

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
BAY BEACH**

(Note: The following Amended and Restated Declaration is a complete restatement of the Declaration of Covenants, Conditions and Restrictions for Estero Bay (now known as BAY BEACH) as the same is found in Official Records Book 1134, at Page 1445 and as subsequently amended in Official Records Book 2309, at Page 51; Official Records Book 2324, at Page 3944; Official Records Book 2348, at Page 4688; Official Records Book 2450, at Page 195; Official Records Book 2502, at Page 1431; Official Records Book 2502, at Page 1443; Official Records Book 2535, at Page 3943; Official Records Book 2554, at Page 152; Official Records Book 2588, at Page 295; and as Instruments #2006000311038, #2008000044387 and #2015000229860; all in the Public Records of Lee County, Florida. Please see that document's Articles I through IX for the present text.)

**This Amended and Restated Declaration** is made [date], by **BAY BEACH ASSOCIATION, INC.**, a Florida corporation, not-for-profit, hereinafter called the "Association", for itself, and its Members, and their respective successors, grantees, and assigns.

**WITNESSETH:**

**Whereas**, Association manages certain real property located in Fort Myers Beach, Lee County, Florida; upon which various Developers have created communities of condominiums, cooperatives, multi-family structures, and related recreational and other common facilities and amenities known as BAY BEACH (hereinafter "Development"); and

**Whereas**, the real property which was developed as BAY BEACH (the "Lands") is described in Exhibit "A" to this Declaration, as it may be amended from time to time; and

**Whereas**, Association and its Owners/Members desire to promote the general health, safety and welfare of residents, provide for the maintenance of the land comprising BAY BEACH, and the improvements thereon, and to provide for preservation of the property values and the amenities, and to this end desire to amend by a full restatement of the protective covenants, conditions, restrictions, and other provisions encumbering and protecting the real property hereinafter set forth; and

**Whereas**, to provide a means for meeting the purposes and intents herein set forth, ESTERO BAY IMPROVEMENT ASSOCIATION, INC., (now known as BAY BEACH ASSOCIATION, INC.) a Florida corporation not for profit was incorporated on May 11, 1976 (hereinafter the "Association"); and

**Now Therefore**, the Association, and any other person owning an interest in the subject property who at any time has consented to (by the acceptance of a Deed hereunder) or joined in the making of this Declaration, hereby declares that the real property described in Exhibit "A" hereto is and shall continue to be owned, used, sold, conveyed, encumbered, demised and

occupied subject to the provisions of this Declaration, which shall run with the Land and be binding on all parties having any right, title or interest in the real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate the lien of any mortgage or deed of trust given in good faith and for value.

1. **DEFINITIONS.** The following definitions shall apply to the terms used in this Declaration and its recorded exhibits, unless the context clearly requires another meaning.

1.1 **“Act”** shall mean the Homeowners’ Association Act as the same is found in Florida Statutes Chapter 720 as it may be amended from time to time. The Association was not formed to operate under such Act, however the Association may avail itself of selected procedures set forth therein by specific reference without creating rights or obligations thereunder.

1.2 **“Architectural Review Committee”** or **“ARC”** means the Architectural Review Committee as established and empowered in Section 6 of this Declaration. The Committee may be a standing or *ad hoc* committee, to be determined at the discretion of the Board.

1.3 **“Assessment”** or **“Assessments”** means a share of the funds required for the payment of the expenses of the Association which from time to time is assessed against the Members, including without limitation: annual assessments and special assessments, as authorized by Section 9 of this Declaration.

1.4 **“Board”** means the Board of Directors of BAY BEACH ASSOCIATION, INC.

1.5 **“Builder”** shall mean any person or entity that purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person or entity’s business. The Owner of a Lot shall not, solely by virtue of having purchased a Lot, be deemed a Builder or a successor or assignee of the development rights of a Builder, or of the Declarant for the purposes of this paragraph, unless an instrument of assignment or conveyance expressly so states.

1.6 **“Common Areas”** means any and all real property and improvements within BAY BEACH owned by, leased to, or dedicated to the Association for the use and benefit of its Members and, by extension, the Owners within BAY BEACH. Common Areas shall also include those areas dedicated to the Association’s use in the various recorded Neighborhood Documents.

1.7 **“Community”** or **“Properties”** means all real property comprising BAY BEACH as described on the attached Exhibit “A”, and the improvements thereon.

1.8 **“County”** or **“the County”** means Lee County, Florida.

1.9 **“Developer”** means Estero Bay Development Corporation and its successors, grantees or assigns or any other entity to which the Developer specifically assigned any or all of

the development rights it may have under the original Declaration (recorded in Official Records Book 1134, at Page 1445 of the Public Records of Lee County, Florida) to develop part or all of BAY BEACH.

1.10 **“Family”** means one natural person or two or more natural persons each of whom are related to each other by blood, marriage, or adoption and who customarily reside and live together and otherwise hold themselves out as a single housekeeping unit or not more than two natural persons who are not related to each other by blood or adoption, who customarily reside and live together and otherwise hold themselves out as a single housekeeping unit. The decision as to whether two persons reside and constitute a qualifying family unit shall be a matter for the Board of Directors in their sole and unbridled discretion.

1.11 **“Governing Documents”** means this Declaration, and the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association. In the event of a conflict in the interpretation of the Governing Documents, they shall be applied in the order of priority listed herein.

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

1.13 **“Institutional Mortgagee”** means:

(A) a lending institution having a first mortgage lien upon a Lot or Unit, or tract, including any of the following institutions: a Federal or State savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, or a life insurance company; or

(B) a governmental, quasi-governmental or private agency that is engaged in the business of holding, guaranteeing or insuring residential mortgage loans (including without limitation: the Federal National Mortgage Association, Governmental National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration) and which holds, guarantees or insures a first mortgage upon a Lot or Unit; or

(C) the Declarant and any and all investors or lenders, or the successors and assigns of such investors or lenders which have loaned money to Declarant to acquire, develop, or construct improvements upon the Properties and who have a mortgage lien on all or a portion of the Properties securing such loan. An “Institutional Mortgage” is a first mortgage held by an Institutional Mortgagee encumbering a Lot or Unit.

1.14 **“Lands”** means the land described in Exhibit “A” to this Declaration, as it may be amended from time to time.

1.15 “**Lease**” when used in connection with a Unit, means the grant by the Owner of the Living Unit of a temporary right of use of the Living Unit for valuable consideration.

1.16 “**Living Unit**” or “**Residential Unit**” means any residential structure, including a single family detached or attached dwelling unit or condominium or cooperative Unit as that term is defined in Fla. Stat. Chapters 718 and 719; located within BAY BEACH. Residential Units are intended for use by one family as their place of residence. Recreational Units may exist to provide ownership of a recreational amenity not a part of the Common Areas. If a Living Unit is a free-standing or attached single family home located on a Lot, the use of the term “Living Unit” or “Unit” shall be interpreted as if the term was followed immediately by the words “and the Lot on which it is located”. The terms “Living Unit” or Residential Unit” shall not include trailers, mobile homes, recreational vehicles, temporary structures, boats, watercraft or any type of floating vessel.

1.17 “**Lot**” means one or more of the unplatted portions of land (or lands not submitted to the condominium or cooperative forms of ownership) into which parts of BAY BEACH have been subdivided, upon each of which Living Units are intended to be constructed.

1.18 “**Member**” means a person or entity entitled to Membership in the Association, as provided in Article VI of the Articles of Incorporation and Article II of the Bylaws. Membership is mandatory for all of the Neighborhood Associations.

1.19 “**Neighborhood**” means a condominium, a cooperative, a group of single family homes, coach homes, or villas, or any other residential sub-area development within BAY BEACH designated as such, where all the Living Units or Recreational Units are part of the Neighborhood Association or where such residential subdivision of a designated area has been designated as a neighborhood by the Declarant.

1.20 “**Neighborhood Association**” means: a condominium association managing a condominium pursuant to Fla. Stat. Ch. 718, a cooperative association managing a cooperative pursuant to Fla. Stat. Ch. 719, an incorporated owners association as defined in Fla. Stat. Ch. 720; or any other incorporated mandatory membership property owners association operating a Neighborhood, or operating facilities or property serving two or more Neighborhoods.

1.21 “**Neighborhood Common Areas**” means that real property, including any improvements thereon, which is owned or leased by, or dedicated to, a Neighborhood Association for the common use and enjoyment of its Members. If the Neighborhood is a condominium, the term includes the common elements of the condominium and any real property owned by the condominium association.

1.22 “**Neighborhood Documents**” means any and all covenants, conditions, restrictions, and other provisions imposed by recorded declaration or other instrument, applicable to one or more specific Neighborhoods to the exclusion of all others, including the recorded articles of incorporation and bylaws of the Neighborhood Association, all as amended from time to time.

1.23 “**Occupy**” when used in connection with a Living Unit, means the act of using a Living Unit as one’s place of residence for two (2) or more consecutive days. An “Occupant” is one who occupies a Living Unit, other than the Owner or his family as defined above.

1.24 “**Owner**” means the record Owner of legal title to any Living Unit or Recreational Unit.

1.25 “**Recreation Parcel(s)**” means those lands comprising the former golf course property lying southerly of Bay Beach Lane, now owned by the Association, the hard-surfaced courts owned by the Association lying along Lenell Road, the easement for a beach hut and Gulf access through Riviera Club, A Condominium, and the Community Fishing Pier lying on the north side of Bay Beach Lane; all held for the use and benefit of its Members and the Owners and any lands hereinafter acquired for such purpose. The Recreation Parcels are described in Exhibit “B”, attached hereto and incorporated herein by this reference.

1.26 “**Recreational Unit**” means those Units that have been created to create and allow a strictly recreational use as opposed to a residential use (“Living Unit” or “Residential Unit”). Examples of a Recreational Unit would include, but not be limited to a boat dock or motor/sail vessel mooring use within a condominium or cooperative which is conveyed, held, and assessed as a separate real property right, exclusive and apart from any Residential Unit. Once declared as “Units” under Fla. Stat. Ch. 718 or 719, Recreational Units cannot be converted to Living Units or Residential Units.

1.27 “**Rules and Regulations**” means the administrative regulations governing use of the Common Areas and procedures for operating the Association, as adopted, amended and rescinded from time to time by resolution of the Board of Directors. A copy of the current Rules and Regulations governing Bay Beach, and specifically use of the Recreational Parcel and Community Fishing Pier, are attached hereto as Exhibit “E” and incorporated herein by this reference.

1.28 “**SFWMD**” means South Florida Water Management District.

1.29 “**Service Assessment**” means a charge against one or more Neighborhood Associations for any service, material or combination thereof which may be provided by the Association for the use and benefit of those particular Neighborhood Associations 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 Neighborhood Associations accepting or receiving such material or service shall be a service assessment against the Living Units or Recreational Units so benefited. An Owner within such Neighborhood Association is deemed to have agreed to such assessment by the act of subscribing to, requesting, or accepting the material or service.

1.30 “**Structure**” means something built or constructed or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground, or which is attached to something having a permanent location on the ground. The term shall be construed as if

followed by the words “or part thereof.” The term includes, without limitation, all Living Units, swimming pools, spas, fences, flagpoles, antennas, basketball backboards, skateboard ramps, swing sets or other play equipment, and all improvements serving, bounding or defining Recreational Units.

1.31 “Unit” or “Units” shall mean either or both Living/Residential Units and/or Recreational Units, as the particular circumstance may indicate.

1.32 “Voting Interests” means the arrangement established in Article VI of the Articles of Incorporation of the Association by which the Members are entitled to vote in the affairs of the Association, whenever a vote of the Members is permitted or required as to any Association business.

2. **GENERAL DEVELOPMENT PLAN.** BAY BEACH is a Planned Unit Development (“PUD”) originally commenced in 1976 by Estero Bay Development Corporation. Through a succession of entities, the sixteen neighborhoods currently comprising the 132+-acre Community were planned and built. The primary development objective is the construction and development of approximately 1,293 Residential Units along with various recreational amenities in various forms of ownership, including but not limited to condominiums and cooperatives. The Community also includes dock slips owned in cooperatives, sports court facilities, numerous pools and recreational facilities, a 55-acre surface water management area, and a community fishing pier on the waters of Estero Bay.

2.1 **Right to Use Common Areas.** The non-exclusive right to use the Common Areas shall be appurtenant to and shall run with each Owner’s membership in a Neighborhood Association, subject to this Declaration and its recorded exhibits. The Association has the right to enter into Agreements with other entities for the maintenance and operation of the Common Areas.

2.2 **Owner and Member Compliance.** The protective covenants, conditions, restrictions and other provisions of this Declaration shall apply not only to the Member (Neighborhood Associations), and persons to whom an Owner has delegated his right of use in and to the Common Areas, but also to any other person occupying an Owner’s Living Unit under lease from the Owner, or by permission or invitation, expressed or implied, of the Owner or his tenants, licensees, invitees or guests. Failure of an Owner to notify any person of the existence of the easements, covenants, conditions, restrictions, and other provisions of this Declaration shall not in any way act to limit or divest the right of the Association of enforcement of these provisions and, in addition, the Owner shall be responsible for any and all violations of these provisions by his tenants, licensees, invitees or guests, and by the guests, licensees and invitees of his tenants at any time.

### 2.3 **Members’ and Owners’ Rights and Easements.**

(A) Easement for Use of Common Areas. Every Owner and Member of the Association shall have a non-exclusive right and easement for access to and the use and enjoyment of the Common Areas. The right and easement shall be appurtenant to and shall pass

with the title to every Unit subject to any limitation set forth in this Declaration, including without limitation:

- (1) The right of the Association to determine the annual and special assessments to be paid by the Members;
- (2) The right of the Association to dedicate or transfer all or any part of the Common Areas to any governmental agency, public authority, or utility;
- (3) The right of the Association to grant easements over, across or through the Common Area or any part thereof;
- (4) The right of the Association to borrow money for the accomplishment of its purposes of improving the Common Areas, and in aid thereof, to mortgage Common Areas;
- (5) The right to take such steps as are reasonably necessary to protect Common Areas against foreclosure;
- (6) The right to enforce the Articles of Incorporation and Bylaws of the Association; and any rules and regulations governing use and enjoyment of the Common Areas adopted by the Association; and
- (7) The right of the Association to charge use fees or Membership fees.

(B) Delegation of Rights. Each Owner may temporarily delegate his right of use in and to the Common Areas to his non-resident guests (if the guests are accompanied by the Owner) or to tenants who reside in the Living Unit or have use rights in a Recreational Unit of the Owner, but only to the extent and subject to conditions, limitations and restrictions as may be provided for in the Governing Documents. Each Owner of a Living Unit or Recreational Unit shall be financially and legally responsible for the actions of any person to whom the Owner has delegated his right to use the Common Areas.

2.4 **Conveyance and Use.** Any real property conveyed to the Association as Common Areas or for the use and benefit of its Members is not and shall not be deemed dedicated for use by the general public but is, and shall be, deemed restricted for the common use and enjoyment of Owners of Units and Members of the Association.

2.5 **Quiet Enjoyment.** Because of its size, full development of BAY BEACH has spanned a number of years and is not yet completed. Incident to the development process, the quiet enjoyment of the Community may be unavoidably interfered with to some extent by construction operations.

3. **THE ASSOCIATION'S PURPOSES AND POWERS.** The primary purposes of the Association are to: operate and maintain the Common Areas, to enforce restrictive covenants applicable to the Community, to provide architectural and aesthetic control, and to

take such other action as the Association is authorized or required to take with regard to the Community pursuant to the Governing Documents or under Florida law. The Association shall operate, insure, maintain and repair all property and related improvements operated by the Association as Common Areas, regardless of whether legal title to that property has been formally conveyed to the Association. If required by governmental agencies, the Association shall accept the transfer of all permits, and assume responsibility for maintenance and monitoring of surface water management and wetland preserve areas located on the Common Areas.

3.1 **Common Areas.** The Association shall operate, maintain and hold record title to the Common Areas. The Common Areas may include, without limitation, Bay Beach Lane, the surface water management system, the recreational courts, an easement for a beach hut and Gulf access, the Community Fishing Pier, and related facilities. The Association may also maintain environmental habitat and preservation areas, surface water drainage and management systems on the Common Areas. The Board of Directors may promulgate reasonable rules and regulations regarding use of the Common Areas consistent with the Governing Documents. Use of Common Areas shall be available to all Members, their constituent Owners and their collective invitees, guests, family Members and tenants, subject to the Rules and to the Governing Documents. The costs of operating, maintaining, repairing, insuring, improving, and protecting the Common Areas and the facilities located thereon or connected therewith shall be assessed equally against all Living Units. The Association shall have, without limitation, the following powers:

- (A) To exercise the rights as set forth in the Declaration.
- (B) To allow Members' and Owners' use of the Common Areas, and other recreational facilities, subject to the terms of these Governing Documents.
- (C) To enter into Agreements to cause additional properties and amenities to become Common Areas if such properties are of common benefit to the Community.
- (D) To enter into Agreements for the improvement, maintenance and operation of the Common Areas.
- (E) To lease, assign or otherwise transfer the operating rights to, and any and all profits from, any restaurant, snack bar or other facility on the Common Areas to a third party.

3.2 **Manager.** The Association may contract, employ and pay for the services of an entity or person to assist in managing its affairs and carrying out its responsibilities, and may employ other personnel as the Association shall determine to be necessary or desirable.

3.3 **Personal Property.** The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

3.4 **Insurance.** The Association at all times shall procure and maintain adequate policies of public liability and other insurance as it deems advisable or necessary and as required elsewhere in this Declaration. The Association additionally shall cause all persons with access to Association funds to be insured or bonded with adequate fidelity insurance or bonds.



3.5 **Express and Implied Powers.** The Association may exercise any rights, powers or privileges given to it expressly by the Governing Documents or by the law in effect at the time this Declaration is recorded, and every other right, power or privilege reasonably inferable therefrom.

3.6 **Acts of the Association.** Unless the approval or affirmative vote of the Members is specifically made necessary by some provision of applicable law or the Governing Documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Members. The officers and Directors of the Association have a fiduciary relationship to the Association and its Members. Neither a Member nor an Owner has the authority to act for the Association by reason of being a Member or an Owner.

3.7 **Articles of Incorporation.** The Articles of Incorporation of the Association are attached as Exhibit "C."

3.8 **Bylaws.** The Bylaws of the Association shall be the Bylaws attached as Exhibit "D" as they may be amended from time to time.

3.9 **Official Records.** The official records of the Association, as defined by Chapter 720, Florida Statutes, as amended, shall be maintained within the State of Florida and must be open to inspection and available for photocopying as provided for in the Bylaws. The Association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspection, and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The Association shall maintain an adequate number of copies of the Governing Documents, to ensure their availability to Members and to prospective purchasers, and may charge its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

3.10 **Polling Places.** Accommodations may be made for the future use of space within the Common Areas for the purposes of accommodating the function of an electoral polling place.

3.11 **Rules and Regulations.** Subject to this Declaration and any other applicable recorded instrument, the Association shall have the right and the power to develop, promulgate and enforce reasonable rules and regulations for the use and enjoyment of the Common Areas. No Common Areas shall be used in violation of any rule or regulation adopted by the Association pursuant to Section 5 of the Bylaws.

3.12 **Acquisition of Property.** Subject to Section 2.4 above, the Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. The power to acquire Ownership interests in real property shall be exercised by the Board of Directors, subject to consent in advance by 66 2/3<sup>rd</sup>% of the Voting Interests.

3.13 **Disposition of Property.** Subject to Section 2.5 above, any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, leased or otherwise encumbered or disposed of by the same authority as would be required to acquire it under Section 3.12 above.

4. **MEMBERSHIP AND VOTING RIGHTS.** Every Neighborhood Association within BAY BEACH shall be a Member of the Association as further defined in Section 4.1 below. The rights, powers, duties and privileges of Members shall be as set forth in this Declaration, and in the Articles of Incorporation and Bylaws of the Association.

4.1 **Classes of Membership.** The Association has two classes of Membership, including one (1) class of non-voting Membership, as follows:

(A) Voting Members. Every Neighborhood Association comprised of Residential Units shall be a Member. The actual number of Memberships which may be created is limited by the number of Residential Units that may be permitted in BAY BEACH, but it is anticipated that the number will be approximately seventeen (17). A Member's rights to use the Common Area and other recreation facilities shall be limited as set forth in this Declaration and in the Bylaws.

(B) Non-Voting Members. The Board shall have the right, but not the obligation, to authorize an unlimited number of non-Voting Members who are Neighborhood Associations constituted solely of Recreational Units and who shall have no voting rights. While in good standing, such Members have the right to enjoy access to the Common Areas and recreational facilities. To remain in good standing, such Members shall be obligated to timely pay all charges and assessments in the amount established by the Board of Directors.

4.2 **Voting.** The Association shall have one class of voting Membership.

(A) Voting Members shall have one vote for each Living Unit created in their respective Neighborhood Association, except that no vote shall be exercised for any property which is exempt from assessment under Section 9.9. All votes shall be cast as provided in Section 4.2 (B) below.

(B) **Exercise of Voting Rights.** The total number of votes shall be an amount equal to the total number of Living Units subject to this Declaration at the time of such vote. Each Member shall cast, through its representative, a number of votes equal to the number of Living Units contained in that Neighborhood Association. Votes, although weighted in this manner, may not be apportioned or divided by a Member: all of its votes shall be cast for or against a matter.

4.3 **Members' Rights and Easements; Limitations.** Members in good standing have the non-exclusive right to use the Common Areas subject to:

(A) The right of the Association, by and through its Board of Directors, to adopt the annual budget and to determine the annual assessments to be paid by Members;

(B) The right of the Association, by and through its Board of Directors, to charge any admission, use, or other fees for any Common Areas as the Board may deem appropriate. The fees may be higher for non-Owners than for Owners;

(C) The right of the Association, by and through its Board of Directors, to suspend a Member's or Owner's right to use Common Areas for the period during which any assessment or charge against an Owner's Lot or Living Unit remains unpaid and past due, and for a reasonable period during or after any infraction of the Association's rules and regulations;

(D) The right of the Association, by and through its Board of Directors, to dedicate or transfer Ownership or control of all or any part of the Common Areas to any governmental agency, public authority, or utility;

(E) The right of the Association, by and through its Board of Directors, to grant licenses or easements over, across or through the Common Areas;

(F) The right of the Association, by and through its Board of Directors, to open the Common Areas for use by non-Members of the Association, or to non-Owners with consent of the Members.

(G) The right of the Association, by and through its Board of Directors, with the prior assent of a majority of the voting interests, to borrow money for the purpose of improving the Common Areas, and in aid thereof, to mortgage Common Areas or portions thereof;

(H) The right of the Association, by and through its Board of Directors, to take such steps as are reasonably necessary to protect the Common Areas;

(I) The right of the Association, by and through its Board of Directors, to close or restrict access to the Common Areas for limited periods of time to conduct special events, to perform maintenance or construct improvements;

(J) The right of the Association, by and through its Board of Directors, to regulate parking and traffic on the private roads within BAY BEACH and the Common Area portions of Bay Beach Lane, including, without limitation, the use of access gates or speed controls;

(K) The provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association; and any rules and regulations governing use and enjoyment of the Common Areas adopted by the Association;

**4.4 Delegation of Use Rights In Common Areas.** Guests accompanied by an Owner or Member shall have the right to use the Common Areas, but only to the extent provided in Section 2.3 above, or in the Association's rules and regulations, and subject to the conditions, limitations and restrictions as may be stated therein. A fee may be imposed for such usage

delegation, not necessarily limited by or related to the cost of processing the delegation. Each Owner shall be financially and legally responsible to the Association for the actions and debts to the Association of any person to whom the Owner has delegated his right to use the Common Areas. The Owner may not delegate the obligation to pay Association assessments.

5. **GENERAL COVENANTS AND USE RESTRICTIONS.** As to Members that are not Neighborhood Associations, Articles 5 and 6 shall be immediately effective. With respect to the Neighborhood Associations, the Association's rights and obligations as set forth in Articles 5 and 6 herein shall only become effective as herein described. In the event that the Board determines that a Neighborhood Association is failing to maintain its Common Elements, enforce "single-family", non-commercial use as described below, or failing to require their Owners to maintain their property in a manner consistent with quality and appearance standards of the Community, the Board may exercise the rights and obligations set forth in Articles 5 and 6. Prior to exercising these rights and obligations, the Board shall put the failing Neighborhood Association on notice that such Neighborhood Association is deficient in one or more areas. Such Neighborhood Association shall have thirty (30) days to correct the deficiencies. If that Neighborhood Association does not remedy the issues, the Board may elect to assume oversight of the Neighborhood Association as described in Articles 5 and 6. Such assumption shall be made by a majority vote of the Board, at a duly called meeting of the Board, for the specified purpose of taking action against that Neighborhood Association. Once the Board assumes control, such oversight shall continue until such time that the impacted Neighborhood Association demonstrates to the Board that oversight is no longer needed. Upon a majority vote of the Board, the affected Neighborhood Association will resume control of its Neighborhood.

5.1 **Uses of Living Units and Recreational Units.** Each Living Unit shall be occupied by only one family and its temporary guests at any time, as a residence and for no other purpose. No time-sharing, business or commercial activity shall be conducted in or from any Living Unit or Recreational Unit. Co-Ownership of Units is permitted. No person may publicly advertise the address of a Living Unit or Recreational Unit as the address of any business. The use of a Living Unit as a public lodging establishment shall be deemed a business or commercial use. The use of a Recreational Unit as commercial docking or as a base for a business or commercial activity using a watercraft or vessel shall be deemed a business or commercial use. This Section 5.1 shall not be construed to prohibit any Living Unit occupant from maintaining a personal or professional library, from keeping his personal, business or professional records in his Living Unit, or from handling his personal, business or professional telephone calls, written correspondence, or other communications in and from his Living Unit. Such uses are expressly declared customarily incident to residential use. This Section 5.1 is, however, intended to prohibit commercial or business activity by an Owner which would noticeably change the residential or recreational ambiance of the Community (as the case may be), 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.

5.2 **Occupancy of Living Unit when Owner is not in Residence.** An Owner may occasionally allow family, friends or business associates in reasonable numbers to temporarily

occupy his Living Unit in his absence. Except as otherwise provided in Section 5.3 below, this provision is not intended to allow any Owner to use his Living Unit as short-term transient accommodations for several individuals or families. The Owner must register all guests with the Association in advance, giving such information about the guests and the period of their stay as the Board may reasonably require. The Owner is responsible for the conduct of his guests. When the Owner is not in residence, no more than six (6) overnight occupants (including the Owner and his family) are allowed at any time.

**5.3 Leasing.** The requirements of this Section 5.3 shall apply to any lease for a Living Unit in BAY BEACH and, at a minimum, all leases are subject to the following restrictions and conditions: (a) the lease must be written, (b) no Living Unit may be rented for a period of less than seven (7) consecutive days and no Unit's availability for rental may be advertised, listed or otherwise marketed for any period less than seven (7) consecutive days, (c) no subleasing or assignment of lease rights is allowed, and (d) no one but the lessee and the lessee's spouse, if any, and their unmarried children, who live with their parents, may occupy the Living Unit during a lease. Neighborhood Associations may enact longer minimum rental periods than set forth in (b), above.

All of the provisions of the Governing Documents and the Rules and Regulations of the Association shall be applicable to and enforceable against any person occupying a Living Unit 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 the Governing 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. Any lease entered into in violation of the above provisions shall, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee by summary proceedings without securing consent to such eviction from the owner.

**5.4 Nuisance.** No Member shall use or permit a Unit (either Living/Residential or Recreational) to be used in any manner which would be unreasonably disturbing, detrimental or a nuisance to the occupant of another Unit 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 Living Unit Common Area and the Neighborhood 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 any Unit, nor shall any Owner permit or condone any activity that is, or may reasonably become, a source of annoyance or nuisance to other residents.

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

**5.6 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 without prior approval of the ARC, which approval may be withheld for any reason. This Section 5.6 shall not apply to signs used by Association or its agents.

5.7 **Appearance; Refuse Disposal.** Each Owner shall keep his Living Unit free of trash and debris and shall reasonably maintain his Living Unit. Personal property of residents shall not be left on the lawns or landscaped areas outside the Living Units. Trash, garbage or other waste must be kept in appropriate containers suitably screened from view from the street. 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.

5.8 **Maintenance.** The Association shall have the right to repair any structure or improvement in any Neighborhood 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 Neighborhood Association 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 non-maintaining Member, which charge shall be a lien on that Neighborhood's Units which may be foreclosed and shall include the Association's attorney fees and other costs in connection with the lien and foreclosure.

5.9 **Fences.** No fence, wall, hedge or other physical and visual barrier shall be erected in the Neighborhood Common Areas, except as originally installed prior to the date of recording this Declaration, or as approved by the ARC.

5.10 **Driveways and Parking Areas.** Neighborhood driveways and parking areas must be paved with concrete, paver blocks, or another hard surface. Maintenance and repair of Neighborhood and recreational driveways, parking and other paved parking facilities shall not be the responsibility of the Association. Neighborhood driveways must be kept clean and free from excessive oil, rust or other unsightly stains.

5.11 **Water Supply; Wells; Water Rights.** Each Neighborhood Association shall be required to connect the water lines serving its neighborhood to the lines of the utility provider(s) providing service to BAY BEACH. Unless approved by BAY BEACH ASSOCIATION, INC. and subject to the terms of the SFWMD permit, no Owner or Neighborhood Association may install or operate a private well for any reason (excluding operation of a water source heat pump) nor may any of the detention/retention lakes be used for irrigation of the Neighborhoods. The foregoing notwithstanding, all irrigation wells currently in place and operating pursuant to SFWMD permit shall continue to be allowed under this Section.

5.12 **Landscaping.** The Association has the right, but not the obligation, to assume the responsibility to maintain the exterior landscaped portions of the Neighborhoods within BAY BEACH, which includes lawn, shrubs, trees, and other landscaping, except for any areas enclosed by fencing or other screening or otherwise not readily accessible from outside the Living Units. The Association's costs associated with the maintenance described in this Section shall be a Common Expense of the Association and shall be allocated among the Living Units so

served pursuant to Section 9.1 of the Declaration; provided, if appropriate, costs may be assessed as a Specific Assessment in accordance with Section 9.5 of the Declaration. The Association shall have a perpetual non-exclusive easement over all of BAY BEACH, including the Living Units (but not inside any structure within a Living Unit), for the purpose of performing its maintenance responsibilities under this Section. Such easement may be exercised, without prior notice, by the Association, its officers, directors, employees, agents, and contractors, and entry upon any Neighborhood for such purpose shall not be deemed a trespass. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon any Neighborhood or Lot and their privacy walls, unless approved by the ARC.

5.13 **Pets.** The Owner of each Living Unit may keep not more than two (2) pets of a normal domesticated household type (cats or dogs only) in the Living Unit. 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 Living Unit. 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 reptiles, amphibians, poultry, swine or livestock may be kept on the Properties. The Board of Directors may restrict the locations where pets may be walked. Notwithstanding the foregoing, pit bull and pit bull mix dogs or other recognized aggressive breeds of dogs shall be prohibited regardless of size or weight. A pit bull or pit bull mix dog is defined as any dog that, in the sole and exclusive discretion of the Board, has the appearance and characteristics of being predominately and commonly referred to as a “pit bull” regardless of the opinion of any veterinary doctor. Pets may not be brought or kept within the Properties for any commercial purposes, including boarding, grooming or breeding.

5.14 **Parking and Storage of Vehicles.** Except for service vehicles temporarily present on the property, Owners and occupants of Living Units may not park, store or keep on the Properties, any commercial truck or other commercial vehicle, or any boat, trailer, semi-trailer, recreation vehicle, house trailer, mobile home, motor home, bus, tractor, or any other such vehicle, unless it is enclosed within a garage. No person may park, store or keep any motor vehicle on grassed or landscaped areas, or any places outside of paved driveways, garages, or other designated parking areas. Vehicles which are in wrecked, junked, partially dismantled, inoperative or abandoned condition, whether attended or not, and those not bearing current license plates, are not permitted on the Properties. Because guest parking may be limited in some areas, each Owner is specifically cautioned that he and the other occupants of his Living Unit may be limited or restricted as to the number of motor vehicles they may keep on the Properties. The repair of motor vehicles, except emergency repairs, is not permitted on the Properties. For purposes of this paragraph “kept” shall mean present for either a period of twenty-four (24) consecutive hours. No house trailer, mobile home, motor home and the like may be kept more than two (2) times in any month. Any vehicle parked in violation of this Section is subject to being towed away at the Owner’s expense without further warning.

5.15 **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: (a) wireless access points serving a Neighborhood or a single or multiple Units; and (b) those antennae specifically covered by 47 CFR, 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.

## 6. ARCHITECTURAL AND AESTHETIC CONTROL.

6.1 **General.** Except for the initial construction of Living Units, Neighborhood Common Area facilities, Common Area facilities, and related improvements by the Developer, no building, structure or other improvement shall be erected or altered, nor shall any grading, excavation, landscaping, change of exterior color, or other work which in any way materially alters the exterior appearance of any structure, Lot, Living Unit, or Neighborhood Common Area be performed without the prior written approval of the ARC. In obtaining said written approval, an Owner, Builder or any other person applying shall comply with all applicable requirements and procedures.

6.2 **Architectural Review Committee.** The architectural and aesthetic review and control functions of the Association shall be administered and performed by the ARC, the members of which shall serve at the pleasure of the Board of Directors. The ARC shall consist of not less than three (3) individuals, who need not be Voting Representatives for, or Officers of Members of the Association. The term of office, composition, compensation (if any), qualifications and meeting procedures of the ARC shall be as provided in Section 6 of the Bylaws.

6.3 **Guidelines.** The Association shall prepare an initial Community Development Standards and Design Guidelines, which may contain general provisions applicable to all of the Properties as well as specific provisions which may vary from Neighborhood to Neighborhood. The Community Development Standards and Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the ARC in considering applications hereunder. The Community Development Standards and Design Guidelines are not the exclusive basis for decisions of the ARC and compliance with the Community Development Standards and Design does not guarantee approval of any application. The Board of Directors shall have sole and absolute authority to approve and amend the



Community Development Standards and Design Guidelines, notwithstanding a delegation of reviewing authority to the ARC. The ARC shall have the authority to recommend to and advise the Board with regard to amendments to the Community Development Standards and Design Guidelines. Any amendments to the Community Development Standards and Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Community Development Standards and Design Guidelines, provided such amendments may remove requirements previously imposed or otherwise make the Community Development Standards and Design Guidelines less restrictive. The ARC shall make the Community Development Standards and Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties. In the Board's discretion, such Community Development Standards and Design Guidelines may be recorded in the Public Records, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Community Development Standards and Design Guidelines was in effect at any particular time.

6.4 **Powers.** The ARC shall have the power, subject to and limited by the guidelines of the approved regulatory permits or local ordinances for BAY BEACH, to:

(A) Require submission to the ARC of complete plans and specifications for any building, structure, or other improvement proposed to be erected or altered, or any proposed grading, excavation, tree or other landscape material removal or installation, change of exterior color or other work which materially alters the exterior appearance of any structure, Lot, Living Unit or Neighborhood Common Area. The ARC may also require submission of samples of building materials or colors proposed for use on any Lot or Living Unit, and may require such additional information as may reasonably be necessary for the ARC to fully evaluate the proposed work;

(B) Approve or disapprove the erection or alteration of any building, structure or other improvement; or any grading, excavation, landscaping, change of exterior color, or other work which in any way materially alters function or the exterior appearance of any structure, Lot, Living Unit or Neighborhood Common Area, including Neighborhood surface water management areas. All decisions of the ARC shall be forwarded in writing to the Board's confirmation. Any person aggrieved by a decision of the ARC shall have the right to make a written appeal to the Board within thirty (30) days after notification of the ARC's decision. The determination by the Board, upon prompt review of any such decision shall, in all events, be final, and shall not be unreasonably delayed;

(C) Adopt procedures and a schedule of reasonable fees for processing requests for ARC review. Fees, if any, shall be payable to the Association, in cash or check, at the time the request is submitted to the ARC; or

(D) Adopt procedures for inspecting approved changes during and after construction, to ensure conformity with approved plans.

6.5 **Enforcement.** Any decisions of the ARC shall be enforced by the Neighborhood Association involved, if applicable, as well as by the Association.

6.6 **No Waiver of Future Approvals.** Each Owner acknowledges that the persons reviewing applications under this Section will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Community Development Standards and Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the ARC may refuse to approve similar proposals in the future. Approval of applications or Plans for any Work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

6.7 **Variances.** The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; (c) estop the ARC from denying a variance in other circumstances; or (d) shall be effective unless and until approved by the Board. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.8 **Limitation of Liability.** The standards and procedures established by this Section 6 are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties, but shall not create any duty to any person. Review and approval of any application pursuant to this Section 6 is made on the basis of aesthetic considerations only and the ARC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size or of similar design nor for ensuring that the dwelling units are marketable. Neither the Association, the Board, any committee, nor Member of any of the foregoing shall be held liable for soil conditions, drainage or other general site work, nor for any defects in plans revised or approved hereunder, nor for any injury, damages, nor loss arising out of the manner or quality of approved construction on or modifications to any Unit. In all matters, the ARC and all persons comprising the ARC shall be defended and indemnified by the Association.

7. **EASEMENTS.** In addition to any easements created elsewhere herein (Section 12) or that otherwise exist on the Properties, easements are hereby provided for:

7.1 **Utilities, Services and Support.** Each Lot, Living Unit, Common Area (except Conservation Areas) and Neighborhood Common Area is and are hereby subjected to easements for public services, communications and telecommunications, and utilities purposes including, but not limited to, fire, police protection, and emergency services, garbage and trash removal, potable and non-potable water, sewage, telephone, electric and gas service, lake maintenance,

and cable television. The utilities and governmental agencies having jurisdiction, and their employees and agents, shall have the right of access to any Lot, Living Unit, the Common Area and Neighborhood Common Area in furtherance of such easements. The easement areas on any Lot, whether or not shown on any plat, shall at all times be properly maintained by the Owner or Member with the authority to maintain such property, whether or not the utility or service company properly maintains the easement area.

(A) There is hereby reserved, for the purpose of installing, operating and maintaining governmental, public or private utility facilities, and for other purposes incidental to the development of the Community, those easements described herein and those shown upon the recorded plat of the Community, and there are also reserved such easements and rights-of-way for any other purposes as the Association in its sole discretion may in the future grant.

(B) The Association hereby reserves the right, and the power to declare, grant and record additional easements for drainage facilities, sanitary sewer lines, potable and irrigation water lines, storm sewers, gas and electric lines, telephone and other telecommunication lines, cable television lines, and such other service facilities as the Association may deem necessary or desirable, along the various utility service routes through, in, over and under all Lots, Common Areas, and Neighborhood Common Areas. The purpose, duration and scope of any such easement shall be set forth in an instrument of public record. Said easements and the rights granted shall not be inconsistent with the then-existing improvements on the applicable portions of the Lot, Common Area or Neighborhood Common Area, or materially change the rights of the Owners. If any agreement is entered into by the Association for the exclusive provision of System services or other services to the Community, as described in either Section 7.2, 7.3 or both below, it shall be the affirmative obligation of the Association to grant all appropriate and reasonably necessary easements for the furnishing of those services; and upon the expiration or termination of such agreement, to provide subsequent or alternate easements so as to insure the continuous accessibility and availability to the Community, of those services.

(C) Each Lot and Living Unit is subject to a permanent easement in favor of adjoining or adjacent Lots and Living Units for lateral and adjacent support.

(D) Each Lot and Living Unit is subject to a permanent easement in favor of the Association to remove and/or destroy invasive exotic vegetation species.

**7.2 Cable TV and Telecommunications System.** The Association hereby reserves for itself and its successors, assignees and licensees, the right, without obligation, to construct or install over, through, under, across, and upon any portion of the Community (for the use and benefit of the Owner and that committed or authorized guests, invitees, tenants, and family Members), one (1) or more cable and/or telecommunications receiving and distribution systems and electronic surveillance systems, emergency, medical and surveillance monitoring, or alarm systems (all or any part of which shall be referred herein collectively as the "System"), the exact description, location and nature of which may have not yet been fixed or determined. The Association's right to create such System is subject to the consent of 66 2/3<sup>rd</sup> percent of the total Voting Interests. The Association shall have and hereby reserves to itself and its designees, successors, assignees and licensees, a perpetual and exclusive right, privilege, easement and

right-of-way for the installation, construction and maintenance of the System (the scope, extent, size and location of which over, across, upon and through the Community shall be determined solely by the Association, its successors, designees and assigns) together with a perpetual and exclusive right and privilege of:

(A) Unlimited ingress and egress thereto for installing, constructing, inspecting, maintaining, altering, moving, improving and replacing the facilities and equipment constituting the System including, without limitation, any towers, antennas, conduits, wires, cables, lines, panels, boxes, housings, connections, insulators and amplifiers necessary or desirable to receive and distribute services of the System including, without limitation, television and radio signals, electronic banking, surveillance, fire, police and emergency medical protection.

(B) Transmitting; the facilities and equipment of which, shall be owned and exclusively controlled by Association, its successors and assigns or its designees.

**7.3 Contracts with Service Providers.** The Association shall have the right to enter into Contracts for the exclusive provision of the System, as the Association shall deem, in its sole discretion, to be in the best interest of the Community and the Association may receive valuable consideration for the grant of the exclusive right to provide System services. The Association's exclusive rights herein shall be subject to the right of each Neighborhood Association to fully perform any unexpired term of an existing agreement to supply similar services to such Neighborhood. As used herein, the term "contractual designee" means the service provider with which the Association contracts for the furnishing of System services. Any such contract for cable television or other similar services shall provide, and if it does not, shall be deemed to provide, that during any period of occupancy of a living unit by a hearing impaired or legally blind unit Owner who does not occupy the Living Unit with a non-hearing impaired or sighted person, said Owner may refuse or discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such living units, the Owners shall not be required to pay any charge related to such service.

**7.4 Collection of "System" Assessments Association.** Every Lot or Living Unit to which the service System is available for many contractual designee(s) shall be subject to a System service assessment, payable by each Member per Lot or Living Unit for System services, including, without limitation, cable television services. The Association shall bill the appropriate System service assessment to each Member per Lot or Living Unit within such Member's management or control along with other assessments for common expenses, which may be due and payable at the same time, and shall collect same and remit payment to the contractual designee(s) providing the System services.

**7.5 Common Area Paths.** Each Owner may be entitled to use established paths and walkways on the Common Areas for walking and cycling, subject to the Association's right to promulgate reasonable rules regarding their use for the benefit of all residents of Bay Beach. The use of the cart paths shall be restricted to walking and cycling only, and scooters, skateboards or other devices shall not be used on the cart paths, except for motorized devices designed and used to assist mobility in persons unable to walk otherwise. Any Owner, on behalf of itself, and any guest or invitee, hereby indemnifies and holds the Association, its agents and

contractors harmless from any and all claims or losses arising from use of the Common Area paths.

## 8. COMMON AREAS: CONVEYANCE, USE AND MAINTENANCE.

8.1 **Designation.** Except for any Conservation Areas, and the Stormwater Management System, the Association shall have the right, and the power, in its sole discretion, to determine which parts of the Association's property shall be Common Areas, and to convey, lease or grant a license or other right to use real property within the Common Areas upon such terms and conditions as it may deem advisable.

(A) Any such conveyance, lease or grant of license or use right may be exclusive or non-exclusive, so that persons or entities other than the Association may or may not have a right, power, duty, or privilege with respect to all or any part of any real property so conveyed, leased, licensed or the use of which has been granted.

(B) The Association shall have the right to charge reasonable fees, rents, or other charges for the use of the Common Areas.

8.2 **Maintenance and Alteration.** The Association is responsible for the maintenance, repair, replacement, insurance, protection and control of all Common Areas in accordance with all applicable laws, and shall keep the same in good, safe, clean, attractive and sanitary condition, and in good working order at all times. There shall be no material alterations of or substantial additions to the Common Areas costing more than \$100,000, in the aggregate during any fiscal year unless first approved by a majority of the Voting Interests of the Members of the Association. However, if work that is advisable or reasonably necessary to meet the Association's obligations under any government-issued permit (including surface water management and environmental) or is reasonably required to repair/replace casualty loss, no prior Membership approval is required. The Members have the right to enforce, by appropriate legal means, the Association's duty to operate, maintain, repair, replace and insure the Common Areas, including without limitation all improvements placed thereon.

8.3 **Partition, Subdivision and Encumbrance.** Except as hereinafter provided, after legal title to the Common Areas, or any portion thereof, becomes vested in the Association, the Common Areas shall not be abandoned, partitioned, subdivided, alienated, released, transferred, hypothecated, or otherwise encumbered, without first obtaining the approval of not less than a majority of the Voting Interests. The foregoing shall not be construed to limit the authority of the Association through its Board of Directors to grant such easements over, across and through the Common Areas, as may be necessary for the effective and efficient operation of the facilities or for the general benefit of the Members and Owners. Nothing herein shall be construed to prohibit judicial partition of any Lot or Living Unit owned in co-tenancy.

8.4 **Association's Rights and Powers.** No Common Areas shall be used in violation of any rule or regulation or other requirement of the Association established pursuant to the provisions of this Declaration or the Bylaws.

8.5 **Expansion or Modification of Common Areas.** Additions or modifications to the Common Area may be made if not inconsistent with the applicable governmental permits and regulation and any amendments thereto.

9. **ASSESSMENTS.**

9.1 **Budgeting and Allocating Common Expenses.** The Association is hereby authorized to levy Base Assessments against all Living Units subject to assessment under Section 9.6 to fund the Common Expenses. The Base Assessment shall be made at a uniform rate as among all Living Units. In determining the Base Assessment rate per Living Unit, the Board may consider any assessment income expected to be generated from any additional Living Units reasonably anticipated to become subject to assessment during the fiscal year. If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined. The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements set forth in this Declaration, the Bylaws or pursuant to Florida law.

9.2 **Budgeting and Allocating Neighborhood Expenses.** At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood expenses, if any, for each Neighborhood on whose behalf Neighborhood expenses are expected to be incurred during the coming year as authorized by this Declaration or any Supplemental Declaration applicable to such Neighborhood. The budget of Neighborhood expenses shall also include any costs for additional services or a higher level of services which the Association and the Neighborhood have agreed upon and additional services not otherwise provided for. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses.

The Association is hereby authorized to levy Neighborhood Assessments equally (or otherwise as may be provided in the Neighborhood Documents) against all Living Units in the Neighborhood which are subject to assessment under Section 9.6 to fund Neighborhood expenses incurred by the Association to perform an activity or function which should have, pursuant to the Governing Documents or the governing documents of the Neighborhood Association, been performed by the Neighborhood Association. If the proposed budget for any Neighborhood is disapproved or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board may revise the budget for any Neighborhood and the amount of any Neighborhood Assessment from time to time during the year, subject to the notice requirements set forth in this Declaration, the Bylaws or pursuant to Florida law.

9.3 **Budgeting for Reserves.** The Board may, but shall not be obligated to, periodically prepare a reserve budget for the Common Areas pursuant to the Bylaws. In the event that the Board elects to fund voluntary, non-statutory reserves under this Section 9.3, the reserve budget shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

9.4 **Special Assessments.** In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire Membership, if such Special Assessment is for Common Expenses, or against the Living Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.5 **Specific Assessments.** The Association shall have the power to levy Specific Assessments against a particular Living Unit as follows:

(A) to cover the costs, including overhead and administrative costs, of providing services to Living Units upon request of an Owner pursuant to any menu of special services which may be offered by the Association. Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(B) to cover costs incurred in bringing the Living Unit or a Neighborhood of Living Units into compliance with the Governing documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Living Unit(s), their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Owner(s) written notice no less than sixty (60) days prior thereto and an opportunity for a hearing, in accordance with the Bylaws, before levying any Specific Assessment under this subsection (B).

The Association may also levy a Specific Assessment against the Living Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided the Board gives written notice no less than sixty (60) days prior to Owners representing the Neighborhood before levying any such assessment.

9.6 **Authority to Assess Owners; Time of Payment.** The Association is hereby authorized to levy assessments as provided for in this Section and elsewhere in the Governing Documents. The obligation to pay Base Assessments, Special Assessments, and Neighborhood Assessments shall commence as to each Lot or Living Unit on the first day of the month following: (a) the month in which the Lot or Living Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Section, whichever is later, and shall be disclosed in any and all contracts relating to the purchase and sale of any Lots or Living Units. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Lot or Living Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot or Living Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments, including but not limited to Base Assessments, Special Assessments, and Capital Assessments as provided in Section 9.10 of this

Declaration, at closing of the transfer of title to a Lot or Living Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, assessments shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot or Living Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

The Neighborhood Association shall be responsible for billing, collecting, and remitting all amounts due from all Owners in such Neighborhood to the Association in accordance with such procedures as may be established by the Board. Notwithstanding the Association's delegation of billing and collection to the Neighborhood Association, in the event of delinquency, the Association shall reserve all rights and powers of collection as set forth in this Section.

**9.7 Personal Obligation for Assessments.** Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with: (a) interest computed from its due date at maximum rate allowed by Florida law (currently 18% per annum), (b) late charges as determined by Board resolution subject to the limitations of Florida law, and (c) costs, fees, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot and Living Unit until paid in full. Upon a transfer of title to a Lot or Living Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments, if any, on the same basis as during the last year for which an assessment was made, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Lot or Living Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer or authorized agent setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment which may be relied upon by any person other than the Owner of the Lot or Living Unit requesting such certificate. The Association or its agents may require the advance payment of a reasonable processing fee for the issuance of such certificate.



9.8. **Lien for Assessments.** The Association shall have a lien against each Lot and Living Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Florida law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value and recorded prior to the date the Association perfects its lien but only to the extent of the lesser of: (i) one percent of the original mortgage indebtedness, or (ii) the previous twelve months' assessments levied against the Lot or Living Unit. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages on real property are foreclosed under Florida law. The Association may bid for the Lot or Living Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot or Living Unit. While a Lot or Living Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf, (b) no assessment shall be levied on it; and (c) each other Lot and Living Unit shall be charged, in addition to its usual assessment, its *pro rata* share of the assessment that would have been charged such Lot or Living Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same. The record Owner of legal title of each Lot or Living Unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while the Owner. Multiple Owners are jointly and severally liable. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any Common Area, by abandonment of the Lot or Living Unit for which the assessments are made, or by interruption in the availability of the Lot, Living Unit or Common Area for any reason whatsoever. Except as provided in the following paragraph, whenever title to a Lot or Living Unit is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments against the transferor, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee. A first mortgagee that acquires title to a Lot or Living Unit through mortgage foreclosure (or acceptance of a deed in lieu of foreclosure) in which the Association has been named as a defendant in the initial complaint, shall be liable for assessments levied against such Lot or Living Unit in the same manner as provided in the preceding paragraph unless the mortgagee is entitled to limited liability for delinquent assessments as provided above. The foregoing sentence pertaining to entitlement to limited liability shall not be construed to negate the authority of a court to order a mortgagee to pay a surcharge pursuant to 11 USC Section 506(c), or grant other relief that may be found to be applicable under federal or state law.

9.9 **Exempt Property.** The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

- (A) All Common Areas,
- (B) Any property conveyed, sold or dedicated to and accepted by any governmental authority or public utility; and
- (C) Neighborhood Common Area or Common Elements.

10. **COVENANT AND RULE ENFORCEMENT.**

10.1 **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.

10.2 **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 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(s) of the land, any construction or other Violation that may be or exist thereon. The Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal.

10.3 **Suspension of Common Area Use Rights; Fines.** The Association may suspend, for a reasonable period of time, the rights of an Owner or an Owner's tenants, guests, or invitees, or both, to use common areas and facilities, and may levy reasonable fines, not to exceed \$100 per violation, per day, up to \$2,500 for a continuing violation, against any Owner 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) Owners 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 Owner(s) or Members because of the failure of the Member to collect and pay assessments or other monetary obligations when due.

(C) Suspension of Common Area use rights shall not impair the right of a Member, Owner or tenant of a Lot or Living Unit to have vehicular and pedestrian ingress to and egress from the Lot or Living Unit, 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. The amounts so fined by the Association shall be a lien on the Owner's Unit

## 11. NEIGHBORHOOD ASSOCIATIONS.

11.1 **Enforcement of Covenants by Association.** If any Master or Neighborhood Association fails to enforce any provisions of its Master or Neighborhood Covenants, or to perform any of its duties and responsibilities thereunder, the Association may, in its sole discretion, enforce such Master or Neighborhood Covenants, and perform such duties and responsibilities, including any and all maintenance provisions, and shall be entitled to recover the costs and expenses (including attorney's fees) of such enforcement or maintenance pursuant to the provisions of this Declaration.

11.2 **Entry Rights.** Each Neighborhood Association and each Owner shall permit the Association, or any authorized agent or employee of the Association, to enter upon a Neighborhood Common Area or the Owner's Lot upon reasonable notice and at reasonable times, to carry out the provisions of this Declaration, and the entry shall not constitute a trespass. This provision shall not be construed as authorizing entry by the Association into the interior of any Living Unit except in emergency.

11.3 **Maintenance of Neighborhood Common Areas.** The Association may contract with any Neighborhood Association to provide for the maintenance and management of its Neighborhood Common Areas.

11.4 **Neighborhood Covenants.** The documents establishing or governing a Neighborhood Association shall not be inconsistent with this Declaration or its recorded exhibits, except they may establish restrictions on subjects related to the use and occupancy of the property within the Neighborhood, such as pets, parking, architectural controls, leasing and guest occupancy, that are more restrictive than those set forth in the Governing Documents.

## 12. SURFACE WATER MANAGEMENT; ENVIRONMENTAL PERMITTING.

12.1 **Establishment: Powers.** The surface stormwater runoff generated by the impervious surfaces of the improvements to the lands comprising BAY BEACH are collected, treated and remediated on the Common Areas for eventual percolation into the shallow aquifer underlying Bay Beach or discharge through outfalls into Estero Bay by a coordinated network of weirs, swales, lakes, pipes, pumps and other improvements constituting the surface water management system (the "System"). The System was designed to allow each Neighborhood to connect its surface water outfall as each Neighborhood completed its construction. It is currently operated under an Environmental Resources Permit issued by South Florida Water Management District: Permit #36-00611-S. The Association is currently the Operating Entity under the

Permit and reports to the District as to compliance with the terms of the Permit. The System exists to mitigate and treat the stormwater generated by the properties owned by the Owners and all costs associated with the System are Common Expenses of the Association. The Association shall have all powers and authority to operate the System for the benefit of the Community.

**12.2 Cross-Easements for Drainage, Access and Maintenance.** (a) BAY BEACH ASSOCIATION, INC. grants to all Neighborhood Associations and their individual constituent Owners a perpetual, non-exclusive easement for the flow and treatment of stormwater runoff over and across the Common Areas of BAY BEACH designated for such use or otherwise as comprise the System now or as it may be reconfigured or re-designed in the future.

(b) The Neighborhood Associations, on behalf of themselves and their respective constituent Owners, grant BAY BEACH ASSOCIATION, INC. a perpetual easement over, through and across their respective Common Elements for the purposes of the operation of the system, and access and maintenance of the portions of the System lying on or to be found upon the Common Elements of the Neighborhoods within BAY BEACH. No Owner or Neighborhood Association shall interfere with the operation and maintenance of the System.

### **13. ENVIRONMENTAL AREAS AND ISSUES.**

**13.1 Assignment of Responsibilities.** Within and adjacent to BAY BEACH there are various types of property such as wetlands, drainage areas, conservation areas, open spaces and buffers upon which restrictions, monitoring requirements, or other obligations may be imposed by local, state, federal or other governmental agencies. Subject to the Members' rights to consent in Section 3.12 and 3.13 herein, the Association shall accept, own, maintain, and preserve the foregoing areas in accordance with the requirements of such agencies. All such areas that are conveyed, transferred, assigned to the Association, or otherwise placed within the Association's responsibility, shall become a portion of the Common Area, and the ownership, operation, and maintenance thereof shall be a Common Expense. Alternatively, the Association may deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to another community association, tax-exempt organization, community development district, or similar type entity with which the Association shall cooperate, perform the responsibilities and obligations as set forth therein, and share in the costs.

Any of the properties and responsibilities within, adjacent to, or benefiting BAY BEACH such as wetlands, drainage areas, conservation areas, open spaces, signage, landscaping, and buffers may be included within the jurisdiction of a Community Development District (the "CDD"). The Association shall cooperate with and perform the responsibilities delegated to it by the CDD.

**13.2 Surface Water Management System.** Bay Beach is served by a surface water management system (the "System") constructed and maintained under Permit #36-00611-S from SFWMD. A copy of a portion of the Permit is attached hereto as Exhibit "F". In addition to the provisions set forth in the preceding Section 12, the following rights and responsibilities shall bind the land and accrue to the benefit of the Association and any CDD created to oversee

environmental matters including (by assignment or delegation) the operation and maintenance of the System:

(A) No structure of any kind shall be constructed or erected, nor shall an Owner or Member in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of the System reserved for, or intended by the Permit to be reserved for, drainage ways, sluiceways or for the accumulation of runoff waters, as reflected in any permits therefor, or plat or instrument of record, without the specific written permission of the Association.

(B) An Owner, Member or Neighborhood Association shall in no way deny or prevent ingress and egress by the Association, the South Florida Water Management District (or any CDD) to the System and drainage areas for maintenance or landscape purposes. The right of ingress and egress, and easements therefor are hereby specifically reserved and created in favor of the Association, the South Florida Water Management District, the CDD, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

(C) No Lot or Living Unit shall be increased in size by filling in any water retention or drainage areas on which it abuts. Neither Owners, Members nor Neighborhood Associations shall fill, dike, rip-rap, block, divert or change the established System without the prior written consent of the Association and the South Florida Water Management District.

(D) Water management for any Lot, Living Unit or Neighborhood shall be provided in accordance with the overall Permit for the Properties. Surface water drainage and management including but not limited to, storm water treatment and storage capacity, shall conform to the overall Permit requirements for the Properties and meet with the approval of the Association and, if applicable, South Florida Water Management District.

(E) Lakes and spillways in BAY BEACH are not visual amenities to the Properties, but are part of a functioning water management system. As such, the water levels in the lakes are not guaranteed, and will fluctuate from time to time and lands adjacent to them may flood or have standing water for periods of time.

(F) The use of any lake or wetland within the BAY BEACH is managed by the Association. No Owner or Member may use the lakes within any part of the Properties in any manner except as may be permitted from time to time by the Association at the Association's sole and absolute discretion. Moreover, due to their use in water management, the lakes shall not be used for any recreational purpose and fishing, swimming, wading or other personal recreational use of the lakes is specifically prohibited. Members and Owners shall cooperate in maintaining the same in a clean, attractive, pristine manner in order to be aesthetically pleasing.

(G) No boats or other watercraft powered by gasoline or diesel fuel shall be permitted on any body of water within Properties except as may be required by the Association, or the South Florida Water Management District. Boat usage is expressly limited to the maintenance of the System.

(H) The use of pesticides in any lake or wetland is prohibited, excepting only any such use by the Association.

(I) ALL PERSONS ARE WARNED THAT ALL BODIES OF WATER IN THE STATE OF FLORIDA SHOULD BE CONSIDERED ATTRACTIVE TO WILDLIFE WHICH COULD BE CONSIDERED DANGEROUS: INCLUDING ALLIGATORS, VENOMOUS SNAKES AND TURTLES. ALLIGATORS CAN BE ESPECIALLY DANGEROUS; DO NOT FEED OR APPROACH. FEEDING OR MOLESTING ALLIGATORS IS PROHIBITED BY STATE LAW: FLA. STAT. §372.667.

(J) No wells may be drilled, dug or installed within any Lot or Living Unit, Common Area or Common Element of any condominium except by the Association's written consent.

The South Florida Water Management District shall have the right to take enforcement actions, including civil actions for an injunction or penalty, against the violating party in order to compel the correction of any outstanding violations or problems with the surface water management system or conservation or mitigation areas. Each Member and Owner hereby agrees to indemnify and hold the Association, its agents and employees harmless from any and all claims, causes of action, injuries, and damages of any kind or nature, including without limitation actual attorney and paralegal fees, court costs, and other disbursements, including attorney and paralegal fees incurred on appeal, incurred by the Association as a result of such Member's or Owner's use or misuse of any of the lakes or other bodies of water (regardless of the type) within the Properties.

### 13.3 Shorelines and Conservation Areas.

**THE SHORELINES AND CONSERVATION AREAS ARE HEREBY DEDICATED AS COMMON AREAS, THEY SHALL BE THE PERPETUAL RESPONSIBILITY OF THE ASSOCIATION OR THE CDD AND MAY IN NO WAY BE ALTERED FROM THEIR NATURAL OR PERMITTED STATE. ACTIVITIES PROHIBITED WITHIN THE CONSERVATION AREAS INCLUDE, BUT ARE NOT LIMITED TO, CONSTRUCTION OR PLACING OF BUILDINGS ON OR ABOVE THE GROUND; DUMPING OR PLACING SOIL OR OTHER SUBSTANCES SUCH AS TRASH; REMOVAL OR DESTRUCTION OF TREES, SHRUBS, OR OTHER VEGETATION - WITH THE EXCEPTION OF EXOTIC/NUISANCE VEGETATION REMOVAL; EXCAVATION, DREDGING OR REMOVAL OF SOIL MATERIAL; DIKING OR FENCING; ANY OTHER ACTIVITIES DETRIMENTAL TO DRAINAGE; FLOOD CONTROL, WATER CONSERVATION, EROSION CONTROL, OR FISH AND WILDLIFE HABITAT CONSERVATION OR PRESERVATION.**

Any portions of the Common Area designated as a conservation area shall be maintained and preserved by the Association in accordance with the rules and regulations of Lee County, Florida as well as the South Florida Water Management District and any recorded conservation easement. The Association shall not, and it shall not allow any person to, undertake or perform any activity or improvements to a conservation area, or remove any native vegetation, without

the prior approval of the foregoing agencies. No excavation, placement of debris, dumping, construction, or other activity shall be permitted in a conservation area. The provisions of the subsection 13.3 shall not however, prevent the lawfully permitted placement and construction of recreational piers, pilings or docks.

**13.4 Open Space and Buffers.** Any property conveyed or dedicated to the Association which is designated as open space, landscape buffer, preserve area, or conservation area on any plat, permit, or other document recorded in the Public Records, shall be owned and maintained by the Association in a natural open condition. The Association, any Member, or any Owner shall not do anything that diminishes or destroys the open space, buffers, preserve area or conservation areas, and such areas shall not be developed for any purpose except that which improves or promotes the use and enjoyment of such areas as open space.

Any landscape buffer installed and maintained in the Common Area under requirements of Lee County ordinances, or the requirements of any other governmental entity, and which is located in an easement area shall be permanently maintained by the Association. In the event that any portion of the landscaping consisting of trees and shrubs in such easement areas are removed, the Association shall replace the trees and shrubs with like size and species as a Common Expense of the Association.

**13.5 Effluent Disposal and Water Supply.** By the act of purchasing or occupying a Lot or Living Unit within the Properties, all Owners understand and irrevocably consent to the possibility of irrigation of the Common Area and other areas within the Properties with treated effluent, provided that the effluent emanates from an approved treatment plant with a current operating permit from the State of Florida, Department of Environmental Protection, or other such agency with jurisdiction.

OWNERS AND MEMBERS ARE HEREBY ADVISED THAT THE EFFLUENT AND NON-POTABLE WATER EMANATING FROM THE NON-POTABLE WATER SYSTEMS THROUGHOUT THE PROPERTIES MAY NOT BE SAFE OR APPROVED FOR HUMAN OR ANIMAL CONSUMPTION. ONLY THE POTABLE WATER AVAILABLE AT THE PROPERTIES SHALL BE CONSUMED. Each Owner and Neighborhood Association shall be required to connect the water lines on his Lot, Living Unit or Neighborhood Common Area to the lines of the utility provider(s) providing service within the Properties. The Association, its designees, successors or assigns shall have the exclusive right to develop and utilize the ground and surface water resources of the Common Areas for any legal purpose, including the distribution and use of such water within and beyond the Properties. The conveyance of any Lot or Living Unit to an Owner does not include the right to develop or utilize the ground or surface water resources within such Lot or Living Unit or parcel or the right to use or extract any of the subsurface oil, gas, or minerals within such Lot, Living Unit or parcel.

**13.6 Environmental Permits and Reporting.** The Association shall be responsible for monitoring, maintaining, repairing, reporting and performing obligations including providing evidence of financial assurances for the performance of said obligations arising out of any environmental permits. An Owner shall in no way deny or prevent ingress and egress by the Association to areas necessary for the performance of such obligations arising under such

environmental permits. The right of ingress and egress, and easements therefor, are hereby specifically reserved and created in favor of the Association, any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress for purposes related to any environmental permits.

#### 14. **INSURANCE.**

14.1 **Duty to Insure and to Reconstruct.** Each Owner and/or Neighborhood Association, as applicable, shall at all times maintain property insurance on his Living Unit 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 is destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the Owner(s) 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.

14.2 **Failure to Reconstruct.** If the Owner of any Lot or Living Unit or any such Neighborhood Association having responsibility for insurance and reconstruction of Neighborhood improvements (collectively the “Responsible Party”) fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 14.1 above, the Association shall give written notice to the responsible party of his/its default. If the Responsible Party 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 Responsible Party, as such Responsible Party’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 Responsible Party 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 non-reconstructing Owner(s) any costs not paid by insurance, and shall have a lien on the Lot and Living Unit to secure payment.

14.3 **Association’s Right of Entry.** For the purpose of performing the duties authorized by this Section 14, the Association, through its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner, to enter upon the Lot or Unit at reasonable hours.

14.4 **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.

**14.5 Required Coverage.** The Association shall maintain adequate liability insurance and casualty insurance covering all buildings and other insurable improvements (if any) within the Common Areas, with coverage equal to the maximum insurable replacement value thereof, as determined annually by the Board of Directors; such insurance to afford 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.

(D) Fidelity Bonding. Adequate fidelity bond coverage for all individuals having control of or access to Association funds.

(E) Directors and Officers Liability

(F) Flood insurance on any Association-owned improvements other than roads and the Surface Water Management System (if not included in (A) above); and

(G) Medical Payments.

**14.6 Description of Coverage.** A detailed summary of the coverage included in the Association’s policies shall be available for each Member and Owner upon request. All Association insurance policies shall be available for inspection by Members and Owners upon request.

**14.7 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 Members, 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.

**14.8 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.

14.9 **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.

14.10 **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.

14.11 **Reconstruction of Common Areas.** Damaged improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Voting Interest vote not to repair or reconstruct. Except as otherwise provided in any written agreement between Association and Association's Mortgagee, no Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed. If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of the Members' constituent Owners and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot or Living Unit. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Membership, levy Special Assessments to cover the shortfall.

## 15. NON-LIABILITY OF ASSOCIATION.

15.1 **Non-Liability of Association.** The Association shall not be liable if security services are not provided.

**ALL PERSONS USING OR OCCUPYING ANY PORTION OF THE COMMUNITY ARE RESPONSIBLE FOR THEIR OWN SECURITY AND THE SECURITY OF THEIR OWN PROPERTY.**

**THE ASSOCIATION IS NOT AN INSURER OR GUARANTOR OF SECURITY FOR PERSONS OR PROPERTY WITHIN THE COMMUNITY.**

**THE ASSOCIATION SHALL NOT BE LIABLE IN ANY WAY ON ACCOUNT OF LOSS, DAMAGE OR INJURY RESULTING FROM LACK OF SECURITY, OR THE LACK OF EFFECTIVENESS OF ANY SECURITY MEASURES UNDERTAKEN. THE ASSOCIATION MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE PROTECTION SYSTEM AND/OR BURGLAR ALARM SYSTEMS, OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE BAY BEACH COMMUNITY.**

## 15.2 Miscellaneous.

January 15, 2019  
Voting Draft #5

*Amended and Restated*  
*Declaration of Covenants, Conditions and Restrictions for*  
*BAY BEACH*  
*Page 34 of 40*

(A) Association shall have the right and the power to regulate and control the external design and appearance of all Common Areas in such a manner as to:

(1) Promote a quality environment which will preserve the value of the Living and Recreational Units; and

(2) Foster the attractiveness and functional utility of the Community as a place to live and play, including a harmonious relationship among structure, vegetation and topography.

(B) Any use of Common Areas other than the uses intended pursuant to this Declaration shall be subject to the prior written approval of the Association.

**15.3 Management Contract.** Association shall have the right and the power to enter into professional management contracts on behalf of the Association.

**15.4 Association's Inaction.** Neither the execution and recordation of this Amended and Restated Declaration, nor the creation of any other association or other entity, nor the recordation of any other instrument subjecting any land in BAY BEACH to protective covenants, conditions or restrictions or other provisions, shall obligate or require:

(A) Association to grant any right, power, duty or privilege of any nature or kind to another association or to any other entity; or

(B) the Association or any other entity, to perform any act permitted by this Declaration or by any other recorded instrument, or to enforce any covenant, condition, restriction or other provision hereof or thereof, or to do anything which it does not, in its sole discretion, elect to do.

## **16. RIGHTS OF MORTGAGEES.**

**16.1 Notice of Casualty or Condemnation.** In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of any significant portion of the Common Areas, the record holder of any first mortgage on the Common Areas who has requested such notice in writing, shall be entitled to written notice.

**16.2 Right to Inspect Documents and Books.** The Association shall make available to Institutional Mortgagees requesting same the current Governing Documents and Rules and Regulations of the Association and financial statements of the Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be at the expense of the mortgagee requesting same. The Association is under no obligation to research and produce documents upon request as the rights conferred under this subsection are limited solely to a mortgagee's right to inspect.

16.3 **Financial Statement.** Any Institutional Mortgagee is entitled, upon written request, to a copy of the financial statements of the Association for the immediately preceding fiscal year.

17. **DURATION OF COVENANTS; AMENDMENT.**

17.1 **Duration of Covenants.** The covenants, conditions, easements and restrictions in this Declaration shall run with and bind the property within the Community, and shall inure to the benefit of and be enforceable by the Association and any Member or Owner, their respective legal representatives, heirs, successors, and assigns:

(a) for an initial period to expire on the ninety-ninth (99th) anniversary of the date of recording this Amended and Restated Declaration in the Public Records of Lee County, Florida. Upon the expiration of said initial period, this Declaration shall be automatically renewed and extended for an unlimited number of successive ten (10) year periods, this Declaration as it may be amended being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, until terminated as provided below; and

(b) The covenants and restrictions in this Amended and Restated Declaration were given, in part, to secure and comply with terms and conditions of governmental permitting: the development orders allowing the BAY BEACH Community to be developed, environmental permitting and surface water management, and are intended to survive any attempt to render them ineffective under the Marketable Record Title Act (Fla. Stat. Ch. 712, *et seq.*).

17.2 **Termination.** This Declaration may be terminated at any time after the initial period if not less than eighty percent (80 %) of the Voting Interests of the Association vote in favor of terminating this Declaration. Written notice of any meeting at which a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least forty-five (45) days in advance of said 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 at which the resolution was adopted, the date that notice of the meeting was given, the total number of votes cast in favor of the resolution, and the total number of votes cast against the resolution. The certificate shall be recorded in the public records of the County, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration. The termination shall be effective on the date the Certificate is recorded in the public records.

17.3 **Amendments.** This Declaration may be amended at any time. Except as otherwise specifically provided, amendments to this Declaration may be proposed by the Board of Directors or by written petition of at least one-fourth (1/4th) of the voting interests.

17.4 **Procedure.** Upon any amendment or amendments to this Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the Members not later than the next annual meeting for which proper notice can be given.

17.5 **Vote Required.** Except as otherwise provided by law, or by specific provision of this Declaration, a proposed amendment to this Declaration shall be adopted if it is approved at an annual or special meeting called for the purpose by at least sixty-six and two-thirds (66-2/3rds) of the total Voting Interests (represented by Voting Representatives) or by proxy and voting, provided that notice of the text of each proposed amendment was sent to the Members with notice of the meeting.

17.6 **Certificate; Recording.** A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be executed by officers 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. The certificate must set forth the location in the public records of the County where the original Declaration was recorded.

17.7 **Proviso.** Regardless of any other provision in this Declaration, no amendment of the governing documents by any person, and no termination or amendment of this Declaration, can be effective to change the Association's responsibilities if any for the Stormwater Management System, the Conservation Areas, unless the amendment has been consented to in writing by the SFWMD. Any proposed amendment which would affect the Stormwater Management System, or the Conservation Areas, must be submitted to the SFWMD for a determination of whether the amendment necessitates a modification of the surface water management permit. If the surface water management system is administered by the CDD, any such amendment shall likewise require the consent of the CDD.

17.8 **Exceptions.** Wherever in this Declaration, or otherwise under Florida law, the consent, approval, or affirmative vote of two-thirds (2/3rds) or more of the Voting Interest of the Members is required to authorize or take a particular action, the language requiring the particular number of consents, approvals, or votes may not be amended except by the same vote required to authorize or take the action.

17.9 **Limitations.** No amendment to any of the Governing Documents shall be effective to materially and adversely change any Member's voting rights as set forth in these Governing Documents, unless all Members affected first consent in writing to said amendment.

17.10 **Exhibits.** The following Exhibits to this Amended and Restated Declaration are attached and incorporated herein by this reference:

- Exhibit A: Legal Description of the lands comprising BAY BEACH;
- Exhibit B: Legal Description of the Recreational Parcel and lands comprising the Surface Water Management System;
- Exhibit C: Amended and Restated Articles of Incorporation of the Association;
- Exhibit D: Amended and Restated Bylaws of the Association;
- Exhibit E: Rules and Regulations of the Association;
- Exhibit F: Portions of Permit #36-00611-S issued by South Florida Water Management District; and
- Exhibit G: Submerged Lands Lease from Florida's Trustees of the Internal

Improvement Trust Fund dated April 4, 2013 (Community Fishing Pier);  
Exhibit H: Easement for Gulf walkway access and Beach Hut.

## 18. GENERAL PROVISIONS.

18.1 **Other Documents.** Declarant (the Association) and the Neighborhood Associations shall have such rights, powers, duties, and privileges as are set forth in the Governing Documents and Neighborhood Covenants; this Amended and Restated Declaration and its provisions shall otherwise prevail in all events of conflict.

18.2 **Severability.** If any covenant, condition, restriction or other provision of this Declaration is held to be invalid in whole or in part by any court of competent jurisdiction, the holding shall in no way affect the validity of the remaining provisions of this Declaration, all of which shall remain in full force and effect.

18.3 **Merger or Consolidation of Associations.** Upon a merger or consolidation of this Association with another corporation as provided by law, the Association's rights, obligations and property may, by operation of law, be transferred to another surviving or consolidated association or the CDD, alternatively, remain the rights, obligations and property of the Association as the surviving corporation. The surviving or consolidated corporation or CDD may administer this Declaration within the existing property together with the covenants and restrictions established upon any other property, as one common scheme. Notwithstanding the foregoing, merger or consolidation of the Association with any other party including a CDD shall have no effect on altering or changing any granted power in the charter of the CDD.

18.4 **Dissolution.** If the Association is dissolved other than by a merger or consolidation as provided for above, each Lot or Living Unit shall continue to be subject to the assessments provided for in Section 9, and each Owner shall continue to be personally obligated to Declarant or the successor or assigns of the Association (as the case may be) for such assessment to the extent that such assessments are required to enable Declarant or any such successors or assigns acquiring any real property previously owned by the Association to properly maintain, operate and preserve it.

18.5 **Gender; Number.** Wherever in this Declaration the context so requires, the singular number shall include the plural, and the converse; and the use of any gender shall be deemed to include all genders.

### 18.6 Notices.

(A) To the Association. Notices to the Association shall be in writing and delivered or mailed to the Association at its principal place of business as shown by the records of the Secretary of the State of Florida, or at any other location designated by the Association.

(B) To the Members. Notices to the Members shall be in writing and delivered or mailed to the Member at its principal place of business as shown by the records of the Secretary of the State of Florida, or at any other location designated by the Member.

(C) To Owners. Notices to any Owner as may be required herein shall be in writing and shall be delivered or mailed to the Owner at his last known address, or at the address shown on the Lee County Property Appraiser's website for the delivery of tax bills by mail.

(D) To CDD. Notices to the CDD as may be required herein, shall be in writing and shall be delivered or mailed to the CDD at its principal place of business as shown by the records of the State of Florida Department of Community Affairs.

**18.7 Construction.** The provisions of this Declaration shall be liberally interpreted and construed to provide maximum flexibility consistent with the general development plan and the purposes set forth herein, including the premises.

**18.8 Captions, Headings and Titles.** Captions, headings, capitalization of certain words, and titles inserted throughout the Governing Documents are for convenience only, and in no way shall such captions, headings or titles define, limit, or in any way affect the subject matter, content or interpretation of the terms and provisions of the Governing Documents.

**18.9 Interpretation.** The Board of Directors of the Association shall be responsible for interpreting the provisions of the Governing Documents. Their interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by Association legal counsel that an interpretation adopted by the Board is not wholly unreasonable shall conclusively establish the validity of such interpretation.

**18.10 Applicable Statutes.** The validity, application, and construction of this Declaration and its exhibits shall be governed by the Laws of Florida, as they exist on the date of recording this Declaration and as they may be amended from time to time.

**18.11 Rights Limited to Express Terms of Governing Documents.** Every Owner and Member of the Association acknowledges that his/her or its rights, duties or obligations are limited to the express terms of the Declaration, Articles of Incorporation, Bylaws and the Rules and Regulations (Governing Documents). Every prospective Owner should make his decision to purchase within BAY BEACH based upon these representations as set out in the Governing Documents which contain the entire understanding of the parties and no prior or present agreements or representation shall be binding upon the Association unless included in the Governing Documents.

Signed, Sealed and Delivered in the Presence of:

\_\_\_\_\_  
*Signature of first witness*

\_\_\_\_\_  
*Printed name of first witness*

**BAY BEACH ASSOCIATION, INC.,**  
***a Florida corporation not-for-profit***

\_\_\_\_\_  
*Signature of second witness*

By: \_\_\_\_\_  
**Tom Taege, President**

\_\_\_\_\_  
*Printed name of second witness*

STATE OF FLORIDA )  
                                  ) §  
COUNTY OF LEE    )

**The foregoing** Declaration was acknowledged before me this \_\_\_\_\_ day of \*, 2019, by **Tom Taege** as President of BAY BEACH ASSOCIATION, INC., a Florida not-for-profit corporation on behalf of said corporation. He [ ] is personally known to me or [ ] has produced identification of: \_\_\_\_\_ .

*(Seal)*

\_\_\_\_\_  
**Notary Public:** *State of Florida At Large*



## EXHIBIT "A"

### BAY BEACH - LEGAL DESCRIPTION:

A TRACT OR PARCEL OF LAND LYING IN GOVERNMENT LOTS 2 AND 3, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, ESTERO ISLAND. LEE COUNTY. FLORIDA; SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF "SANTA MARIA RESORT CONDOMINIUM", AS DESCRIBED IN OFFICIAL RECORDS BOOK 1739, PAGE 295 (ALL RECORDED INSTRUMENTS REFERENCED HEREIN ARE RECORDED IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.). SAID NORTHWEST CORNER OF "SANTA MARIA RESORT CONDOMINIUM" LIES ON THE EASTERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD (80-FOOT RIGHT-OF-WAY); THENCE S 18°34'20" E ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 210.44 FEET TO AN INTERSECTION WITH THE NORTH LINE OF GOVERNMENT LOT 3 AND THE POINT-OF-BEGINNING OF THIS DESCRIPTION; THENCE N 89°11'07" E, ALONG SAID NORTH LINE OF GOVERNMENT LOT 3, A DISTANCE OF 730.30 FEET TO AN INTERSECTION WITH THE MOST WESTERLY BOUNDARY LINE OF PHASE 9 OF "ROYAL PELICAN TOWNHOUSE CONDOMINIUM", AS RECORDED IN OFFICIAL RECORDS BOOK 1861, PAGE 4140; THENCE ALONG THE BOUNDARY OF SAID "ROYAL PELICAN TOWNHOUSE CONDOMINIUM" FOR THE NEXT FOURTEEN (14) COURSES: N 19°55'51" W A DISTANCE OF 75.79 FEET; THENCE N 79°17'38" E A DISTANCE OF 79.13 FEET; THENCE N 19°32'02" W A DISTANCE OF 224.22 FEET; THENCE N 19°44'01" W A DISTANCE OF 555.45 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE ALONG AN ARC OF SAID CURVE, HAVING A RADIUS OF 29.80 FEET, A CENTRAL ANGLE OF 81°56'17" AND WHOSE CHORD BEARS N 21°14'08" E FOR A DISTANCE OF 39.08 FEET, HAVING AN ARC LENGTH OF 42.62 FEET; THENCE N 62°12'16" E ALONG A TANGENT LINE, A DISTANCE OF 51.89 FEET; THENCE N 83°26'57" E A DISTANCE OF 185.14 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE ALONG AN ARC OF SAID CURVE, HAVING A RADIUS OF 37.45 FEET, A CENTRAL ANGLE OF 77°32'13" AND WHOSE CHORD BEARS S 57°46'54" E FOR A DISTANCE OF 46.90 FEET, HAVING AN ARC LENGTH OF 50.68 FEET; THENCE S 19°00'47" E ALONG A TANGENT LINE, A DISTANCE OF 70.86 FEET; THENCE S 18°42'33" E A DISTANCE OF 122.86 FEET; THENCE S 18°38'02" E A DISTANCE OF 309.40 FEET; THENCE S 18°42'25" E A DISTANCE OF 320.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE ALONG AN ARC OF SAID CURVE, HAVING A RADIUS OF 30.16 FEET, A CENTRAL ANGLE OF 72°01'38" AND WHOSE CHORD BEARS S 54°43'14" E FOR A DISTANCE OF 35.47 FEET, HAVING AN ARC LENGTH OF 37.91 FEET; THENCE N 89°15'57" E A DISTANCE OF 48.80 FEET TO THE MOST WESTERLY CORNER OF TRACT A-1 OF "HIBISCUS POINT CONDOMINIUM" AS RECORDED IN OFFICIAL RECORDS BOOK 2361, PAGE 1855; THENCE ALONG THE BOUNDARY OF SAID "HIBISCUS POINT CONDOMINIUM" AND A SEAWALL, FOR THE NEXT TWELVE (12) COURSES; N 89°11'33" E A DISTANCE OF 46.00 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE ALONG AN ARC OF SAID CURVE, HAVING A RADIUS OF 14.50 FEET, A CENTRAL ANGLE OF 108°46'21" AND

WHOSE CHORD BEARS N 34°57'05" E FOR A DISTANCE OF 23.53 FEET, HAVING AN ARC LENGTH OF 28.00 FEET; THENCE N 19°36'48" W A DISTANCE OF 85.00 FEET; THENCE N 19°21'21" W, A DISTANCE OF 738.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE ALONG AN ARC OF SAID CURVE, HAVING A RADIUS OF 38.00 FEET, A CENTRAL ANGLE OF 107°39'50" AND WHOSE CHORD BEARS N 34°28'34" E FOR A DISTANCE OF 61.35 FEET, HAVING AN ARC LENGTH OF 71.00 FEET; THENCE N 88°18'29" E A DISTANCE OF 264.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE ALONG AN ARC OF SAID CURVE, HAVING A RADIUS OF 26.00 FEET, A CENTRAL ANGLE OF 72°49'17" AND WHOSE CHORD BEARS S 55°16'53" E FOR A DISTANCE OF 30.87 FEET, HAVING AN ARC LENGTH OF 33.00 FEET; THENCE S 18°52'14" E A DISTANCE OF 274.00 FEET; THENCE S 18°36'39" E A DISTANCE OF 275.00 FEET; THENCE S 18°56'53" E A DISTANCE OF 320.00 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE ALONG AN ARC OF SAID CURVE, HAVING A RADIUS OF 11.50 FEET, A CENTRAL ANGLE OF 72°18'07" AND WHOSE CHORD BEARS S 55°32'53" E FOR A DISTANCE OF 13.42 FEET, HAVING AN ARC LENGTH OF 15.00 FEET; THENCE N 88°45'00" E A DISTANCE OF 58.00 FEET TO THE MOST WESTERLY CORNER OF PHASE 1 OF "CASA MARINA CONDOMINIUM" AS RECORDED IN OFFICIAL RECORD BOOK 2188, PAGE 2851; THENCE ALONG THE BOUNDARY OF SAID "CASA MARINA CONDOMINIUM" FOR THE NEXT TWELVE (12) COURSES; N 89°13'11" E A DISTANCE OF 44.94 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE ALONG AN ARC OF SAID CURVE, HAVING A RADIUS OF 12.50 FEET, A CENTRAL ANGLE OF 107°00'45" AND WHOSE CHORD BEARS N 35°42'48" E FOR A DISTANCE OF 20.10 FEET, HAVING AN ARC LENGTH OF 23.35 FEET; THENCE N 17°47'34" W A DISTANCE OF 126.76 FEET; THENCE N 20°00'46" W A DISTANCE OF 113.46 FEET; THENCE N 21°29'35" W A DISTANCE OF 625.55 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE ALONG AN ARC OF SAID CURVE, HAVING A RADIUS OF 18.00 FEET, A CENTRAL ANGLE OF 111°33'55" AND WHOSE CHORD BEARS N 34°17'23" E FOR A DISTANCE OF 25.62 FEET, HAVING AN ARC LENGTH OF 35.05 FEET, THENCE S 89°55'41" E A DISTANCE OF 278.25 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE ALONG AN ARC OF SAID CURVE, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 71°09'00" AND WHOSE CHORD BEARS S 54°21'11" E FOR A DISTANCE OF 29.09 FEET, HAVING AN ARC LENGTH OF 31.05 FEET; THENCE S 18°46'40" E A DISTANCE OF 676.25 FEET; THENCE S 12°31'21" E A DISTANCE OF 179.05 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE ALONG AN ARC OF SAID CURVE, HAVING A RADIUS OF 18.50 FEET, 5 CENTRAL ANGLE OF 85°55'05" AND WHOSE CHORD BEARS S 55°28'53" E FOR A DISTANCE OF 25.21 FEET, HAVING AN ARC LENGTH OF 27.74 FEET; THENCE N 81°33'34" E A DISTANCE OF 54.26 FEET TO AN INTERSECTION WITH THE WESTERLY BOUNDARY LINE OF "HARBOUR POINTE CONDOMINIUM" AS RECORDED IN OFFICIAL RECORDS BOOK 1650, PAGE 1600, THENCE ALONG THE BOUNDARY OF SAID "HARBOUR POINTE CONDOMINIUM" FOR THE NEXT SIX (6) COURSES; N 18°52'24" W A DISTANCE OF 965.59 FEET; THENCE N 89°11'00" E A DISTANCE OF 330.00 FEET; THENCE S 01°28'44" W A DISTANCE OF 100.94 FEET; THENCE S 22°01'35" E A DISTANCE OF 321.32 FEET; THENCE S 27°57'44" E A DISTANCE OF 119.90 FEET; THENCE S 32°38'55" E A DISTANCE OF 208.83 FEET TO THE MOST NORTHERLY CORNER OF "THE PALMS OF

BAY BEACH PHASE 2 CONDOMINIUM” AS RECORDED IN OFFICIAL RECORDS BOOK 1227, PAGE 991; THENCE ALONG THE BOUNDARY OF SAID “THE PALMS OF BAY BEACH PHASE 2 CONDOMINIUM” FOR THE NEXT TWO (2) COURSES: S 32°38’55” E A DISTANCE OF 27.16 FEET; THENCE S 46°14’58” E A DISTANCE OF 185.62 FEET TO THE MOST NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN OFFICIAL RECORDS BOOK 3674, PAGE 4424; THENCE ALONG THE BOUNDARY OF SAID CERTAIN PARCEL FOR THE NEXT SIXTEEN (16) COURSES: S 55°36’12” E A DISTANCE OF 3.48 FEET; THENCE S 55°40’07” E A DISTANCE OF 15.95 FEET; THENCE S 61°54’49” E A DISTANCE OF 95.09; THENCE S 59°20’27” E A DISTANCE OF 50.10 FEET; THENCE S 41°17’24” E A DISTANCE OF 13.40 FEET; THENCE S 12°04’43” E A DISTANCE OF 17.40 FEET THENCE S 02°43’18” E A DISTANCE OF 14.36 FEET; THENCE S 67°05’07” W. A DISTANCE OF 39.30 FEET; THENCE N 87°03’10” W A DISTANCE OF 22.88 FEET THENCE S 80°44’08” W A DISTANCE OF 45.34 FEET; THENCE S 88°47’40” W A DISTANCE OF 94.26 FEET; THENCE S 48°40’42” W A DISTANCE OF 14.98 FEET; THENCE S 12°45’21” E A DISTANCE OF 12.35 FEET; THENCE S 69°38’02” E A DISTANCE OF 17.29 FEET; THENCE S 65°33’47” E A DISTANCE OF 60.69 FEET; THENCE S 35°41’00” W A DISTANCE OF 17.18 FEET TO THE MOST NORTHERLY CORNER OF “THE PALMS OF BAY BEACH, PHASE 1 CONDOMINIUM”; THENCE S 53°55’25” E ALONG THE NORTHEASTERLY BOUNDARY OF SAID “THE PALMS OF BAY BEACH, PHASE 1 CONDOMINIUM”, AS RECORDED IN OFFICIAL RECORDS BOOK 1134, PAGE 1461, A DISTANCE OF 291.59 FEET TO THE MOST NORTHERLY CORNER OF “THE PALMS OF BAY BEACH, PHASE 3 CONDOMINIUM” AS RECORDED IN OFFICIAL RECORD BOOK 1266, PAGE 2149; THENCE S 57°56’34” E ALONG THE NORTHEASTERLY BOUNDARY LINE OF SAID “THE PALMS OF BAY BEACH, PHASE 3 CONDOMINIUM” A DISTANCE OF 372.87 FEET; THENCE S 33°51’38” W ALONG THE EASTERLY BOUNDARY OF “THE PALMS OF BAY BEACH, PHASE 3 CONDOMINIUM” A DISTANCE OF 6.37 FEET TO AN INTERSECTION WITH THE MEAN HIGH WATERLINE AS DESCRIBED IN OFFICIAL RECORDS BOOK 3399, PAGE 927; THENCE ALONG THE SAID DESCRIBED MEAN HIGH WATERLINE FOR THE NEXT FIFTY-NINE (59) COURSES; THENCE S 49°22’19” E A DISTANCE OF 35.02 FEET; THENCE S 57°15’00” E A DISTANCE OF 40.41 FEET; THENCE S 66°41’10” E A DISTANCE OF 97.42 FEET; THENCE S 59°57’17” E A DISTANCE OF 186.89 FEET; THENCE S 71°54’56” E A DISTANCE OF 232.09 FEET; THENCE S 73°32’03 E A DISTANCE OF 142.56 FEET; THENCE S 65°56’34” E A DISTANCE OF 89.65 FEET; THENCE N 51°24’41” E A DISTANCE OF 45.62 FEET; THENCE S 71°28’29” E A DISTANCE OF 38.27 FEET; THENCE N 74°10’37” E A DISTANCE OF 127.6 FEET; THENCE S 87°24’35” E A DISTANCE OF 9.22 FEET; THENCE S 87°24’35” E A DISTANCE OF 85.82 FEET; THENCE S 86°54’56” E A DISTANCE OF 164.92 FEET; THENCE S 74°29’55” E A DISTANCE OF 131.01 FEET; THENCE N 73°45’32” E A DISTANCE OF 160.92 FEET; THENCE N 83°11’12” E A DISTANCE OF 107.29 FEET; THENCE N 80°12’43” E A DISTANCE OF 95.61 FEET; THENCE S 84°10’58” E A DISTANCE OF 144.81 FEET; THENCE S 58°06’20” E A DISTANCE OF 54.05 FEET; THENCE S 07°20’47” E A DISTANCE OF 28.39 FEET; THENCE S 09°37’17” W A DISTANCE OF 16.21 FEET; THENCE S 15°23’33” E A DISTANCE OF 16.11 FEET; THENCE S 16°40’21” W A DISTANCE OF 14.26 FEET; THENCE N 67°04’01” W A DISTANCE OF 36.53 FEET; THENCE S 46°01’40” W A DISTANCE OF 16.81 FEET;

THENCE S 12°13'48" E A DISTANCE OF 92.23 FEET; THENCE S 04°42'34" W A DISTANCE OF 47.49 FEET; THENCE S 37°06'29" W A DISTANCE OF 52.85 FEET; THENCE S 38°18'22" W A DISTANCE OF 214.90 FEET; THENCE S 56°37'50" W A DISTANCE OF 84.85 FEET; THENCE S 74°36'20" W A DISTANCE OF 224.68 FEET; THENCE S 53°06'20" W A DISTANCE OF 94.35 FEET; THENCE S 78°26'54" W A DISTANCE OF 94.35 FEET; THENCE S 89°06'02" W A DISTANCE OF 109.65 FEET; THENCE S 81°28'06" W A DISTANCE OF 216.31 FEET; THENCE N 82°29'51" W A DISTANCE OF 104.65 FEET; THENCE N 84°44'49" W A DISTANCE OF 136.81 FEET; THENCE N 79°42'51" W A DISTANCE OF 116.01 FEET; THENCE N 83°44'01" W A DISTANCE OF 11601 FEET; THENCE N 83°44'01" W A DISTANCE OF 50.20 FEET; THENCE N 85°34'06" W A DISTANCE OF 11.21 FEET; THENCE N 81°27'40" W A DISTANCE OF 58.59 FEET; THENCE N 83°59'17" W A DISTANCE OF 173.98 FEET THENCE N 57°06'30" W A DISTANCE OF 144.88 FEET THENCE N 68°36'56" W A DISTANCE OF 152.22 FEET THENCE N 64°02'29" W A DISTANCE OF 131.27 FEET; THENCE N 61°21'06" W A DISTANCE OF 169.16 FEET THENCE N 73°25'42" W A DISTANCE OF 148.86 FEET; THENCE N 89°33'46" W A DISTANCE OF 128.42 FEET; THENCE N 74°26'10" W A DISTANCE OF 169.75 FEET; THENCE S 68°45'06" W A DISTANCE OF 146.04 FEET; THENCE N 85°57'41" W A DISTANCE OF 187.13 FEET; THENCE N 53°46'36" W A DISTANCE OF 161.42 FEET; THENCE N 60°30'09" W A DISTANCE OF 36.70 FEET; THENCE S 89°15'12" W A DISTANCE OF 52.34 FEET; THENCE S 42°49'34" W A DISTANCE OF 74.65 FEET; THENCE S 11°58'01" W A DISTANCE OF 120.90 FEET; THENCE S 04°29'30" W A DISTANCE OF 83.98 FEET; THENCE S 24°45'41" E, A DISTANCE OF 63.42 FEET TO AN INTERSECTION WITH THE NORTH LINE OF "UNIT 1 - LAGUNA SHORES", AS RECORDED IN PLAT BOOK 9, PAGE 29, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S 89°11'46" W ALONG THE NORTH LINE OF SAID "UNIT 1", AND ALSO THE NORTH LINE OF "ISLAND SANDS CONDOMINIUM" AS RECORDED IN OFFICIAL RECORDS BOOK 1909, PAGE 695 OF SAID PUBLIC RECORDS, A DISTANCE OF 378.54 FEET, THENCE N 37°42'14" W ALONG THE NORTHEASTERLY BOUNDARY OF SAID "ISLAND SANDS" A DISTANCE OF 231.23 FEET TO THE MOST NORTHERLY CORNER OF SAID "ISLAND SANDS"; THENCE S 52°17'46" W ALONG THE NORTHWESTERLY BOUNDARY OF SAID "ISLAND SANDS", AND ALSO THE NORTHWESTERLY BOUNDARY OF "TROPICAL SANDS RESORT CONDOMINIUM" AS RECORDED IN OFFICIAL RECORDS BOOK 1679, PAGE 1964, SAID PUBLIC RECORDS, A DISTANCE OF 450.96 FEET TO AN INTERSECTON WITH THE NORTHEASTERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD (80-FOOT RIGHT-OF-WAY); THENCE ALONG SAID RIGHT-OF-WAY LINE FOR THE NEXT FOUR (4) COURSES; N 37°48'38" W A DISTANCE OF 727.59 FEET; THENCE N 37°49'24" W A DISTANCE OF 18.87 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE ALONG AN ARC OF SAID CURVE, HAVING A RADIUS OF 2251.83 FEET; A CENTRAL ANGLE OF 19°15'04" AND WHOSE CHORD BEARS N 28°11'52" W FOR A DISTANCE OF 753.06 FEET; HAVING AN ARC LENGTH OF 756.60 FEET; THENCE N 18°34'20" W A DISTANCE OF 45.30 FEET TO THE SAID POINT-OF-BEGINNING OF THIS DESCRIPTION.

LINE	BEARING	DISTANCE
L1		
L2		
L3		
L4	N 18°55'55" W	76.78'
L5	N 79°17'38" E	78.13'
L6	N 02°12'16" E	51.89'
L7	S 19°00'47" E	70.96'
L8	S 18°42'33" E	122.95'
L9	N 89°19'57" E	48.00'
L10	N 89°11'33" E	85.00'
L11	N 19°36'48" W	85.00'
L12	N 05°45'00" E	58.00'
L13	N 89°13'11" E	44.94'
L14	N 17°47'34" W	126.76'
L15	N 20°02'46" W	113.46'
L16	N 01°33'34" E	54.26'
L17	S 01°28'41" W	100.94'
L18	S 27°57'44" E	119.90'
L19	S 32°39'55" E	27.16'
L20	N 74°26'10" W	169.75'
L21	S 88°45'06" W	146.04'
L22	N 85°52'41" W	187.13'
L23	N 53°46'36" W	161.42'
L24	N 60°30'07" W	36.70'
L25	S 03°15'17" W	52.34'
L26	S 42°48'34" W	74.65'
L27	S 11°58'01" W	120.90'
L28	S 04°29'30" W	63.98'
L29	S 24°45'41" E	63.42'
L30	N 37°49'24" W	18.87'
L31	N 18°34'20" W	45.30'

**ABBREVIATIONS**  
 C1 = DESIGNATION OF CURVE SHOWN IN TABLE  
 CL = CENTERLINE  
 INSTR. = INSTRUMENT  
 L1 = DESIGNATION OF LINE SHOWN IN TABLE  
 O.R. = OFFICIAL RECORDS  
 PG. = PAGE  
 POB = POINT OF BEGINNING  
 POC = POINT OF COMMENCEMENT  
 RAW = RIGHT-OF-WAY

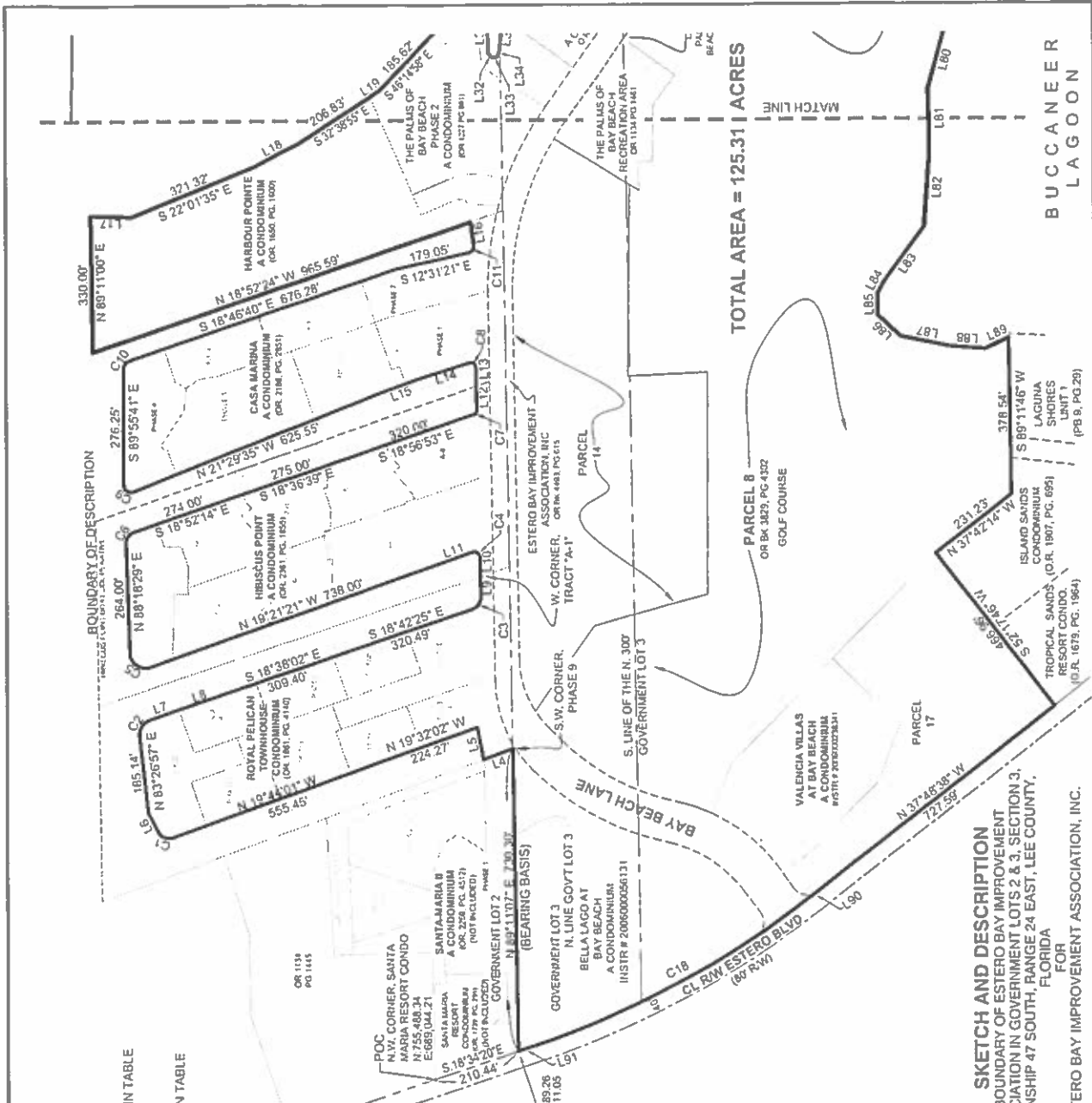


THIS IS NOT A SURVEY!

CURVE	RADIUS	CENTRAL ANGLE	CHORD LENGTH	CHD. BEARING	ARC LENGTH
C1	29.90'	81°55'17"	39.08'	N 21°14'08" E	42.62'
C2	37.45'	77°32'13"	46.90'	S 57°45'54" E	50.68'
C3	30.16'	72°01'38"	35.47'	S 54°43'14" E	37.91'
C4	14.50'	108°48'21"	23.57'	N 34°57'05" E	28.00'
C5	38.00'	107°39'50"	61.35'	N 34°28'34" E	71.00'
C6	26.00'	72°49'17"	30.87'	S 55°16'53" E	33.00'
C7	11.50'	72°18'07"	13.42'	S 56°32'53" E	15.00'
C8	13.50'	111°00'45"	20.10'	N 35°42'48" E	23.35'
C9	18.00'	111°33'55"	25.62'	N 34°17'23" E	35.05'
C10	25.00'	71°19'00"	29.09'	S 64°21'11" E	31.05'
C11	18.50'	85°35'05"	25.21'	S 55°28'53" E	27.74'
C12					
C13	690.00'	32°10'55"	302.48'	N 74°43'30" W	387.56'
C14	234.90'	45°10'35"	180.46'	S 69°35'45" W	185.22'
C15	550.00'	30°00'00"	284.70'	S 29°00'25" W	287.98'
C16	415.00'	11°24'14"	82.46'	S 19°42'35" W	82.60'
C17	39.99'	91°50'59"	57.47'	S 00°09'33" W	64.11'
C18	2261.83'	19°15'04"	753.05'	N 18°11'52" W	756.60'

PROJ. MANAGER: MAH  
 DRAWING BY: MAH  
 DATE: 02/05/2016  
 JOB NO.: 13041  
 SHEET NO.: 2 OF 3

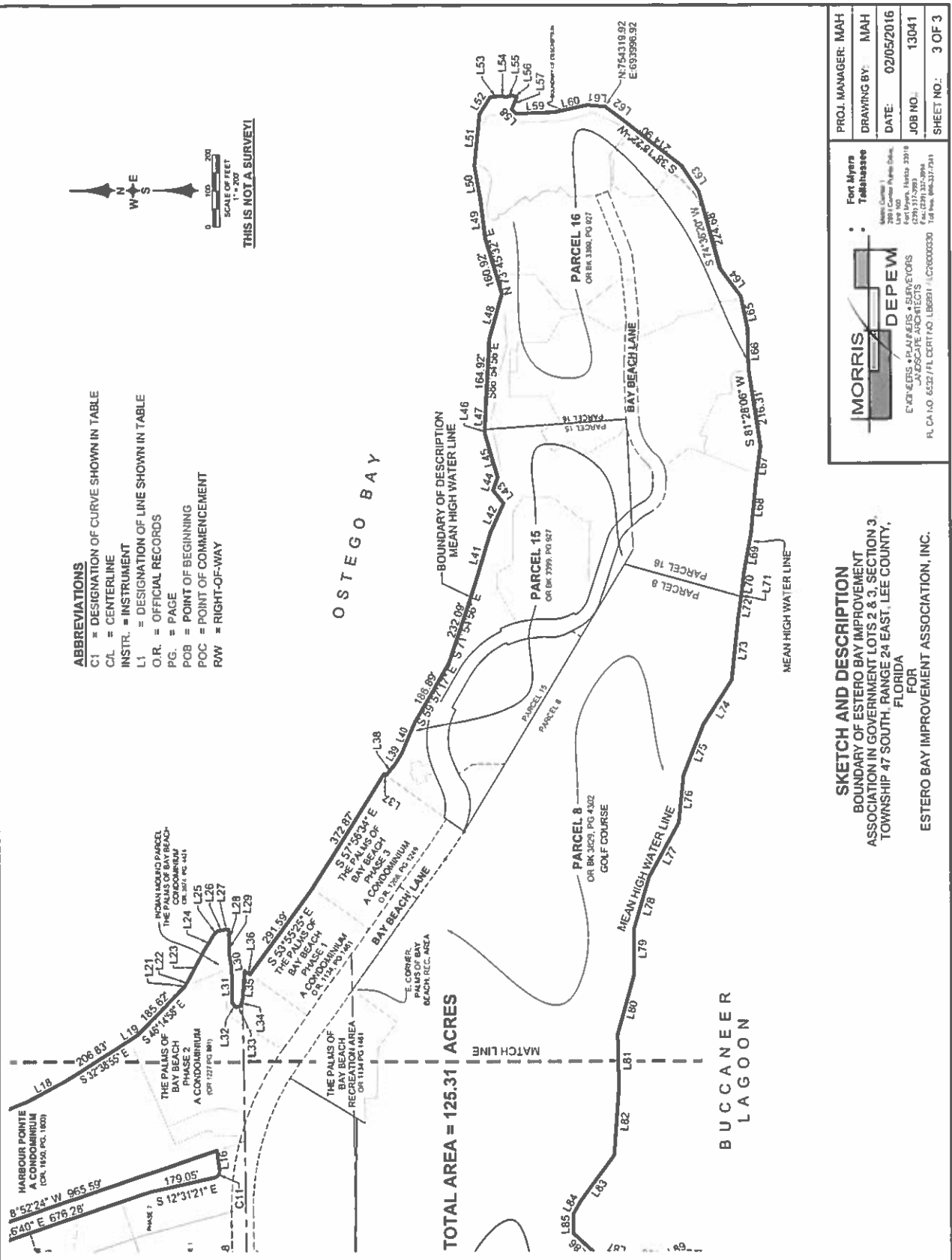
**MORRIS DEPEW**  
 ENGINEERS • PLANNERS • SURVEYORS  
 LANDSCAPE ARCHITECTS  
 Fort Myers  
 1400 Central Expressway, Suite 100  
 Fort Myers, Florida 33916  
 Tel: (239) 337-9999  
 Fax: (239) 337-9999  
 1st floor elev: 066.307' (1st)



TOTAL AREA = 125.31 ACRES

**SKETCH AND DESCRIPTION**  
 BOUNDARY OF ESTERO BAY IMPROVEMENT  
 ASSOCIATION IN GOVERNMENT LOTS 2 & 3, SECTION 3,  
 TOWNSHIP 47 SOUTH, RANGE 24 EAST, LEE COUNTY,  
 FLORIDA  
 FOR  
 ESTERO BAY IMPROVEMENT ASSOCIATION, INC.

LINE	BEARING	DISTANCE
L19	S 32°35'55" E	27.16'
L21	S 55°36'12" E	3.48'
L22	S 55°40'07" E	15.95'
L23	S 61°54'49" E	95.09'
L24	S 59°20'27" E	50.10'
L25	S 41°17'34" E	13.40'
L26	S 12°04'43" E	17.40'
L27	S 02°43'18" E	14.35'
L28	S 87°05'07" W	39.30'
L29	N 87°03'10" W	22.88'
L30	S 80°44'18" W	46.34'
L31	S 88°42'00" W	94.26'
L32	S 48°46'12" W	14.98'
L33	S 12°43'21" E	12.35'
L34	S 69°36'02" E	17.29'
L35	S 65°33'47" E	60.69'
L36	S 35°41'00" W	17.18'
L37	S 33°51'38" W	6.37'
L38	S 49°22'19" E	35.02'
L39	S 57°15'00" E	40.41'
L40	S 66°41'00" E	97.42'
L41	S 73°32'03" E	142.56'
L42	S 65°56'34" E	89.65'
L43	S 51°24'41" E	45.62'
L44	S 71°28'29" E	30.27'
L45	N 74°10'37" E	127.66'
L46	S 87°24'35" E	9.72'
L47	S 87°24'35" E	85.82'
L48	S 74°29'55" E	131.01'
L49	N 83°11'10" E	102.20'
L50	N 60°12'43" E	95.61'
L51	S 64°10'50" W	144.81'
L52	S 58°06'20" E	54.05'
L53	S 07°20'47" E	28.39'
L54	S 09°37'17" W	16.21'
L55	S 15°23'33" E	16.11'
L56	S 16°40'21" W	14.26'
L57	N 67°04'01" W	36.53'
L58	S 45°01'40" W	16.61'
L59	S 01°54'53" E	107.68'
L60	S 12°12'48" E	92.23'
L61	S 04°42'34" W	47.49'
L62	S 37°06'20" W	52.85'
L63	S 56°37'50" W	64.85'
L64	S 53°06'20" W	94.35'
L65	S 76°26'54" W	64.35'
L66	S 67°06'02" W	102.65'
L67	N 62°29'51" W	104.65'
L68	N 64°44'49" W	136.81'
L69	N 79°47'51" W	116.01'
L70	N 63°44'01" W	50.20'
L71	N 65°34'06" W	11.21'
L72	N 81°27'40" W	50.59'
L73	N 83°53'19" W	173.98'
L74	N 57°06'30" W	144.86'
L75	N 60°36'55" W	152.22'
L76	N 84°02'28" W	131.27'
L77	N 61°21'05" W	158.15'
L78	N 73°25'42" W	146.05'
L79	N 69°33'46" W	126.42'
L80	N 74°26'10" W	169.75'
L81	S 68°45'06" W	146.04'
L82	N 65°24'11" W	187.17'
L83	N 53°45'36" W	161.42'
L84	S 60°30'09" W	30.70'
L85	S 69°15'12" W	52.34'
L86	S 47°49'34" W	74.65'
L87	S 11°58'01" W	120.90'
L88	S 04°28'50" W	83.95'
L89	S 24°45'41" E	63.42'
L90	N 37°49'24" W	18.87'
L91	N 19°34'20" W	45.30'



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PROJ. MANAGER: MAH  
 DRAWING BY: MAH  
 DATE: 02/05/2016  
 JOB NO.: 13041  
 SHEET NO.: 3 OF 3

**EXHIBIT “B”**

*(Recreational Parcel Legal Description)*

**DESCRIPTION OF PARCEL 8**

*(REVISED 4—26—89)*

A PARCEL OF LAND LYING IN GOVERNMENT LOT 3, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, ESTERO ISLAND, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF SAID GOVERNMENT LOT 3 AND THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD S-865, ESTERO BOULEVARD; THENCE LEAVING SAID EASTERLY LINE NORTH 89°11'00" EAST ALONG SAID NORTH LINE A DISTANCE OF 742.52 FEET; THENCE LEAVING SAID NORTH LINE SOUTH 55°06'39" EAST 94.87 FEET TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF BAY BEACH LANE AND THE POINT OF BEGINNING OF PARCEL 8 HEREIN BEING DESCRIBED; THENCE CONTINUE SOUTH 55°06'39" EAST 250.25 FEET; THENCE SOUTH 15°25'21" EAST 283.75 FEET; THENCE SOUTH 89°48'02" EAST 535.57 FEET; THENCE NORTH 2°45'28" WEST 190.29 FEET; THENCE SOUTH 89°19'11" EAST 462.71 FEET; THENCE ALONG THE BOUNDARY LINE OF PALMS OF BAY BEACH RECREATION AREA ON THE FOLLOWING SIX COURSES: 1) SOUTH 31°21'55" WEST 26.69 FEET; 2) NORTH 89°11'00" EAST 70.16 FEET; 3) SOUTH 0°49'00" EAST 34.00 FEET; 4) SOUTH 89°00'00" EAST 135.00 FEET; 5) SOUTH 54°19'00" EAST 90.35 FEET; 6) NORTH 35°41'00" EAST 151.07 FEET TO AN INTERSECTION WITH A SOUTHWESTERLY RIGHT-OF-WAY LINE OF BAY BEACH LANE; THENCE SOUTH 54°19'00" EAST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 309.16 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE SOUTH 54°19'00" EAST 134.14 FEET TO THE BEGINNING OF A CIRCULAR CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 1,940.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CIRCULAR CURVE THROUGH A CENTRAL ANGLE OF 2°43'03"; AN ARC DISTANCE OF 92.01 FEET; THENCE SOUTH 59°02'44" EAST ON A NON-TANGENT LINE, A DISTANCE OF 860.17 FEET; THENCE SOUTH 15°37'22" WEST APPROXIMATELY 346 FEET TO THE MEAN HIGH WATER LINE OF BUCCANEER LAGOON; THENCE WESTERLY AND SOUTHERLY ALONG SAID MEAN HIGH WATER LINE FOR APPROXIMATELY 2,214 FEET TO AN INTERSECTION WITH THE EASTERLY EXTENSION OF THE NORTHERLY LINE OF LAGUNA SHORES, UNIT 1, AS RECORDED IN PLAT BOOK 9, PAGES 29 THROUGH 30; THENCE SOUTH 89°11'00" WEST, LEAVING SAID MEAN HIGH WATER LINE, ALONG SAID NORTHERLY LINE A DISTANCE OF APPROXIMATELY 378 FEET, TO AN INTERSECTION WITH A NORTHEASTERLY LINE OF ISLAND SANDS CONDOMINIUM; THENCE NORTH 37°43'00" WEST ALONG SAID NORTHEASTERLY LINE A DISTANCE OF 231.26 FEET; THENCE NORTH 45°35'38" WEST 708.38 FEET; THENCE NORTH 69°40'18" WEST 128.17 FEET TO AN INTERSECTION WITH THE ARC OF A CIRCULAR CURVE CONCAVE WESTERLY WHOSE RADIUS POINT BEARS NORTH 64°35'57" WEST 415.00

FEET; THENCE NORTHEASTERLY AND NORTHERLY ALONG THE ARC OF SAID CIRCULAR CURVE AND THE SOUTHERLY RIGHT-OF-WAY LINE OF BAY BEACH LANE THROUGH A CENTRAL ANGLE OF 11°23'34" AN ARC DISTANCE OF 82.52 FEET; THENCE NORTH 14°00'29" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 32.00 FEET TO THE BEGINNING OF A CIRCULAR CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 550.00 FEET; THENCE NORTHERLY AND NORTHEASTERLY ALONG THE ARC OF SAID CIRCULAR CURVE AND SAID SOUTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 30°00'00" AN ARC DISTANCE OF 287.98 FEET; THENCE NORTH 44°00'29" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 48.08 FEET TO THE BEGINNING OF A CIRCULAR CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 234.91 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CIRCULAR CURVE AND SAID SOUTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 13°19'31" AN ARC DISTANCE OF 5463 FEET TO THE POINT OF BEGINNING OF THAT PART OF PARCEL 8 HEREIN DESCRIBED;

ALSO:

A PARCEL OF LAND LYING IN GOVERNMENT LOTS 2 AND 3, IN SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, ESTERO ISLAND, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF SAID GOVERNMENT LOT 2 AND THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD S-865, ESTERO BOULEVARD; THENCE LEAVING SAID EASTERLY LINE NORTH 89°11'00" EAST ALONG SAID SOUTH LINE A DISTANCE OF 730.82 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN BEING DESCRIBED; THENCE LEAVING SAID SOUTH LINE NORTH 20°08'40" WEST 77.35 FEET; THENCE NORTH 79°17'43" EAST 20.27 FEET; THENCE SOUTH 20°08'40" EAST 76.16 FEET TO AN INTERSECTION WITH THE ARC OF A CIRCULAR CURVE WHOSE RADIUS POINT BEARS SOUTH 28°14'33" EAST 314.91 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CIRCULAR CURVE AND A NORTHERLY RIGHT-OF-WAY LINE OF BAY BEACH LANE THROUGH A CENTRAL ANGLE OF 3°41'42", AN ARC DISTANCE OF 20.31 FEET; THENCE LEAVING SAID CIRCULAR CURVE AND SAID NORTHERLY RIGHT-OF-WAY LINE NORTH 20°08'40" WEST ON A NON-RADIAL LINE A DISTANCE OF 5.64 FEET TO THE POINT OF BEGINNING OF THAT PART OF PARCEL 8 HEREIN DESCRIBED;

#### **DESCRIPTION OF PARCEL 14**

A PARCEL OF LAND LYING IN GOVERNMENT LOT 3, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, ESTERO ISLAND, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF SAID GOVERNMENT LOT 3 AND THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD



S-865, ESTERO BOULEVARD; THENCE LEAVING SAID EASTERLY RIGHT-OF-WAY LINE NORTH 89°11'00" EAST ALONG SAID NORTH LINE A DISTANCE OF 742.52 FEET; THENCE LEAVING SAID NORTH LINE SOUTH 55°06'39" EAST 94.87 FEET TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF BAY BEACH LANE AND THE POINT OF BEGINNING OF PARCEL 14 HEREIN BEING DESCRIBED; THENCE CONTINUE SOUTH 55°06'39" EAST 250.25 FEET; THENCE SOUTH 15°25'21" EAST 283.75 FEET; THENCE SOUTH 89°48'02" EAST 535.57 FEET; THENCE NORTH 2°45'28" WEST 190.29 FEET; THENCE SOUTH 89°19'11" EAST 462.71 FEET; THENCE NORTH 31°21'55" EAST ALONG A NORTHWESTERLY LINE OF PALMS OF BAY BEACH RECREATION AREA A DISTANCE OF 214.32 FEET TO AN INTERSECTION WITH THE ARC OF A CIRCULAR CURVE CONCAVE SOUTHERLY WHOSE RADIUS POINT BEARS SOUTH 31°21'55" WEST 690.00 FEET; THENCE NORTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CIRCULAR CURVE AND THE SOUTHERLY RIGHT-OF-WAY LINE OF BAY BEACH LANE THROUGH A CENTRAL ANGLE OF 32°10'55" AN ARC DISTANCE OF 387.56 FEET; THENCE SOUTH 89°11'00" WEST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 889.04 FEET TO THE BEGINNING OF A CIRCULAR CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 234.91 FEET; THENCE WESTERLY AND SOUTHWESTERLY ALONG THE ARC OF SAID CIRCULAR CURVE AND SAID SOUTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 31°51'00" AN ARC DISTANCE OF 130.58 FEET TO THE POINT OF BEGINNING OF PARCEL 14 HEREIN DESCRIBED;

#### **DESCRIPTION OF PART OF PARCEL 17**

A PARCEL OF LAND LYING IN GOVERNMENT LOT 3, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, ESTERO ISLAND, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF SAID GOVERNMENT LOT 3, AND THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD S-865, ESTERO BOULEVARD; THENCE SOUTH 18°34'20" EAST ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 45.30 FEET TO THE BEGINNING OF A CIRCULAR CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 2,251.83 FEET; THENCE SOUTHERLY AND SOUTHEASTERLY ALONG THE ARC OF SAID CIRCULAR CURVE AND SAID EASTERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 19°15'04" AN ARC DISTANCE OF 756.60 FEET; THENCE SOUTH 37°49'24" EAST ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 1,887 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN BEING DESCRIBED AND TO AN INTERSECTION WITH THE ARC OF A NON-TANGENT CURVE CONCAVE EASTERLY AND WHOSE RADIUS POINT BEARS NORTH 52°10'36" EAST A DISTANCE OF 40.00 FEET; THENCE LEAVING SAID EASTERLY RIGHT-OF-WAY LINE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG THE ARC OF SAID CIRCULAR CURVE AND ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF BAY BEACH LANE THROUGH A CENTRAL ANGLE OF 91°49'53" AN ARC DISTANCE OF 64.11 FEET; THENCE CONTINUE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE NORTH 54°00'29" EAST A DISTANCE OF 43.74 FEET; THENCE LEAVING SAID

SOUTHERLY RIGHT-OF-WAY LINE SOUTH 37°49'24" EAST A DISTANCE OF 86.63 FEET; THENCE SOUTH 45°49'01" EAST A DISTANCE OF 232.03 FEET; THENCE SOUTH 68°56'18" EAST A DISTANCE OF 150.94 FEET; THENCE NORTH 44°24'22" EAST A DISTANCE OF 225.70 FEET TO THE EASTERLY LINE OF PARCEL 17; THENCE SOUTH 45°35'38" EAST ALONG SAID EASTERLY LINE A DISTANCE OF 355.18 FEET; THENCE LEAVING SAID EASTERLY LINE SOUTH 52°17'00" WEST A DISTANCE OF 466.92 FEET TO AN INTERSECTION WITH AFORESAID EASTERLY RIGHT-OF-WAY LINE; THENCE NORTH 37°49'24" WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 727.59 FEET THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.

**Exhibit “C”**

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
BAY BEACH ASSOCIATION, INC.  
a Florida corporation, not-for-profit**

**(Note: The following Amended and Restated Articles are a complete restatement of the Articles of Incorporation of BAY BEACH ASSOCIATION, INC., formerly known as Estero Bay Improvement Association, Inc. as the same are found recorded in Official Records Book 4767, at Page 3814 in the Public Records of Lee County, Florida. Please see that document’s Articles I through XIII for the present text.)**

The undersigned Corporation, by an affirmative vote of its Members, hereby adopts the following Amended and Restated Articles of Incorporation for such corporation pursuant to Fla. Stat. Ch. 617:

**ARTICLE I  
(Name)**

The name of the corporation (hereinafter called the “Association”) is BAY BEACH ASSOCIATION, INC.

**ARTICLE II  
(Not-for-Profit Status)**

The Association is a corporation not for profit.

**ARTICLE III  
(Duration)**

The period of its duration is perpetual.

**ARTICLE IV  
(Purposes and Powers)**

The specific purposes for which the Association is formed are to provide for:

(a) maintenance, preservation, and architectural control of the Common Areas; and enforcement of the Declaration of Covenants, Conditions and Restrictions for BAY BEACH, a

Community of condominium and cooperative subdivisions and other land serving them lying in Lee County, Florida; and

(b) to maintain and preserve the Surface Water Management Systems, including conservation easements, within the subdivision as specified and permitted by the South Florida Water Management District; all within a certain subdivided tract of real property described as BAY BEACH, consisting of lands located in Lee County, Florida, and as more particularly described as Estero Bay Improvement Association, Inc. in the Declaration of Covenants recorded in Official Records Book 1134, at Page 1445 and as subsequently amended; all in the Public Records of Lee County, Florida, and generally, to promote the health, safety, and welfare of the residents within the above-described subdivision and such additions thereto as may hereafter be brought within the jurisdiction of the Association for such purpose.

In furtherance of such purposes, the Association shall have power to:

(c) Perform all of the duties and obligations of the Association as set forth in a certain Declaration of Covenants, Conditions, and Restrictions, as amended (the "Declaration") and Bylaws of the Association applicable to the Community and recorded in the public records of Lee County, Florida, which includes the power to enforce the terms and provisions of the Declaration and Bylaws;

(d) Affix, levy, and collect all charges and assessments pursuant to the terms of the Declaration and the Association's Bylaws, and enforce payment thereof by any lawful means; and pay all expenses in connection therewith, and all office and other expenses incident to the conduct of the business of the Association including all licenses, taxes, or governmental charges levied or imposed on the property of the Association;

(e) Acquire (by gift, purchase, or otherwise), own, hold, improve, build on, operate, maintain, convey, sell, lease, transfer, dedicate to public use, or otherwise dispose of real and personal property in connection with the affairs of the Association. The power to acquire a specific item of real or personal property in excess of \$250,000.00 shall be subject to the approval of a majority of the total Voting Interests;

(f) Dedicate, sell, convey or transfer all or any part of the Common Areas to any government or municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed on by the Members;

(g) Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, or annex additional property and Common Areas, provided that any merger, consolidation, or annexation shall have the consent by vote or written instrument of two-thirds (2/3rds) of the Voting Interests;

(h) Have and exercise any and all powers, rights, and privileges that a corporation organized under Chapter 617 of the Florida Statutes by law may now or hereafter have or exercise under that Not For Profit Corporation Act (the "Act"). The Association is organized and shall be operated exclusively for the aforementioned purposes. The activities of the Association shall be financed by

assessments on Owners (as collected by the Members) as provided in the Declaration and/or Bylaws, and no part of any net earnings shall inure to the benefit of any Member or Owner.

(i) Enforce all properly promulgated rules, ordinances, or regulations of any governmental entity relating to the Common Areas and particularly the easements, covenants and restrictions over the Neighborhoods and Common Areas for surface water management

(j) Make and enforce reasonable Rules and Regulations regarding the use of lands within the Community.

#### **ARTICLE V (Street Address, Registered Office and Agent)**

The street address of the principal office and the registered office of the Association is 27180 Bay Landing Drive, Suite 4, Bonita Springs, FL 34135, and the name of its registered agent at such address is VESTA PROPERTY SERVICES, INC.

#### **ARTICLE VI (Members and Voting Rights)**

(a) The Members of the Association shall be the Neighborhood Associations representing the Owners of Living Units, Recreational Units or Lots within BAY BEACH.

(b). Each condominium association pertaining thereto shall be a Member of the Association. Each cooperative association may be admitted as a Member of the Association. The total number of votes shall be an amount equal to the total number of Living Units or Dwelling Units then subject to the Declaration of Covenants, Conditions and Restrictions for Bay Beach and which Living Units or Dwelling Units shall have been completed at the time of the vote on any matter subject to voting by the Members. Each Member shall be entitled to cast, through its Voting Representative, a number of votes equal to the number of Living Units or Dwelling Units represented by the Member, as hereinabove provided. The manner of appointing Voting Representatives and casting votes shall be as set forth in the Bylaws.

(c) In addition to the lands described in the Declaration, additional lands may henceforth from time to time be submitted to the condominium or cooperative form of ownership. Should additional lands be brought within the ambit of the Declaration of Covenants, Conditions and Restrictions for Bay Beach devoted to residential uses other than as set forth hereinabove, they shall be admitted to Membership to this Association upon either the basis that the owners of such real property shall collectively be entitled to designate one Member of the Association or as a vote of two thirds (2/3) of the Board of Directors shall then determine, but always with the voting powers provided in subsection (b), above.

#### **ARTICLE VII**

**(Classes of Membership)**

The Association shall have one class of voting Members.

**ARTICLE VIII  
(Directors)**

The number of directors constituting the board of directors of the Association is seven (7). The terms and method for electing directors shall be stated in the Association’s Bylaws. The names and addresses of the persons who currently serve as the directors are:

<i>Name</i>	<i>Address</i>
TAEGE, TOM	27180 Bay Landing Drive, Suite 4, Bonita Springs, FL 34135
KOCSIS, ED	27180 Bay Landing Drive, Suite 4, Bonita Springs, FL 34135
MEIDINGER, DON	27180 Bay Landing Drive, Suite 4, Bonita Springs, FL 34135
LOMBARD, ED	27180 Bay Landing Drive, Suite 4, Bonita Springs, FL 34135
THIEMKE, AL	27180 Bay Landing Drive, Suite 4, Bonita Springs, FL 34135
MAISER, DAVID	27180 Bay Landing Drive, Suite 4, Bonita Springs, FL 34135
HOCKLEY, JACK	27180 Bay Landing Drive, Suite 4, Bonita Springs, FL 34135

**ARTICLE IX  
(Disposition of Assets)**

On dissolution, the assets of the Association shall be distributed to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event such distribution is refused acceptance, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization organized and operated for such similar purposes.

**ARTICLE X  
(Amendments)**

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

- (a) **Notice.** Notice of a proposed amendment shall be included in: (a) a Notice of Proposed Member Action Without a Meeting pursuant to Fla. Stat. §617.0701, or (b) in a notice of

any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapter 617 or the Association's Bylaws. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.

(b) **Adoption.** A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the Members of the Association. Members' approval may be expressed by written consent pursuant to Fla. Stat. §617.0701. Directors and Members not present in person or by proxy at any meeting considering the amendment may express their approval in writing, providing the approval is delivered to the Secretary at or prior to the meeting. The approvals must be by not less than a majority of the votes of all of the Members of the Association and by not less than 66-2/3% of the entire Board of Directors.

(c) **Limitation.** No amendment shall make any changes in the qualifications for membership, nor in the voting rights of Members, nor any changes in Sections (a) through (j) of Article IV, entitled "Powers", without the approval in writing of all Members and any governmental agency having permitting powers over the lands in BAY BEACH. No amendment shall be made that is in conflict with the Act, the Declaration or the Bylaws.

(d) **Recording.** A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the Public Records of Lee County, Florida.

**The foregoing Amended and Restated Articles of Incorporation** were enacted by the Members of the Corporation at a meeting duly noticed and called for the purpose on the \_\_\_\_ day of \_\_\_\_\_, 2019 by a vote of \_\_\_\_% for approval/enactment. The vote was sufficient for enactment of this Amendment.

**Executed** this \_\_\_\_\_ day of \*, 2019.

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**TOM TAEGE, *President***

**Exhibit “D”**

**AMENDED AND RESTATED  
BYLAWS OF  
BAY BEACH ASSOCIATION, INC.  
a Florida corporation, not-for-profit**

**Note: The following is an amendment by restatement of the Bylaws of BAY BEACH ASSOCIATION, INC., formerly known as Estero Bay Improvement Association, Inc., as the same are recorded in Official Records Book 4767, at Page 3814; and as subsequently amended by Instrument #2006000311038; all in the Public Records of Lee County, Florida. Please see that document’s Articles 1 through 11 for the present text.**

**ARTICLE I. NAME AND LOCATION**

The name of the corporation is BAY BEACH ASSOCIATION, INC. The principal office of the corporation shall be located at 27180 Bay Landing Drive, Suite 4, Bonita Springs, FL 34135; but meetings of Members and Directors may be held at such places within the State of Florida as may be designated by the Board of Directors.

**ARTICLE II. DEFINITIONS**

**Section 1.** “Association” shall mean and refer to BAY BEACH ASSOCIATION, INC., its successors and assigns.

**Section 2.** “Common Area” shall mean all real property within BAY BEACH (as defined and bounded in the Declaration) which is owned or leased by the Association, or dedicated for use or maintenance by the Association, regardless of whether title has been conveyed to the Association:

(a) Real property, the use of which is dedicated to the Association by a recorded plat; or

(b) Real property committed by the Declaration to be leased or conveyed to the Association; or dedicated to the use of the Association, including any conservation easements or easements for surface water management.

**Section 3.** “Declaration” shall mean and refer to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for BAY BEACH as recorded in the Public Records of Lee County, Florida to which these Bylaws are attached.

**Section 4.** “Unit”, “Lot” or “Parcel” shall mean and refer to any condominium parcel, cooperative unit or other plot of land shown within BAY BEACH with the exception of the Common Area.



**Section 5.** “Member” shall mean and refer to those Neighborhood Associations entitled to membership in this Association as provided in the Declaration.

**Section 6.** “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot, unit or parcel which lies within BAY BEACH, including contract sellers, but excluding those holding title merely as security for the performance of an obligation.

**Section 7.** “BAY BEACH” shall mean and refer to that certain tract of real property described in the Declaration, and such additions thereto as may be brought within the jurisdiction of the Association pursuant to the provisions of the Declaration.

Any term not defined in this Article, but otherwise defined in Chapters 617 or 720 of the Florida Statutes as amended from time to time, shall have that meaning as statutorily defined. Any term not defined in this Article but otherwise defined in the Governing Documents of this Association, shall have that meaning as defined in those documents.

### **ARTICLE III. MEETINGS OF MEMBERS AND VOTING**

**Section 1. Annual Meetings.** Annual meetings of Members shall be held at such time and place as the Directors may dictate. Annual meetings will not be held on legal holidays.

**Section 2. Special Meetings.** Special meetings of Members may be called at any time by the Board of Directors, or on written request of ten percent (10%) of the membership. Business conducted at a special meeting is limited to the purposes described in the notice of meeting.

**Section 3. Notice of Meetings.** Except as otherwise provided herein, written notice of a meeting (whether the Annual Members’ Meeting or a special meeting of the Members) shall be mailed or delivered by electronic transmission to each Member at his or her last known address as it appears on the books of the Association. Proof of such mailing shall be given by affidavit of the person who mailed or electronically transmitted such notice and also by such other method as may be required by the Act. The notice shall state the time and place of such meeting and the purposes for which the meeting is called. Unless a Member waives in writing the right to receive notice of the meeting, written notice of Annual Members’ Meetings and special meetings of the Members shall be mailed, electronically transmitted or delivered to each Member in the manner required by the Act, not less than fourteen (14) days prior to the date of the meeting. Notice of the Annual Members’ Meeting or special meeting of the Members shall also be posted at a conspicuous place within BAY BEACH as more particularly set forth in the rules and regulations, at least fourteen (14) continuous days prior to the meeting. If a meeting of the Members, either a special meeting or an Annual Members’ Meeting, is one which, by express provision of the Governing Documents (provided the express provision of the Governing Documents is in accordance with the requirements of the Florida law) there is permitted or required a greater or lesser amount of time for the mailing or posting of notice than is required or permitted by the provisions of this Section 3, then such express provision shall govern.

Within 48 hours of receipt of the Association's notice of a meeting, each Member shall likewise notify its constituent Owners of the meeting by forwarding the Association's notice to the Members in substantially the same form as that delivered to the Member. Each Member's internal rule shall dictate and govern the method and manner of providing notice to its constituent Owners.

Electronic transmission of meeting notices shall only be made to such Members who have provided written consent to the Association for such delivery: providing an electronic mail address, telephone number or other discernible and exclusive point of receipt under the Member's control and exclusive access.

(a) In order to be effective, any consent given by a Member to receive notices via electronic transmission, and any revocation of consent, must be in writing and must be signed by an authorized representative or officer. Consent or revocation of consent may be delivered to the Association via electronic transmission, by hand-delivery, by United States mail, by certified United States mail, or by other commercial delivery service. The Member bears the risk of ensuring delivery.

(b) Delivery of Consent or Revocation of Consent. Any consent given by a Member to receive notices via electronic transmission must be actually received by a current officer, Board member, or manager of the Association, or by the Association's registered agent. Unless otherwise agreed to by the Association in advance of delivery of any consent or revocation of consent, delivery to an attorney who has represented the Association in other legal matters will not be effective unless that attorney is also a Board member, officer, or registered agent of the Association.

(c) Automatic Revocation of Consent. Consent shall be automatically revoked if the Association is unsuccessful in providing notice via electronic transmission for two consecutive transmissions to a Member, if and when the Association becomes aware of such electronic failures.

(d) In order to be effective notice, notice of a meeting delivered via electronic transmission must contain all attachments and information required by law.

(e) Notice of a meeting is effective when sent by the Association, regardless of when the notice is actually received by the Member, if directed to the correct address, location or number, or if posted on a web site or internet location to which the Member has consented. A Member, by consenting to notice via electronic transmission, accepts the risk of not receiving electronic notice, so long as the Association correctly directed the transmission to the address, number, or location provided by the Member. An affidavit of the secretary or other authorized agent of the Association filed among the official records of the Association that the notice has been duly provided via electronic transmission is verification that valid electronic transmission of the notice has occurred. The Association may elect to provide, but is not required to provide, notice of meetings via non-electronic transmission even if notice has been sent to the same Member via electronic transmission.

(f) The Association shall maintain among its official records, which shall be accessible to the Members or their duly authorized representatives, all consent forms including electronic numbers, addresses and locations, all affidavits, all fax receipts of notice and related communications, copies of all electronic notices and attachments sent by the Association, and any other record created or received by the Association related to the electronic transmission of meeting notices. Electronic records may be maintained in electronic or paper format, but must be available for inspection and copying upon Member request as per Article XII, herein. Specifically, the Association shall maintain:

(1) Copies of any plans, specifications, permits, and warranties related to improvements constructed on the Common Areas or other property that the Association is obligated to maintain, repair, or replace.

(2) A copy of the Bylaws of the Association and of each amendment to the Bylaws.

(3) A copy of the Articles of Incorporation of the Association and of each amendment thereto.

(4) A copy of the Declaration and a copy of each amendment thereto.

(5) A copy of the current Rules and Regulations of the Association.

(6) The minutes of all meetings of the Board of Directors and of the Members, which minutes must be retained for at least 7 years.

(7) A current roster of all Members and their mailing addresses. The Association shall also maintain the electronic mailing addresses and the numbers designated by Members for receiving notice sent 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. However, the Association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

(8) All of the Association's insurance policies or a copy thereof, which policies must be retained for at least 7 years.

(9) A current copy of all contracts to which the Association is a party, including, without limitation, any management agreement, lease, or other contract under which the Association has any obligation or responsibility. Bids received by the Association for work to be performed must also be considered official records and must be kept for a period of 1 year.

(10) The financial and accounting records of the Association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 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 periodic statement of the account for each Member, designating the name and current address of each Member who collects and remits monies for its constituent Owners obligated to pay assessments, the due date and amount of each assessment or other charge against the Member's Owners, 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.

**Section 4. Voting Representatives.** (a) Members' votes may be cast only by that Member's designated representative, who shall be identified as the Member's Voting Representative in a letter from the president and secretary of that Member and delivered to the Secretary of the Association no later than two (2) weeks before the Annual Membership Meeting at which the designated representative will be voting for the election of Directors of the Association.

(b) The designation of a person as the Voting Representative of a Member shall remain in effect for two (2) years from the date it is made, unless it is revoked earlier by said Member in the form of a letter from the President and the Secretary of said Member and delivered to the Secretary of the Association.

(c) Any natural person may be designated by a Member as its Voting Representative. Only natural persons may be so designated.

(d) The Association may require reasonable photographic proof of the identity of any person who claims to be a Member's Voting Representative. A current driver's license or passport with the holder's photograph affixed to it is presumed to be reasonable proof.

(e) If a Member fails to provide the Secretary of the Association with a current letter identifying the Member's designated Voting Representative and/or fails to provide the secretary with a current address to which the notices required by the Bylaws are to be sent, that Member's Voting Representative shall be the representative currently serving until a new Voting Representative is designated and said Member provides the required documentation.

(f) If a person who is otherwise properly designated as a Member's Voting Representative is unable or unwilling to produce reasonable photographic proof of said person's identity, if requested to do so by the Secretary of the Association, such person shall not be permitted to cast such Member's vote unless and until such proof is so produced.

**Section 5. Quorum.** The presence at the meeting, in person or by proxy, of Members (through their respective Voting Representatives) entitled to cast thirty percent (30%) of the Voting Interests shall constitute a quorum for authorization of any action, except as may otherwise be provided in the Declaration, the Articles of Incorporation, or these Bylaws. If a quorum is not present at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

**Section 6. Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing, dated, state the date of the meeting for which it is given, signed by the authorized person who executed the proxy, and filed with the secretary. Proxies shall be revocable. A proxy is effective only for the meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires ninety (90) days after the date of the meeting for which it was originally given.

**Section 7. Action without a Meeting.** The Members of the Association may take any action allowable under the Declaration, Articles of Incorporation or these Bylaws without the necessity of a meeting if such action is evidenced by written consent as provided in Fla. Stat. §617.0701.

**Section 8. Electronic Voting.** The Association may conduct elections and other Membership votes through an Internet-based online voting system if a Member consents, in writing, to online voting and if the following requirements are met:

(a) The Association provides each Member with:

(1) A method to authenticate the Member's identity to the online voting system.

(2) A method to confirm, at least 14 days before the voting deadline, that the Member's electronic device can successfully communicate with the online voting system.

(3) A method that is substantially consistent with the election and voting procedures in this Section 7.

(b) The Association uses an online voting system that is:

(1) Able to authenticate the Member's identity.

(2) Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.

(3) Able to transmit a receipt from the online voting system to each Member who casts an electronic vote.

(4) Able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific Member. This paragraph only applies if these Bylaws provide for secret ballots for the election of directors.

(5) Able to store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

(c) A Member voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum.

(d) The decision to implement a plan of electronic voting shall be set forth in a Board resolution. The board resolution must provide that Members receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for Members to consent, in writing, to online voting, and must establish reasonable procedures and deadlines for Members to opt out of online voting after giving consent. Written notice of a meeting at which the Board resolution regarding online voting will be considered must be mailed, delivered, or electronically transmitted to the Members and posted conspicuously on the Association property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the Association.

(e) A Member's consent to online voting is valid until the Member opts out of online voting pursuant to the procedures established by the board of administration pursuant to subsection (d).

(f) This section may apply to any matter that requires a vote of the Members.

**Section 9. Secret Ballot for Director Elections.** Voting in Director elections shall be by secret ballot, including Director elections done by electronic voting (as provided by Fla. Stat. §720.317(d), as amended).

**Section 10. Procedural Rules.** Parliamentary Rules following *Robert's Rules of Order Newly Revised* (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation, or these Bylaws, or with the Statutes of the State of Florida. However, meetings may depart from strict compliance with such rules whenever a majority of Members or a majority of directors, whichever is applicable, is present and votes to waive such rules or, without objection, takes any action which otherwise would be inconsistent with such rules, it being conclusively presumed that the taking of such an action, without objection, constitutes a waiver of the rules.

**Section 11.** The President of the Association shall preside at all Member meetings.

**ARTICLE IV. BOARD OF DIRECTORS;  
TERM OF OFFICE; REMOVAL**

**Section 1. Number.** The affairs of the Association shall be managed by a Board of seven (7) Directors who shall, in all events, perform their duties as business fiduciaries on behalf of the Owners and Members in conformity with the provisions of Chapters 617, Florida Statutes.

**Section 2. Term of Office.** Except as provided below, each Director shall serve a term of two (2) years, however, no Director's term shall expire until his successor has been elected. There shall be no limit on the number of terms an otherwise qualified Director may serve.

The Director's terms shall be staggered such that in any given year, no more than four (4) Directors' seats shall be elected.

**Section 3. Removal.** (a) Any member of the Board of Directors may be recalled and removed from office with or without cause by a majority of the total voting interests.

(b)(1) Board Directors may be recalled by an agreement in writing or by written ballot without a Membership meeting. The agreement in writing or the written ballots, or a copy thereof, shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure.

(2) The Board shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing or written ballots. At the meeting, the Board shall either certify the written ballots or written agreement to recall a Director or Directors of the Board, in which case such Director or Directors shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or proceed as described in subparagraph (d), below.

(3) When it is determined by the Board that an initial recall effort was defective, written recall agreements or written ballots used in the first recall effort and not found to be defective may be reused in one subsequent recall effort. However, in no event is a written agreement or written ballot valid for more than 120 days after it has been signed by the Member.

(4) Any rescission or revocation of a Member's written recall ballot or agreement must be in writing and, in order to be effective, must be delivered to the Association before the Association is served with the written recall agreements or ballots.

(5) The agreement in writing or ballot shall list at least as many possible replacement Directors as there are Directors subject to the recall, when at least a majority of the Board is sought to be recalled; the person executing the recall instrument may vote for as many replacement candidates as there are Directors subject to the recall.

(c)(1) The Members may also recall and remove a Board Director or Directors by a vote taken at a meeting. If so provided in the governing documents, a special meeting of the Members to recall a Director or Directors of the Board may be called by 10 percent of the Voting

Interests giving notice of the meeting as required for a meeting of Members, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

(2) The Board shall duly notice and hold a Board meeting within 5 full business days after the adjournment of the Member meeting to recall one or more Directors. At the meeting, the Board shall certify the recall, in which case such Member or Members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the Association in their possession, or shall proceed as set forth in paragraph (d).

(d) If the Board determines not to certify the written agreement or written ballots to recall a Director or Directors of the Board or does not certify the recall by a vote at a meeting, the Board shall, within 5 full business days after the meeting, serve on the Members who voted for recall at the meeting (or who executed the agreement in writing) an offer to participate in pre-suit mediation substantially conforming to the form of offer set forth in Fla. Stat. 720.311(2)(a)[2018]. For the purposes of this section, the Members who voted at the meeting or who executed the agreement in writing shall constitute one party under the mediation and the Board shall constitute the other. Each party shall be liable for half of the costs of mediation. No action may be filed in any court of competent jurisdiction nor before any administrative body until mediation has been attempted in good faith and the mediator conducting such mediation has ruled that the parties are at impasse.

(e) If a vacancy occurs on the Board as a result of a recall and less than a majority of the Directors are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining Directors. If vacancies occur on the Board as a result of a recall and a majority or more of the Directors are removed, the vacancies shall be filled by Members voting in favor of the recall; if removal is at a meeting, any vacancies shall be filled by the Members at the meeting. If the recall occurred by agreement in writing or by written ballot, Members may vote for replacement Directors in the same instrument.

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

(g) If the board fails to duly notice and hold the required meeting or fails to serve an offer to participate in pre-suit mediation, any Member representative may file a petition in a court of competent jurisdiction challenging the board's failure to act. The petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period.

(h) If a Director who is removed fails to relinquish his or her office or turn over records as required under this section, the circuit court in and for Lee County, Florida may, upon the petition of the Association, summarily order the Director to relinquish his or her office and turn over all Association records upon application of the Association.



(i) The minutes of the Board meeting at which the Board decides whether to certify the recall are an official Association record. The minutes must record the date and time of the meeting, the decision of the Board, and the vote count taken on each Director subject to the recall. In addition, when the Board decides not to certify the recall, as to each vote rejected, the minutes must identify the Member's votes challenged and the specific reason for each such rejection.

(j) When the recall of more than one Director is sought, the written agreement, ballot, or vote at a meeting shall provide for a separate vote for each Director sought to be recalled.

(k) A Director who has been recalled by Member vote and Board certification may file a petition challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified. The Association and the Members who voted for recall at the meeting (or who executed the agreement in writing) shall be named as respondents.

**Section 4. Compensation.** No Director shall receive compensation for any service rendered to the Association. This subsection does not preclude:

(a) Participation by such person in a financial benefit accruing to all or a significant number of Members as a result of actions lawfully taken by the Board or a committee of which he or she is a member, including, but not limited to, routine maintenance, repair, or replacement of community assets.

(b) Reimbursement for out-of-pocket expenses incurred by such person on behalf of the Association, subject to approval in accordance with an approval process established by the Board.

(c) Any recovery of insurance proceeds derived from a policy of insurance maintained by the Association for the benefit of its Directors.

(d) Any other fee or compensation authorized in the governing documents.

(e) Any fee or compensation authorized in advance by a vote of a majority of the Voting Interests voting in person or by proxy at a meeting of the Members.

## **ARTICLE V. BOARD OF DIRECTORS: NOMINATION AND ELECTION**

**Section 1. Applicability.** (a) Unless otherwise provided herein, these provisions apply to all regular and run-off elections conducted by the Association, regardless of any provision to the contrary contained in the Governing Documents of the Association.

(b) Except as otherwise provided, these provisions do not apply to vacancies created by the recall of a Board member or members. The method of removing Directors by recall and the procedures for filling such vacancies are set forth in Article IV, Section 3. Likewise, the provisions of this Article V do not apply to a vacancy caused by the retirement or resignation of a

Board member not subject to recall. In that case, the remaining Board members may appoint a replacement Board member to serve the balance of the unexpired terms or call and hold a special election to fill the vacancy.

(c) Balloting is not necessary to fill any vacancy unless there are two or more eligible candidates for that vacancy. In such a case, not later than the date of the scheduled election:

1. For a regular election the Association shall call and hold a meeting of the Members to announce the names of the new Board members, or shall notify the Members of the names of the new Board members or that one or more Board positions remain unfilled, as appropriate under the circumstances. In the alternative, the announcement may be made at the annual meeting of Members.

2. If the Board determines to hold a special election to fill a vacancy due to retirement or resignation, the Association shall call and hold a special meeting of the Members to elect and announce the names of the new Board members or, in the alternative, shall notify the Members of the names of the new Board members or that one or more Board positions remain unfilled, as appropriate under the circumstances.

**Section 2. Regular or General Election.** A regular or general election for purposes of this rule shall be an election to fill a vacancy caused by expiration of a term in office. A regular or general election shall occur at the time and place at which the annual meeting is scheduled to occur, regardless of whether a quorum is present. Other elections as may be required shall occur in conjunction with duly called meetings of the Members, regardless of whether a quorum is attained for the meeting.

**Section 3. Nominating Committees Prohibited.** A Board of Directors shall not create or appoint any committee for the purpose of nominating a candidate or candidates for election to the Board. A Board may create or appoint a search committee which shall not have the authority to nominate any candidate, but may encourage qualified persons to become candidates for the Board.

**Section 4. First Notice of Election.** The first notice of the date of the election, which is required to be mailed, electronically transmitted, or delivered to the Members not less than 60 days before a scheduled election, must contain the name and correct mailing address of the Association. Failure to follow the procedures for giving the first notice of the date of the election shall require the Association to conduct a new election, if the election has been conducted. Where the election has not occurred, the Association shall mail, transmit, or deliver an amended first notice to the eligible voters, which shall explain the need for the amended notice, not less than 60 days before the scheduled election. If an amended notice cannot be mailed, transmitted or delivered not less than 60 days before the election, then the Association must re-notice and reschedule the election.

**Section 5. Notice of Intent to be a Candidate.** An Owner or other eligible person desiring to be a candidate for the Board of Directors shall give written notice to the Association not less than 40 days before a scheduled election. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in

another jurisdiction which would be considered a felony if committed in this state, may not seek election to the board and is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the board. Written notice shall be effective when received by the Association, or its community association manager. Written notice shall be accomplished in accordance with one or more of the following methods:

- (a) By certified mail, return receipt requested, directed to the Association; or
- (b) By personal delivery to the Association; or
- (c) By regular U.S. mail, facsimile, telegram, electronic mail or other method of delivery to the Association.

**Section 6. Receipt.** Upon actual receipt by the Association of any timely-submitted written notice by personal delivery that an Owner or other eligible person desires to be a candidate for the Board of Directors, the Association shall issue a written receipt acknowledging receipt of the written notice. Candidates who timely submit a written notice by mail may wish to send the written notice by certified mail in order to obtain a written receipt of its delivery.

**Section 7. Candidate's Information Sheet.** Upon the timely request of a candidate as set forth in this paragraph, the Association shall include, with the second notice of election (and notice of meeting) described in Section 8 below, a copy of an information sheet which may describe the candidate's background, education, and qualifications as well as other factors deemed relevant by the candidate. The information contained therein shall not exceed one side of the sheet which shall be no larger than 8 1/2 inches by 11 inches. Any candidate desiring the Association to mail or personally deliver copies of an information sheet to the voting Members must furnish the information sheet to the Association not less than 35 days before the election. If two or more candidates consent in writing, the Association may consolidate into a single side of a page the candidate information sheets submitted by those candidates. The failure of the Association to mail, transmit or personally deliver a copy of a timely-delivered information sheet of each eligible candidate to the eligible voters shall require the Association to mail, transmit, or deliver an amended second notice, which shall explain the need for the amended notice and include the information within the time required by this rule. If an amended second notice cannot be timely mailed, transmitted or delivered, the Association must re-notice and reschedule the election. If the election has already been conducted, the Association shall conduct a new election. The Association shall not edit, alter, or otherwise modify the content of the information sheet. The original copy provided by the candidate shall become part of the official records of the Association.

**Section 8. Second Notice of Election.** The Association shall mail or deliver to the Members at the addresses listed in the official records a second notice of the election, together with a ballot and any information sheets timely submitted by the candidates. The Association shall mail or deliver the second notice no less than 14 days and no more than 34 days prior to the election. The second notice and accompanying documents shall not contain any communication by the Board that endorses, disapproves, or otherwise comments on any candidate. Accompanying the ballot shall be an outer envelope addressed to the person or entity authorized to receive the ballots

and a smaller inner envelope in which the ballot shall be placed. The exterior of the outer envelope shall indicate the name of the Voting Representative and the Member (on whose behalf the votes are being cast), the number of votes cast, and shall contain a signature space for the Voting Representative. Once the ballot is filled out, the Voting Representative shall place the completed ballot in the inner smaller envelope and seal the envelope. The inner envelope shall be placed within the outer larger envelope, and the outer envelope shall then be sealed. Each inner envelope shall contain only one ballot, but if a person is entitled to cast more than one ballot, the separate inner envelopes required may be enclosed within a single outer envelope. The Voting Representative shall sign the exterior of the outer envelope in the space provided for such signature. The envelope shall either be mailed or hand delivered to the Association. Upon receipt by the Association, no ballot may be rescinded or changed.

**Section 9. Ballot Specifications.** The written ballot shall indicate in alphabetical order by surname, each and every unit owner or other eligible person who desires to be a candidate for the Board of administration and who gave written notice to the Association not less than 40 days before a scheduled election, unless such person has, prior to the mailing of the ballot, withdrawn his candidacy in writing. The failure of the written ballot to indicate the name of each eligible person shall require the Association to mail, transmit, or deliver an amended second notice, which shall explain the need for the amended notice and include a revised ballot with the names of all eligible persons within the time required under Section 8, above. If an amended second notice cannot be timely mailed, transmitted or delivered, then the Association must re-notice and reschedule the election. If the election has already been held, under these circumstances the Association shall conduct a new election. No ballot shall indicate which candidates are incumbents on the Board. No write-in candidates shall be permitted. No ballot shall provide a space for the signature of or any other means of identifying a voter. All ballot forms utilized by the Association, whether those mailed to voters or those cast at a meeting, shall be uniform in color and appearance.

**Section 10. Security of Envelopes.** Envelopes containing ballots received by the Association shall be retained and collected by the Association and shall not be opened except in the manner and at the time provided herein.

(a) Any envelopes containing ballots shall be collected by the Association and shall be transported to the location of the duly called meeting of the Members/Owners. The Association shall have available at the meeting additional blank ballots for distribution to the eligible voters who have not cast their votes. Each ballot distributed at the meeting shall be placed in an inner and outer envelope in the manner provided in Section 8, above. Each envelope and ballot shall be handled in the following manner: as the first order of business, ballots not yet cast shall be collected. The ballots and envelopes shall then be handled as stated below by an impartial committee as defined in paragraph (b) below appointed by the Board. The business of the meeting may continue during this process. The signature and Association identification on the outer envelope shall be checked against a list of qualified Voting Representatives, unless previously validated as provided in paragraph (b) below. Any exterior envelope not signed by the eligible Voting Representative shall be marked "Disregarded" or with words of similar import, and any ballots contained therein shall not be counted. The Voting Representatives shall be checked off on the list as having voted. Then, in the presence of any Members in attendance, and regardless of whether a quorum is present, all inner envelopes shall be first removed from the outer envelopes

and shall be placed into a receptacle. Upon the commencement of the opening of the outer envelopes, the polls shall be closed, and no more ballots shall be accepted. The inner envelopes shall then be opened and the ballots shall be removed and counted in the presence of the Members. Any inner envelope containing more than one ballot shall be marked "Disregarded", or with words of similar import, and any ballots contained therein shall not be counted. All envelopes and ballots, whether disregarded or not, shall be retained with the official records of the Association.

(b) If the Association desires to verify outer envelope information in advance of the meeting, it may do so as provided herein. An impartial committee designated by the Board may, at a meeting noticed in the manner required for the noticing of Board meetings, which shall be open to all Members and Owners and which shall be held on the date of the election, proceed as follows. For purposes of this rule, "impartial" shall mean a committee whose members do not include any of the following or their spouses:

1. Current Board members;
2. Officers; and
3. Candidates for the Board.

At the committee meeting, the signature and unit identification on the outer envelope shall be checked against the list of qualified Voting Representatives. The Voting Representatives shall be checked off on the list as having voted. Any exterior envelope not signed by the eligible Voting Representative shall be marked "Disregarded" or with words of similar import, and any ballots contained therein shall not be counted.

(c) If two or more candidates for the same position receive the same number of votes, which would result in one or more candidates not serving or serving a lesser period of time, the Association shall conduct a runoff election in accordance with the procedures set forth herein. Within 7 days of the date of the election at which the tie vote occurred, the Board shall mail or personally deliver to the Members, a notice of a runoff election. The only candidates eligible for the runoff election to the Board position are the runoff candidates who received the tie vote at the previous election. The notice shall inform Members of the date scheduled for the runoff election to occur, shall include a ballot conforming to these requirements and shall include copies of any candidate information sheets previously submitted by those candidates to the Association. The runoff election must be held not less than 21 days, nor more than 30 days, after the date of the election at which the tie vote occurred.

**Section 11. Disability.** Any Member represented by a person who requires assistance to vote by reason of blindness, disability, or inability to read or write, may request the assistance of a member of the Board or other Owner to assist in casting his vote.

**Section 12. Retention of Election Records.** For all elections occurring after July 1, 2018, notices of election, notices of candidacy for election, information sheets, voting envelopes, written agreements for recall of Board members, ballots, sign-in sheets, voting proxies, and all other papers relating to voting by Members shall be maintained as part of the official records of the Association

for the seven (7) years from the date of the election, vote, or meeting to which the document relates.

## **ARTICLE VI. BOARD OF DIRECTORS' MEETINGS**

**Section 1. Regular Meetings.** Regular meetings of the Board of Directors shall be held with notice, at such place and hour as may be fixed from time to time by resolution of the Board. No meeting shall be held on a legal holiday. A Board meeting occurs whenever a quorum of the Board gathers to conduct Association business.

**Section 2. Special Meetings.** Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two Directors.

**Section 3. Quorum.** A majority of the Directors shall constitute a quorum for the transaction of business. Every act performed or decision made by a majority of Directors present at a duly held meeting in which a quorum is present shall constitute the act or decision of the Board. No Director shall vote by proxy or secret ballot, except that secret ballots may be used in the election of officers.

**Section 4. Notice.** Except in an emergency, notice of the time, agenda and place of regular and special meetings of the Board, or adjournments thereof, shall be given to each Director personally or by mail, electronic delivery, telephone or telegraph at least forty-eight (48) hours prior to the time specified for such meeting and shall be posted conspicuously in the Community, as more specifically set forth in the rules and regulations, at least forty-eight (48) continuous hours in advance for the attention of Members. Notice of any meeting where regular assessments against Owners/Members are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments. Notice of a meeting where nonemergency Special Assessments or amendments to rules regarding Common Area or Neighborhood use will be considered shall be mailed, electronically delivered or delivered to the Members and posted conspicuously on the Common Areas or the Association's website not less than fourteen (14) days prior to the meeting. Proof of such mailing or electronic delivery shall be given by affidavit executed by the person providing the notice and filed among the official records of the Association. Any Director may waive notice of the meeting before, during or after a meeting and such waiver shall be deemed equivalent to the receipt of notice by such Director. Electronic delivery of any notice shall be made only in conformity with the provisions of Article III, Section 3, above.

**Section 5. Meetings Open to Members and Owners; Exceptions.** Members and Owners have the right to attend all meetings of the Board and to speak on any matter placed on the agenda by petition of the voting interests (refer to Section 8 below) for at least 3 minutes. The Association may adopt written reasonable rules expanding the right of Members or Owners to speak and governing the frequency, duration, and other manner of member statements, which rules must be consistent with this paragraph and may include a sign-up sheet for Members and Owners wishing to speak. Notwithstanding any other law, meetings between the Board or a committee and the Association's attorney to discuss proposed or pending litigation or meetings of the Board held

for the purpose of discussing personnel matters are not required to be open to the Members or Owners other than Directors.

**Section 6. Minutes.** Minutes reflecting the actions taken, in written form, shall be kept and recorded for all meetings of the Directors and committees.

**Section 7. Action without a Meeting.** Unless otherwise provided herein, the Directors may take action without a meeting as provided in Florida Statute §617.0821.

**Section 8. Petition for consideration of matters.** If 20 percent of the total Voting Interests petition the Board to address an item of business, the Board shall at its next regular Board meeting or at a special meeting of the Board, but not later than 60 days after the receipt of the petition, take the petitioned item up on an agenda. The Board shall give all Members 14-days' notice of the meeting at which the petitioned item shall be addressed. Each Member or Owner shall have the right to speak for at least 3 minutes on each matter placed on the agenda by petition, provided that the member signs the sign-up sheet, if one is provided, or submits a written request to speak prior to the meeting. Other than addressing the petitioned item at the meeting, the Board is not obligated to take any other action requested by the petition.

## **ARTICLE VII. BOARD OF DIRECTORS' POWERS AND DUTIES**

**Section 1. Powers.** The Board of Directors shall have power to:

(a) Adopt and publish Rules and Regulations governing the use of the Common Areas and facilities including the personal conduct of the Members, Owners and their guests and invitees thereon; and to establish penalties (fines and suspension of voting rights and Common Area usage) for infractions of such Rules and Regulations, the Declaration or these Bylaws;

(b) Suspend the voting rights and right to use of Bay Beach recreational facilities of any Member or Owner during any period in which such Member or its constituent Owners is/are in default in the payment of any assessment levied by the Association in excess of ninety (90) days. Such rights may also be suspended after notice and hearing before the Board, for a period not to exceed thirty (30) days, for infraction of published Rules and Regulations;

(c) Exercise on behalf of the Association all powers, duties, and authority vested in or delegated to the Association under Florida Statutes Chapter 617, as amended from time to time and not specifically reserved to the membership by the Declaration, Articles of Incorporation, or by other provisions of these Bylaws;

(d) Declare the office of a member of the Board of Directors to be vacant in the event that such Board member is absent from three consecutive regular meetings of the Board of Directors; and

(e) Employ a manager, independent contractors, and such other employees as deemed necessary, and to prescribe their duties.

(f) Assess the Owners (collected by and through the Members) for their pro rata share of the expenses of the Association.

(g) Enforce, on behalf of the Association and its Members and their constituent Owners, the terms and provisions of the governing documents of the Association, provisions of the conservation easement and any environmental or water management permits for the development of the Subdivision.

(h) Provide the reports of the financial affairs of the Association set forth in Article XIV, hereof.

(i) Establish such advisory committees the Board feels are warranted to support the Board in its efforts to manage the Community and Properties for the benefit of the Members and Owners.

(j) Operate under an assumed or fictitious name pursuant to Fla. Stat. §865.09.

**Section 2. Duties.** It shall be the duty of the Board of Directors to:

(a) Cause to be kept the official records specified in Article III, Section 3;

(b) Supervise all officers, agents, and employees of the Association and see to it that their duties are properly performed;

(c) Budget and assess expenses for the Association, as follows:

(1) Prepare an annual budget for the Association, reflecting the expected revenues and expenses for the upcoming year and the estimated surplus or deficit of the current year. The budget must set out separately all fees or charges for recreational amenities, whether owned by the Association or not. A copy of the budget shall be mailed to each Member at least fourteen (14) days prior to the Board's budget meeting called for in subparagraph (2), below, or within ten (10) business days of receipt of a written request, whichever is sooner. The budget may also include reserves for items of deferred maintenance or replacement of portions of the improvements on BAY BEACH that the Association may oversee or elect to repair, maintain or replace.

A. In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible. Such reserves shall be determined, maintained, and waived in the manner provided in this Section. This section does not preclude the termination of an established reserve account upon approval of a majority of the total voting interests of the association. Upon such approval, the terminating reserve account shall be removed from the budget.

B. If a reserve account for a specific item or items has not been specifically provided, the Board of Directors may elect to do so in the budget process. Notice of



the creation or addition of reserve account(s) shall be provided in the proposed budget. The Notice must state that one or more additional reserve accounts shall be provided for in the budget and must designate the components for which the additional reserve accounts are to be established. Upon adoption of the budget creating such additional reserve accounts, the Board of Directors shall include the additional reserve accounts in the budget adopted and the budgets for each year thereafter. Once established as provided in this subsection, the reserve accounts must be funded or maintained or have their funding waived in the manner provided in subparagraph D, below.

C. The amount to be reserved in any account established shall be computed by means of a formula that is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates of cost or useful life of a reserve item. The Association may use the “pooling” method of reserve funding.

D. After one or more reserve accounts are established, the Members of the association, upon a majority vote at a meeting at which a quorum is present, may provide for no reserves or less reserves than required by this section. If a meeting of the Members has been called to determine whether to waive or reduce the funding of reserves and such result is not achieved or a quorum is not present, the reserves as included in the budget go into effect. Any vote taken pursuant to this subsection to waive or reduce reserves is applicable only to one budget year.

E. Funding formulas for reserves authorized by this section must be based on a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets.

1. If the association maintains separate reserve accounts for each of the required assets, the amount of the contribution to each reserve account is the sum of the following two calculations:

a. The total amount necessary, if any, to bring a negative component balance to zero.

b. The total estimated deferred maintenance expense or estimated replacement cost of the reserve component less the estimated balance of the reserve component as of the beginning of the period the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the component.

The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may include factors such as inflation and earnings on invested funds.

2. If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget may not be less than that required to ensure that the balance on hand at the beginning of the period the budget will go into effect plus the projected annual cash

inflows over the remaining estimated useful life of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all the assets that make up the reserve pool, based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal and accounts receivable minus the allowance for doubtful accounts. The reserve funding formula may not include any type of balloon payments.

F. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote of the Members at a meeting at which a quorum is present or by written consent in lieu thereof.

(2) Fix the amount of the annual assessment against each unit or parcel at least thirty (30) days in advance of each annual assessment period. The annual assessment may be paid in installments either monthly or quarterly as determined by the Board. This shall be accomplished at a meeting of the Board called for the purpose of budget approval and assessment.

(3) Special assessments may be made by the Board at any Board meeting specifically noticed (with 14 days written notice to each Member) for the purpose of considering a special assessment.

(4) Send written notice of each annual assessment to every Member subject thereto at least ten (10) days in advance of annual assessment period, or in the case of a special assessment, thirty (30) days prior to the due date of such special assessment; and

(5) Commence collection efforts and foreclose the lien against any property for which assessments or installments thereon are not paid within thirty (30) days after the due date, and/or bring an action at law against the Owner personally obligated to pay the same.

(6) If the Board adopts in any fiscal year an annual budget which requires assessments against Unit Owners which exceed 115 percent of assessments for the preceding fiscal year, the Board shall conduct a special meeting of the Members to consider a substitute budget if the Board receives, within 21 days after adoption of the annual budget, a written request for a special meeting from at least 10 percent of all Voting Interests. The special meeting shall be conducted within 60 days after adoption of the annual budget. At least 14 days prior to such special meeting, the Board shall deliver to each Member a notice of the meeting. An officer or manager of the Association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement, and such affidavit shall be filed among the official records of the Association. Members may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all Voting Interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the Board shall take effect as scheduled.

(d) Issue, or cause an appropriate officer to issue, on demand by any person, a certificate setting forth whether or not any assessment has been paid. A statement in a certificate to the effect that an assessment has been paid shall constitute conclusive evidence of such payment.

By resolution, the Board may impose a reasonable charge for the issuance of these certificates and may also establish that the provision of information for lender questionnaires may also require payment of a fee to the person or entity processing the questionnaire on behalf of the Association;

(e) Procure and maintain adequate liability and hazard insurance on all property owned by the Association;

(f) Cause all officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate;

(g) Cause the Common Area to be maintained, including the maintenance of the conservation easement and Surface Water Management System; and

(h) Enforce the terms and provisions of the conservation easement and water management permit.

(i) Act on behalf of the Members and Owners within BAY BEACH as to any action by any governmental entity or political subdivision of the State of Florida as to matters of general and common concern to the residents, Owners and Members of the BAY BEACH Community.

**Section 3. Emergency Powers.** In the event of any emergency as defined in subsection (g) below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Fla. Stat. §617.0303, 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 only, an “emergency” exists only during a period of time that the Community, or the immediate geographic area in which the Community is located, is subjected to:

(1) a State of emergency declared by local civil or law enforcement authorities;

(2) a hurricane warning;

(3) a partial or complete evacuation order;

(4) federal or state disaster area status; or

(5) a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the improvements constructed on the Lots, Parcels or Neighborhoods of the Community, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism.

An emergency also exists for purposes of this Section during the time when a quorum of the Board cannot readily be assembled because of the occurrence of a catastrophic event, such as a hurricane, earthquake, act of war or terrorism, or other similar event. A determination by any two (2) Directors, or by the President, that an emergency exists shall have presumptive validity.

## **ARTICLE VIII. OFFICERS AND THEIR DUTIES**

**Section 1. Enumeration of Officers.** The officers of the Association shall be a president and vice president, who shall at all times be Members of the Board of Directors, and a secretary, treasurer, and such other officers as the Board may from time to time by resolution create.

**Section 2. Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of Members.

**Section 3. Term.** The officers of the Association shall be elected annually by the Board. Each shall hold office for a term of one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

**Section 4. Special Appointments.** The Board may elect such other officers as the affairs in the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board, from time to time, may determine.

**Section 5. Resignation and removal.** Any officer may be removed from office by the Board at any time with or without cause. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6. Vacancies.** A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the unexpired term of the officer replaced.

**Section 7. Multiple offices.** The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 4 of this Article.

**Section 8. Duties.** The duties of the officers are as follows:

(a) President. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, and other instruments, and shall co-sign all promissory notes.

(b) Vice president. The Vice President shall act in the place of the President in the event of the President's absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it to all papers so requiring; serve notice of meetings of the Board and of Members; keep appropriate current records showing the Members of the Association together with their addresses; and perform such other duties as may be required by the Board or by law.

(d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all funds of the Association, and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all promissory notes of the Association; shall keep proper books of account; shall cause an annual audit of the Association books to be made by a certified public accountant at the completion of each fiscal year (if applicable); and shall prepare an annual budget and statement of income and expenditures, a copy of which documents shall be delivered to each Member, and a report on which shall be given at the regular annual meeting of Members.

## ARTICLE IX. COMMITTEES

The Association may appoint Committees as provided in the Declaration or elsewhere in these Bylaws, either standing or *ad hoc* as it may deem appropriate in the performance of its duties. Any meeting of a committee shall be open to the Members and Owners and shall be noticed and conducted in all other respects as provided in Sections 3 through 6 of Article VI.

## ARTICLE X. ASSESSMENTS

As more fully provided in the Declaration and elsewhere in these Bylaws, each Member is obligated to collect and pay to the Association annual and special assessments representing its constituent Owners' pro rata share of the expenses of the Association, which are secured by a continuing lien on the Owners' units against which such assessments are made. The lien shall secure the assessment or installments thereon unpaid, plus all others coming due during the pendency of such lien including installments accelerated as below, plus all interest, administrative late fees, charges, and costs of collection incurred, including attorneys' fees.

**Section 1. Delinquencies.** Any assessments or installments thereon not paid when due are considered delinquent. If an assessment is not paid within ten (10) days after the due date, the assessment bears interest from the date due at the rate of eighteen percent (18%) per annum until paid. An administrative late fee of the greater of: \$25.00 or 5% of the installment outstanding, shall be due on any assessment installment not paid within ten (10) days of the date due. The Association may, after first giving forty-five (45) days' written notice of its intent to do so, record a Claim of Lien in the Public Records of Lee County, Florida for all amounts due the Association. The notice must substantially conform to the requirements set forth in Fla. Stat. §720.3085(4). The Claim of Lien shall secure all amounts then due or coming due thereafter and chargeable to the Lot or Parcel.

**Section 2. Application of Payments.** Any payment received by the Association shall first be applied to any interest outstanding, then to any late fee, cost or charge (including attorneys' fees) then due for the collection of the assessment or assessments, and lastly to the oldest assessment or its installment then due, any restrictive endorsement to the contrary notwithstanding.

**Section 3. Remedies.** Forty-five (45) days after mailing (by certified mail) notice of its intentions to do so, the Association may: (a) accelerate all remaining installments in that budget year and/or (b) bring an action to foreclose the lien against the Unit. Said notice shall be effective upon mailing. At any time, the Association may bring an action at law for damages against the Owner personally obligated to pay the same without waiving any claim of lien and may likewise pursue its remedies against any tenant residing in the Unit or on the Parcel or Lot. Interest, late fees, costs, and reasonable attorneys' fees of any such action (including appeals) shall be added to the amount of any assessment due.

**Section 4. No Waiver.** No Owner may waive or otherwise escape liability for assessments by non-use of the Common Areas or abandonment of the lot, unit or parcel.

## ARTICLE XI. FINES AND SUSPENSION OF RIGHTS

The Board shall suspend Owners' rights to use Common Areas and facilities and/or levy fines against the Owners for violations of the Rules and Regulations, Declaration or these Bylaws only as follows: (Note: this Article shall not apply to the suspension of Owners' rights under Article VII(1)(b).)

**Section 1. Fining Committee.** The Board of Directors shall appoint a Fining Committee to be comprised of three (3) to five (5) Owners who are not officers, Directors or employees of the Association, or the spouse, parent, child, brother or sister of an officer, Director or employee. The committee shall serve at the pleasure of the Board of Directors.

**Section 2. Complaint.** Upon written complaint by any Owner, Director, Member, or agent of the Association, the Board of Directors shall determine whether a fine should be levied against an Owner for the failure of that Owner or his/her/its tenants/occupants, licensees, or invitees, to comply with any provision of the Declaration, the Association Bylaws, or the Rules and Regulations of the Association.

**Section 3. Amount of Fine.** No fine shall exceed the higher of One Hundred Dollars (\$100.00) per violation. However, a fine may be levied on the basis of each day of a continuing violation with a single notice and opportunity for hearing provided that no such fine in the aggregate shall exceed Two Thousand Five Hundred Dollars (\$2,500.00). Fines over \$1,000.00 may become a lien on a unit, lot or parcel as an individual assessment and may be secured by claim of lien and otherwise collected using the procedure for collecting unpaid regular assessments.

**Section 4. Notice of Violation.** If the Board of Directors determines that a fine should be levied, then it shall notify the Owner of the Board's finding by notice of violation citing the specific provisions violated. Further, the notice of violation shall inform the Owner that if the Owner does not request a hearing in writing within fourteen (14) days of the mailing of the notice of violation, then the fine shall be made final at the next regular or special Board of Directors meeting. The notice of violation shall include a deadline for the Owner's request and a mailing address for the Association. If the Owner does not respond to the notice of violation, the Board of Directors may assess the fine at its next regular or special meeting and such assessment shall be considered final.

**Section 5. Hearing.** If the owner requests a hearing on the fine in writing, the Board of Directors shall refer the matter to the Fining Committee for hearing. Upon referral of the matter, the Fining Committee shall notify the Owner by notice of hearing of the time and date for the hearing which shall not be earlier than fourteen (14) days after the mailing of the notice of hearing. At the hearing, both Owner and Association may be represented by counsel and call witnesses.

**Section 6. Committee Report and Levy.** Within five (5) days of the conclusion of the hearing, the Fining Committee shall report its findings and conclusions to the Board of Directors and the owner. If the Fining Committee, by majority vote, does not approve a fine, the fine may not be levied. If the Fining Committee agrees with the fine, the Board of Directors may assess the fine at its next regular or special meeting and shall notice the owner by notice of fine.

**Section 7. Notices to be Sent by Certified Mail.** All notices described in this Article shall be sent by certified mail, return receipt requested, and shall be effective upon mailing.

## ARTICLE XII. BOOKS AND RECORDS; INSPECTION

The official records shall be maintained within the state for at least 7 years and shall be made available to a Member or Owner for inspection or photocopying within 45 miles of BAY BEACH within 10 business days after receipt by the Board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying within BAY BEACH or, at the option of the Association, by making the records available to a Member or Owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the Association has a photocopy machine available where the records are maintained, it must provide Members or Owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. The Association shall allow a Member or Owner or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the Association's providing the Member or Owner or his or her authorized representative with a copy of such records. The Association may not charge a fee to a Member or Owner or his or her authorized representative for the use of a portable device.

(a) The failure of the Association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the Association willfully failed to comply with this subsection.

(b) A Member or Owner who is denied access to official records is entitled to the actual damages or minimum damages for the Association's willful failure to comply with this subsection. The minimum damages are to be \$50 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request.

(c) The Association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a Member or Owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a Member or Owner's right to inspect records to less than one 8-hour business day per month. The Association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed \$20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The Association may charge up to 25 cents per page for copies made on the Association's photocopier or that of its agents and contractors. If the Association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the Association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The Association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to Members, Owners and prospective Owners. Notwithstanding this paragraph, the following records are not accessible to Members or Owners:



(1) Any record protected by the lawyer-client privilege as described in Fla. Stat. §90.502 and any record protected by the work-product privilege, including, but not limited to, a record prepared by an Association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Association and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

(2) Information obtained by the Association in connection with the approval of the lease, sale, or other transfer of a parcel.

(3) Personnel records of Association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an Association or management company employee or budgetary or financial records that indicate the compensation paid to an Association or management company employee.

(4) Medical records of Owners or community residents.

(5) Social security numbers, driver license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for an Owner other than as provided for Association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, the Association may print and distribute to Members and Owners a directory containing the name, parcel address, and all telephone numbers of each Owner. However, an Owner may exclude his or her telephone numbers from the directory by so requesting in writing to the Association. An Owner may consent in writing to the disclosure of other contact information described in this subparagraph. The Association is not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the Association and is voluntarily provided by an Owner and not requested by the Association.

(6) Any electronic security measure that is used by the Association to safeguard data, including passwords.

(7) The software and operating system used by the Association which allows the manipulation of data, even if the Owner owns a copy of the same software used by the Association. The data is part of the official records of the Association.

(d) The Association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the Community or the Association other than information or documents required by this Article to be made available or disclosed. The Association or its authorized agent may charge a reasonable fee to the prospective purchaser or lienholder or the current Owner or Member for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by

law, if the fee does not exceed \$150 plus the reasonable cost of photocopying and any attorney fees incurred by the Association in connection with the response.

### **ARTICLE XIII. CORPORATE SEAL**

The Association shall have a seal in circular form having within its circumference the words: "BAY BEACH ASSOCIATION, INC."

### **ARTICLE XIV. FISCAL YEAR AND REPORTS**

The fiscal year of the Association shall be the calendar year and shall end on December 31. 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 or other date as provided in the bylaws, the Association shall, within the time limits set forth in subsection (5), 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. Financial reports shall be prepared as follows:

(a) The Association shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles as adopted by the Board of Accountancy. The financial statements shall be based upon the Association's total annual revenues, as follows:

(1) If the Association's total annual revenues equal \$150,000 or more, but are less than \$300,000, it shall prepare compiled financial statements.

(2) If the Association's total annual revenues equal at least \$300,000, but are less than \$500,000, it shall prepare reviewed financial statements.

(3) If the Association's total annual revenues equal \$500,000 or more, it shall prepare audited financial statements.

(b)(1) If the Association's total annual revenues are less than \$150,000, it shall prepare a report of cash receipts and expenditures.

(2) A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the Association.

(c) If Members representing 20 percent of the Owners petition the Board for a level of financial reporting higher than that required by this section, the Association shall duly notice and hold a meeting of Members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total Voting Interests, the Association shall prepare or cause to be prepared (and shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in these Governing Documents) and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

(1) Compiled, reviewed, or audited financial statements, if the Association is otherwise required to prepare a report of cash receipts and expenditures;

(2) Reviewed or audited financial statements, if the Association is otherwise required to prepare compiled financial statements; or

(3) Audited financial statements if the Association is otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the Voting Interests present at a properly called meeting of the Association, an Association may prepare or cause to be prepared:

(1) A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

(2) A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

(3) A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

## **ARTICLE XV. AMENDMENTS**

These Bylaws may be amended by written consent, or at a regular or special meeting of Members, by the affirmative vote, in person or by proxy, of a majority of the Voting Interests (50%, plus 1) of the Association.

## **ARTICLE XVI. CONFLICTS**

In the case of any direct conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; in the case of any direct conflict between the Declaration and these Bylaws, the Declaration shall control.

**EXHIBIT “E”**

*(Rules and Regulations of the Association Dated \*)*

**BAY BEACH COMMUNITY ASSOCIATION INC.**

**RULES AND REGULATIONS**  
**FOR**  
**BAY BEACH**

In order to provide for and further the peaceful use of the neighborhoods and Common Areas within Bay Beach, the following Rules and Regulations for the Association have been enacted pursuant to Section 3 (especially 3.11) of the Declaration of Covenants and Restrictions for Bay Beach:

1. **Signs.** No Owner shall post or display, or permit to be posted or displayed, any signs on Bay Beach Common Areas including, without limitation, "For Sale," "For Rent," "Open House," and similar signs.

2. **Nuisance.** Nothing shall be done on the Bay Beach Common Areas which is or may become an annoyance or nuisance to any person. No obnoxious, unpleasant, obscene, or offensive activity shall be carried on, nor shall anything be done which can be reasonably construed to constitute a nuisance, whether public or private in nature. No Owner shall make or permit any disturbing noises by himself, his family, servants, employees, agents, visitors, or licensees, nor do or permit anything by such persons that will interfere with the rights, comforts or convenience of the Owners. No Owner shall play upon or suffer to be played upon any musical instrument, or operate or suffer to be operated, a phonograph, television, radio or sound amplifier, in such manner so as to disturb or annoy other occupants of the Bay Beach Properties. All parties shall lower the volume as to the foregoing as of 10:00 pm. of each day. The Board of Directors may also use local law enforcement and any and all other legal means necessary to enforce the provisions of this Section.

3. **Common Areas.** Common Areas shall only be used for their intended purposes. No Owner or resident shall make any use of any Common Area in such a manner as to abridge the equal rights of the other residents to their use and enjoyment, nor shall any Owner or resident remove, prune, cut, damage, or alter any trees or other landscaping located in the Common Areas. The sidewalks, entrances and all passageways must not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the premises.

4. **Storage and Display of Personal Property and Other Materials.** The personal property of all Owners and residents shall not be stored or left on any of the Bay Beach Common Areas.

5. **Agents of the Association.** Agents or employees of the Association shall not be sent off the Bay Beach Properties by any Owner or resident at any time for any purpose. No Owner or resident shall direct, supervise, or in any manner interfere with or attempt to assert any control over the agents or employees of the Association.

6. **Speed Limits and Traffic Signs.** All residents and their guests shall observe all posted speed limit and traffic signs within the Bay Beach Properties.

7. Hazardous and Flammable Materials. No flammable, combustible, or explosive fluid, chemical or substance shall be kept or utilized on or about the Common Areas.

8. Pet Restrictions.

A. The Board may require the permanent removal from the Bay Beach Properties of any such pet that becomes a source of annoyance, nuisance or danger to any other Owner or resident.

B. Owners keeping domestic animals shall be responsible for pet droppings, which must be disposed of in a trash receptacle, and for any inconvenience or damage caused by such animal.

C. No pet shall be left unattended on any portion of the Common Areas, and all pets shall be kept leashed.

D. Owners shall not feed any wild or stray animals on the Bay Beach Properties, but rather shall report any such wild or stray animals to the Community Patrol immediately. Owners should not attempt to capture any wild or stray animals.

9. Improper and Unlawful Uses. No improper, offensive, hazardous or unlawful use shall be made of Bay Beach Properties.

10. Recreation Areas. All Owners, members, tenants, guests and invitees shall obey the posted Rules and Regulations governing the Recreation facilities and areas.

11. [Dock Rules]

12. Enforcement and Remedies. Should an Owner fail to follow these Rules and Regulations, the Association may utilize all of the remedies described in under Fla. Stat. §720.305 including, but not limited to: (a) the levy of a fine after notice and an opportunity for a hearing, and (b) the suspension of the Owner's rights of use in the Common Areas.

**EXHIBIT “F”**

*(South Florida Water Management District - Permit 36-00611-S)*



## SOUTH FLORIDA WATER MANAGEMENT DISTRICT

District Headquarters: 3301 Gun Club Road, West Palm Beach, Florida 33406 (561) 686-8800 [www.sfwmd.gov](http://www.sfwmd.gov)

Application 160212-13  
Permit 36-00611-S

March 14, 2016

Estero Bay Improvement Association Inc  
C/O Sterling Property Services LLC  
27180 Bay Landing Drive Suite 4  
Bonita Springs, FL 34135

Dear Permittee:

Subject: **Notice of Permit Transfer  
Fort Myers Beach Golf Club  
Lee County, Section 3, Township 47 South, Range 24 East**

In response to your request which we received on February 12, 2016 for transfer of the above, Permit 36-00611-S has been officially transferred to Estero Bay Improvement Association, Inc., subject to the attached Notice of Rights. As a condition of transfer you have agreed that all terms and conditions of the permit and subsequent modifications, if any, are understood and accepted, and any proposed modification shall be applied for and authorized by this District prior to such modification. The Permit Transfer document including conditions and permit history are enclosed.

Outstanding compliance issues associated with the permit were identified during the transfer review. Please contact Beccagayle Reide at [breide@sfwmd.gov](mailto:breide@sfwmd.gov) or (239) 338-2929 ext. 7760 for more information.

Copies of the permit documents can be obtained from the District's ePermitting website at [www.sfwmd.gov/ePermitting](http://www.sfwmd.gov/ePermitting). If you have questions, please contact Rich Walker at [rdwalker@sfwmd.gov](mailto:rdwalker@sfwmd.gov) or (561) 682-6741.

Sincerely,

A handwritten signature in blue ink that reads "Stanley Orłowski".

Stanley Orłowski  
Section Administrator  
Regulatory Support Bureau

SO/r Handwritten initials "je" in blue ink.

c: Bill Morris, Jr. PE ([bmorris@m-da.com](mailto:bmorris@m-da.com))  
Clark L. and Chip Durpo  
Lee County Engineer ([BDickson@leegov.com](mailto:BDickson@leegov.com))  
Lee Ann Rosengarten, Sterling Property Services ([leann@sterlingpropertyfl.com](mailto:leann@sterlingpropertyfl.com))



## NOTICE OF RIGHTS

As required by Sections 120.569 and 120.60(3), Fla. Stat., the following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all of the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

### **RIGHT TO REQUEST ADMINISTRATIVE HEARING**

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a SFWMD decision which affects or may affect their substantial interests shall file a petition for hearing with the Office of the District Clerk of the SFWMD, in accordance with the filing instructions set forth herein, within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: (1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or (2) within 14 days of service of an Administrative Order pursuant to Section 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of written notice through mail, electronic mail, or posting that the SFWMD has or intends to take final agency action, or publication of notice that the SFWMD has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

If the District takes final agency action which materially differs from the noticed intended agency decision, persons who may be substantially affected shall, unless otherwise provided by law, have an additional Rule 28-106.111, Fla. Admin. Code, point of entry.

Any person to whom an emergency order is directed pursuant to Section 373.119(2), Fla. Stat., shall comply therewith immediately, but on petition to the board shall be afforded a hearing as soon as possible.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for an extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

### **FILING INSTRUCTIONS**

A petition for administrative hearing must be filed with the Office of the District Clerk of the SFWMD. Filings with the Office of the District Clerk may be made by mail, hand-delivery, or e-mail. Filings by facsimile will not be accepted. A petition for administrative hearing or other document is deemed filed upon receipt during normal business hours by the Office of the District Clerk at SFWMD headquarters in West Palm Beach, Florida. The District's normal business hours are 8:00 a.m. – 5:00 p.m., excluding weekends and District holidays. Any document received by the Office of the District Clerk after 5:00 p.m. shall be deemed filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the District Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.

- Filings by hand-delivery must be delivered to the Office of the District Clerk. Delivery of a petition to the SFWMD's security desk does not constitute filing. It will be necessary to request that the SFWMD's security officer contact the Office of the District Clerk. An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by e-mail must be transmitted to the Office of the District Clerk at [clerk@sfwmd.gov](mailto:clerk@sfwmd.gov). The filing date for a document transmitted by electronic mail shall be the date the Office of the District Clerk receives the complete document. A party who files a document by e-mail shall (1) represent that the original physically signed document will be retained by that party for the duration of the proceeding and of any subsequent appeal or subsequent proceeding in that cause and that the party shall produce it upon the request of other parties; and (2) be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed.

### **INITIATION OF AN ADMINISTRATIVE HEARING**

Pursuant to Sections 120.54(5)(b)4. and 120.569(2)(c), Fla. Stat., and Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, SFWMD file number or any other SFWMD identification number, if known.
2. The name, address, any email address, any facsimile number, and telephone number of the petitioner and petitioner's representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the SFWMD's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's proposed action.

### **MEDIATION**

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401–.405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

### **RIGHT TO SEEK JUDICIAL REVIEW**

Pursuant to Section 120.68, Fla. Stat., and in accordance with Florida Rule of Appellate Procedure 9.110, a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal with the Office of the District Clerk of the SFWMD in accordance with the filing instructions set forth herein within 30 days of rendition of the order to be reviewed, and by filing a copy of the notice with the clerk of the appropriate district court of appeal.



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
 PERMIT TRANSFER FOR  
 ENVIRONMENTAL RESOURCE INDIVIDUAL PERMIT NO. 36-00611-S**

**DATE ISSUED : MAR 14, 2016**

**PERMITTEE:** ESTERO BAY IMPROVEMENT ASSOCIATION, INC.  
 (FORT MYERS BEACH GOLF CLUB)  
 C/O STERLING PROPERTY SERVICES LLC  
 27180 BAY LANDING DRIVE SUITE 4  
 BONITA SPRINGS, FL 34135

**ORIGINAL PERMIT ISSUED:** DECEMBER 5, 2006, MODIFIED AS DESCRIBED IN ATTACHED PERMIT HISTORY.

**ORIGINAL PROJECT AUTHORIZATION:** CONSTRUCTION AND OPERATION OF A SURFACE WATER MANAGEMENT SYSTEM SERVING A 132 ACRE RESIDENTIAL PROJECT KNOWN AS FORT MYERS BEACH GOLF CLUB.

**CURRENT AUTHORIZATION:** TRANSFER CONSTRUCTION AND OPERATION OF A SURFACE WATER MANAGEMENT SYSTEM SERVING A 132 ACRE RESIDENTIAL PROJECT KNOWN AS FORT MYERS BEACH GOLF CLUB.

**PROJECT LOCATION:** LEE COUNTY **SECTION:** 3 **TWP:** 47S **RGE:** 24E

**PERMIT DURATION:** AS PREVIOUSLY PERMITTED.

In response to Transfer Application No. 160212-13, dated February 11, 2016 this Permit Transfer is issued pursuant to the applicable provisions of Part IV, Chapter 373, Florida Statutes (F.S) and Section 62-330.340, Florida Administrative Code.

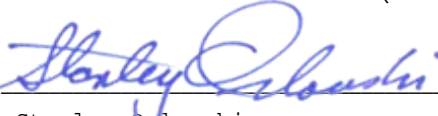
All Permit design specifications, special and general/limiting Permit conditions, and other terms and requirements contained in the Permit shall remain in full force and effect unless further modified by the South Florida Water Management District and shall be binding upon the Permittee, for the duration of the Permit, as specified in Section 62-330.320, Florida Administrative Code.

In the event the property is sold or otherwise conveyed, the Permittee shall remain liable for compliance with this Permit until permit transfer to the new owner is approved by the District. Section 62-330.340, Florida Administrative Code requires written notification to the District within 30 days of the transfer of any interest in the permitted real property, giving the name and address of the new owner in interest with a copy of the instrument effecting the transfer.

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

SEE PAGES 2 - 3 OF 5 ( 15 SPECIAL CONDITIONS )

SEE PAGES 4 - 5 OF 5 ( 19 LIMITING CONDITIONS )

By 

Stanley Orłowski  
 Section Administrator  
 Regulatory Support Bureau

**SPECIAL CONDITIONS**

1. 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.
2. MEASURES SHALL BE TAKEN DURING CONSTRUCTION TO INSURE THAT SEDIMENTATION AND/OR TURBIDITY PROBLEMS ARE NOT CREATED IN THE RECEIVING WATER.
3. 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.
4. FACILITIES OTHER THAN THOSE STATED HEREIN SHALL NOT BE CONSTRUCTED WITHOUT AN APPROVED MODIFICATION OF THIS PERMIT.
5. LAKE SIDE SLOPES SHALL BE NO STEEPER THAN 4:1 (HORIZONTAL:VERTICAL) TO A DEPTH OF TWO FEET BELOW THE CONTROL ELEVATION. SIDE SLOPES SHALL BE NURTURED OR PLANTED FROM 2 FEET BELOW TO 1 FOOT ABOVE CONTROL ELEVATION TO INSURE VEGETATIVE GROWTH.
6. OPERATION OF THE SURFACE WATER MANAGEMENT SYSTEM SHALL BE THE RESPONSIBILITY OF THE PERMITTEE.
7. SILT SCREENS, HAY BALES OR OTHER SUCH SEDIMENT CONTROL MEASURES SHALL BE UTILIZED DURING CONSTRUCTION. THE SELECTED SEDIMENT CONTROL MEASURES SHALL BE INSTALLED LANDWARD OF THE UPLAND BUFFER ZONES AROUND ALL PROTECTED WETLANDS. ALL AREAS SHALL BE STABILIZED AND VEGETATED IMMEDIATELY AFTER CONSTRUCTION TO PREVENT EROSION INTO THE WETLANDS AND UPLAND BUFFER ZONES.
8. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, THE PERIMETER OF THE PROTECTED WETLANDS AND BUFFER ZONES SHALL BE FENCED TO PREVENT ENCROACHMENT INTO THE WETLANDS. THE PERMITTEE SHALL NOTIFY THE SFWMD'S ENVIRONMENTAL COMPLIANCE STAFF IN WRITING UPON COMPLETION OF FENCING AND SCHEDULE AN INSPECTION OF THIS WORK. THE PERMITTEE SHALL MODIFY THE FENCING IF SFWMD STAFF DETERMINES IT IS INSUFFICIENT OR IS NOT IN CONFORMANCE WITH THE INTENT OF THIS PERMIT. FENCING SHALL REMAIN IN PLACE UNTIL ALL ADJACENT CONSTRUCTION ACTIVITIES ARE COMPLETE.
9. THE SFWMD RESERVES THE RIGHT TO REQUIRE REMEDIAL MEASURES TO BE TAKEN BY THE PERMITTEE IF WETLAND AND/OR UPLAND MONITORING OR OTHER INFORMATION DEMONSTRATES THAT ADVERSE IMPACTS TO PROTECTED, CONSERVED, INCORPORATED OR MITIGATED WETLANDS OR UPLANDS HAVE OCCURRED DUE TO PROJECT RELATED ACTIVITIES.
10. ANY FUTURE CHANGES IN LAND USE OR TREATMENT OF WETLANDS AND/OR UPLAND BUFFER/COMPENSATION AREAS MAY REQUIRE A SURFACE WATER MANAGEMENT PERMIT MODIFICATION AND ADDITIONAL ENVIRONMENTAL REVIEW BY DISTRICT STAFF. PRIOR TO THE PERMITTEE INSTITUTING ANY FUTURE CHANGES NOT AUTHORIZED BY THIS PERMIT, THE PERMITTEE SHALL NOTIFY THE SFWMD OF SUCH INTENTIONS FOR A DETERMINATION OF ANY NECESSARY PERMIT MODIFICATIONS.
11. MINIMUM BUILDING FLOOR ELEVATION: 11.0 FT. NGVD.
12. DISCHARGE FACILITIES:  
  
BASIN 1:  
  
1 - .33' DIA. CIRCULAR ORIFICE WITH INVERT AT ELEVATION 1.0 FT. NGVD.  
1- 3'W X 1.4'H RECTANGULAR NOTCH WITH CREST AT ELEVATION 2.27 FT. NGVD.  
EXISTING 1.33' DIA. PVC CULVERT.

RECEIVING BODY: ESTERO BAY.

1 - 800 GPM BLEEDER PUMP OPERATING BETWEEN ELEVATION 1.33/2.27 FT. NGVD.  
1 - 10,000 GPM MAIN PUMP WITH ON/OFF AT ELEVATION 2.27/2.25 FT. NGVD.

RECEIVING BODY: LAKE L-1.

CONTROL ELEV: 1.0 FT. NGVD/1.0 FT. NGVD DRY SEASON.

BASIN 2:

1 - .33' W X .71'H RECTANGULAR NOTCH WITH CREST AT ELEVATION 2.5 FT. NGVD.  
1 - 10.5' W X 1.09'H RECTANGULAR NOTCH WITH CREST AT ELEVATION 3.21 FT. NGVD.  
1 - 10,000 GPM PUMP WITH ON/OFF AT ELEVATION 4.3/4.2 FT. NGVD.  
EXISTING 2' DIA. CMP AND 1.5' DIA. RCP CULVERT.

RECEIVING BODY: UNNAMED CANAL.

CONTROL ELEV: 2.5 FT NGVD/ 1.0 FT. NGVD DRY SEASON.

13. PRIOR TO THE COMMENCEMENT OF ANY SITE ACTIVITY AUTHORIZED BY THIS PERMIT, A PRE-CONSTRUCTION MEETING SHALL BE HELD WITH SFWMD FIELD ENGINEERING AND ENVIRONMENTAL POST PERMIT COMPLIANCE STAFF FROM THE FT. MYERS OFFICE.
14. WATER QUALITY TESTING SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS IN EXHIBIT 7A-D.
15. THE MODIFICATIONS TO THE SURFACE WATER MANAGEMENT SYSTEM INCLUDING THE REMOVING THE PUMP ON THE EASTERN LAKE AND INSTALLING A CONTROL STRUCTURE WITH BLEEDER AND WEIR, INSTALLING A 10,000 GPM MAIN PUMP AND 800 GPM BLEEDER PUMP ON LAKE L-2 TO DISCHARGE TO LAKE L-1, INSTALLING A CONTROL STRUCTURE WITH BLEEDER AND WEIR ON LAKE L-1, CONVERTING THE EXISTING 10,000 GPM PUMP ON LAKE L-1 TO AN AUTOMATIC SYSTEM AND PLANTING THE LAKE BANKS WITH WETLAND PLANTS SHALL BE COMPLETED WITHIN 60 DAYS OF THE FILLING OF LAKE L-14.

**LIMITING CONDITIONS**

1. THE PERMITTEE SHALL IMPLEMENT THE WORK AUTHORIZED IN A MANNER SO AS TO MINIMIZE ANY ADVERSE IMPACT OF THE WORKS ON FISH, WILDLIFE, NATURAL ENVIRONMENTAL VALUES, AND WATER QUALITY. THE PERMITTEE SHALL INSTITUTE NECESSARY MEASURES DURING THE CONSTRUCTION PERIOD, INCLUDING FULL COMPACTION OF ANY FILL MATERIAL PLACED AROUND NEWLY INSTALLED STRUCTURES, TO REDUCE EROSION, TURBIDITY, NUTRIENT LOADING AND SEDIMENTATION IN THE RECEIVING WATERS.
2. WATER QUALITY DATA FOR THE WATER DISCHARGED FROM THE PERMITTEE'S PROPERTY OR INTO SURFACE WATERS OF THE STATE WILL BE SUBMITTED TO THE DISTRICT AS REQUIRED BY SECTION 5.9, "BASIS OF REVIEW FOR SURFACE WATER MANAGEMENT PERMIT APPLICATIONS WITHIN SOUTH FLORIDA WATER MANAGEMENT DISTRICT". PARAMETERS TO BE MONITORED MAY INCLUDE THOSE LISTED IN CHAPTER 62-302, F.A.C.. IF WATER QUALITY DATA IS REQUIRED, THE PERMITTEE SHALL PROVIDE DATA ON VOLUMES OF WATER DISCHARGED, INCLUDING TOTAL VOLUME DISCHARGED DURING THE DAYS OF SAMPLING AND TOTAL MONTHLY DISCHARGES FROM THE PROPERTY OR INTO SURFACE WATERS OF THE STATE.
3. THIS PERMIT SHALL NOT RELIEVE THE PERMITTEE OF ANY OBLIGATION TO OBTAIN NECESSARY FEDERAL, STATE, LOCAL OR SPECIAL DISTRICT APPROVALS.
4. THE OPERATION PHASE OF THIS PERMIT WILL NOT BECOME EFFECTIVE UNTIL THE DISTRICT'S ACCEPTANCE OF CERTIFICATION OF THE COMPLETED SURFACE WATER MANAGEMENT SYSTEM. THE PERMITTEE SHALL REQUEST TRANSFER OF THE PERMIT TO THE RESPONSIBLE OPERATION ENTITY ACCEPTED BY THE DISTRICT, IF DIFFERENT FROM THE PERMITTEE. THE TRANSFER REQUEST CAN BE SUBMITTED CONCURRENTLY WITH THE CONSTRUCTION COMPLETION CERTIFICATION.
5. ALL ROAD ELEVATIONS SHALL BE SET IN ACCORDANCE WITH THE CRITERIA SET FORTH IN SECTION 6.5, "BASIS OF REVIEW FOR SURFACE WATER MANAGEMENT PERMIT APPLICATIONS WITHIN SOUTH FLORIDA WATER MANAGEMENT DISTRICT".
6. ALL BUILDING FLOOR ELEVATIONS SHALL BE SET IN ACCORDANCE WITH THE CRITERIA SET FORTH IN SECTION 6.4, "BASIS OF REVIEW FOR SURFACE WATER MANAGEMENT PERMIT APPLICATIONS WITHIN SOUTH FLORIDA WATER MANAGEMENT DISTRICT".
7. OFF-SITE DISCHARGES DURING CONSTRUCTION AND DEVELOPMENT WILL BE MADE ONLY THROUGH THE FACILITIES AUTHORIZED BY THIS PERMIT.
8. A PERMIT TRANSFER TO THE OPERATION PHASE SHALL NOT OCCUR UNTIL A RESPONSIBLE ENTITY MEETING THE REQUIREMENT IN SECTION 9.0, "BASIS OF REVIEW FOR SURFACE WATER MANAGEMENT PERMIT APPLICATIONS WITHIN SOUTH FLORIDA WATER MANAGEMENT DISTRICT" HAS BEEN ESTABLISHED TO OPERATE AND MAINTAIN THE SYSTEM. THE ENTITY MUST BE PROVIDED WITH SUFFICIENT OWNERSHIP OR LEGAL INTEREST SO THAT IT HAS CONTROL OVER ALL WATER MANAGEMENT FACILITIES AUTHORIZED HEREIN.
9. THE PERMIT DOES NOT CONVEY TO THE PERMITTEE ANY PROPERTY RIGHTS OR PRIVILEGES OTHER THAN THOSE SPECIFIED IN THE PERMIT AND CHAPTER 40E-4, F.A.C..
10. 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, OPERATION, MAINTENANCE OR USE OF ANY FACILITY AUTHORIZED BY THE PERMIT.
11. 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.
12. WITHIN 30 DAYS OF ISSUANCE OF THIS PERMIT, THE PERMITTEE OR AUTHORIZED AGENT SHALL NOTIFY THE DISTRICT (VIA THE SUPPLIED CONSTRUCTION COMMENCEMENT NOTICE OR EQUIVALENT) OF THE ACTUAL OR ANTICIPATED CONSTRUCTION START DATE AND THE EXPECTED COMPLETION DATE.
13. WHEN THE DURATION OF CONSTRUCTION EXCEEDS ONE YEAR, THE PERMITTEE OR AUTHORIZED AGENT SHALL SUBMIT CONSTRUCTION STATUS REPORTS ON AN ANNUAL BASIS (VIA THE SUPPLIED ANNUAL STATUS REPORT OR EQUIVALENT) BEGINNING ONE YEAR AFTER THE INITIAL COMMENCEMENT OF CONSTRUCTION.
14. WITHIN 30 DAYS AFTER COMPLETION OF CONSTRUCTION OF THE SURFACE WATER MANAGEMENT SYSTEM, THE PERMITTEE OR AUTHORIZED AGENT SHALL FILE A WRITTEN STATEMENT OF COMPLETION AND CERTIFICATION BY A FLORIDA REGISTERED

PROFESSIONAL ENGINEER. THESE STATEMENTS MUST SPECIFY THE ACTUAL DATE OF CONSTRUCTION COMPLETION AND MUST CERTIFY THAT ALL FACILITIES HAVE BEEN CONSTRUCTED IN SUBSTANTIAL CONFORMANCE WITH THE PLANS AND SPECIFICATIONS APPROVED BY THE DISTRICT (VIA THE SUPPLIED CONSTRUCTION COMPLETION/CERTIFICATION OR EQUIVALENT). THE CONSTRUCTION COMPLETION CERTIFICATION MUST INCLUDE, AT A MINIMUM, EXISTING ELEVATIONS, LOCATIONS AND DIMENSIONS OF THE COMPONENTS OF THE WATER MANAGEMENT FACILITIES. ADDITIONALLY, IF DEVIATIONS 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.

15. WITHIN 30 DAYS OF ANY SALE, CONVEYANCE OR OTHER TRANSFER OF ANY OF THE LAND WHICH IS PROPOSED FOR DEVELOPMENT UNDER THE AUTHORIZATION OF THIS PERMIT, THE PERMITEE SHALL NOTIFY THE DISTRICT OF SUCH TRANSFER IN WRITING VIA EITHER FORM 0483, REQUEST FOR PERMIT TRANSFER; OR FORM 0920, REQUEST FOR TRANSFER OF SURFACE WATER MANAGMENT CONSTRUCTION PHASE TO OPERATION PHASE (TO BE COMPLETED AND SUBMITTED BY THE OPERATING ENTITY), IN ACCORDANCE WITH SECTIONS 40E-1.6105 AND 40E-4.351, F.A.C..
16. A PRORATED SHARE OF SURFACE WATER MANAGEMENT RETENTION/DETENTION AREAS, SUFFICIENT TO PROVIDE THE REQUIRED FLOOD PROTECTION AND WATER QUALITY TREATMENT, MUST BE PROVIDED PRIOR TO OCCUPANCY OF ANY BUILDING OR RESIDENCE.
17. 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.
18. IT IS THE RESPONSIBILITY OF THE PERMITEE TO INSURE THAT ADVERSE OFF-SITE WATER RESOURCE RELATED IMPACTS DO NOT OCCUR DURING CONSTRUCTION.
19. THE PERMITEE MUST OBTAIN A WATER USE PERMIT PRIOR TO CONSTRUCTION DEWATERING, UNLESS THE WORK QUALIFIES FOR A GENERAL PERMIT PURSUANT TO SUBSECTION 40E-20.302(4), F.A.C..

**EXHIBIT “G”**

*(Submerged Lands Lease dated April 4, 2013 - Community Fishing Pier)*



~~FOIA b 7 - C~~  
Bureau of Public Land Administration  
3900 Commonwealth Boulevard  
Mail Station No. 125  
Tallahassee, Florida 32399

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND  
OF THE STATE OF FLORIDA

SOVEREIGNTY SUBMERGED LANDS LEASE RENEWAL

BOT FILE NO. 360028535  
PA NO. \_\_\_\_\_

THIS LEASE is hereby issued by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the Lessor.

WITNESSETH: That for and in consideration of payment of the annual lease fees hereinafter provided and the faithful and timely performance of and compliance with all terms and conditions stated herein, the Lessor does hereby lease to Estero Bay Improvement Association, Inc., a Florida nonprofit corporation, hereinafter referred to as the Lessee, the sovereignty lands described as follows:

A parcel of sovereignty submerged land in Section 03,  
Township 47 South, Range 24 East, in Estero Bay,  
Lee County, containing 1,088 square feet,  
more or less, as is more particularly described and shown  
on Attachment A, dated March 23, 2007.

TO HAVE THE USE OF the hereinabove described premises from April 14, 2013, the effective date of this lease renewal, through April 14, 2023, the expiration date of this lease renewal. The terms and conditions on and for which this lease renewal is granted are as follows:

1. USE OF PROPERTY: The Lessee is hereby authorized to operate an existing residential fishing pier to be used exclusively for fishing and passive recreational activities only in conjunction with an upland residential condominium, without fueling facilities, without a sewage pumpout facility if it meets the regulatory requirements of the State of Florida Department of Environmental Protection or State of Florida Department of Health, whichever agency has jurisdiction, and without liveboards as defined in paragraph 26 as shown and conditioned in Attachment A. All of the foregoing subject to the remaining conditions of this lease.

2. LEASE FEES: The Lessee hereby agrees to pay to the Lessor an annual lease fee of \$490.00 (which, pursuant to Section 253.0347(2)(b), Florida Statutes, does not include a lease fee on a preempted area of 10 square feet of sovereignty submerged lands for each linear foot of the Lessee's shoreline) plus sales tax pursuant to Section 212.031, Florida Statutes, if applicable, within 30 days of the date of receipt of the invoice. The annual fee for the remaining years of this lease shall be adjusted pursuant to provisions of Rule 18-21.011, Florida Administrative Code. The State of Florida Department of Environmental Protection, Division of State Lands (the "Division") will notify the Lessee in writing of the amount and the due date of each subsequent annual lease payment during the remaining term of this lease. All lease fees due hereunder shall be remitted to the Division as agent for the Lessor.

request by the Lessor any and all information in a certified form needed to calculate the lease fee specified in paragraph two (2) above, including the income, as defined in subsection 18-21.003(31), Florida Administrative Code, derived directly or indirectly from the use of sovereignty submerged lands on an annual basis. When six percent (6%) of said annual income exceeds the base fee or minimum annual fee established pursuant to Rule 18-21.011, Florida Administrative Code, for any lease year during the term of this lease, the Lessor shall send the Lessee a supplemental invoice for the difference in the amounts for that lease year. (B) The instrument or agreement used by the Lessee to transfer or assign the right to use a wet slip at the docking facility to a third party shall include a provision that clearly notifies the wet slip renter/user/holder that if the wet slip renter/user/holder subsequently transfers his right to use said wet slip to another party, the instrument or agreement used to transfer said wet slip shall contain a provision that requires six percent (6%) of the annual gross income derived from said instrument or agreement for the use of said wet slip be paid to the Lessee who, upon receipt, shall report and transmit said amount to the Lessor. The instrument or agreement used by the Lessee to transfer a wet slip shall also include a provision that clearly notifies the wet slip renter/user/holder that no interest in said wet slip may be further transferred unless a substantially similar provision to the one contained in the preceding sentence is placed in each succeeding instrument or agreement used to transfer said wet slip to each new wet slip renter/user/holder. (C) The Lessee shall submit to the Lessor each instrument or agreement used by the Lessee to transfer or assign the right to use a wet slip at the docking facility to a third party annually at the same time the Lessee submits the required Annual Wet Slip Revenue Report to the Lessor.

4. **LATE FEE ASSESSMENTS:** The Lessee shall pay a late payment assessment for lease fees or other charges due under this lease which are not paid within 30 days after the due date. This assessment shall be computed at the rate of twelve percent (12%) per annum, calculated on a daily basis for every day the payment is late.

5. **EXAMINATION OF LESSEE'S RECORDS:** For purposes of this lease renewal, the Lessor is hereby specifically authorized and empowered to examine, for the term of this lease renewal including any extensions thereto plus three (3) additional years, at all reasonable hours, the books, records, contracts, and other documents confirming and pertaining to the computation of annual lease payments as specified in paragraph two (2) above.

6. **MAINTENANCE OF LESSEE'S RECORDS:** The Lessee shall maintain separate accounting records for: (i) gross revenue derived directly from the use of the leased premises, (ii) the gross revenue derived indirectly from the use of the leased premises, and (iii) all other gross revenue derived from the Lessee's operations on the riparian upland property. The Lessee shall secure, maintain and keep all records for the entire term of this lease renewal plus three (3) additional years. This period shall be extended for an additional two (2) years upon request for examination of all records and accounts for lease verification purposes by the Lessor.

7. **AGREEMENT TO EXTENT OF USE:** This lease is given to the Lessee to use or occupy the leased premises only for those activities specified herein. The Lessee shall not (i) change or add to the approved use of the leased premises as defined herein (e.g., from commercial to multi-family residential, from temporary mooring to rental of wet slips, from rental of wet slips to contractual agreement with third party for docking of cruise ships, from rental of recreational pleasure craft to rental or temporary mooring of charter/tour boats, from loading/offloading commercial to rental of wet slips, etc.); (ii) change activities in any manner that may have an environmental impact that was not considered in the original authorization or regulatory permit; or (iii) change the type of use of the riparian uplands or as permitted by the Lessee's interest in the riparian upland property that is more particularly described in Attachment B without first obtaining a regulatory permit/modified permit, if applicable, the Lessor's written authorization in the form of a modified lease, the payment of additional fees, if applicable, and, if applicable, the removal of any structures which may no longer qualify for authorization under the modified lease.

8. **PROPERTY RIGHTS:** The Lessee shall make no claim of title or interest to said lands hereinbefore described by reason of the occupancy or use thereof, and all title and interest to said land hereinbefore described is vested in the Lessor. The Lessee is prohibited from including, or making any claim that purports to include, said lands described or the Lessee's leasehold interest in said lands into any form of private ownership, including but not limited to any form of condominium or cooperative ownership. The Lessee is further prohibited from making any claim, including any advertisement, that said land, or the use thereof, may be purchased, sold, or re-sold.

9. **INTEREST IN RIPARIAN UPLAND PROPERTY:** During the term of this lease renewal, the Lessee shall maintain satisfactory evidence of sufficient upland interest as required by paragraph 18-21.004(3)(b), Florida Administrative Code, in the riparian upland property that is more particularly described in Attachment B and by reference made a part hereof together with the riparian rights appurtenant thereto. If such interest is terminated or the Lessor determines that such interest did not exist on the effective date of this lease, this lease may be terminated at the option of the Lessor. If the Lessor terminates this lease, the Lessee agrees not to assert a claim or defense against the Lessor arising out of this lease. Prior to sale and/or termination of the Lessee's interest in the riparian upland property, the Lessee shall inform any potential buyer or transferee of the Lessee's interest in the riparian upland property and the existence of this lease and all its terms and conditions and shall complete and execute any documents required by the Lessor to effect an assignment of this lease, if consented to by the Lessor. Failure to do so will not relieve the Lessee from responsibility for full compliance with the terms and conditions of this lease which include, but are not limited to, payment of all fees and/or penalty assessments incurred prior to such act.

without prior written consent of the Lessor or its duly authorized agent. Such assignment or other transfer shall be subject to the terms, conditions and provisions of this lease, current management standards and applicable laws, rules and regulations in effect at that time. Any assignment or other transfer without prior written consent of the Lessor shall be null and void and without legal effect.

11. INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS: The Lessee shall investigate all claims of every nature arising out of this lease at its expense, and shall indemnify, defend and save and hold harmless the Lessor and the State of Florida from all claims, actions, lawsuits and demands arising out of this lease renewal.

12. NOTICES/COMPLIANCE/TERMINATION: The Lessee binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Lessee, its successors and assigns. In the event the Lessee fails or refuses to comply with the provisions and conditions herein set forth, or in the event the Lessee violates any of the provisions and conditions herein set forth, and the Lessee fails or refuses to comply with any of said provisions or conditions within twenty (20) days of receipt of the Lessor's notice to correct, this lease may be terminated by the Lessor upon thirty (30) days written notice to the Lessee. If canceled, all of the above-described parcel of land shall revert to the Lessor. All notices required to be given to the Lessee by this lease or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

Esterio Bay Improvement Association, Inc.  
27180 Bay Landing Drive, Suite 4  
Bonita Springs, Florida 34135

The Lessee shall notify the Lessor by certified mail of any change to this address at least ten (10) days before the change is effective.

13. TAXES AND ASSESSMENTS: The Lessee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this lease renewal.

14. NUISANCES OR ILLEGAL OPERATIONS: The Lessee shall not permit the leased premises or any part thereof to be used or occupied for any purpose or business other than herein specified unless such proposed use and occupancy are consented to by the Lessor and the lease is modified accordingly, nor shall Lessee knowingly permit or suffer any nuisances or illegal operations of any kind on the leased premises.

15. MAINTENANCE OF FACILITY /RIGHT TO INSPECT: The Lessee shall maintain the leased premises in good condition, keeping the structures and equipment located thereon in a good state of repair in the interests of public health, safety and welfare. The leased premises shall be subject to inspection by the Lessor or its designated agent at any reasonable time.

16. NON-DISCRIMINATION: The Lessee shall not discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the area subject to this lease renewal or upon lands adjacent to and used as an adjunct of the leased area. During the lease term, the Lessee shall post and maintain the placard furnished to the Lessee by the Lessor in a prominent and visible location on the leased premises or adjacent business office of the Lessee. It shall be the responsibility of the Lessee to post the placard in a manner which will provide protection from the elements, and, in the event that said placard becomes illegible at any time during the term of this lease renewal (including any extensions thereof), to notify the Lessor in writing, so that a replacement may be provided.

17. ENFORCEMENT OF PROVISIONS: No failure, or successive failures, on the part of the Lessor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Lessor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

18. PERMISSION GRANTED: Upon expiration or cancellation of this lease renewal all permission granted hereunder shall cease and terminate.

subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. In the event that the Lessee is in full compliance with the terms of this lease, the Lessor will begin the renewal process. The term of any renewal granted by the Lessor shall commence on the last day of the previous lease term. In the event the Lessor does not grant a renewal, the Lessee shall vacate the leased premises and remove all structures and equipment occupying and erected thereon at its expense. The obligation to remove all structures authorized herein upon termination of this lease renewal shall constitute an affirmative covenant upon the Lessee's interest in the riparian upland property more particularly described in Attachment B, which shall run with the title to the Lessee's interest in said riparian upland property and shall be binding upon the Lessee and the Lessee's successors in title or successors in interest.

20. REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES: If the Lessee does not remove said structures and equipment occupying and erected upon the leased premises after expiration or cancellation of this lease renewal, such structures and equipment will be deemed forfeited to the Lessor, and the Lessor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Lessee at the address specified in Paragraph 12 or at such address on record as provided to the Lessor by the Lessee. However, such remedy shall be in addition to all other remedies available to the Lessor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

21. REMOVAL COSTS/LIEN ON RIPARIAN UPLAND PROPERTY: Subject to the noticing provisions of Paragraph 20 of this lease, any costs incurred by the Lessor in removal of any structures and equipment constructed or maintained on state lands shall be paid by Lessee and any unpaid costs and expenses shall constitute a lien upon the Lessee's interest in the riparian upland property that is more particularly described in Attachment B. This lien on the Lessee's interest in the riparian upland property shall be enforceable in summary proceedings as provided by law.

22. RIPARIAN RIGHTS/FINAL ADJUDICATION: In the event that any part of any structure authorized hereunder is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent riparian rights, Lessee agrees to either obtain written consent for the offending structure from the affected riparian owner or to remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this paragraph shall constitute a material breach of this lease renewal agreement and shall be grounds for immediate termination of this lease renewal agreement at the option of the Lessor.

23. AMENDMENTS/MODIFICATIONS: This lease renewal is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this lease renewal must be in writing, must be accepted, acknowledged and executed by the Lessee and Lessor, and must comply with the rules and statutes in existence at the time of the execution of the modification or amendment. Notwithstanding the provisions of this paragraph, if mooring is authorized by this lease, the Lessee may install boatlifts within the leased premises without formal modification of the lease provided that (a) the Lessee obtains any state or local regulatory permit that may be required; and (b) the location or size of the lift does not increase the mooring capacity of the docking facility.

24. ADVERTISEMENT/SIGNS/NON-WATER DEPENDENT ACTIVITIES/ADDITIONAL ACTIVITIES/MINOR STRUCTURAL REPAIRS: No permanent or temporary signs directed to the boating public advertising the sale of alcoholic beverages shall be erected or placed within the leased premises. No restaurant or dining activities are to occur within the leased premises. The Lessee shall ensure that no permanent, temporary or floating structures, fences, docks, pilings or any structures whose use is not water-dependent shall be erected or conducted over sovereignty submerged lands without prior written consent from the Lessor. No additional structures and/or activities including dredging, relocation/realignment or major repairs or renovations to authorized structures, shall be erected or conducted on or over sovereignty, submerged lands without prior written consent from the Lessor. Unless specifically authorized in writing by the Lessor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Lessee to administrative fines under Chapter 18-14, Florida Administrative Code. This condition does not apply to minor structural repairs required to maintain the authorized structures in a good state of repair in the interests of public health, safety or welfare; provided, however, that such activities shall not exceed the activities authorized by this agreement.

25. COMPLIANCE WITH FLORIDA LAWS: On or in conjunction with the use of the leased premises, the Lessee shall at all times comply with all Florida Statutes and all administrative rules promulgated thereunder. Any unlawful activity which occurs on the leased premises or in conjunction with the use of the leased premises shall be grounds for the termination of this lease by the Lessor.

26. LIVEBOARDS: The term "liveboard" is defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period. If liveboards are authorized by paragraph one (1) of this lease, in no event shall such "liveboard" status exceed six (6) months within any twelve (12) month period, nor shall any such vessel constitute a legal or primary residence.

27. GAMBLING VESSELS. During the term of this lease and any renewals, extensions, modifications or assignments thereof, Lessee shall prohibit the operation of or entry onto the leased premises of gambling cruise ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in "cruises to nowhere," where the ships leave and return to the state of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from such gambling cruise ships.

28. FINANCIAL CAPABILITY: To assure the Lessor that the Lessee has the financial capability to undertake and operate the project authorized by this lease, the Lessee certifies to the Lessor as follows: (i) the Lessee is not the subject of a pending bankruptcy proceeding; (ii) the Lessee has no unsatisfied judgments entered against it; (iii) the Lessee has satisfied all state and local taxes for which it is responsible; and (iv) no other matters are pending or threatened against or affecting the Lessee or the Lessee's interest in the riparian upland property that would impair the Lessee's financial capability to undertake and operate the project authorized by this lease. Any breach of this lease condition shall constitute a default under this lease.

29. SPECIAL LEASE CONDITION: The docking of any vessels, on either a temporary or permanent basis, is prohibited and the pier shall be used solely for passive recreational activities, such as fishing. To ensure compliance, the Lessee shall place and maintain, during the term of this lease and all subsequent renewal terms: (1) a guard and intermediate rail(s) consistent with state or local building code(s) or a 4-foot high railing and 2-foot high intermediate railing around the entire perimeter; and (2) signs advising boaters that mooring, on either a temporary or permanent basis, is prohibited.

Mary K. Thurmond  
 Print/Type Name of Witness  
Kathy C Griffin  
 Original Signature  
Kathy C Griffin  
 Print/Type Name of Witness

BY: Cheryl C McCall  
 Cheryl C. McCall, Chief, Bureau of Public Land Administration,  
 Division of State Lands, State of Florida Department of  
 Environmental Protection, as agent for and on behalf of the  
 Board of Trustees of the Internal Improvement Trust Fund of the  
 State of Florida

"LESSOR"

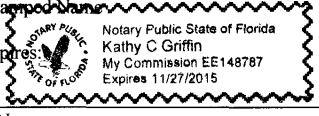
STATE OF FLORIDA  
 COUNTY OF LEON

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of September, 2013, by  
Cheryl C. McCall, Chief, Bureau of Public Land Administration, Division of State Lands, State of Florida Department of  
Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State  
of Florida. She is personally known to me.

APPROVED SUBJECT TO PROPER EXECUTION:

[Signature]  
 DEP Attorney Date 8/15/13

[Signature]  
 Notary Public, State of Florida

Printed, Typed or Stamped Name  
 My Commission Expires  
 Commission/Serial No.  


WITNESSES:

Estero Bay Improvement Association, Inc.,  
a Florida nonprofit corporation (SEAL)

[Signature]  
 Original Signature  
Patrice Murphy  
 Typed/Printed Name of Witness  
[Signature]  
 Original Signature  
Lee Ann Rosengarten  
 Typed/Printed Name of Witness

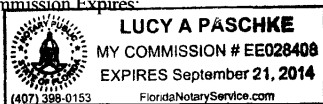
BY: [Signature]  
 Original Signature of Executing Authority  
Gerald Robinson  
 Typed/Printed Name of Executing Authority  
Vice President  
 Title of Executing Authority

"LESSEE"

STATE OF Florida  
 COUNTY OF Lee

The foregoing instrument was acknowledged before me this 31st day of July, 2013, by  
Gerald Robinson as Vice President of Estero Bay Improvement Association, Inc., a Florida nonprofit corporation, for and on  
behalf of the corporation. He is personally known to me or who has produced \_\_\_\_\_, as identification.

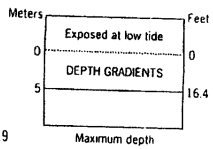
My Commission Expires:

  
 LUCY A PASCHKE  
 MY COMMISSION # EE028408  
 EXPIRES September 21, 2014  
 (407) 398-0153 FloridaNotaryService.com

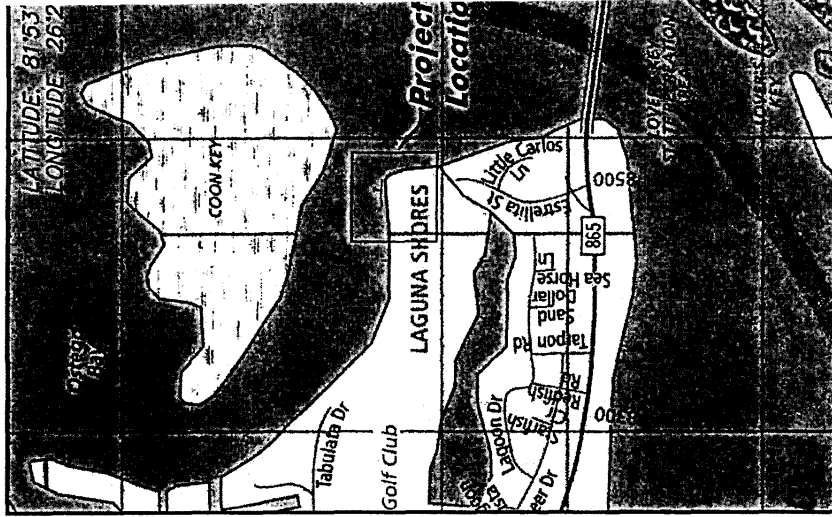
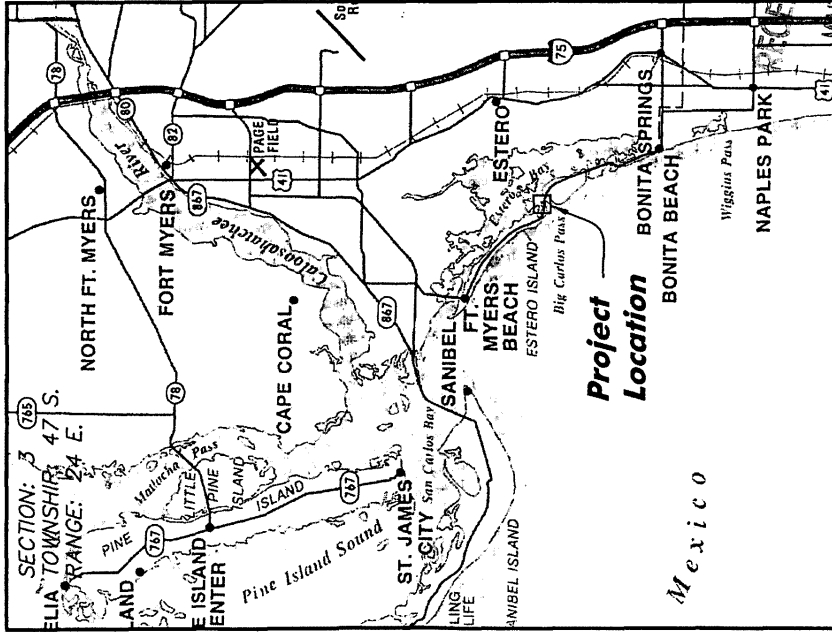
[Signature]  
 Signature of Notary Public  
 Notary Public, State of \_\_\_\_\_

Commission/Serial No. \_\_\_\_\_

Printed, Typed or Stamped Name \_\_\_\_\_



6007E  
243A 1991



Merch  
Drawing: EBI

SUBMERGED LAND LEASE LOCATION

**HANS WILSON & ASSOC., INC.**  
1938 Hill Ave. Ft. Myers, Florida 33901  
Tel: 239-334-6870 Fax: 239-334-7810  
MARINE and ENVIRONMENTAL CONSULTANTS



**Estero Bay  
Improvement Association**

3.27.07



A PARCEL OF SUBMERGED LAND LYING IN PART OF GOVERNMENT LOT 3, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, SAID PARCEL OF SUBMERGED LAND BEING COMMONLY CALLED AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHERLY LINE OF SAID GOVERNMENT LOT 3 AND THE EASTERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD (STATE ROAD S-865);  
 THENCE N.89°11'00"E. ALONG SAID NORTHERLY LINE FOR A DISTANCE OF 2074.22 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS S.17°58'47"W., SAID INTERSECTION BEING ALSO ON THE EASTERLY RIGHT-OF-WAY LINE OF BAY BEACH LANE;  
 THENCE EASTERLY AND SOUTHERLY ALONG SAID EASTERLY RIGHT-OF-WAYLINE AND ALONG SAID CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 750.00 FEET, A CENTRAL ANGLE OF 17°42'13" FOR AN ARC DISTANCE OF 231.74 FEET TO A POINT OF TANGENCY;  
 THENCE S.54°19'00"E. ALONG A NORTHEASTERLY RIGHT-OF-WAY LINE OF SAID BAY BEACH LANE FOR A DISTANCE OF 553.34 FEET;  
 THENCE LEAVING SAID NORTHEASTERLY LINE S.35°41'00"W. FOR A DISTANCE OF 60.00 FEET TO AN INTERSECTION WITH A SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID BAY BEACH LANE;  
 THENCE S.54°19'00"E. ALONG SAID SOUTHWESTERLY LINE FOR A DISTANCE OF 134.14 FEET TO A POINT OF CURVATURE;  
 THENCE SOUTHEASTERLY CONTINUING ALONG SAID SOUTHWESTERLY LINE AND ALONG SAID CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1940.00 FEET, A CENTRAL ANGLE OF 02°43'03" FOR AN ARC DISTANCE OF 92.01 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENTLINE;  
 THENCE S.59°02'44" EAST FOR A DISTANCE OF 906.54 FEET;  
 THENCE N.87°02'24"E. FOR A DISTANCE OF 110.05 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS S.49°59'28" WEST;  
 THENCE SOUTHEASTERLY ALONG SAID CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 167.50 FEET, A CENTRAL ANGLE OF 10°03'15" FOR AN ARC DISTANCE OF 29.39 FEET TO A POINT OF TANGENCY;  
 THENCE S.29°57'17"E. FOR A DISTANCE OF 14.03 FEET TO A POINT OF CURVATURE;  
 THENCE SOUTHEASTERLY ALONG SAID CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 49.50 FEET, A CENTRAL ANGLE OF 59°30'03" FOR AND ARC DISTANCE OF 51.41 FEET TO A POINT OF TANGENCY;  
 THENCE S.89°27'20"E. FOR A DISTANCE OF 24.27 FEET TO A POINT OF CURVATURE;  
 THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 49.50 FEET, A CENTRAL ANGLE OF 46°33'45" FOR AND ARC DISTANCE OF 40.23 FEET TO A POINT OF TANGENCY;  
 THENCE N.43°58'55"E. FOR A DISTANCE OF 11.65 FEET TO A POINT OF CURVATURE;  
 THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 167.50 FEET, A CENTRAL ANGLE OF 4°03'29" FOR AN ARC DISTANCE OF 125.88 FEET TO A POINT OF TANGENCY;  
 THENCE N.87°02'24"E. FOR A DISTANCE OF 115.83 FEET TO A POINT OF CURVATURE;  
 THENCE EASTERLY ALONG SAID CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 529.50 FEET, A CENTRAL ANGLE OF 05°55'13" FOR AND ARC DISTANCE OF 54.71 FEET TO A POINT OF TANGENCY;  
 THENCE S.87°02'24" EAST FOR A DISTANCE OF 101.20 FEET TO A POINT OF CURVATURE;  
 THENCE EASTERLY ALONG SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 170.50 FEET, A CENTRAL ANGLE OF 08°29'26" FOR AN ARC DISTANCE OF 25.27 FEET TO A POINT OF TANGENCY;  
 THENCE N.84°28'10"E. FOR A DISTANCE OF 151.53 FEET TO A POINT OF CURVATURE;  
 THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 82.50 FEET, A CENTRAL ANGLE OF 15°52'51" FOR AN ARC DISTANCE OF 22.87 FEET TO A POINT OF TANGENCY;

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 SOUTH DISTRICT

NOT VALID UNLESS VIEWED IN ITS ENTIRETY

<b>MILLER SURVEYING INC.</b> 21053 Peachland Blvd. Port Charlotte, Florida 33952 OFFICE (941) 743-8423 FAX (941) 743-8404 E-Mail: millersurveying@comcast.net LICENSED BUSINESS NO. 7413	DATE:	1/19/07	CLIENT:	ESTERO BAY IMPROVEMENT ASSOC.			
	SCALE:	1"=30'	DRAWN BY:	EBIA-2			
	CHECKED BY:	DSM	TITLE:	SKETCH & DESCRIPTION			
	SEC. TWP. RGE:	3 47S 24E	PROJECT NUMBER:	060904	SHEET NUMBER:	2 OF 5	FILE NUMBER:

BOOK 4132, PAGE 377, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA;  
 THENCE N01°54'29"W. ALONG SAID EASTERLY LINE FOR A DISTANCE OF 71.82 FEET;  
 THENCE CONTINUE ALONG SAID EASTERLY LINE N. 51°20'34"E. FOR A DISTANCE OF 17.27 FEET TO A POINT OF INTERSECTION WITH A NON TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS N.38°16'14"W.; THENCE NORTHEASTERLY ALONG SAID CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 58.67 FEET, A CENTRAL ANGLE OF 20°00'25" FOR AN ARC DISTANCE OF 20.49 FEET;  
 THENCE N.56°38'47"W., A DISTANCE OF 18.01 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS N.58°59'59"W.;  
 THENCE NORTHERLY ALONG SAID CURVE WESTERLY, HAVING A RADIUS OF 40.67 FEET, A CENTRAL ANGLE OF 69°39'24" FOR AN ARC DISTANCE OF 49.44 FEET;  
 THENCE N.38°39'23"W., A DISTANCE OF 34.78 FEET;  
 THENCE N.51°20'36"E., A DISTANCE OF 19.00 FEET;  
 THENCE N.38°39'24"W., A DISTANCE OF 78.26 FEET;  
 THENCE N.06°46'20"W., A DISTANCE OF 14.28 FEET;  
 THENCE S.83°13'40"W., A DISTANCE OF 12.00 FEET;  
 THENCE N.06°41'51"W., A DISTANCE OF 28.87 FEET;  
 THENCE N.83°18'09"E., A DISTANCE OF 35.18 FEET;  
 THENCE S.79°58'00"E., A DISTANCE OF 75.03 FEET;  
 THENCE N.77°36'28"E., A DISTANCE OF 13.01 FEET;  
 THENCE N.63°17'09"E., A DISTANCE OF 21.34 FEET;  
 THENCE N.29°52'05"E., A DISTANCE OF 33.35 FEET TO THE NORTHERLY LINE OF SAID WATERSIDE "V" A CONDOMINIUM;  
 THENCE S.84°16'12"E. ALONG SAID NORTHERLY LINE A DISTANCE OF 10.03 FEET;  
 THENCE LEAVING SAID NORTHERLY LINE N.05°43'48"E., A DISTANCE OF 3.95 FEET ;  
 THENCE S.84°10'58"E., A DISTANCE OF 17.83 FEET TO THE POINT OF BEGINNING OF THE HEREIN DECRIBED PRE-EMPTED AREA:  
  
 THENCE N.07°23'17"E., A DISTANCE OF 56.15 FEET;  
 THENCE N.81°40'59"W., A DISTANCE OF 17.49 FEET;  
 THENCE N.07°23'17"E., A DISTANCE OF 14.45 FEET;  
 THENCE S.81°40'59"E., A DISTANCE OF 43.00 FEET;  
 THENCE S.07°23'17"W., A DISTANCE OF 14.45 FEET;  
 THENCE N.81°40'59"W., A DISTANCE OF 15.87 FEET;  
 THENCE S.07°23'17"W., A DISTANCE OF 4.00 FEET;  
 THENCE N.81°40'59"W., A DISTANCE OF 1.40 FEET;  
 THENCE S.07°23'17"W., A DISTANCE OF 51.79 FEET;  
 THENCE N.84°10'58"W., A DISTANCE OF 8.25 FEET TO THE POINT OF BEGINNING.  
  
 SAID PRE-EMPTED AREA CONTAINING 1,088.00 SQUARE FEET OR 0.0250 ACRES, OF MORE OR LESS.

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<b>MILLER SURVEYING INC.</b> 21053 Peachland Blvd. Port Charlotte, Florida 33952 OFFICE (941) 743-8423 FAX (941) 743-8404 E-Mail: millersurveying@comcast.net LICENSED BUSINESS NO. 7413	DATE:	1/19/07	CLIENT:	ESTERO BAY IMPROVEMENT ASSOC.		
	SCALE:	1"=30'		TITLE:	EBIA-2	
	DRAWN BY:	DSM			SKETCH & DESCRIPTION	
	CHECKED BY:	DSM		PROJECT NUMBER:	060904	SHEET NUMBER: 3 of 5

NO OTHER PERSON OR ENTITY MAY RELY UPON THIS SKETCH AND DESCRIPTION.

SURFACE, SUBSURFACE AND AERIAL IMPROVEMENTS, UNLESS DEPICTED HEREON, WERE NOT LOCATED.

THIS SKETCH & DESCRIPTION REPRESENTS EXISTING CONDITIONS AS OBSERVED ON THE DATE OF LAST FIELD WORK: OCTOBER 27, 2006.

BEARINGS ARE BASED ON THE NORTHERLY LINE OF GOVERNMENT LOT 3, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, BEING N.89°11'00"E.

ELEVATIONS BASED ON TIDAL BENCHMARK 872 5325 D STAMPED (5325 D) NORTH AMERICAN VERTICAL DATUM (NAVD) 1988, WITH A PUBLISHED ELEVATION OF 9.69'.

THIS IS A SPECIFIC PURPOSE SURVEY TO OBTAIN A SUBMERGED LAND LEASE FROM THE STATE OF FLORIDA, BOARD OF TRUSTEES.

THERE IS A 49'x1' APPLICANT OWNED UPLAND PARCEL PER OFFICIAL RECORD BOOK 2896, PAGE 596.

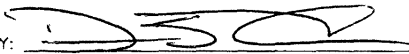
THE SHORELINE 1000' WEST AND 1000' EAST OF THE PROJECT IS 100% MANGROVE VEGETATION WITH INTERSPERSED RIPRAP.

POINT OF BEGINNING (P.O.B.) STATE PLANE COORDINATE (SPC) WAS SCALED FROM A 2005 DIGITALLY RECTIFIED LEE COUNTY AERIAL. FLORIDA WEST ZONE 1983 NORTH AMERICAN DATUM (NAD), N.754677.7801, E.693849.3336.

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MAR 27 2007  
SOUTH DISTRICT

**PREPARED FOR:**

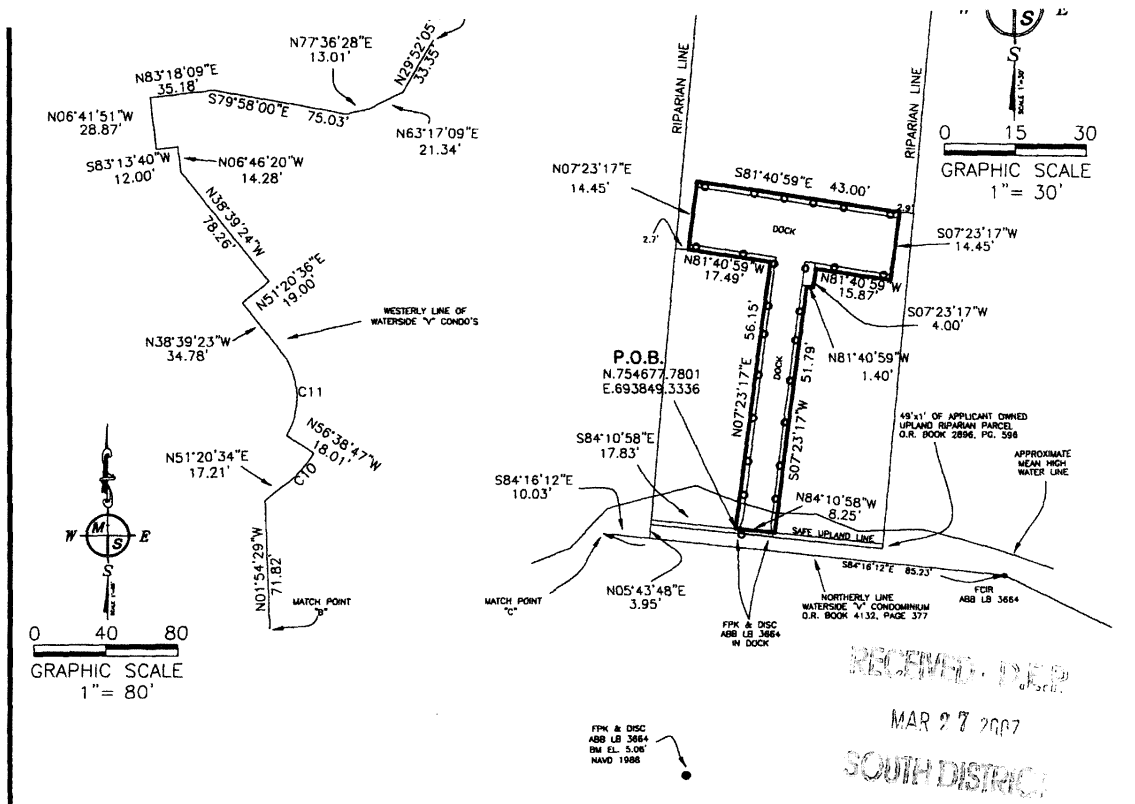
BOARD OF TRUSTEES (TIIF)  
ESTERO BAY IMPROVEMENT ASSOCIATION

BY:  3/23/07

DEREK S. MILLER DATE SIGNED  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA CERTIFICATE NO. 6341  
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

NOT VALID UNLESS VIEWED IN ITS ENTIRETY

<b>MILLER SURVEYING INC.</b> 21053 Peachland Blvd. Port Charlotte, Florida 33952 OFFICE (941) 743-8423 FAX (941) 743-8404 E-Mail: millersurveying@comcast.net LICENSED BUSINESS NO. 7413	DATE: 1/19/07	CLIENT: ESTERO BAY IMPROVEMENT ASSOC.	
	SCALE: 1" = 30'	TITLE: EBIA-2	
	DRAWN BY: DSM	SKETCH & DESCRIPTION	
	CHECKED BY: DSM	PROJECT NUMBER: 060904	SHEET NUMBER: 1 OF 5



0 40 80  
GRAPHIC SCALE  
1" = 80'

0 15 30  
GRAPHIC SCALE  
1" = 30'

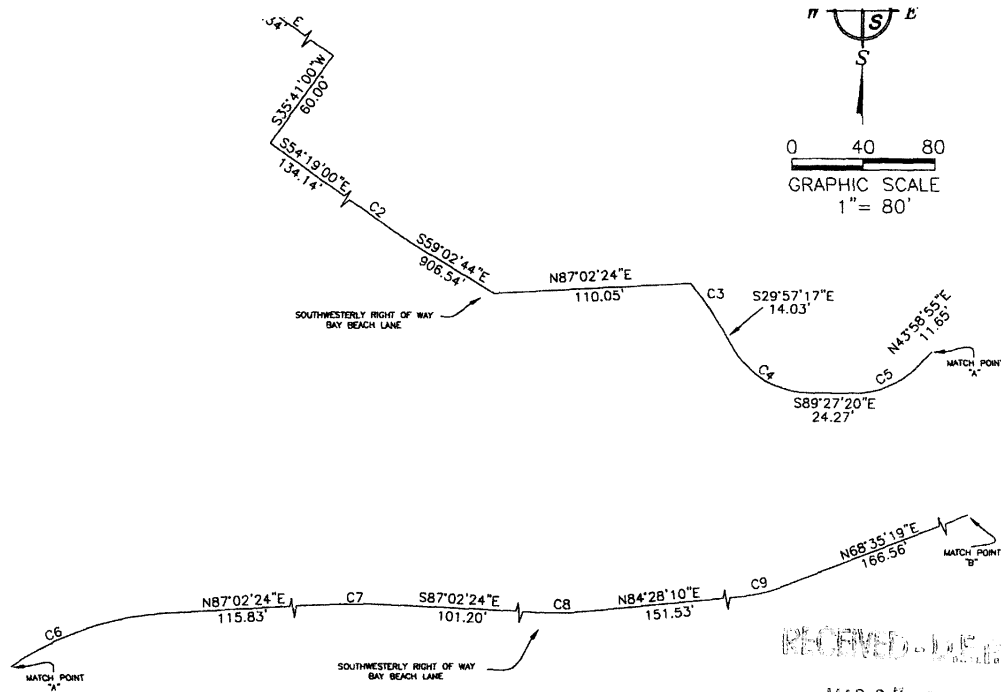
- ABBREVIATIONS:**
- FCIR = FOUND CAPPED IRON ROD, AS NOTED
  - FPK = FOUND PARKER KALON NAIL, AS SHOWN
  - SQ. = SQUARE
  - FT. = FEET
  - EL. = ELEVATION
  - P.O.C. = POINT OF COMMENCEMENT
  - P.O.B. = POINT OF BEGINNING
  - NAVD = NORTH AMERICAN VERTICAL DATUM
  - BM = BENCHMARK
  - EL. = ELEVATION
  - C1 = SEE CURVE TABLE

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG.
C1	231.74'	750.00'	17°42'13"	230.82'	N63°10'08"W
C2	92.01'	1940.00'	7°43'03"	92.00'	S53°40'52"E
C3	28.39'	167.50'	10°03'15"	28.35'	N34°58'34"W
C4	51.41'	49.50'	59°30'03"	49.13'	S59°42'18"E
C5	40.23'	49.50'	48°33'45"	39.13'	N87°15'47"E
C6	123.88'	167.50'	43°03'29"	122.84'	S65°30'39"W
C7	54.71'	523.50'	2°55'18"	54.69'	N90°00'00"W
C8	25.27'	170.50'	8°29'28"	25.24'	N88°42'33"E
C9	22.87'	82.50'	15°52'51"	22.79'	N76°31'45"E
C10	20.49'	58.87'	20°00'25"	20.41'	N41°40'05"E
C11	49.44'	40.67'	69°39'24"	46.45'	N03°49'41"W

NOT VALID UNLESS VIEWED IN ITS ENTIRETY

<p><b>MILLER SURVEYING INC.</b> 21053 Peachland Blvd. Port Charlotte, Florida 33952 OFFICE (941) 743-8423 FAX (941) 743-8404 E-Mail: millersurveying@comcast.net LICENSED BUSINESS NO. 7413</p>	DATE: 1/19/07	CLIENT: ESTERO BAY IMPROVEMENT ASSOC.
	SCALE: VARIES	TITLE: EBIA-2
	DRAWN BY: DSM	SKETCH & DESCRIPTION
	CHECKED BY: DSM	
LOC: TWP. RGE. 3 47S 24E	PROJECT NUMBER: 060904	SHEET NUMBER: 5 OF 5
		FILE NUMBER: 060904

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SOUTH DISTRICT



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MAR 27 2007  
SOUTH DISTRICT

**ABBREVIATIONS:**

- FCIR = FOUND CAPPED IRON ROD, AS NOTED
- FPK = FOUND PARKER KALON NAIL, AS SHOWN
- SQ. = SQUARE
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- BM = BENCHMARK
- EL. = ELEVATION
- C1 = SEE CURVE TABLE

CURVE	LENGTH	RADIUS	CURVE TABLE		
			DELTA	CHORD	CHORD BRG.
C1	231.74'	750.00'	17°42'13"	230.82'	N63°10'06"W
C2	92.01'	1950.00'	7°43'03"	92.00'	S55°40'32"E
C3	29.39'	167.50'	10°03'15"	29.35'	N54°58'54"W
C4	51.41'	48.50'	59°30'03"	49.13'	S59°42'18"E
C5	49.23'	49.50'	48°33'45"	39.13'	N67°15'47"E
C6	125.88'	167.50'	43°01'30"	122.94'	S65°30'38"W
C7	54.71'	529.50'	5°55'13"	54.69'	N80°00'00"W
C8	25.27'	170.50'	8°29'26"	25.24'	N68°42'53"E
C9	22.87'	82.50'	15°52'51"	22.79'	N76°31'45"E
C10	29.49'	58.87'	20°00'25"	29.41'	N44°40'05"E
C11	49.44'	40.87'	69°39'24"	46.45'	N02°49'41"W

NOT VALID UNLESS VIEWED IN ITS ENTIRETY

<p><b>MILLER SURVEYING INC.</b> 21053 Peachland Blvd. Port Charlotte, Florida 33952 OFFICE (941) 743-8423 FAX (941) 743-8404 E-Mail: millersurveying@comcast.net LICENSED BUSINESS NO. 7413</p>	DATE: 1/19/07	CLIENT: ESTERO BAY IMPROVEMENT ASSOC.	
	SCALE: 1"=80'	TITLE: EBIA-2 SKETCH & DESCRIPTION	
	DRAWN BY: DSM	PROJECT NUMBER: 060904	SHEET NUMBER: 4 of 5
	CHECKED BY: DSM	FILE NUMBER: 060904	
	SEC: IMP: RCE: 3 475 24F		

6 P60596

THIS INDENTURE made this 5 day of December, 1997 between STARDIAL INVESTMENTS COMPANY, a Florida general partnership, first party, and ESTERO BAY IMPROVEMENT ASSOCIATION, INC., a Florida not-for-profit corporation, whose mailing address is: \_\_\_\_\_, party of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable consideration to Grantor in hand paid by Grantee, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed, and by these presents does remise, release and quit claim unto the said party of the second part all the right, title, interest claim and demand which the said party of the first part has in and to the following described lot, piece or parcel of land, situate lying and being in the County of Lee, State of Florida, to wit:

See Exhibit "A" attached hereto and made a part hereof.

It is hereby agreed and understood between the party of the first part and party of the second part, and it is a condition hereof, that, if at any time the fishing pier situated abutting and/or adjacent to the property herein conveyed shall be removed, damaged or destroyed in any way and said pier is not rebuilt or repaired, as the case may be, within one year from the date of such removal, damage or destruction, then the premises herein conveyed shall at once revert to, vest in and become absolutely the property of the party of the first part, its successors and assigns forever free and discharged forever from any claim of the party of the second part.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all of the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part.

IN WITNESS WHEREOF, the said Grantor has caused these presents to be executed as provided by law, on this, the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

STARDIAL INVESTMENTS COMPANY, a Florida general partnership

By: DARBY PARTNERS LTD., a Florida limited partnership, a General Partner

By: Michael Johnson, Vice President of Darby Properties, Inc., a General Partner

Witness #1

Printed Name of Witness #1

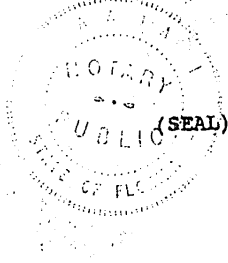
Witness #2

Printed Name of Witness #2

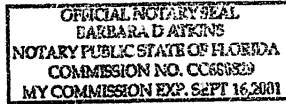
RECORD VERIFIED - CHARLIE GREEN, CLERK BY: TRENT A. VOGES, D.C.

take acknowledgements, personally appeared \_\_\_\_\_  
President of Darby Properties, Inc., a general partner of Darby  
Partners Ltd., a Florida limited partnership, a general partner of  
Stardial Investments Company, a Florida general partnership, to me  
known to be the person described in and who executed the foregoing  
instrument and he acknowledged before me that he executed the same.

WITNESS my hand and official seal this 5 day of December,  
1997.



*Barbara D. Atkins*  
\_\_\_\_\_  
Notary Public  
Printed Name \_\_\_\_\_  
Commission No. \_\_\_\_\_  
Commission Expires \_\_\_\_\_



2896 PG0597





**EXHIBIT “H”**

*(Beach Access Easement for the benefit of the residents of Bay Beach over North 20 feet of RIVIERA CLUB, A CONDOMINIUM as recorded in O.R. Book 1469, Page 1616 and again in O.R. Book 1544, at Pages 1549 and 1551; all in the Public Records of Lee County, Florida)*

10.00  
.40

1368717

E A S E M E N T

OFF REF 1469 Pg 1616

THIS GRANT OF EASEMENT made the day and year below written  
witnesseth that:

WHEREAS, ESTERO BAY DEVELOPMENT CORPORATION, a Florida  
Corporation, is the owner of the land described below, located in  
Lee County, Florida; and

WHEREAS, the Grantees are the present and future owners of  
condominium units within BAY BEACH DEVELOPMENT and the ESTERO BAY  
IMPROVEMENT ASSOCIATION, INC., a Florida non-profit corporation, and

WHEREAS, the Grantor desires to grant a perpetual non-exclusive  
easement for a private walkway over and across the herein described  
property and for the construction, use and maintenance of one wooden  
sun-shelter with thatched roof within the confines of the easement.  
The purpose is to afford the Grantees their heirs, assigns and  
guests ingress to and egress from Estero Boulevard to the Gulf of  
Mexico.

NOW THEREFORE, Grantor in consideration of the sum of ONE  
AND NO/100 (\$.00) and other good and valuable consideration does  
by this instrument give and grant to Grantees, their heirs and  
assigns, a perpetual easement for ingress and egress over, across  
and upon the walkway described as follows:

A twenty foot (20') wide walkway easement located in  
Government Lot 3, Section 3, Township 47S, Range 24E,  
and more particularly described as follows:

From the south corner of Block 3-A of Unit No. 1,  
LAGUNA SHORES, recorded in Plat Book 9 at page 29  
of the Public Records of Lee County, run S 48° 23' 00" W  
for 70.02 feet to the old southwesterly right-of-way line  
of Estero Boulevard; thence run northwesterly along said  
right-of-way on the arc of a curve to the right of  
radius 2899.79 feet for 147.39 feet to a point of tangency;  
thence run N. 37°43'00" W along said right-of-way line for  
827.68 feet; thence run S 52°17'00" W for 6.62 feet to a  
point on the new right-of-way line of Estero Boulevard;  
thence run N 37° 49' 24" W along said new right-of-way  
line for 117.95 feet to a point of curvature; thence run  
northwesterly along said new right-of-way line along the

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BY LINDA EDWARDS D.C.

arc of a curve to the right with a radius of 2331.83 feet (chord bearing N 34° 36' 22" W, chord distance of 261.73 feet) for 261.86 feet to the point of beginning of the herein described parcel; thence continue along said curve (chord bearing N 31° 08' 30" W, chord distance 20.13 feet) for 20.13 feet; thence run S 52° 17' 00" W for 387 feet, more or less, to the waters of the Gulf of Mexico; thence run southeasterly along said waters to a point on a line bearing N 52° 17' 00" E and running through the aforesaid point of beginning; thence run N 52° 17' 00" E for 385 feet, more or less, to the point of beginning.

The above described parcel of land for ingress and egress purposes from Estero Boulevard to the Gulf of Mexico.

This easement is granted with the express condition that Grantor shall have no responsibility for improving or maintaining the walkway nor any other liability or responsibility to Grantees, their heirs, assigns or guests, or to any of those who may use the walkway.

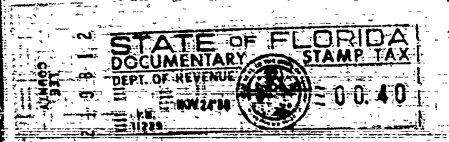
This easement is not in favor of the general public, owners of commercial or non-residential condominiums or any other persons not specified herein.

The easement does not carry uses not specified herein and may not be used except for the purposes specified and shall be interpreted to restrict rather than enlarge the uses contemplated herein.

Grantor, or its successors, will pay taxes on the lands of the easement, but Grantees shall pay taxes on the sun-shelter and Grantees shall be responsible for the maintenance and insurance of the sun-shelter as well as carry reasonably sufficient liability insurance covering and insuring against loss or injury to persons using the property under this easement.

Grantees shall maintain and pay for trash collection and disposal within the easement and in the vicinity of the sun-shelter.

This easement is for the use of Grantees, their heirs and assigns, and by invitees of Grantees their heirs and assigns.





LEGAL DESCRIPTION

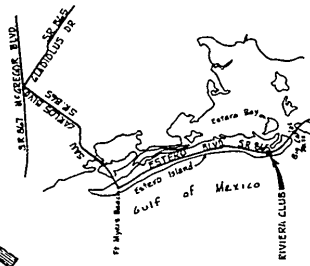
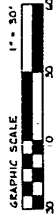
A tract or parcel of land lying in Government Lot 3, Section 3, Township 47 South, Range 24 East on Estero Island, Lee County, Florida, more particularly described as follows:

From the south corner of Block 3-A of Unit No. 1, LAGUNA SHORES, recorded in Plat Book 9 at Page 29 of the public records of Lee County, Florida, run S 48° 23' 00" West for 70.02 feet to the old southwesterly right-of-way line of Estero Boulevard; thence run Northwesterly along said right-of-way on the arc of a curve to the right of radius 2899.79 feet for 147.39 feet to a point of tangency; thence run N 37° 43' 00" West along said right-of-way line for 827.68 feet; thence run S 52° 17' 00" West for 6.62 feet to a point on the new right-of-way line of Estero Boulevard and the point of beginning; thence run N 37° 49' 24" West along said new right-of-way line for 117.95 feet to a point of curvature; thence run Northwesterly along the arc of a curve to the right with a radius of 2331.83 feet (chord bearing N 34° 21' 24" West, chord distance of 281.83 feet) for 281.99 feet; thence run S 52° 17' 00" West for 387 feet, more or less, to the waters of the Gulf of Mexico; thence run Southeasterly along said waters for 400 feet, more or less, to an intersection with a line bearing S 52° 17' 00" West passing through the point of beginning; thence run N 52° 17' 00" East for 331 feet, more or less, to the point of beginning.

The above parcel is subject to a twenty foot (20') wide walkway easement along the Northwesterly property line running from the right-of-way of Estero Boulevard (SR 865) to the Gulf of Mexico. Said easement is more particularly described in Official Record Book 1469, Page 1616, public records of Lee County, Florida. This easement is designed to allow owners and guests of the Bay Beach Condominiums to have walking access to the Gulf of Mexico.

EXHIBIT A

CONDOMINIUM PLAT BOOK PAGE



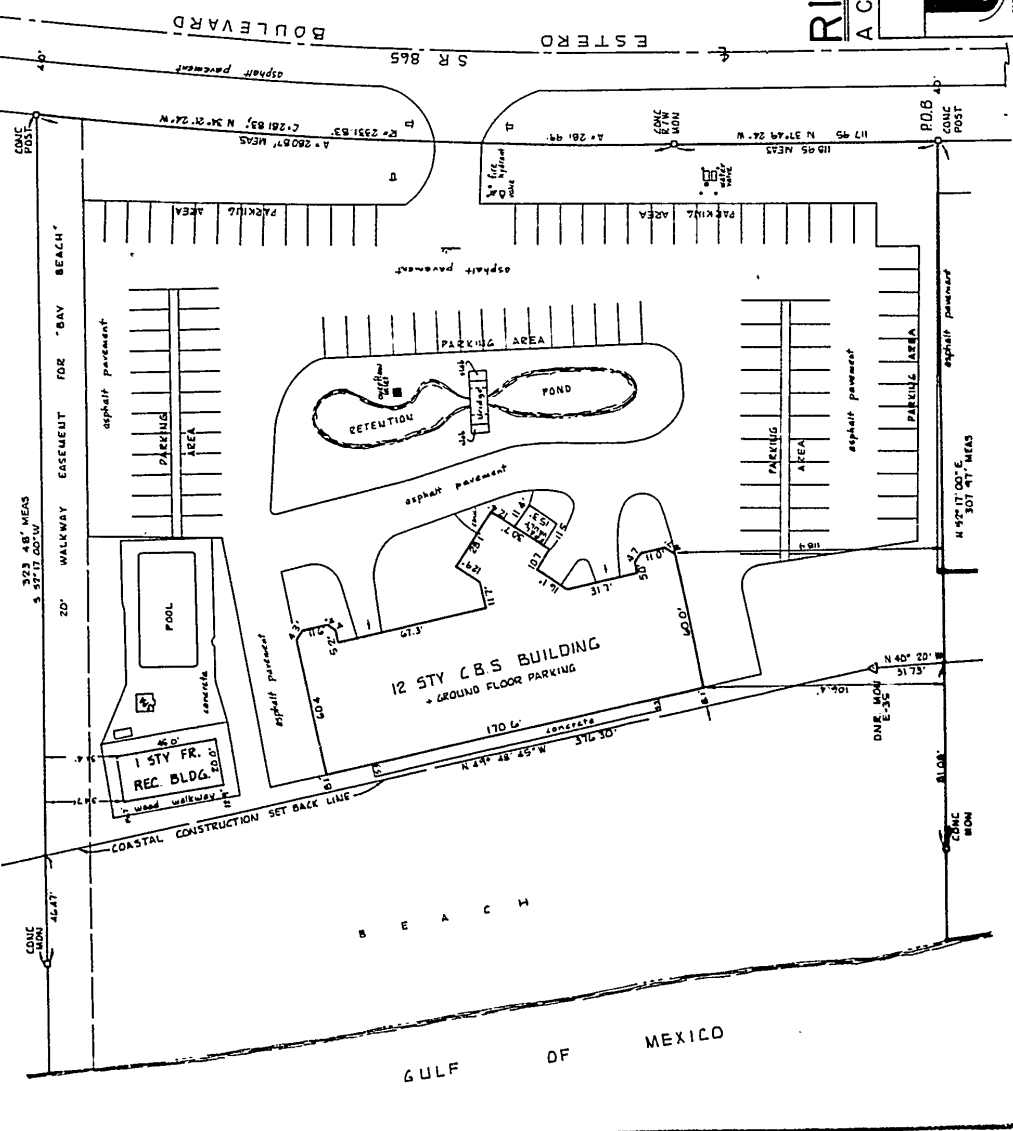
LOCATION MAP

# RIVIERA CLUB

## A CONDOMINIUM

DATE	SEPT 4, 1981
BY	DR. DANIELA
FOR	CONDOMINIUM
SHEET	2 OF 6

EXHIBIT "B"



GULF OF MEXICO