preparation, and the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association. The Treasurer shall deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Association, making proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated.

**5.6 Compensation of Officers.** No compensation shall be paid to any Member for services as an officer of the Association. This provision does not preclude the Board of Directors from employing officers in other capacities as employees of the Association.

## ARTICLE VI FISCAL MATTERS

**6.1 Depository.** The Association shall maintain its funds in accounts in federally insured accounts at financial institutions in the State of Florida as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles.

**6.2 Accounts and Accounting Procedures.** The financial and accounting records of the Association must be kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least seven (7) years. The financial and accounting records must include:

- (A) Accurate, itemized, and detailed records of all receipts and expenditures.
- (B) A current account and a period statement of the account for each Member, designating the name and current address of each Member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the Member, the date and amount of each payment on the account, and the balance due.
- (C) All tax returns, financial statements, and financial reports of the Association.
- (D) Any other records that identify, measure, record or communicate financial information.

**6.3 Budget.** The Board of Directors shall adopt in advance an annual budget that sets out the annual operating expenses. The budget must reflect the estimated revenues and expenses for the next fiscal year, and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges paid for by the Association for recreational amenities, whether owned by the Association, the Declarant, or another person. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board at which the budget will be considered shall be mailed to or served on each Owner not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by income accounts and expense classifications. The minutes of the Association shall reflect the adoption of the budget, and a copy of the proposed and adopted budgets shall be maintained as part of the financial records of the Association. If an annual budget has not been adopted at the time the first quarterly installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last quarterly payment, and payments shall be continued at such rate until a budget is adopted and new quarterly installments are calculated, at which time an appropriate adjustment shall be added to or subtracted from each Villa's next due quarterly installment.

**6.4 Reserves.** In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the Association is responsible, except to the extent prohibited or limited by the Declaration and/or these Bylaws. If the budget of the Association includes reserve accounts, such reserves shall be determined, maintained, and/or waived in accordance with Section 720.303(6) of the Florida Statutes (2007). Once an association provides for reserve accounts in the budget, or is deemed to have provided for reserve accounts by reason of the Declarant having provided for reserve accounts prior to turnover, the Association shall thereafter determine, maintain, and/or waive reserves in accordance with Section 720.303(6) of the Florida Statutes (2007).

**6.5 Assessments.** Regular annual assessments based on the adopted budget shall be payable in quarterly installments, in advance, due on the first day of January, April, July and October of each year. Written notice of each quarterly installment shall be sent to all Members at least ten (10) days prior to the due date. Failure to send or receive the notice does not excuse the obligation to pay.

**6.6 Special Assessments.** Subject to the limitations contained in the Declaration, special assessments may be imposed by the board of Directors whenever necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses, or for such other purposes as are authorized by the Declaration and these Bylaws. Special assessments are due on the day specified in the resolution of the Board approving such assessment. The notice of any special assessment must contain a statement of the purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s) or credited back to the Members' accounts.

**6.7 Fidelity Bonds.** The President, Secretary, Treasurer, and any persons who are authorized to sign checks, shall be bonded in such amounts as may be required by law or by the Board of Directors. The premiums on such bonds shall be a common expense.

**6.8 Financial Reporting.** Within 90 days after the end of the fiscal year, the Association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the Association or received from the third party, but not later than 120 days after the end of the fiscal year, the Association shall, provide each Member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the Member. The financial report must consist of either:

- (A) Financial statements presented in conformity with generally accepted accounting principles as adopted by the Board of Accountancy; or
- (B) A financial report of actual receipts and expenditures, cash basis, which report must show:

- (1) The amount of receipts and expenditures by classification; and
- (2) The beginning and ending cash balances of the Association.

**6.9 Audit.** A formal, certified audit of the accounts of the Association, if required by law, by vote of a majority of the voting interests, or by a majority of the Board of Directors, shall be made by a certified public accountant, and a copy of the audit report shall be available to all Owners.

**6.10 Application of Payments.** All payments on account by an Owner shall be applied first to interest, then to late payment fees, then to attorney's fees and costs, then to other charges, and finally to unpaid regular and special assessments, in the order they first came due.

**6.11 Fiscal Year.** The fiscal year for the Association shall begin on the first day of January of each year.

## **ARTICLE VII**

### **RULES AND REGULATIONS; USE AND RESTRICTIONS**

The Board of Directors may, from time to time adopt and amend reasonable rules and regulations governing the operation, use, maintenance, management and control of the Common Areas and the operation of the Association. Copies of such rules and regulations shall be furnished to each Owner. The Board has the power to impose fines and suspensions of common area use privileges, as further provided in the Declaration, for violations of the rules and regulations.

## **ARTICLE VIII**

### **AMENDMENT OF BYLAWS**

**8.1 Proposal.** Amendments to these Bylaws may be proposed by a majority of the Board or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests.

**8.2 Procedure.** Upon any amendment to these Bylaws being so proposed by the Board or the Members, such proposed amendment shall be submitted to a vote of the Members not later than the next annual meeting for which proper notice can be given.

**8.3 Vote Required.** Except as otherwise provided by law, or by specific provision of the Governing Documents, a proposed amendment to these Bylaws shall be adopted if it is approved by at least two-thirds (2/3rds) of the voting interests of the Association present and voting at any annual or special meeting called for the purpose, provided that the full text of any proposed amendment was given to the Members with notice of the meeting. Prior to the turnover of control of the Association by the Declarant as provided for in the Declaration, Bylaw

amendments may be adopted by vote of a majority of the Directors, without need for a vote of the Owners.

**8.4 Effective Date, Recording.** A copy of each amendment shall be attached to a certificate reciting that the amendment was duly adopted, and executed by an officer of the Association. The certificate must also identify the book and page of the public records where the Declaration was originally recorded. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Official Records of Lee County, Florida.

## **ARTICLE IX MISCELLANEOUS**

**9.1 Gender.** Whenever a masculine or singular pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

**9.2 Severability.** Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.

**9.3 Conflict.** If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration or Articles of Incorporation, the provisions of the Declaration and the Articles of Incorporation shall prevail over the provisions of the Bylaws.

The foregoing constitute the first Bylaws of Porpoise Point Townhome Association, Inc., and were duly adopted at the first meeting of the Board of Directors held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Date: \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Secretary

Attest:

(CORPORATE SEAL)

\_\_\_\_\_  
President

EXHIBIT "T"  
URBAN STORMWATER MANAGEMENT PROGRAM



December 11, 2008

**PORPOISE POINT  
URBAN STORMWATER MANAGEMENT PROGRAM**

**1.0 Introduction**

This document provides details of the Urban Stormwater Management Program for Porpoise Point in Matlacha, 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 Porpoise Point 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) routine water quality testing; and (6) 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.

Each homeowner must commit themselves to the practice of responsible and careful landscape design and maintenance of each lot to prevent contamination of surface waters. The guidelines included in this section are intended to help homeowners make educated environmental choices regarding the maintenance of individual yards within the community. These maintenance and management guidelines are meant to promote an attractive neighborhood that preserves the health of adjacent waterways and environmental features.

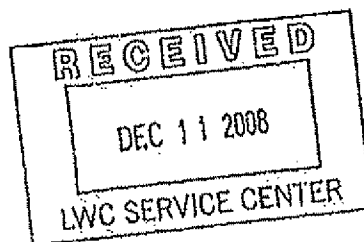
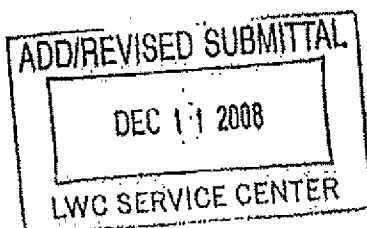
**2.1 General Requirements**

A landscape plan must be developed for each residence. The plan must be comprehensive in nature and follow the landscape design guidelines established by the Homeowners Association and must promote revegetation of each lot as quickly as possible.

Commercial applicators of chemical lawn products must register with the Homeowners Association 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.

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## 2.2 Nutrient Management Program

Management and application of nutrients and fertilizers in Porpoise Point 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 BPA-approved
- D. The half-life of products used shall not exceed seventy (70) days

## 3.0 Street Sweeping

Since Porpoise Point has been constructed with shell surface roadways and parking areas, street sweeping is not applicable.

## 4.0 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.

## 5.0 Stormwater Management and Treatment System

The stormwater management system for Porpoise Point is designed to maximize the attenuation of stormwater generated pollutants prior to discharge to the off-site wetland systems. Operational details and maintenance requirements of the various system components are given in the following sections.

### 5.1 Dry Retention Areas and Interconnect Pipes

The basic element of the stormwater management system consists of a series of interconnected dry retention areas that provide stormwater treatment through a variety of physical, biological, and chemical processes.

Maintenance of the dry retention areas 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 retention areas 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 retention areas for evidence of excessive sediment accumulation or erosion.

At the completion of the inspections, a written inspection report should be prepared, listing any deficiencies that need to be addressed or corrected by the Homeowners Association.

### 5.2 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.

### 5.3 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 siltng 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.

**6.0 Water Quality Testing**

Not required.

**7.0 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.

James G. Jack  
P.E. #18474

12/9/08