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**EASEMENTS WITH COVENANTS
AND RESTRICTIONS AFFECTING LAND
AND
OWNERS' ASSOCIATION PROVISIONS**

ANDROS ISLES

**By
DD/GATEWAY DAYTONA, LLC
and
DK GATEWAY ANDROS, LLC**

**For
ANDROS ISLES VILLAGES DEVELOPMENT**

February 11, 2011

RETURN TO:
FIDELITY NATIONAL TITLE GROUP
ATTN: JENNIE CLAYTON
5447 E Beaumont Center Blvd
Tampa, FL 33634
NAPS / FNT File No NT10-2088

**EASEMENTS WITH COVENANTS
AND RESTRICTIONS AFFECTING LAND
AND
OWNERS' ASSOCIATION PROVISIONS**

ANDROS ISLES

THIS EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND AND OWNERS' ASSOCIATION PROVISIONS ("Agreement," or "ECR") is made as of this 11 day of February, 2011, by and between DD/GATEWAY DAYTONA, LLC, a Delaware limited liability company ("Commercial Developer") and DK GATEWAY ANDROS, LLC, a Florida limited liability company ("Residential Developer," and together with the Commercial Developer, sometimes hereinafter referred to collectively as the "Developers"). The addresses of the parties are provided in Section 25 below.

WITNESSETH:

WHEREAS, this Agreement is applicable to all of the real property (the "Property") that is the subject of the following plat (the "Plat");

ANDROS ISLES, as recorded in Map Book 55, page 87 through 89, inclusive, of the public records of Volusia County, Florida;

WHEREAS, the Plat includes six (6) separate lots (each a "Lot"), as well as Tract A which is denominated as common area, wetlands, and drainage easement on said Plat;

WHEREAS, the overall development of the Property, as set forth on the site plan attached hereto as Exhibit A and incorporated herein by this reference (the "Site Plan"), includes in addition to Tract A, other areas to be utilized in common for the purposes of storm water detention/retention and as access roadways;

WHEREAS, Commercial Developer is the owner of Tract A, and Lots 1, 2, 4, 5 and 6 as described on the Plat;

WHEREAS, Residential Developer is the owner of Lot 3 as described on the Plat;

WHEREAS, the Developers desire that the Property be developed in phases and together form a horizontal mixed-use project containing multi-family improvements on Lot 3, and retail, commercial and/or office improvements on Lots 1, 2, 4, 5 and 6, all consistent with that certain Andros Isles Villages Residential Planned Unit Development Agreement, made and entered into October 29, 2007, by and between the City of Daytona Beach, Florida, a municipal corporation, and DD/Gateway Daytona, LLC, a Delaware limited liability company, recorded in the public records of Volusia County, Florida, at OR Book 6233, Pages 4931 through 4986 inclusive, as amended or modified from time to time (the "PUD Agreement"), including the Master Plan attached as Exhibit B to the PUD Agreement, as that plan may be amended or modified from

time to time (the "Master Plan"), and further desire that the Property be subject to the easements and the covenants, conditions and restrictions hereinafter set forth;

WHEREAS, Residential Developer intends, prior to the commencement of improvements to the Commercial Properties (as hereinafter defined), to commence construction of multi-family housing on Lot 3, which shall include related amenities, and of necessity certain common area improvements, in accordance with the planned development of the Property;

WHEREAS, the Developers further desire and intend to: (i) create the Andros Isles Property Owners Association, Inc., a Florida not-for-profit corporation ("Association"); (ii) provide that each Owner (as hereinafter defined) become a Member (as hereinafter defined) of the Association; (iii) establish a general scheme for the maintenance, use and enjoyment of the Access Road Areas and Stormwater Drainage System (each, as hereinafter defined); and (iv) provide for the Association's right and ability to own Tract A and the improvements thereon and thereto, if any, to maintain the Access Road Areas and Stormwater Drainage System on behalf of the Owners, and to receive reimbursement for such services and other related costs from the Owners; and

WHEREAS, the Developers have agreed to adopt this Agreement in order to accomplish, on the terms and conditions set forth herein, the matters set forth in the preceding recitals.

NOW, THEREFORE, for and in consideration of the premises, and of the further provisions contained herein, the sufficiency of which are hereby acknowledged, each Developer does hereby agree as follows:

1. DEFINITIONS:

1.1 "Access Roads" means the roadways constructed within the Access Road Areas. In addition to the use of the Access Roads by Owners, Permittees and others as provided in this Agreement, Access Road B-3 will also be a means of ingress and egress for the owner of the tract of land adjacent to the northeast portion of Lot 3, and for such owner's guests, tenants, customers, invitees, agents and employees, in accordance with that certain Easement Agreement dated July 23, 2008 by and between DD/Gateway Daytona, LLC, and The Pantry, Inc., a Delaware corporation, recorded October 27, 2008, in Book 6289, Page 3030, et seq., of the public records of Volusia County, Florida (the "Pantry Easement Agreement"), under which that adjacent tract is referred to as the "Pantry Tract."

1.2 "Access Road Areas" means those portions of the Property designated on the Site Plan as follows: (i) Driggs Hill Drive (which is designated as Easement B-2 and Easement B-3 on the Plat, said area B-2 being further designated as serving as a drainage and utility easement area); and (ii) St. Croix Drive (which includes Easement B-1 on the Plat, which easement area is designated as a means of ingress and egress as well as drainage. The actual location of Driggs Hill Drive may vary from time to time, subject to the approval of the Owners of Lots 3, 4, 5 and 6, and the actual location of St. Croix Drive may vary from time to time, subject to the approval of the Owners of Lots 1 and 2, which approval shall not be unreasonably withheld, conditioned, or delayed.

- 1.3 "Articles" mean the Association's articles of incorporation and their amendments.
- 1.4 "Assessment Default" means as provided in Section 12.3 of this Agreement.
- 1.5 "Assessments" mean all charges imposed by the Association to which a Lot is subject, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments and Lot Assessments, as such terms are defined in Article 12 hereof.
- 1.6 "Association" means Andros Isles Property Owners Association, Inc., a Florida not for profit corporation, and its successors and assigns.
- 1.7 "Association Rules" means the rules and regulations adopted and amended by the Board, from time to time, regulating, among other matters, the general management and operation of the Access Road Areas and the Stormwater Drainage System; the conduct of the business and affairs of the Association; and the use and enjoyment of the Access Road Areas and the Stormwater Drainage System.
- 1.8 "Board of Directors" or "Board" means the Board of Directors of the Association.
- 1.9 "Building" means any permanently enclosed structure placed, constructed or located on a Lot, which for the purpose of this Agreement will include any building appurtenances such as stairs leading to or from a door, transformers, trash containers or compactors, canopies, supports, loading docks, truck ramps, and other outward extensions of such structure.
- 1.10 "Building Areas" mean those portions of the Property within the green space buffer lines shown on Exhibit A. The green space buffer lines as shown on Exhibit A are conceptual only and are not intended as a representation of actual future development of the Property. Canopies may encroach from the Building Areas over the Common Areas provided the canopies do not interfere with the use of the Common Areas. Either Developer may alter the Building Areas from time to time on its respective Lot(s) in connection with the initial construction of Buildings on the Property in accordance with the requirements of the Master Plan and in compliance with all applicable Governmental Requirements. One or more Buildings may be located within a Building Area.
- 1.11 "Bylaws" mean the Association's bylaws and any amendments to the bylaws.
- 1.12 "Commercial Developer" means DD/Gateway Daytona, LLC, a Delaware limited liability company, and its successors and assigns. Any of the rights and obligations of Commercial Developer under this Agreement not transferred to a successor will be automatically transferred to the Association when DD/Gateway Daytona, LLC no longer retains title to any Lot.

1.13 "Commercial Properties" means those Lots owned by the Commercial Developer, that is, Lots 1, 2, 4, 5, and 6, as set forth in the recitals above.

1.14 "Common Area" means all of the Property except the Building Areas and other area of a Lot upon which landscaped areas have been constructed, including, but not limited to, the Access Road Areas, the Stormwater Drainage System (including all applicable on and off-site wetland detention and mitigation areas).

1.15 "Eligible Mortgage Holder" means a first Mortgagee who has submitted to the Association a written request for notice of matters with respect to which an Eligible Mortgage Holder is entitled to receive notice under this ECR, including with such request the Mortgagee's name, address for notices and the address or designation of the Lot(s) to which its Mortgage (or guaranty or insurance) applies.

1.16 "Governmental Authorities" mean any federal, state, county, city or local governmental or quasi-governmental authority, entity or body (or any departmental agency thereof) exercising jurisdiction over a particular subject matter.

1.17 "Governmental Requirements" mean all applicable laws, statutes, ordinances, codes, rules, regulations, orders, and applicable judicial decisions or decrees, as presently existing and hereafter amended, of any Governmental Authorities.

1.18 "Lot" or "Lots" means, singularly or collectively as suits the context, Lots 1 through 6, Andros Isles, according to the map or plat thereof recorded in Map Book 55, Pages 87 through 89 inclusive, of the public records of Volusia County, Florida.

1.19 "Member" means any Owner (including the Developers and their respective successors and assigns).

1.20 "Membership" means the status held by the respective Members of the Association.

1.21 "Mortgage" means a recorded mortgage or deed of trust encumbering a Lot, which is given as security by an Owner for the payment of money.

1.22 "Mortgagee" means either a mortgagee under a Mortgage or the beneficiary under a deed of trust and any holder, governmental guarantor, or insurer of a Mortgage.

1.23 "Occupant" means any Person from time to time entitled to the use and occupancy of any portion of a Building on the Property under an ownership right or under any lease, sublease, license, concession, or other similar agreement with an Owner.

1.24 "Operator" means the Person, or Persons, designated in writing, from time to time, by the Association to maintain the Access Road Areas (including the Access Roads) and Stormwater Drainage System. The Operator will serve in such capacity until it resigns upon 60-days prior written notice to the Board or is removed by the Board. The initial Operator is Commercial Developer.

1.25 "Owner" means each Person holding a record ownership interest in a Lot. "Owner" may also mean "Member" provided the context relates to an Owner as a Member of the Association. "Owner" will not include a Mortgagee or any persons or entities that hold an interest in a Lot merely as security for the performance of an obligation nor will it include a lessee or tenant holding a possessory interest. In the event that a Lot has multiple Owners, such Owners will provide notice to the Association designating one (1) Owner to act as the designated representative of such Owners (and hereinafter called the same). The Designated Representative will be the sole Owner with whom the other Owners and the Association will be required to deal with and the decision (or action or inaction) of the Designated Representative will be binding on all such Owners. Absent the notice of designation required by this Section the Owner of the largest fee ownership interest in a Lot (as determined by reference to the Official Records) will be deemed the Designated Representative of all the Owners, and if fee ownership interests are exactly the same, the Owner whose deed was recorded in the Official Records first will be deemed the Designated Representative.

1.26 "Permittee" means all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Property. Persons engaged in civic, public, charitable or political activities within the Property, including but not limited to the activities set forth below, will not be considered Permittees: exhibiting any placard, sign or notice; distributing any circular, handbill, placard or booklet; soliciting memberships or contributions for private, civic, public charitable or political purposes; parading, picketing or demonstrating.

1.27 "Person" means any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or Governmental Authority.

1.28 "Plat" means the plat of Andros Isles recorded at Map Book 55, page 88 *et seq.* of the public records of Volusia County, Florida.

1.29 "Property" means Lots 1-6 and Tract A, all as described on the Plat.

1.30 "Residential Developer" means DK Gateway Andros, LLC, a Florida limited liability company, and its successors and assigns. Any of the rights and obligations of Residential Developer under this ECR not transferred to a successor will be automatically transferred to the Association when DK Gateway Andros, LLC no longer retains title to any Lot.

1.31 "Residential Property" means Lot 3, owned by Residential Developer and as stated in the Recital above.

1.32 "Site Plan" means the initial overall plan of development for the Property, as approved by Volusia County, Florida and attached hereto as Exhibit A, but subject to clarifications as to Building Areas contained in the Section 1.11 above.

1.33 "SJRWMD" means the St. Johns River Water Management District.

1.34 "Stipulated Share" means a fraction, the numerator of which is the land square footage contained within a Lot and the denominator of which is the total land square

footage of all Lots, except that where the pertinent cost is shared by less than all Lots, "Stipulated Share" means a fraction, the numerator of which is the land square footage contained within a Lot and the denominator of which is the total land square footage of those Lots sharing the pertinent cost.

1.35 "Stormwater Drainage System" means a system which is designed and constructed or implements to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, Florida Administrative Code. The Stormwater Drainage System located on the Property includes without limitation, surface and underground water collection, transmittal, and detention/retention improvements, Tract A exclusive of the Access Road Areas contained therein, the three Wet Detention Areas on Tract A as shown on the Site Plan, the Wet Detention Area on Lot 1 as shown on the Site Plan, and Wet Detention Area 1 on Lot 3 as shown on the Site Plan).

1.36 "Tract A" means Tract A as shown on the Plat on which certain detention/retention improvements are to be constructed, and certain wetlands are located. Commercial Developer, at its election, may convey, in one or more conveyances, all or any part of Tract A, or any interest in Tract A, to the Association, to a third party or parties, or to one or more Governmental Authorities.

1.37 "Utility Lines" mean those facilities and systems for the transmission of utility services, including facilities and systems for potable water, sanitary sewer (but not storm sewer), electric, gas, and cable television. Utility Lines installed pursuant to this ECR will only provide service necessary for the development or operation of the Property.

2. USES, EXCLUDED USES, AND RESTRICTIONS ON USES.

2.38 Prohibited Uses. Buildings on the Commercial Properties shall be of the type normally found in a mixed-use commercial development including, without limitation, financial institutions, gas stations and services shops, offices and retail stores. No use will be permitted on the Property which is inconsistent with a first-class mixed use development, including without limitation:

2.38.1 Any use on the Commercial Properties which emits an obnoxious odor, noise or sound which can be heard or smelled outside of the Building unless the Occupant installs ventilation equipment and takes other actions as required by the Commercial Developer to eliminate such odors or sounds, and otherwise obtains the written consent of the Commercial Developer.

2.38.2 An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.

2.38.3 Any "second hand" store, "surplus" store, or pawn shop, but "Play it Again Sports" and substantially similar retailers will not be deemed to be a second hand or surplus store.

2.38.4 Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition is not applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.

2.38.5 Any dumping, disposing or incineration of garbage; provided, however, this prohibition is not applicable to garbage compactors located near the rear of any Building.

2.38.6 Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.

2.38.7 Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition is not applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located.

2.38.8 Any establishment selling or exhibiting pornographic materials or which sells illicit drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff or any massage parlors or similar establishments.

2.39 Outside Sales Areas. Any outside sales on the Commercial Properties will not interfere with the free movement of vehicular traffic within the Property, or access to or from the Property, or any part thereof, to or from any public right-of-way, or with pedestrian traffic. The operator thereof will keep and maintain such area in a neat and orderly condition during the operation of said activities. Sales of merchandise are permitted on sidewalks in the Commercial Properties, provided such sales are conducted in accordance with the restrictions set forth above in this Section 2 and further subject to the requirement that such sales activities do not interfere with the free movement of pedestrian traffic on such sidewalks.

2.40 Hazardous Materials. No Owner will use, or permit Hazardous Materials, except in the ordinary course of its usual business operations conducted thereon, and any such use will at all times be in compliance with all Environmental Laws. Each Owner agrees to defend, protect, indemnify and hold harmless each other Owner from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to costs of investigation, remedial or removal response, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any Hazardous Material used or permitted to be used by such Owner in or about the Property, whether or not in the ordinary course of business.

For the purpose of this Section 2.4, the term (i) "Hazardous Materials" means the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" mean and refer to the following: all federal, state, county, municipal, local and other statutes, laws,

ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

3. COMMON AREAS/EASEMENTS AND LIMITATIONS.

3.1 Grant of Easements as to Access Road Areas and Other Areas.

3.1.1 Residential Developer hereby declares and grants to the Owners of Lots 4, 5 and 6, for the benefit of each such Lot and the Owner of each such Lot and their respective Occupants and Permittees, and for the benefit of the Association, in common with others entitled to use the same, a non-exclusive, perpetual easement for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) upon, over and across the Access Road Area known as Driggs Hills Drive.

3.1.2 Commercial Developer hereby declares, establishes and grants to the Owners of Lots 3, 4, 5 and 6, for the benefit of each such Lot and the Owner of each such Lot and their respective Occupants and Permittees, and for the benefit of the Association, in common with others entitled to use the same, a non-exclusive, perpetual easement for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) upon, over and across the roadways and walkways existing from time to time on Lots 4, 5 and 6 together with the right to use of facilities installed for the comfort and conveniences of customers, invitees, licensees, tenants and employees of all businesses and occupants of the buildings constructed on those Lots, but subject to the rights and limitations set forth in Section 3.6 hereinbelow.

3.1.3 Commercial Developer hereby declares, establishes and grants to the Owners of Lots 1 and 2, for the benefit of each such Lot and the Owner of each such Lot and their respective Occupants and Permittees, and for the benefit of the Association, in common with others entitled to use the same, a non-exclusive, perpetual easement for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) upon, over and across: (i) the Access Road Area known as St. Croix Drive, and (ii) the roadways and walkways existing from time to time on Lots 1 and 2 and Tract A, together with the right to use the facilities installed for the comfort and conveniences of customers, invitees, licensees, tenants and employees of all businesses and occupants of the buildings constructed on Lots 1 and 2, but subject to the rights and limitations set forth in Section 3.6 hereinbelow.

The Access Roads will contain two (2) traffic lanes, one in each direction. The Access Roads are generally described or depicted on the Site Plan. Each easement over the Access Road Areas established in this Section 3.1 will be appurtenant to and for the benefit of the Lot or Lots expressly identified in this Section 3.1 as benefited by such easement, and each such easement is binding on, enforceable against and burden each Lot on which the easement is located. During the term of this Agreement, the Access Road Areas, including directional and traffic signage, will be operated, maintained and repaired by the Association (which will include performing the obligations of the Commercial Developer to operate, maintain and repair the Access Road Areas imposed under the Pantry Easement Agreement and the PUD Agreement).

After the termination of this ECR, Driggs Hill Drive will be maintained in a good state of repair and condition by the Owner of Lot 3, but the costs associated therewith will be shared by

the Owners of Lots 3, 4, 5 and 6, with each Owner paying its Stipulated Share of such costs. In the event the Lot 3 Owner fails to perform the required maintenance, any Owner of Lot 4, 5 or 6 (a "Curing Owner"), after at least thirty (30) days prior notice to the Lot 3 Owner with a copy to the Owner of the other such Lots, will have the right, but not the obligation, to cause such maintenance to be performed. If such curative measures are taken, the Curing Owner will have the right to collect from the other Owners sharing such cost their Stipulated Share of all costs and expenses incurred with respect to such curative action, which amount will be paid by such other Owners within thirty (30) days after receipt of invoice.

After the termination of this ECR, St. Croix Drive will be maintained in a good state of repair and condition by the Owner of Lot 1, but the costs associated therewith will be shared by the Owners of Lots 1 and 2, with each Owner paying its Stipulated Share of such costs. In the event the Lot 1 Owner fails to perform the required maintenance, any Owner of Lot 2 as Curing Owner, after at least thirty (30) days prior notice to the Lot 1 Owner, will have the right, but not the obligation, to cause such maintenance to be performed. If such curative measures are taken, the Curing Owner will have the right to collect from the Lot 1 Owner its Stipulated Share of all costs and expenses incurred with respect to such curative action, which amount will be paid by such the Lot 1 Owner within thirty (30) days after receipt of invoice.

3.2 Utility and Service Easements. Residential Developer hereby establishes and grants to the Owners of Lots 4, 5, and 6, a non-exclusive perpetual subterranean easement for the benefit of the Owner of each such Lot, on, across and under the Access Road Area known as Driggs Hills Drive, to install, use, maintain and repair underground public utility services and distribution systems. Commercial Developer hereby establishes and grants to the Owner of each Lot a non-exclusive easement for the benefit of each Lot, on, across and under the Common Areas, the right to install use, maintain and repair public utility services and distribution systems to the extent necessary to service such Lot. The use of easements granted in this Section 3.2 is conditioned upon the inability of the Owner of the benefitted Lot to access such utility service directly from the public right-of-way contiguous to its Lot. If an Owner must use an easement granted under this Section 3.2, such Owner will use its best efforts to cause the installation of such utility and services lines prior to the installation of paving on the burdened Lot, and thereafter, in connection with any maintenance, repair, replacement, or removal of such lines, will use its best efforts to minimize any interference with any Owner's, Occupant's or Permittee's use of the pertinent portion of the burdened Lot. No such lines, sewers, utilities or services of one Owner shall be installed within the Building Areas on another Owner's Lot. The location of any utilities installed shall be reasonably determined by the Owner of the Lot upon which utilities are to be installed. Any such installed utility services may be relocated by the Owner of a Lot within such Owner's Lot, as more fully set forth hereinbelow.

Furthermore, all utility and service easement areas will be no wider than necessary to reasonably satisfy the requirements of a private or public utility company, or five (5) feet on each side of the centerline if the easement is granted to an Owner. At least thirty (30) days prior to utilizing an easement created herein, the Owner of the benefitted Lot will provide the Owner of the burdened Lot with a written statement describing the need for such easement, will identify the proposed location of the Utility Line, the nature of the service to be provided and the anticipated commencement and completion dates for the work. Prior to commencing any work, excluding any emergency work if reasonably necessary under the circumstances, the Owner of the

benefited Lot will provide the Owner of the burdened Lot evidence of insurance coverage as required by Article 5 below. All Utility Lines will be underground except:

(i) Ground mounted electrical transformers (which will be located only on the Lot served by such transformer);

(ii) As may be necessary during periods of construction, reconstruction, repair or temporary service;

(iii) As may be required by Governmental Authorities; and

(iv) Fire hydrants.

Any such installed utility services may be relocated by the Owner of a Lot on such Owner's Lot, upon thirty (30) days prior written notice to the Owner of each Lot served by such Utility Line provided that such relocation:

(i) is in compliance with all Governmental Requirements, at the expense of the Owner of that Lot,

(ii) will not interfere with, increase the cost of, or diminish utility services to any other Lot,

(iii) will not interfere with or diminish the utility service to the benefited Lot during the Owner of such Lot's business hours; and if an electrical line/computer line is being relocated, then the work will be scheduled to eliminate or minimize any detrimental effects;

(iv) will not reduce or unreasonably impair the usefulness or function of such Utility Line;

(v) will be performed without cost or expense to Owner of the benefited Lot(s);

(vi) will be completed using materials and design standards which equal or exceed those originally used; and

(vii) will have been approved by the provider of such utility service and the appropriate Governmental Authorities.

Documentation of the relocated easement area, including the furnishing of an "as-built" survey to the Owner of the benefited Lot, will be at expense of the Owner of the burdened Lot and will be accomplished as soon as possible following completion of such relocation.

3.3 Surface Water Drainage. Each Developer hereby establishes and grants a perpetual, nonexclusive easement on its respective Lot or Lots for the benefit of the Owner of each other Lot to discharge surface storm water drainage and runoff from the benefitted Lot over, upon and across the Common Area of all other Lots, including water drainage to Stormwater

Drainage System collection points and through the portion of the Stormwater Drainage System located on the burdened Lot, upon the following conditions and terms and in accordance with Governmental Requirements:

3.3.1 Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the Owner's improvements substantially as shown on Exhibit A (including without limitation Building and Building expansion, curbs, drives and paving) will be permitted.

3.3.2 No Owner will alter or permit to be altered the surface of the Common Area or the Stormwater Drainage System constructed on its Lot if such alteration would materially increase the flow of surface water onto an adjacent Lot either within the aggregate or by directing the flow of surface water to a limited area.

3.4 Stormwater Drainage System. Commercial Developer and Residential Developer each hereby establish and grant on each of their respective Lot or Lots for the benefit of their respective Lots and the Lot or Lots owned by the other and for the Association, and hereby declare and grant, for the benefit of each Lot and the Owner of such Lot, the Occupants of such Lot and their Permittees, and the Association, in common with others entitled to use the same, a non-exclusive, perpetual easement for the collection, storage, treatment, flow and discharge of storm water through the Stormwater Drainage System. The easement over and through the Stormwater Drainage System herein established are appurtenant to and for the benefit of each Lot, and will be binding on, enforceable against and burden each Lot on which the easement is located. During the term of this ECR, the Stormwater Drainage System will be maintained by the Association, and the Stormwater Drainage System will not be relocated in any material respect without the approval of all Owners, which approval will not be unreasonably withheld, conditioned or delayed. The Association shall be responsible for the maintenance, operation and repair of the Stormwater Drainage System. Maintenance of the Stormwater Drainage System shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the SJRWMD. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the Stormwater Drainage System shall be as permitted, or if modified as approved by the SJRWMD.

After the termination of this ECR, the Stormwater Drainage System will be maintained in a good state of repair and condition by the Owner of Lot 3, but the costs associated therewith will be shared by the Owners of all of the Lots with each Owner paying its Stipulated Share. In the event the Lot 3 Owner fails to perform the required maintenance, any Owner (a "Curing Owner"), after at least thirty (30) days prior notice to the Lot 3 Owner with a copy to the Owner of all other Lots, will have the right, but not the obligation, to cause such maintenance to be performed. If such curative measures are taken, the Curing Owner will have the right to collect from the other Owners their Stipulated Share of all costs and expenses incurred with respect to such curative action, which amount will be paid by such other Owners within thirty (30) days after receipt of invoice.

3.5 Lighting. Each Owner grants a perpetual irrevocable license to each other Owner for the purpose of permitting the lighting from one Lot to incidentally shine on the adjoining Lot or Lots.

3.6 Rights and Limitations as to Easements.

3.6.1 Each Owner may close-off any portion of its Lot for such reasonable period of time as may be legally necessary, in the opinion of such Owner's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing-off any portion of its Lot, such Owner will give written notice to each other Owner of its intention to do so, and will attempt to coordinate such closing-off with each other Owner so that no unreasonable interference with the passage of pedestrians or vehicles will occur;

3.6.2 Each Owner may at any time and from time to time exclude and restrain any Person who is not a Permittee from using its Lot; and

3.6.3 Each Owner may temporarily erect or place barriers in and around areas on its Lot which are being constructed or repaired in order to ensure either safety of Persons or protection of property or as needed for increased traffic control for special events.

4. MAINTENANCE AND TAXES. Each Owner, at its sole expense, will maintain its Lot in neat, orderly condition, planted in grass and trimmed until completion of one or more Buildings occurs. Following installation of paving, landscaping and other improvements on the Common Areas of the Lot, the Owner will maintain such Common Areas in good condition and repair at all times. Owner's maintenance will include, without limitation, the following:

- (a) maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;
- (b) removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
- (c) placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;
- (d) operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;
- (e) maintaining all Buildings, improvements, paved areas and perimeter and exterior building walls, including but not limited to all retaining walls, in a good condition and state of repair; and
- (f) maintaining, mowing, weeding, trimming and watering all landscaped and unimproved areas and making such replacements of shrubs and other landscaping as is necessary to maintain a neat and attractive appearance.

Each Owner will pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities, all real property taxes and assessments which are levied against its Lot.

5. INSURANCE.

5.1 Liability Insurance. Each Owner shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its Lot, with limits of not less than \$5,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$5,000,000.00 for property damage. Each party shall provide the other party with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the Owner's Lot.

5.2 Property Insurance. At all times during the term of this Agreement, each party shall keep the Buildings and all other improvements on its Lot insured against loss or damage by fire and other perils and events as may be insured against under special form (all-risk) property insurance in effect from time to time, with such insurance to be for the full replacement value of the insured improvements.

5.3 Mutual Waiver of Subrogation. Each Lot Owner, for itself and its property insurer, hereby releases the other Owners from and against any and all claims, demands, liabilities or obligations whatsoever for damage to property or loss of rents or profits resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent, employee, tenant, subtenant, or licensee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

6. EMINENT DOMAIN.

6.1 Owner's Right To Award. Except as provided in Section 6.2 below, no Owner will have an interest in any award or payment made to another Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Owner's Lot or giving the public or any government any rights in that Owner's Lot. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on any Lot, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the Owner thereof, and no claim thereon shall be made by the Owners of any other Lot.

6.2 Collateral Claims. Notwithstanding Section 6.1 above, an Owner may file collateral claims with the condemning authority for its loss which is separate and apart from the value of the land area and improvements taken from another Owner's Lot (such as, for example,

for loss of access as a result of the condemnation of a portion of the Access Road Areas located on another Lot).

6.3 Tenant's Claim. Nothing in this Section 6 will prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between tenant and such Owner for all or a portion of any such award or payment.

6.4 Restoration of Common Areas. The Owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its Lot as nearly as practicable to the condition existing immediately prior to such condemnation.

7. ASSOCIATION MAINTENANCE.

7.1 Maintenance of Access Roads and Stormwater Drainage Systems. The Association will at all times operate, maintain and repair the Access Road Areas (including without limitation, directional and stop signs) and the Stormwater Drainage System in good working order and in accordance with Governmental Requirements, including without limitation, the PUD Agreement. At least 30 days prior to any major work on the Access Road Areas or the Stormwater Drainage System, the Association will advise the Owners of the scope thereof, and the proposed commencement and completion dates.

7.2 Access Onto Lots. The Association, or its agents (including the Operator) or designated contractors, will have the right and easement to enter any portion of the Common Area to perform its obligations under the ECR with respect to maintenance or repair of the Access Road Areas or the Stormwater Drainage System, and to enter upon such portions of a Lot as may be necessary to the performance of those obligations. Such entry will be made with as little inconvenience as possible to the Lot's Occupants, and any entry shall be limited to such areas of a Lot and to such period of time as may be reasonably required in each instance for performing maintenance or repair. Any damage caused by such entry, maintenance, construction or repair will be repaired by the Association. If such entry, maintenance, construction or repair is attributable to a violation or breach of the ECR, or the Bylaws or Association Rules, the Association shall have the right to recover the reasonable costs of curing the same from the Owner of the Lot as a Lot Assessment (as set forth in Section 12.7 hereof), less such costs as are attributable to damage caused by the negligence or willful misconduct of the Association.

7.3 SJRWMD Restrictions. Any amendment to this ECR which alters the Stormwater Drainage System beyond maintenance in its original condition, including the water management portions of the Common Area, must have the prior approval of the SJRWMD. The SJRWMD shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this ECR which relate to the maintenance, operation and repair of the Stormwater Drainage System.

8. THE ASSOCIATION.

8.1 Status. The Association is a not for profit corporation formed under the laws of Florida. Upon the initial recording of the ECR in the Official Records of Volusia County, Florida, the Association is charged with the duties and vested with the powers set forth

Areas); provided however, all proposed rules and regulations must be delivered to Members via the Notices provisions of this ECR, and Members will have no less than a fifteen (15) day comment period, prior to such proposed rule or regulation being voted on by the Board of Directors. If, during such comment period, Members holding Stipulated Shares constituting a majority interest in the Association shall request that a vote of the Members be taken to determine whether a proposed Association Rule should be adopted, then such vote shall be taken (either by written action of the Members without a meeting, or at a duly constituted meeting at which a quorum is present in person or by proxy), and the vote of a majority interest of the Members rather than action by the Board shall determine whether the proposed Association Rule is adopted.

8.2.2.8 To enforce by lawful means the provisions of this ECR, the Articles, the Bylaws, the rules and regulations for the use of the Common Area and applicable law, including, but not limited to, assessing fines as individual lot assessments, filing liens or notice of violation, and actions at law or in equity.

8.2.2.9 To contract for the management and maintenance of the Access Road Areas and the Stormwater Drainage System, and to authorize a management agent (which may be an affiliate of a Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Access Road Areas and the Stormwater Drainage System with such funds as will be made available by the Association for such purposes. The Association and its officers will, however, retain at all times the powers and duties to make Assessments, promulgate rules and execute contracts on behalf of the Association.

8.2.2.10 To employ personnel to perform the services required for the proper operation of the Access Road Areas and the Stormwater Drainage System.

8.2.2.11 To enter into necessary agreements with utility companies, community systems service providers, a community development district or Governmental Authorities to provide services to or for the Association or the Members.

8.2.2.12 To sue and be sued.

8.2.2.13 To have legal redress against Members, Owners and Occupants for misuse of, or damage to, the Access Road Areas and Stormwater Drainage System.

8.2.2.14 To consent to or otherwise cause the construction of additional roadway or shoulder bed improvements in the Access Road Areas and drainage facilities in the Stormwater Drainage System, and to consent to or otherwise cause the alteration or removal of any existing improvements in the Access Road Areas and Stormwater Drainage System, including the right to deny access to portions of the Access Road Areas during periods of construction, alteration or removal of improvements thereon, provided that the Association uses diligent efforts in each instance to adopt measures to minimize adverse impacts upon the ordinary course of business within the Property and each Lot therein.

8.2.2.15 To delegate the Association's authorized rights and obligations in connection with the Access Road Areas and Stormwater Drainage System to applicable Governmental Authorities (whether SJRWMD or otherwise) or the Operator.

8.2.2.16 To take any and all other lawful action necessary for the purposes for which the Association is formed.

9. POWERS EXERCISED BY BOARD OF DIRECTORS. Except as otherwise provided in Section 8, all of the foregoing powers or duties will be exercised by the Board of Directors subject to the approval of the required number of directors as may be set forth in this ECR, the Articles or Bylaws, provided however, the Board of Directors may not act on behalf of the Association to amend or terminate this ECR or terminate the Association. The foregoing powers are subject to the approval of the Members holding the requisite number of votes of Members either by written action of the Members without a meeting, or at a duly constituted meeting at which a quorum is present in person or by proxy.

10. MEETING OF MEMBERS. The meetings of the Members will be held as set forth in the Bylaws.

11. MEMBERSHIP AND VOTING RIGHTS.

11.1 Membership.

11.1.1 Qualifications. Each Owner will be a Member of the Association for so long as it is an Owner of all or part of the fee simple interest of a Lot. A Member may hold more than one Membership in the Association if the Member owns fee simple title interests in more than one Lot. The right to be a Member is appurtenant to the fee ownership of a Lot, and only Persons that hold a fee simple title interest in a Lot will be Members. If a Person transfers all of its fee simple interest in a Lot, such Person will no longer be a Member.

11.1.2 Members' Rights and Duties. Each Member will have the rights, duties, and obligations set forth in the ECR, the Articles, the Bylaws and the Association Rules. In the event of conflict between the Articles and the other aforementioned documents, the Articles will control, otherwise, the ECR will control in the event of conflict with the other aforementioned documents.

11.1.3 Transfer of Membership. Membership may not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of a fee simple title interest in a Lot, and then only to the transferee. Any attempt to otherwise make a transfer of Membership will be void. Any transfer of a fee simple title interest in a Lot will operate automatically to transfer the appurtenant Membership rights in the Association to the transferee.

11.1.4 Class of Members / Voting. The Association will have two (2) classes of voting membership:

11.1.4.1 Classes of Membership.

11.1.4.1.1 Class A Member. Class A Members will be all Owners of Lots, with the exception of the Commercial Developer (as long as the Class B Membership exists and, thereafter, the Commercial Developer will be a Class A Member to the extent it would otherwise qualify). Each Class A Member will have the number of votes equal to the Stipulated Share of the Lot or Lots owned by such Member multiplied by 100. There will be partial votes, i.e. if a Member has a Stipulated Share of .1555, that Member will have 15.55 votes in the Association. If more than one Owner owns an interest in any Lot, the vote for such Lot will be exercised by the Designated Representative of the Owners of the Lot. If the ownership of Lot 3 is divided by subdivision, the formation of a condominium, fractional ownership, or any other method that results in the formation of a governing association for the Owners, that association will be the Designated Representative for such Owners.

11.1.4.1.2 Class B Member. The Class B Member will be the Commercial Developer, or a representative thereof. The Class B Member will also have the number of votes equal to the Stipulated Share of the Lot or Lots owned by the Class B Member multiplied by 100, as set forth in Section 11.1.4.1.1 above.

The Residential Developer and the Class B Member will have the exclusive rights to vote in Association matters until the occurrence of the earlier of the following events ("Turnover"):

11.1.4.1.2.1 Three (3) months after sixty six percent (66%) of the Lots have been conveyed to Class A Members.

11.1.4.1.2.2 Such earlier date as Commercial Developer in its sole discretion, may determine in writing.

11.1.4.1.2.3 Three (3) years after recording of this ECR.

11.2 Voting.

11.2.1 Majority Approval Required. Except as otherwise provided in the ECR, the Articles or the Bylaws, all matters requiring the approval of Members will be deemed approved if approved by Members holding a majority of the total voting rights of all Members by written consent as provided in the Bylaws, or if approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws.

11.2.2 Voting Procedures. All matters permitted or required under the ECR to be decided upon the vote of the Members may be decided at any annual or special meeting of the Members (which will also be deemed to be a meeting of Members) called, noticed and conducted as provided in the Bylaws, except to the extent that a different procedure is specified in the ECR.

11.2.3 Commencement of Voting Rights. Voting rights vest (a) in Commercial Developer upon the later of the recording of the ECR in the public records of Volusia County, Florida, or the incorporation of the Association by the initial filing of the Articles with the Florida Department of State, (b) in the Residential Developer upon the recordation of its deed to Lot 3, and (c) subject to Section 11.1.4.1 above, in a Member other

than the Commercial Developer or the Residential Developer upon the recording in the public records of Volusia County, Florida of the deed or other conveyance to the Member for the Member's Lot.

12. ASSESSMENTS, RESERVES AND FINANCIAL REPORTING.

12.1 Agreement to Pay. Each Member covenants and agrees to pay to the Association regular assessments and special assessments, such assessments to be established, made and collected as provided in this Agreement. It shall be a condition precedent to the Association's rights to receive payment from a Member of any such assessment that, as to each such assessment and at least thirty (30) days prior to the due date for the payment of all or any portion thereof, the Association has given such Member notice thereof in accordance with the Notices section of the Covenants, except that, in the case of an Emergency Assessment, only fifteen (15) days prior notice shall be required.

12.2 Purpose of Assessments; Limitation to Necessary Cost. The assessments levied by the Association will be used exclusively for the improvement, replacement, repair, operation and maintenance of the Access Road Areas and the Stormwater Drainage System (including but not limited to work within retention areas, drainage structures and drainage easements), the payment expenses incurred by the Association to perform its responsibilities and obligations, the performance of the duties of the Association as set forth in this ECR, and to further any other purpose that is for the common benefit of the Members in their use and enjoyment of the Property and duly authorized by a vote of the Members. The Association will not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

12.3 Default in Payment of Assessments. Subject to the provisions of Section 12.1 of this Agreement, the failure to pay any Assessment within 30 days after the due date thereof shall render such Assessment, and the Owner responsible for the payment thereof, in default ("Assessment Default"), whereupon interest at the highest rate under applicable law shall accrue on the amount of the unpaid assessment until paid. The occurrence of an Assessment Default shall be a condition precedent to the Association's filing a claim of lien, and pursuing its other rights and remedies, for the non-payment of an Assessment.

12.4 Annual Assessments. For each Lot within the Property, the Developers covenant, and each Owner, by acceptance of a deed or other conveyance, agrees, to pay annual assessments ("Annual Assessments") levied by the Association for the improvement, maintenance, repair and replacement and operation of the Access Road Areas and the Stormwater Drainage System, management and administration of the Association, furnishing of services, maintenance, repair and replacements as set forth in this ECR, and payment of expenses incurred by the Association to perform its responsibilities and obligations. As further hereinafter described, the Board of Directors, by majority vote, will set the Annual Assessments at a level sufficient to meet the Association's obligations, including contingencies and reserves as the Board of Directors may from time to time reasonably deem necessary. The Board of Directors will set the date or dates such Annual Assessments are due and may provide for collection of Assessments to be payable annually or in monthly, quarterly or semi-annual installments; provided, however, that upon the occurrence of an Assessment Default as to any one or more

installments, the entire balance of such Annual Assessment may be accelerated, at the option of the Board of Directors, and be declared due and payable in full.

12.5 Special Assessments. In addition to the Annual Assessments the Association may levy, by majority vote of the Board of Directors; (a) special assessments for the purpose of defraying, in whole or in part, the cost of any necessary construction, reconstruction, repair or replacement of a capital improvement upon the Access Road Areas and the Stormwater Drainage System, including fixtures and personal property related thereto; and (b) special assessments for necessary but unforeseen costs or expenses not included in the budget (collectively, "Special Assessments").

12.6 Emergency Assessments. The Association may also levy an emergency assessment ("Emergency Assessment") at any time by a majority vote of the Board of Directors, for the purpose of defraying, in whole or in part, the cost of any emergency matters that affect the Access Road Areas and the Stormwater Drainage System, including, after depletion of any applicable reserves, any unexpected expenditures not provided for by the Budget or unanticipated increases in the amounts budgeted. Any Emergency Assessment will be due and payable at the time and in the manner specified by the Board of Directors.

12.7 Lot Assessments. The Association may, from time to time, levy a Lot assessment ("Lot Assessment") against a particular Lot and the Owner thereof by a majority vote of the Board of Directors, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon or serving the specific Lot (or any additional special services specific to such Lot) rather than the Property generally, the cost of which is not included in the Annual Assessment, or to reimburse the Association for any costs it incurs as a result of the Owner's or its Occupant's failure to comply with this ECR, or to repair damage to the Common Area for which such Owner is responsible. Any fines assessed by the Board of Directors will be deemed to be a Lot Assessment.

12.8 Commencement of and Non-Payment of Annual Assessments.

12.8.1 Date of Commencement. The Annual Assessments provided for herein will commence with respect to each Lot on the date of the recording of the ECR.

12.8.2 Non-Payment of Assessments. Subject to the notice requirement of Section 12.1, any Assessment not paid within fifteen (15) days after the due date thereof will be deemed delinquent.

12.8.3 Creation of Lien. The Assessments, together with interest, costs and reasonable attorney's fees, will be the personal obligation of the Owner, as well as a charge and continuing lien on the Lots in favor of the Association. Upon the occurrence of an Assessment Default, such lien may be perfected by the Association's filing of a claim of lien in the public records of Volusia County, Florida, containing the following:

12.8.3.1 The name of the lien claimant;

12.8.3.2 A statement concerning the nature of the Assessment for which the lien is claimed;

12.8.3.3 The name of the Owner against which the lien is claimed, and the date that notice of the Assessment involved was given to the Member;

12.8.3.4 The legal description of the Lot against which the lien is claimed; and,

12.8.3.5 A statement that the lien is claimed pursuant to the provisions of the ECR, reciting the date and document number of recordation hereof.

The claim of lien will be duly verified and acknowledged, and contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed by a means provided in the Notices section of the Covenants. The lien so claimed will attach from the date of recordation solely in the amount claimed thereby and (except as limited by Section 12.8.6 of this Agreement) may be enforced in any judicial proceedings allowed by law, including without limitation, a suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the laws of the State of Florida.

12.8.4 Owner's Acceptance. Assessments are also the personal obligation of the person or entity which was the Owner of such Lot at the time when the Assessment was levied, and of each subsequent Owner thereof. Each Owner of a Lot, by acceptance of a deed or other transfer document therefor, whether or not expressed in such deed or transfer document, is deemed to covenant and agree to pay to the Association the Assessments established or described in this Article. Each Owner, by his acceptance of title to a Lot, expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of such Assessments as a debt and (except as expressly limited by this Agreement) to enforce the aforesaid by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the Association in a like manner as a mortgage lien on real property. No Owner may waive or otherwise escape liability for Assessments by abandonment of its Lot.

12.8.5 Late Fees; Interest. Provided that the notice of the Assessment required by Section 12.1 is met, any Assessment not paid within fifteen (15) days after the due date thereof will be subject to a late fee as determined from time to time by the Board of Directors. Upon the occurrence of an Assessment Default, interest shall accrue as provided in Section 12.3.

12.8.6 Remedies. Upon the occurrence of an Assessment Default as provided in Section 12.3 above, the Association may seek collection of any Assessment by bringing an action at law against the Owner or Owners personally obligated to pay Assessments and, in addition, may file a claim of lien and foreclose that lien against the Lot upon which the Assessments are made in the manner set forth in the Florida Statutes for the foreclosure of mortgages. The Association, acting on behalf of the Owners, will have the power to bid for an interest in any Lot at any such foreclosure sale and to acquire, hold, lease, mortgage and convey the same. Further, upon payment of an overdue Assessment (together with any late fee, interest, reasonable attorneys' fees, claim of lien filing fees and court costs applicable to such Assessment pursuant to this Agreement), the Association's collection rights and remedies as to such Assessment shall cease and terminate, and the Association shall deliver to the Owner a duly

executed instrument in recordable form releasing any claim of lien filed by the Association as to such Assessment.

12.9 Budget.

12.9.1 Fiscal Year. The fiscal year of the Association is the calendar year. The first fiscal year shall be the period of the calendar year that the ECR is recorded commencing on the recording date thereof and ending on December 31, inclusive.

12.9.2 Preparation and Approval of Annual Budget. Within 30 days after recording of this ECR, the Commercial Developer will establish the budget for the fiscal year in which the ECR is recorded. Commencing on or before November 1st of the year in which this ECR is recorded, and on or before December 1 of each year thereafter, the Board of Directors will adopt a budget for the coming fiscal year containing an estimate of the total amount which it considers necessary to pay the cost of all expenses to be incurred by the Association to carry out its responsibilities and obligations, including, without limitation, the cost of wages, materials, insurance premiums, services, supplies, and other expenses for the rendering to the Owners of all services required or permitted hereunder. Such budget will also include such reasonable amounts as the Board of Directors considers necessary to provide working capital for the Association, and a general operating reserve and reserves for contingencies and replacements. The Board of Directors will send to each Owner a copy of the budget in accordance with the Notices provisions of the Covenants, the same to be in a reasonably itemized form which sets forth the amount of the Annual Assessments payable by each Owner, on or before December 1 preceding the fiscal year to which the budget applies. Such budget will constitute the basis for determining each Owner's Annual Assessment as provided above. Except as provided in this Section, the Assessment for each Lot will be determined by multiplying the amount of the budget by the Stipulated Share of such Lot. Assessments for maintenance, repair, replacement and operation of Driggs Hill Drive will be charged solely to the Owners of Lots 3, 4, 5 and 6, with each such Owner paying its Stipulated Share of that Assessment. Assessments for maintenance, repair, replacement and operation of St. Croix Drive will be charged solely to the Owners of Lots 1 and 2, with each such Owner paying its Stipulated Share of that Assessment. Assessments for maintenance, repair, replacement and operation (including insurance) of the Stormwater Drainage System (including without limitation, the ad valorem taxes on Tract A) will be charged in equal amounts to each Owner (with each Owner paying 16.66% of such charges). For the avoidance of doubt, notwithstanding the foregoing timeframes, the notice condition precedent to the Association's rights to receive payment provided in Section 12.1 shall apply to each Annual Assessment.

12.10 Reserves. The Association will maintain such reserves as it deems reasonable or necessary for (i) working capital, (ii) contingencies, (iii) replacements, and (iv) the performance of such other coordinating or discretionary functions not contrary to the terms of the ECR which the Board of Directors may from time to time approve, which may be collected as part of the Annual Assessment as provided above. The amount and manner of collection of reserves will be as determined by the Board of Directors, in its sole discretion. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year will be charged first against such reserves. Except in the event of an emergency, reserves accumulated for one purpose may not be expended for any other purpose unless

approved by a vote or written consent of the Members owning a majority of the Lots. If the reserves are inadequate for any reason, including nonpayment of any Owner's Assessment, the Board of Directors may, at any time, levy a Special Assessment or Emergency Assessment by establishing a budget for such Assessment and then after approved by the Board of Directors levying this Assessments, which may be payable in a lump sum or in installments as the Board of Directors may determine. In the event there is a balance of reserves at the end of any fiscal year and the Board of Directors so determines, any excess reserves may be taken into account in establishing the next year's budget, and may be applied to defray general expenses incurred thereunder.

12.10.1 Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors to prepare or adopt an annual budget or adjusted budget for any fiscal year will not constitute a waiver or release in any manner of an Owner's obligation to pay his Assessment, as herein provided, whenever the same will be determined. In the absence of any annual Association budget or adjusted budget, each Owner will continue to pay the Assessments at the then existing rate established for the previous fiscal period, in the manner such payment was previously due, until notified otherwise.

12.11 Accounts. Except as otherwise provided herein, all sums collected by the Board of Directors with respect to Assessments against the Owners may be commingled in a single fund.

12.12 Exempt Property. The following properties subject to the ECR will be exempted from the Assessments, and liens created herein: (a) Tract A; and (b) any property dedicated to and accepted by a Governmental Authority.

12.13 Real Estate Taxes. If any portion of the Common Area is taxed separately from the Lots, the Association will include such taxes as part of the Annual Assessment, allocated between the Owners in accordance with Section 12.9.2 above. In the event the Common Area is taxed as a component of the value of the Lot owned by each Owner, it will be the obligation of such Owner to promptly pay such taxes prior to delinquency.

12.14 Certificate of Payment. The treasurer of the Association, or the management company authorized by the Board of Directors, upon demand of any Owner liable for an Assessment, will furnish to such Owner, or any Eligible Mortgage Holder, a certificate in writing setting forth whether such Assessment has been paid. Such certificate will be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge for the services involved in preparing such certificate may be assessed by the Association or management company, as applicable.

13. ASSOCIATION INSURANCE AND INDEMNIFICATION.

13.1 Liability Insurance. The Association will obtain and maintain public liability insurance insuring the Association, any managing agent, and the Members, and their respective Permittees, against any liability incident to the operations of the Access Road Areas and the Stormwater Drainage System or any other Association-owned or maintained real or personal property and including, if obtainable upon commercially reasonable terms, against

ownership or use of Lots. Such insurance will include, if obtainable upon commercially reasonable terms, a cross-liability or severability of interest clause or endorsement insuring the liability of each insured against claims by each other insured. The limits of such insurance will not be less than Five Million Dollars (\$5,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance will include coverage against liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location, and use.

13.2 Officer and Director Insurance. To the extent insurance is available upon commercially reasonable terms, the Association will purchase and maintain insurance in an amount up to One Million Dollars (\$1,000,000) on behalf of any Director, Officer, or Member of a committee of the Association (collectively the "agents") against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, regardless of whether the Association would have the power to indemnify the agent against such liability under applicable law.

13.3 Indemnification by the Association. To the extent covered by insurance carried by the Association, the Association agrees to defend, protect, indemnify and hold harmless each Owner from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind, including reasonable attorneys' fees and cost of suit, asserted or incurred in connection with or arising out of the negligent performance by Operator of its duties or obligations under the ECR with respect to the maintenance and operation of the Access Road Areas and the Stormwater Drainage System; provided, however, the foregoing obligation does not apply to claims or demands based on the negligence or the willful act or omission of the Owner to be indemnified. In the event it is determined that such Owner was not at fault, then the Operator must reimburse such other Owner for all reasonable expenses and costs incurred by such Owner defending against such claim or demand.

13.4 Notification of Any Change. The Association will, as soon as reasonably practical, notify Members in accordance with the Notice provisions of this ECR if any of the insurance policies the Association is required to maintain have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. Further, the Association will immediately so notify Members if the Association receives any notice of non-renewal of any of the policies the Association is required to maintain under the ECR and replacement coverage will not be in effect by the date the existing coverage lapses.

14. BREACH AND DEFAULT. The occurrence of any one or more of the following events will constitute a material default and breach of this Agreement ("Default") by the non-performing Owner (the "Defaulting Owner"):

- (a) The occurrence of an Assessment Default under Section 12.3, above; or
- (b) Other than an Assessment Default, the failure to make any payment required to be made hereunder within thirty (30) days after the due date thereof; or

(c) Except as provided in "a" or "b" above, the failure to observe or perform any of the covenants, conditions or obligations of this Agreement.

A collection action on account of a payment Default under "a" or "b" above may be commenced by the Association at any time after the occurrence of an Assessment Default or failure to make any other required payment within thirty (30) days after the due date thereof.

A proceeding or other action on account of a Default under "c" above may be commenced only after advance written notice, specifying the nature of the breach of this Agreement, is given to the Member against whom the Default is claimed (the "Defaulting Member"), and the same is not fully cured within thirty (30) days after such notice is given; *provided, however:*

(a) if such breach constitutes an emergency situation in that, under all attendant circumstances, public health, safety or welfare would be endangered, or full and complete relief may be unavailable, in the event that the foregoing advance notice and/or cure period requirements are followed, then only such advance notice (if any) as the circumstances reasonably permit shall be required (or, if necessary, no advance notice shall be required, so long as notice is given as soon as possible after the commencement of proceedings or other action); and

(b) if such breach is not reasonably susceptible of cure within the thirty (30) day period prescribed above, then the Defaulting Member shall have a reasonable cure period, provided that the Defaulting Member commences cure within such thirty (30) day period and thereafter prosecutes cure to completion with reasonable continuity and diligence.

In any action arising out of a Default of this Agreement, whether at law or in equity, the prevailing party will be entitled to reasonable attorneys fees. In no event will consequential or punitive damages be permitted. Nothing in this Section 14 will limit the right of any Owner to pursue equitable relief in connection with any term, covenant or condition of this Agreement, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance, or for the prevailing Owner to recover court costs in such an enforcement action.

15. RIGHTS AND OBLIGATIONS OF LENDERS. Any holder of a first lien on any portion of the Property, and any assignee or successor in interest of such first lienholder, will be subject to the terms and conditions of this Agreement.

15.1 Mortgage Permitted. Any Member may encumber the Member's Lot with a Mortgage.

15.2 Subordination. Any lien created or claimed under the provisions of the ECR for nonpayment of Assessments or other amounts due hereunder is expressly made subject and subordinate to any first Mortgage that encumbers all or a portion of the Property, or any Lot, made in good faith and for value, and no such lien will in any way defeat, invalidate, or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien. If any Lot is encumbered by a first Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in the ECR for

assessments, or installments of assessments, will not operate to affect or impair the lien of the Mortgage. On foreclosure of the first Mortgage, the lien for Assessments, or installments thereof that has accrued up to the time of foreclosure, will be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Lot free of the lien for Assessments or installments thereof that have accrued up to the time of the foreclosure sale. On taking title to the Lot, the foreclosure-purchaser will only be obligated to pay Assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Lot. Subsequently levied Assessments or other charges may include previously unpaid Assessments provided that all Members, including the foreclosure-purchaser and its successors and assigns, are required to pay their Stipulated Share thereof.

16. CONSTRUCTION AND INTERPRETATION.

16.1 The ECR has been fully negotiated at arm's length between the signatories hereto, and after advice by counsel and other representatives chosen by each Developer, and the provisions of this ECR and the Exhibits hereto will be construed as a whole according to their common meaning and not strictly for or against either Developer.

16.2 Use of the words "including", "such as", or words of similar import, when following any general term, statement or matter, will not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto.

16.3 Capitalized terms are only for convenience of reference, and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of the ECR.

16.4 Invalidation of any of the provisions contained in the ECR, or of the application thereof to any Person by judgment or court order, will in no way affect any of the other provisions hereof or the application thereof to any other Person and the same will remain in full force and effect.

16.5 This Agreement may be amended by, and only by, a written agreement duly executed by Owners allocated at least a majority of the Stipulated Shares in the Association, and will be effective only when recorded in the public records of Volusia County, Florida; provided, however, that no such amendment will impose any materially greater obligation on, or materially impair any right of, a Owner or its Lot under this Agreement without the consent of such Owner. Prior to turnover of the Association, the Commercial Developer and Residential Developer must consent to any amendment of this Agreement. No agreement to any amendment of this Agreement will ever be required of any Occupant or Person other than the Owners, nor will any Occupant or Person other than the Owners have any right to enforce any of the provisions hereof. The submission of a proposed amendment of this Agreement to the Owners shall not constitute an item of "consent" or "approval"; accordingly, each Owner may consider any proposed amendment to this Agreement in its sole and absolute discretion, without regard to reasonableness or timeliness.

16.6 ANY AMENDMENT TO THIS ECR WHICH ALTERS ANY PROVISIONS RELATING TO THE STORMWATER DRAINAGE SYSTEM, BEYOND MAINTENANCE IN ITS ORIGINAL CONDITION, INCLUDING THE WATER MANAGEMENT PORTIONS OF THE COMMON AREA AND ANY PROVISIONS RELATING TO ENVIRONMENTAL CONSERVATION AREAS, MUST HAVE THE PRIOR WRITTEN APPROVAL OF THE SJRWMD.

16.7 Time. Time is of the essence of the ECR.

17. RELEASE FROM LIABILITY. Any person acquiring fee or leasehold title to any portion of a Lot will be bound by this Agreement. Such person will be bound by this Agreement only during the period such person is the fee or leasehold owner of such Lot or portion of the Lot, except that obligations, liabilities or responsibilities that accrue during said period will continue to bind such person after its transfer of all interests in such Lot. Although persons may be released under this Section, the easements, covenants and restrictions in this Agreement shall continue to bind the Lot as servitudes upon the Property running with the land.

18. RIGHTS OF SUCCESSORS. The easements, restrictions, benefits and obligations hereunder create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns.

19. NON-MERGER. This Agreement is not subject to the doctrine of merger.

20. DURATION. Unless otherwise canceled or terminated, all of the easements granted in this Agreement, and all other provisions thereof that are expressly stated to be perpetual, shall continue in perpetuity, and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof; provided, however, that the termination of this Agreement will not limit or affect any remedy at law or in equity that a party may have against any other party with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of such termination.

21. HEADINGS. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

22. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

23. TRANSFER OF INTERESTS. In the event that any person or entity (the "Acquiring Party") shall acquire a fee or mortgage interest in any Lot or portion thereof subject to this Agreement, the Acquiring Party shall execute and file in the land records of Volusia County, Florida, a statement setting forth the name of the Acquiring Party, the address of the Acquiring Party to which all notices for the purposes of this Agreement may be sent, the nature

of the interest held by the Acquiring Party, and the date that such interest was acquired (the "Notice Statement"). Contemporaneously with such filing, the Acquiring Party shall also send by certified mail, return receipt requested, a copy of such Notice Statement to all other persons or entities then holding fee or mortgage interests in any tract subject to this Agreement, or any portion thereof, as reflected by the Notice Statements then of record in the land records of Volusia County, Florida (the "Existing Interest Holders"). Until such time as an Acquiring Party files and mails such Notice Statement in accordance with the terms of this Section 22, it shall not be entitled to receive any notice required or permitted to be given under this Agreement, and the Existing Interest Holders shall have no obligation to give any such notice to the Acquiring Party. Any change of address shall require the filing and mailing of a new Notice Statement.

24. LIENS. In the event any lien in the nature of a contractor's lien is recorded against the Lot of one Owner as a result of services performed or materials furnished for the benefit of another Owner, the Owner permitting or causing such lien to be so recorded will cause such lien to be released or discharged within fifteen (15) days after notice thereof (and in all events before the entry of a final judgment (after all appeals) for the foreclosure of such lien). Nothing herein will prevent the Owner permitting or causing such lien to be recorded from contesting the validity thereof in any manner such Owner chooses so long as such contest is pursued with reasonable diligence and the Owner permitting or causing such lien discharges or bonds off such lien as required herein. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Owner will promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien of record. Further, in the event that such a lien is not timely released from the other Owner's Lot in accordance with this Section, the Owner permitting or causing such lien not to be so released agrees to defend, protect, indemnify and hold harmless the other Owner and its Lot from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from such lien. The bond or other security referred to herein must be effective to remove the lien as a cloud upon title to the other Owner's affected Lot in accordance with applicable law, including Chapter 713, Florida Statutes.

25. NOTICES. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

Commercial Developer: DK Gateway Andros, LLC
4401 West Kennedy Boulevard
Third Floor
Tampa, FL 33609
Attn: Ed Kobel and Jay Adams

With a copy to:

DK Gateway Andros, LLC
c/o DeBartolo Development, LLC
15436 North Florida Avenue, Suite 200
Tampa, Florida 33613
Attention: General Counsel

With a copy to:

Holland & Knight LLP
100 North Tampa Street, Suite 4100
Tampa, Florida 33602
Attention: Richard D Eckhard, Esq.

Residential Developer:

DK Gateway Andros, LLC
4401 West Kennedy Boulevard
Third Floor
Tampa, FL 33609
Attn: Ed Kobel and Jay Adams

With a copy to:

DK Gateway Andros, LLC
c/o DeBartolo Development, LLC
15436 North Florida Avenue, Suite 200
Tampa, Florida 33613
Attention: General Counsel

With a copy to:

Holland & Knight LLP
100 North Tampa Street, Suite 4100
Tampa, Florida 33602
Attention: Richard D Eckhard, Esq.

Notices shall be effective upon receipt or refusal. In the event that any person acquires a fee interest in the Property said person shall be entitled to provide a request for notice to the addressees listed above, which request, in order to be effective, must also be recorded in the county recorder's office in the county in which the Property is located. Any party shall be entitled to change its address for notice by providing notice of such change and recording a copy of the notice of such change in the county recorder's office in the county recorder's office in the county in which the Property is located. Until such time as the notice of change is effective pursuant to the terms of this Section 25 and until such time as it is recorded as required above, the last address of said party, or the address stated in the notice of change, will each be deemed a proper address of said party for notices under this Agreement shall be deemed to be the proper address of said party.

IN WITNESS WHEREOF, Commercial Developer and Residential Developer have executed this Agreement as of the day and year first written above.

Signed, sealed and delivered in the presence of:

WITNESSES:


Print Name: LAUREN RAMBUSZER


Print Name: Gerard Norcia

COMMERCIAL DEVELOPER:

DD/GATEWAY DAYTONA, LLC
a Delaware limited liability company

By: PRISA III TRS, LLC
a Delaware limited liability company

By: PRISA III REIT Operating LP,
a Delaware limited partnership, its
sole member

By: PRISA III OP GP, LLC
a Delaware limited liability
company, its general partner

By: PRISA III Fund LP,
a Delaware limited partnership, its
manager

By: PRISA III FUND GP, LLC,
a Delaware limited liability
company, its general partner

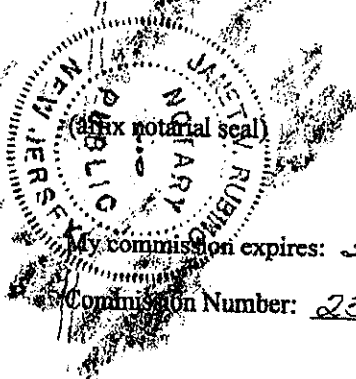
By: PRISA III FUND PIM, LLC,
a Delaware limited liability
company, its sole member

By: Prudential Investment Management,
Inc., a New Jersey corporation, its
sole member

By: 
Name: Scott M. Dalrymple
Title: Vice President

STATE OF New Jersey
COUNTY OF Monmouth

The foregoing instrument was acknowledged before me this 9 day of February, 2011, by Scott M. Dalrymple, as Vice President of Prudential Investment Management Inc., a New Jersey corporation, as the sole member of PRISA III FUND PIM, LLC, a Delaware limited liability company, as the sole member of PRISA III FUND GP, LLC, a Delaware limited liability company, as the general partner of PRISA III Fund LP, a Delaware limited partnership, as the manager of PRISA III OP GP, LLC, a Delaware limited liability company, as the general partner of PRISA III REIT Operating LP, a Delaware limited partnership, as the sole member of PRISA III TRS, LLC, a Delaware limited liability company, as the managing member of DD/GATEWAY DAYTONA, LLC, a Delaware limited liability company, on behalf of the limited liability company. He is personally known to me or has produced N/A as identification.



Janet V. Rubino
(Official Notary Signature)
Notary Public--State of New Jersey

(Printed, Typed or Stamped Name of Notary)
Janet V. Rubino
Janet V. Rubino
Notary Public
New Jersey
My Commission Expires 2-3-2015

Janet V. Rubino
Notary Public
New Jersey
My Commission Expires 2-3-2015

WITNESSES:

Carolyn A. Rapunzio
Print Name: CAROLYN RAPUNZIO
Andrea Jeffers
Print Name: Andrea Jeffers

RESIDENTIAL DEVELOPER:

DK GATEWAY ANDROS, LLC
a Florida limited liability company

By: Fortis Kobel, LLC
its sole member and manager

By: [Signature]
Name: Edward M. Kobel
Title: President

STATE OF FLORIDA

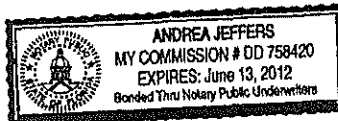
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 9 day of Feb, 2011
by Edward Kobel, the manager of DK GATEWAY
ANDROS, LLC, a Florida limited liability company, on behalf of the company. He/she is either
personally known to me, or has produced a driver's license as identification.

Andrea Jeffers
Print Name: Andrea Jeffers
Notary Public
State of Florida at Large

(Notarial Seal)

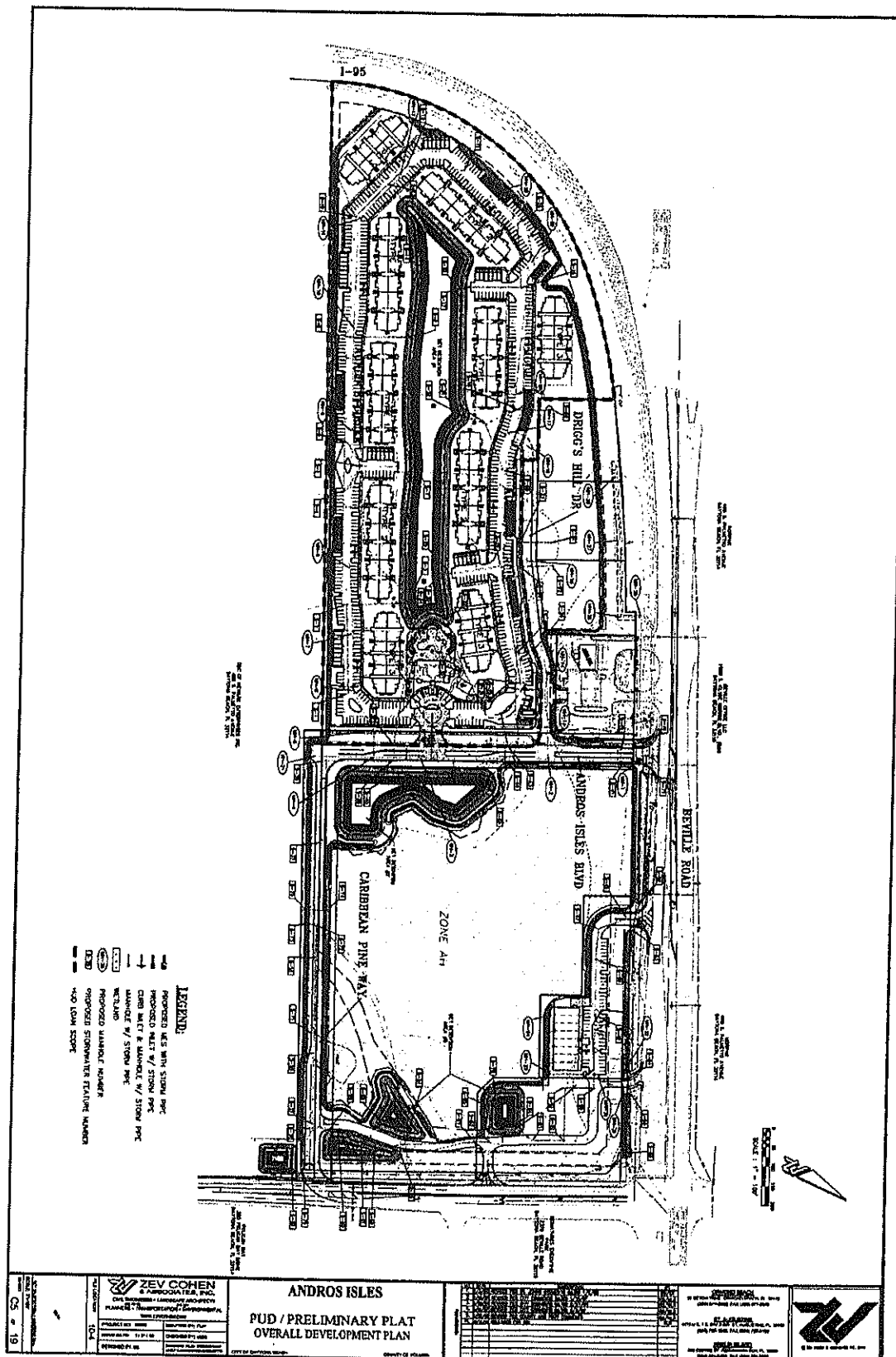
My Commission Expires: 6-13-12

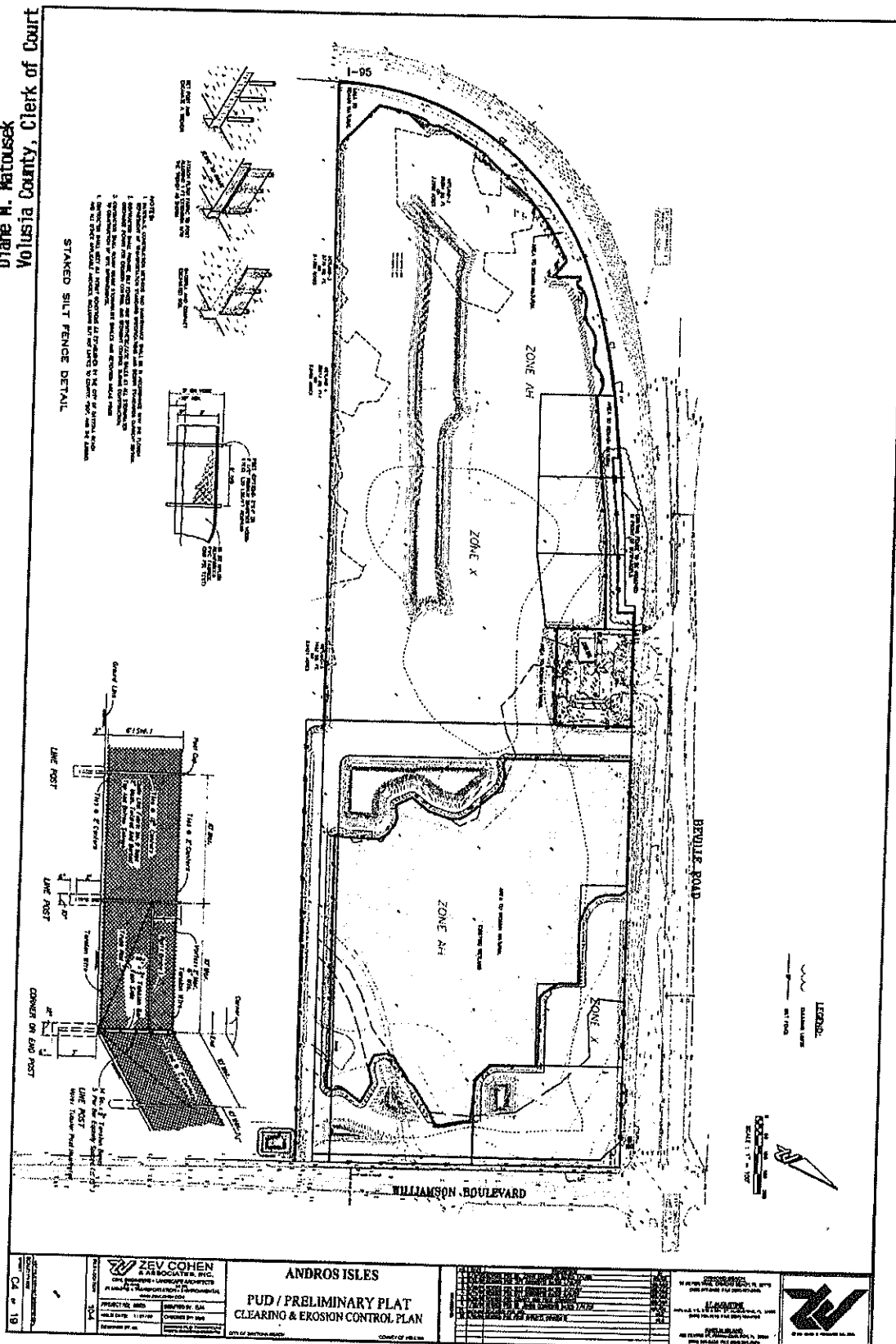


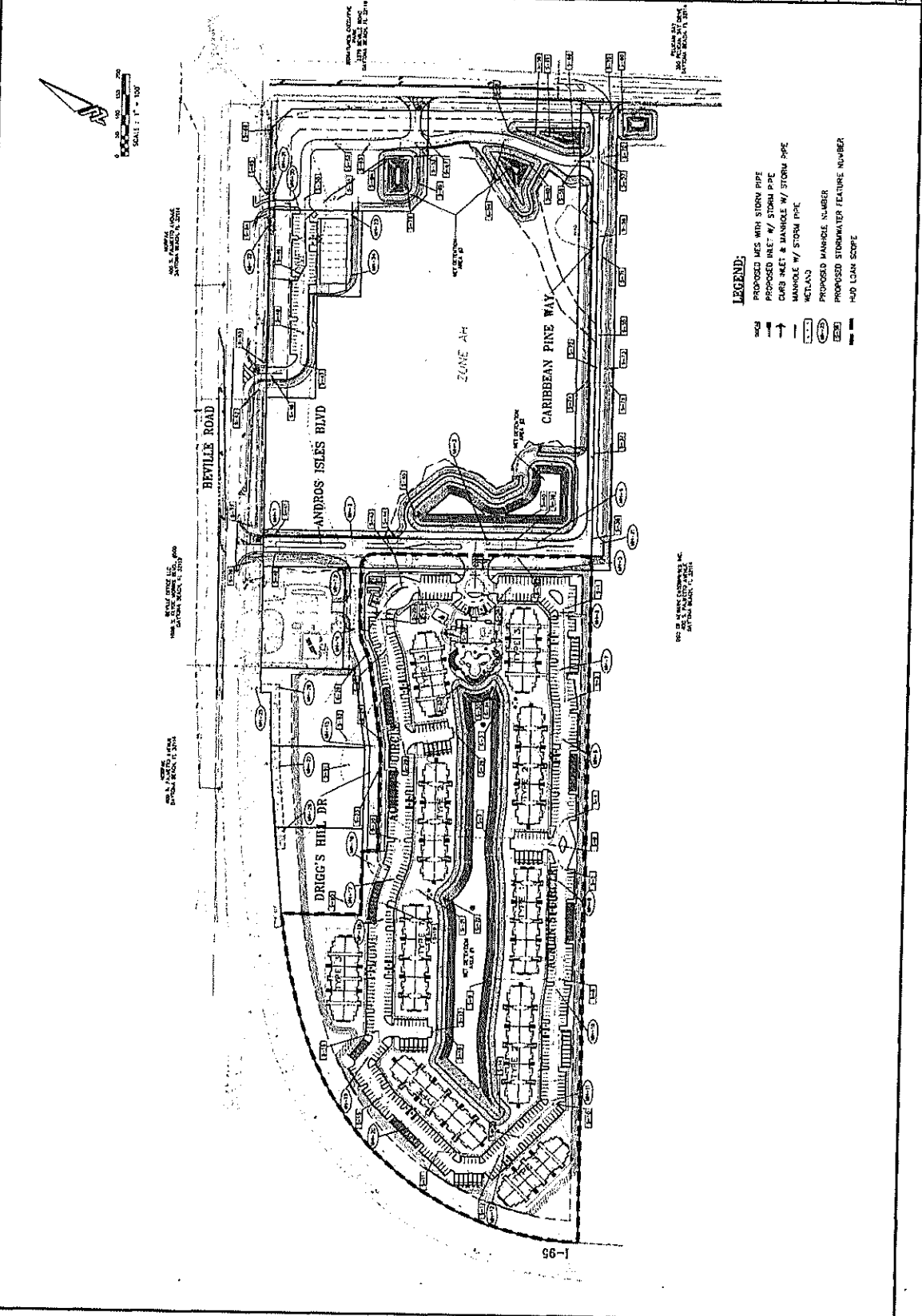
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EXHIBIT A

SITE PLAN







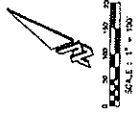


PROJECT NO. 10-4
SHEET NO. 19
DATE: 10/1/88
BY: J. J. JONES
CHECKED BY: J. J. JONES
APPROVED BY: J. J. JONES

NO.	DESCRIPTION	DATE
1	PRELIMINARY PLAN	10/1/88
2	FINAL PLAN	10/1/88
3	CONSTRUCTION PLAN	10/1/88
4	AS-BUILT PLAN	10/1/88

ANDROS ISLES PUD / PRELIMINARY PLAN CLEARING & EROSION CONTROL PLAN

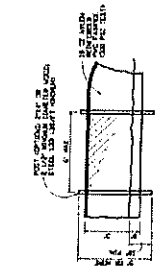
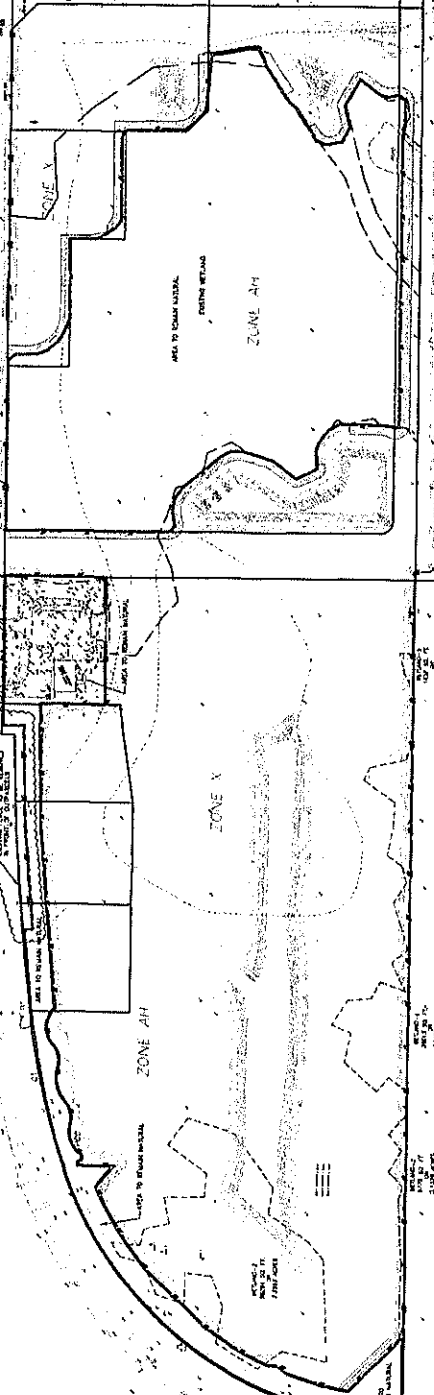
PROJECT NO. 10-4
SHEET NO. 19
DATE: 10/1/88
BY: J. J. JONES
CHECKED BY: J. J. JONES
APPROVED BY: J. J. JONES



LEGEND
CLEARING LIMITS
1" = 100'

BEVILLE ROAD

WILLIAMSON BOULEVARD



NOTES:
1. THE STAKED SILT FENCE SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DETAIL.
2. THE STAKED SILT FENCE SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DETAIL.
3. THE STAKED SILT FENCE SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DETAIL.
4. THE STAKED SILT FENCE SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DETAIL.

STAKED SILT FENCE DETAIL

