



REGULAR TOWN COUNCIL MEETING

Monday, March 1, 2021 at 7:30 pm

1. CALL TO ORDER, PRAYER AND PLEDGE
2. ROLL CALL
3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES
4. CONSENT AGENDA
 - a. Approve Minutes & Continuing Engineering Services Contracts
Exhibit: Agenda Report Number 4

Attachments:

- **Agenda Report number 4** (Agenda_Report_Number_4.pdf)

5. ATTORNEY REPORT
6. BCSO REPORT
7. BOARD / COMMITTEE REPORTS
 - a. T&G Committee
 - b. Park & Recreation Board
 - c. Planning & Zoning Board
8. STAFF REPORTS
 - a. Manager
Exhibit: Agenda Report Number 8a

Attachments:

- **Agenda Report Number 8a** (Agenda_Report_Number_8a.pdf)
- **Agenda Report Number 8a** (Agenda_Report_Number_8a.pdf)
- **Agenda Report Number 8a** (Agenda_Report_Number_8a.pdf)

- b. Clerk
 - c. Fire Chief
9. PUBLIC COMMENTS

Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required)

Five (5) Minute Limit per Speaker

10. PUBLIC HEARINGS / SPECIAL ORDERS
 - a. 2nd Reading of Ordinance 2021-01 Amending Table 1-19.8 of the Land

Development Code, Article XIX - Signage, Section 1-19.18 Entitled District Sign Regulations.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTION 1-19.18 OF THE TOWN CODE OF ORDINANCES, LAND DEVELOPMENT CODE. ARTICLE XIX - SIGNAGE RELATING TO DISTRICT SIGN REGULATIONS: AMENDING THE PROVISIONS OF TABLE 1-19.8 OF THE TOWN CODE RELATING TO THE MAXIMUM AREA PERM11-FED IN RESIDENTIAL AND NONRESIDENTIAL ZONING DISTRICTS PERTAINING TO GENERAL OUTDOOR ADVERTISING: PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10a

Attachments:

- **Agenda Report Number 10a** (Agenda_Report_Number_10a.pdf)

b. Final Plat for "Twin Lakes" - A 16 homesite subdivision in RR-65 zoning on the south side of Malabar Road, east of Weber Road on a vacant 24 acre site.

Applicant Malcom Kirschenbaum, Weber Woods LLC

Exhibits: Agenda Report Numbers 10b & 10b(1)

Attachments:

- **Agenda Report Number 10b** (Agenda_Report_Number_10b.pdf)
- **Agenda Report Number 10b(1)** (Agenda_Report_Number_10b_1_.pdf)

c. (Tabled on 2/1/2021) Road Improvement Waiver Request - Right of Way known as Beekeeper Lane

Applicant Adam Hayward

Exhibit: Agenda Reports 10c(1) - 10c(4)

Attachments:

- **Agenda Report Number 10c(1)** (Agenda_Report_Number_10c_1_.pdf)
- **Agenda Report Number 10c(2)** (Agenda_Report_Number_10c_2_.pdf)
- **Agenda Report Number 10c(3)** (Agenda_Report_Number_10c_3_.pdf)
- **Agenda Report Number 10c(4)** (Agenda_Report_Number_10c_4_.pdf)
- **Agenda Report Number 10c(4)** (Agenda_Report_Number_10c_4_.pdf)

11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

12. ACTION ITEMS

ORDINANCES:0

RESOLUTIONS:1

MISCELLANEOUS:1

a. Continue or Sunset Policy Requiring Face Coverings and Social Distancing per Reso 17-2020

Exhibit: Agenda Report Number 12a

Attachments:

- **Agenda Report Number 12a** (Agenda_Report_Number_12a.pdf)

b. Authorization for Legal Review of Code by Municode

Exhibit: Agenda Report Number 12b

Attachments:

- **Agenda Report Number 12b** (Agenda_Report_Number_12b.pdf)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

13. DISCUSSION/POSSIBLE ACTION

14. PUBLIC COMMENTS

General Items (Speaker Card Required)

15. REPORTS - MAYOR AND COUNCIL MEMBERS

16. ANNOUNCEMENTS

(1) Vacancy on the Board of Adjustments; (2) Vacancies on the Trails and Greenways Committee

17. ADJOURNMENT

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105).

The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 4.
Meeting Date: March 01, 2021

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Consent Agenda

BACKGROUND/HISTORY:

4.a. Town Council Regular Meeting Minutes – 02/01/2021

4.b. At the RTCM of March 20, 2020, Council approved the recommendation of the Selection and Negotiating Committee (SNC) to hire Singhofen and Associates to produce the Stormwater Master Plan and to create continuous service contracts with the 2nd and 3rd ranked firms for other engineering projects within the Town.

ATTACHMENTS:

- a. Draft Minutes of 02/01/2021
- b. Continuing Engineering Services (separate package)

ACTION OPTIONS:

Council Action on Consent Agenda

Malabar Regular Town Council Meeting Minutes
FEBRUARY 1st, 2021 7:30PM, Meeting held at Malabar Town Hall, 2725 Malabar Road

1. **CALL TO ORDER, PRAYER AND PLEDGE**
Council Member White led the prayer and pledge.
2. **ROLL CALL**

CHAIR:
VICE-CHAIR:
COUNCIL MEMBERS:

MAYOR PATRICK T. REILLY
STEVE RIVET
MARISA ACQUAVIVA
BRIAN VAIL
DAVID SCARDINO
DANNY WHITE
LISA MORRELL
KARL BOHNE
RICHARD W. KOHLER

INTERIM TOWN MANAGER:
TOWN ATTORNEY:
DEPUTY TOWN CLERK:
For the record Fire Chief Mike Foley was in attendance.

3. **APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: NONE**
4. **CONSENT AGENDA:**
4.a. **Regular Town Council Mtg Minutes of 1/04/2021**
CM Vail / CM White to accept the minutes of 01/04/2021 as presented.
All Ayes: Motion Carried 5-0.

5. **ATTORNEY REPORT:** Painted Acres litigation, insurance defense council Mr. Connor has left the firm defending the Town. Douglas Noah will be the new counsel. This litigation has been going on since 2012, and the new Attorney has been in contact with him. Motion was filed to short cut the case. Attorney also sent an email about litigation in Palm Beach County regarding face coverings. Made it to an appellate court. Failed to show likelihood of success, affirm the lower court ruling. Highlighted portion states that we all have individual rights, but in an emergency, the Government has the right to temporarily halt those personal freedoms, such as back in the 1920's in the influenza pandemic.

6. **BCSO REPORT: NONE**

7. **BOARD / COMMITTEE REPORTS:**

7.a. T&G Committee:

Deputy Clerk Kohler gave a brief explanation of the concept of the "Zig-Zag Trail" proposed at the North end of Corey Road.

7.b. Park & Recreation Board: **None**

7.c. P&Z Board: **None**

8. **STAFF REPORTS:**

8.a. Town Manager – Hunter Lane has gone out for quote. Reached a coordination agreement between KSM and Goodson Paving. Will only need to work on 2 culverts. Will move forward with stability testing. Parks and Rec board is working on a survey about possible future playground equipment. EDC Engineering & Kimberly Horn Engineering have been contacted about their continuing services, which will be reviewed by the attorney and approved by Council at a future date. SAI will soon start staff training. Gave an in-depth update of the playground equipment, tennis and basketball courts. Also discussed north Corey Road project, and FDOT road closure.

8.b. Fire Chief – Written Report given to Council at the meeting. Three grants out for a life pack, 45K unit. Starting off the year on the right foot. CM Acquaviva asked about the policy for emergency lights

after hours, Chief stated they do not use the siren in residential areas after dark, but require the lights stay on while performing emergency services. CM White asked about EMS services. Chief explained the Malabar Fire Fighters are all EMT certified, and the department provides BLS services. The County is the only transport system, and they perform ALS.

8.C. Clerk – Deputy Clerk Kohler informed Council of an upcoming Ethics Training Webinar provided by the Florida League of Cities taking place on 2/24 from 10 AM to 3:30 PM. It is a free class and it will cover the annual requirements for ethics training. A date has been set for Fall in Love with Springfest, March 20th from 9 AM to 1 PM. Malabar BTR holders will pay no vendor fee and Dolphin Auto will be presenting the car show. Social distancing will be encouraged.

9. **PUBLIC COMMENTS:** Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required)
Five (5) Minute Limit per Speaker.

10. **PUBLIC HEARINGS: 1**

10.a. Road Improvement Waiver Request – right-of-way know as Beekeeper Lane – tabled from July 6, 2020; applicant Adam Hayward

Exhibit: Agenda Report No. 10.a.

CM Vail / CM White to un-table the issue. 5-0 approve.

Applicant Adam Hayward was asked to come to the podium and present his case. He is trying to build a house, but his property is not on an accepted road. The code states he needs to put in 70' ROW which would cut into current residents' yard. There have only been 2 35' dedications. Old owner had an agreement to improve the road in 2004. He is requesting a waiver to the requirement for the road to be widened to its planned width if he maintains it. As each person builds, they dedicate more road.

Mayor asked if there is anyone using the road past his property? Applicant stated that there is an agricultural goat farm at the end of the road.

ITM Morrell gave a brief overview of the history on this item. Waiver is in the authority of Council. Engineer's report has not changed since his letter advising against a waiver.

Mayor opened the Public Hearing.

Lyndon Jones, 2885 Corey Road, lived there 20 years. He asked the Town to dig out the ditch along Beekeeper Lane and was told by the Town it was wetlands 7-10 years ago. Mayor asked if he is in favor or against this waiver? He states he is in support of it as he believes it will improve his drainage situation.

Mayor Closed Public Hearing

MOTION: CM Rivet / CM Scardino to approve the waiver.

CM Rivet stated the petitioner is looking to make a bad situation better. Asked himself if it was right to deny this man the best use of his property. We should make every effort to help him.

CM Vail agreed we can't deny people the use of their property. If there is a ROW issue, it will still be better than many existing roads in Malabar. He does not believe the 70' portion is applicable here, but you need at least 24' for emergency services. The Town has code for 50' and 25' roads, use them. Can we find a way to make this 50' all the way? We should reach out to the owner of the undedicated lot and let them know how beneficial the road will be for them.

Attorney Bohne stated the current road is below standard. If we are going to accept the road, it needs to be brought up to a standard that will hold emergency vehicles. This isn't so much a waiver as it is a delay of getting this done.

CM Acuaviva asked if everyone has dedicated, and if the neighbors need to be noticed.

Attorney Bohne stated that no, one lot west of Mr. Hayward (lot 291) has not dedicated property, and notices are issued after a Building Permit, and the building of a road is a requirement for getting a Building Permit.

CM Rivet asked if this road should be re-classified? It probably isn't a collector.

CM Vail agreed, but urged caution. Eau Gallie Blvd was developed through a swamp. This could also help with stormwater. It can connect the properties around it with the Town's Stormwater system.

CM Scardino reminded Council this is only about Mr. Hayward's property. Not the neighborhood in the future.

CM White stated eminent domain is no way to make friends. However, if there is no other way to improve the road without a dedication, then we should get the land.

CM Vail asked who should reach out to the owner not dedicating land? Town – Attorney. He asks ITM Morrell to reach out to owner of lot 291 and ask if they would be interested in dedicating ROW.

Applicant stated that there are 16 roads that are under 13'. There are about 60 homes served by roads in worse condition than Beekeeper Lane is right now.

Attorney Bohne stated that is the problem. We should not create anymore of these situations.

CM Vail reminded the applicant of the Town's road payback program and states it has worked in the past for Malabar residents. Road was built, and development followed.

Attorney Bohne stated that the applicant isn't interested in giving the road to the Town for improvements, so there would be no payback.

Applicant stated he wants to improve the road on the current footprint to build an "Interim Roadway" that he will maintain.

Attorney Bohne asked to what width do we want him to build the road?

CM Acquaviva asked Fire Chief Foley if he had any question?

Chief Foley stated he can't get a fire engine to the applicant's property due to the poor road quality, but he can get a brush truck. It'll matter the road base and stability. He would love to see 50', but 25' road surface would suffice.

CM White stated he is sympathetic to the applicant. If he follows the Town standards, he's going to build an expensive road with a small possibility of the payback program. However, that doesn't mean we should ignore our standards.

CM Acquaviva asked if this qualifies as a hardship?

Attorney Bohne stated that Council has the power to grant relief, but the only hardship is getting the dedicated ROW.

ITM Morrell stated the difficulty is our Code says 70 feet. Council has the authority to grant a waiver. The applicant is looking for relief from the vision of the Town.

Mayor stated he believes the applicant should build a 25' road.

CM Vail stated it should be built as 50' road where applicable, and narrow where its needed. If we build a 25' road now, how do we enforce building it up to 50'?

ITM Morrell stated that if lot 291 would dedicate the ROW, a 25' road is possible and could be accepted.

CM White suggested the Town accept the improved road so it can be maintained to the Town's standard.

Applicant stated he does not want to improve the road; he wishes to use the current path as an interim roadway.

Attorney stated that then the answer is to deny the request because it would not be meet the Town's standard for an accepted road.

Mayor suggested the Council table this item until the owner of lot 291 can be contacted.

CM Vail stated the request seems to be to do a minimal improvement to the existing two trail, provide no drainage, and build a house at the end. We already have 60 of those houses and do not need anymore.

Mayor Reilly stated he sees four options, Council can table the request, they can deny the request, they can approve the request, or they can deny the request and come up with a different agenda item.

Motion: CM Vail / CM Rivet to table this item for 30 days until the owner of lot 291 can be reached by ITM Morrell.

VOTE: 5-0 (all ayes).

CM White stated that this proposal was to keep the road at its current dimensions with minimal improvements and the applicant would maintain it. That idea is a nonstarter. Our policy is if you build a house, you build a road. Recommends the applicant meet with ITM Morrell to develop a plan that can meet the Town's standard.

11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES) 0

12. ACTION ITEMS:

ORDINANCES for FIRST READING: 1

12.a. Amend Signage Code, Article XIX (Ord 2021-01).

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTION 1-19.18 OF THE TOWN CODE OF ORDINANCES, LAND DEVELOPMENT CODE, ARTICLE XIX - SIGNAGE RELATING TO DISTRICT SIGN REGULATIONS; AMENDING THE PROVISIONS OF TABLE 1-19.18 OF THE TOWN CODE RELATING TO THE MAXIMUM AREA PERMITTED IN RESIDENTIAL AND NON-RESIDENTIAL ZONING DISTRICTS PERTAINING TO GENERAL OUTDOOR ADVERTISING; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 12.a.

Chair asked the Deputy Clerk to read the Ordinance by title only.

MOTION: CM Rivet / CM Scardino to approve Ordinance 2021-01 for First Reading.

Discussion: CM Vail stated that this is essentially changing the residential to 16 square feet and commercial to 32 square feet.

ROLL CALL VOTE: CM Marisa Acquaviva, Aye; CM Brian Vail, Aye; CM Steve Rivet, Aye; CM David Scardino, Aye; CM Danny White, Aye. Motion Carried 5 -0.

**RESOLUTIONS: 0
MISCELLANEOUS: 1**

12.b. Permission for the Town Manager to negotiate and amend the terms and conditions pertaining to the Exclusive Solid Waste and Recyclable Material Collection Franchise Agreement

Exhibit: Agenda Report No. 12.b.

Discussion: ITM Manager explained that this is a 21-year contract, but that every 7 years we can amend terms and conditions. This is an opportunity to do just that. Any final changes will be reviewed by the attorney and presented to Council at a future date.

MOTION: CM White / CM Vail to authorize ITM Morrell to negotiate.
VOTE:5-0

Chair may excuse Attorney at this Point

13. DISCUSSION/POSSIBLE ACTION: 0

14. PUBLIC COMMENTS: General Items Five (5) Minute Limit per Speaker. Speaker Card Required

15. REPORTS – MAYOR AND COUNCIL MEMBERS

Council Member Marisa Acquaviva: None

Council Member Brian Vail: None

Council Member Steve Rivet: None

Council Member David Scardino: None

Council Member Danny White: None

Mayor Patrick T. Reilly: None

16. ANNOUNCEMENTS:

(2) Vacancies on the Trails & Greenways

17. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 9:17 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Richard W. Kohler
Deputy Town Clerk/Treasurer

Date Approved: 03/01/2021

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 4.b
Meeting Date: March 1, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Consideration for executing contracts for continuing consulting/professional services for civil engineering.

BACKGROUND/HISTORY:

Town Council directed staff at the March 3, 2020 Regular Town Council Meeting to negotiate with Singhofen and Associates, Inc (SAI) for the Stormwater Asset management Master Plan and continuing services contracts with top three submittals for the Request for Qualifications, NO. 20-03 (RFQ).

Singhofen and Associates, Inc (SAI) has an executed contract for services with The Town. Engineering Design & Construction, Inc and Kimley-Horn and Associates welcomed the opportunity to provide contracts and rates for ongoing civil engineering services for scopes of work provided by on as-needed and as requested by The Town of Malabar for a term of five years.

Each contractor has included an annual rate for each level and type of engineering services within the contract as a basis for any future scopes of work developed by The Town in the future for consideration and approval for expenditure(s) by the Town Council. The Town Attorney has reviewed each contract with the Interim Town Manager for each engineering firm's legal and contract team and are ready for execution.

ATTACHMENTS:

ENGINEERING DESIGN & CONSTRUCTION, INC. Contract for Consulting Professional Services Civil Engineering and Rates.PDF

KIMLEY-HORN AND ASSOCIATES, INC Contract for Consulting Professional Services Civil Engineering and Rates.PDF

Page 2 Meeting Minutes of the Regular Town Council Meeting 03022020.PDF

ACTION OPTIONS:

Motion to approve and execute contracts for the additional two top ranked firms, Engineering Design and Construction Inc. and Kimley-Horn and Associates, as identified and approved with the award of Request for Qualifications (RFQ) NO. 20-03 for ongoing and as needed-consulting/professional services related to Civil Engineering.

three-county area. Pre-selection process reduced it to five firms. Singhofen (SAI) was the strongest. Another of the top three had a member that lives in Town and related very well to committee. At the 2/27 mtg they heard presentations and performed a Q&A for the top five entries. They then ranked them and are submitting the recommendation that Council authorize TM to approve the committee recommendation of SAI (Singhofen & Assc Inc) to conduct the Stormwater Asset Inventory Master Plan. They also recommend TM set up continuing service contracts with SAI, EDC and Kimley-Horn to provide project design and construction consulting services for capital improvement projects. Town Planner asked one of the members to speak.

Roger Walters – sat on committee – all five were extremely qualified. Had depth and length of experience. SAI is a premier firm. Look at existing projects, what we want to do and what we plan to do. The top three, SAI had a preliminary plan model started at presentation. Committee support for the other two firms for continuing services or other small projects.

Atty said to approve the recommendation contingent with a successful negotiation with the top ranked firm

→ **MOTION: CM Vail / CM Scardino to approve Committee recommendation as submitted and direct TM to negotiate with SAI for this and continuing service contracts with top three. VOTE: All Ayes.**

8.d. **FIRE CHIEF:** Gave brief report. 30 calls, 18 ems. Riley and he went to large animal rescue class thru UF. Asked for residents who have large animals to contact Fire Dept and let them know who they use for vets. Another grant will be submitted. CM Scardino asked about large human rescue – Chief said they have provisions for up to 600 lbs. CM Scardino asked about fire danger from mulch pile out front. Chief is prepared.

8.e. **CLERK:** Nothing.

9. **PUBLIC COMMENTS:** Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) Five (5) Minute Limit

10. **PUBLIC HEARINGS:** 3

10.a. **Ord 2020-02 - Amend Article III, District Provisions, Table 1-3.2**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO TABLE 1-3.2 IN ARTICLE III OF THE LAND DEVELOPMENT CODE, PROVIDING FOR FINDINGS; PROVIDING FOR TRADES AND SERVICES IN COMMERCIAL GENERAL (CG) ZONING TO BE A PERMITTED USE INSTEAD OF A CONDITIONAL USE AND PROVIDING FOR THE ADDITION OF GARDEN AND PINE STREETS TO THE FOOTNOTE WHERE THESE USES ARE ALLOWED; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Ord read by title only.

PH open – none

PH closed

MOTION: CM Vail / CM Scardino to adopt Ord 2020-02.

ROLLCALL VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, Excused; CM Scardino, Aye; CM White, Aye. Motion carried 4 to 0.

**CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES
CIVIL ENGINEERING**

THIS CONTRACT is made as of the day of 2021 by and between **TOWN OF MALABAR**, a political subdivision of the State of Florida, hereinafter referred to as the "Town", and **ENGINEERING DESIGN & CONSTRUCTION, INC.**, hereinafter referred to as "Consultant".

WHEREAS, pursuant to Section 287.055, Florida Statutes, the Town solicited proposals for non-exclusive Contracts to perform professional services for Professional Engineering Services with engineering firms for the performance of services; and,

WHEREAS, at the regularly scheduled meeting on March 3, 2020, The Town Council approved the short list of firms, permission to negotiation a continuing contract, and authorized the execution of an agreement for Continuing professional services between Town and Consultant hereinafter referred to as "Contract"; and,

WHEREAS, the Consultant is willing and able to render professional services for various projects on an as-needed basis and for the compensation and on the terms hereinafter set forth; and,

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, agreements, terms, and condition contained herein, do agree as follows:

1. RECITALS

The Recitals set forth above are fully incorporated into the Contract by reference.

2. SERVICES

The Consultant's responsibility under this Contract is to provide professional/consultation services in the area of Professional Civil Engineering Services.

3. TERM

The term of the Contract shall be for a period of 5 (five) years beginning on March 2, 2021 and continuing through March 1, 2026.

4. TECHNICAL AND PROFESSIONAL SERVICES

It shall be the responsibility of the Consultant to work with the Town to provide Professional Civil Engineering Services for consulting, design and construction management services on selected projects for Town of Malabar whereby the construction fees will not exceed \$2,000,000. The scope of services may include, but not limited to, construction/project management and design, capital improvements planning and implementation, feasibility and engineering studies, contract administration, construction phase services, interior engineering, representation for the Town in matters concerning other government or regulatory agencies, preparing construction cost estimates, prepare preliminary and final design,

construction/equipment specifications, prepare bid documents using Town templates, assist in bid award and analysis, determine applicable permits and licenses necessary for project and provide permit application and submittals services. Each project will require a separate work authorization using the form issued by the Town. The work authorization shall set out the scope of work, time of performance and compensation schedule for each project.

5. PERIOD OF SERVICE; WORK AUTHORIZATIONS

- A. The Consultant will be available to begin work promptly after receipt of a fully executed copy of this Agreement. It is agreed that this Agreement shall be considered as a continuing contract and work will be initiated on an assignment by assignment basis. The Town is under no obligations to assign any minimum amount of projects/work to the Consultant. The Town reserves the right to select the respective Consultant who the Town, in its sole discretion, believes is in its best interest to perform the specified work.
- B. If the Consultant's services called for under this Agreement are delayed for reasons beyond the Consultant's control, the time of performance may be adjusted appropriately.
- C. Specific work assignments shall be set forth in individual Work Authorizations which will be issued to the Consultant. All Work Authorizations shall be executed on behalf of the Town in accordance with the Town Purchasing Policy. The Work Authorization shall describe the scope of the work to be performed and shall set forth the schedule for completion of the work.

The Town shall provide all criteria and full information as to Town's requirements for the assignment and designate in writing a person with authority to act on Town's behalf on all matters concerning this assignment.

6. COMPENSATION PAYMENTS

The Consultant shall be compensated for all services satisfactorily completed in accordance with the terms and conditions of this Agreement and each work authorization pursuant to the approved hourly rate schedule attached hereto as Exhibit "A". All invoices presented to the Town for payment shall be on a Request for Payment form approved by the Town. Services provided under each work authorization issued pursuant to this contract may meet the definition of "Construction Services" as defined in F.S. §218.72.

7. GENERAL CONDITIONS

- A. It is understood and agreed that the Consultant's services under this Agreement do not include participation, whatsoever, in any litigation. Should the services of the Consultant be required by the Town as an expert witness on behalf of the Town, a supplemental agreement may be negotiated between the Town and the Consultant describing the services desired and providing a basis for compensation to the Consultant. If however the Consultant is subpoenaed by a third-party in any litigation or proceeding where the Consultant has not been hired by the town as an expert witness, the Town shall not be required to compensate Consultant for such service and response to or compliance with the subpoena.
- B. Upon the Consultant's written request, the Town will furnish or cause to be furnished such reports, studies, instruments, documents, and other information as the Consultant and Town

mutually deem necessary; and the Consultant may rely upon same in performing the services required under this Agreement.

8. TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement by Consultant shall act as the execution of as truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete and current at the time of execution of the Agreement. The original Agreement rates and any additions thereto shall be adjusted to exclude any significant sums by which Town determines the Agreement rate(s) was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such rate adjustments shall be made within one year following the end of this Agreement.

9. DEFAULT TERMINATION

A. FOR CAUSE

If either party fails to fulfill its obligations under this Agreement in a timely and proper manner, the other party shall have the right to terminate this Agreement by giving written notice of any deficiency and by allowing the party in default seven (7) calendar days to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, this Agreement shall terminate at the expiration of the seven (7) calendar day time period.

With regard to the Consultant, the following items shall be considered a default under this Agreement:

- (1) If the Consultant should be adjudged bankrupt, or if he, or it, should make a general assignment for the benefit of his, or its, creditors, or if a receiver should be appointed on account of his, or its, insolvency.
- (2) If the Consultant should persistently or repeatedly refuse or fail, except in cases for which an extension of time is provided, to provide the services contemplated by this Agreement.
- (3) If the Consultant disregards laws, ordinances, or the instructions of the Project Manager or otherwise is guilty of a substantial violation of the provisions of the Agreement.

In the event of termination, the Consultant shall only be entitled to receive payment for work satisfactorily completed prior to the termination date.

B. WITHOUT CAUSE

Either party may terminate the Agreement without cause at any time upon thirty (30) calendar days prior written notice to the other party. In the event of termination, the Town shall

compensate the Consultant for all authorized work satisfactorily performed through the termination date.

C. SCRUTINIZED COMPANIES TERMINATION

The Town may immediately terminate the Contract without cause at any time upon ascertaining that pursuant to § 287.135, Florida Statutes, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local government entity for goods or services if at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, or at any time thereafter, the company: (1) is on the Scrutinized Companies that Boycott Israel List, created pursuant to § 215.4725, Florida Statutes, or is engaged in a boycott of Israel; (2) is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to § 215.473, Florida Statutes; or (3) is engaged in business operations in Cuba or Syria. Furthermore, the Town may immediately terminate the Contract if it is determined that the company submitted a false certification stating that it was not (1) on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel; (2) was not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; (3) or was not engaged in business operations in Cuba or Syria when in fact the company was engaged in such activities at the time of the bid or proposal, or at the time of entering into or renewing the Contract.

10. SUB-CONSULTANTS AND SUBCONTRACTORS

In the event the Consultant requires the services of any sub-consultant, subcontractor or professional associate in connection with the services to be provided under this Agreement, Consultant shall secure the written approval of Town Project Manager before engaging such sub-consultant, subcontractor or professional associate.

If a sub-consultant fails to perform or make progress, as required by this Contract, and it is necessary to replace the sub-consultant to complete the work in a timely fashion, the Consultant shall promptly do so, subject to acceptance of the new sub-consultant by the Town. The substitution of a subcontractor shall not be adequate cause to excuse a delay in the performance of any portion of this contract as set forth in the Scope of Work.

The Consultant, its sub-consultants, agents, servants, or employees agree to be bound by the Terms and Conditions of this Contract and its agreement with the sub-consultant for work to be performed for the Town the Consultant must incorporate the terms of this contract.

11. FEDERAL AND STATE TAX

The Town is exempt from payment of Florida State Sales and Use Taxes. The Town will sign an exemption certificate if submitted by the Consultant. The Consultant shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the Town, nor is the

Consultant authorized to use the Town's Tax Exemption Number in securing such materials. The Consultant shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

12. INSURANCE

The Consultant shall procure and maintain during the life of this Agreement insurance of the types and subject to the limits set forth below. The Consultant shall also provide the Town with evidence of this insurance in the form of Certificates of Insurance which shall be subject to the Town's approval for adequacy. The Town shall be an Additional Insured on policies of Commercial General Liability with respect to all claims arising out of the work performed under this Agreement. The Town shall be given thirty (30) days prior written notice of any material changes or cancellations of the policies. If sub-contractors are used by the Consultant, it shall be the responsibility of the Consultant to ensure that all its sub-contractors comply with all the insurance requirements contained herein relating to such sub-contractors.

Except as otherwise stated, the amounts and types of insurance shall conform to the following minimum requirements:

A. COMMERCIAL GENERAL LIABILITY

The Consultant shall provide and maintain during the life of this Agreement, at his, its or their own expense, Commercial General Liability insurance on an occurrence basis for a minimum combined single limit of \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate for claims of bodily injury including death, property damage and personal injury. Contractual Liability coverage shall be included.

B. COMMERCIAL AUTO LIABILITY

The Consultant shall provide and maintain during the life of this Agreement, at his, its or their own expense, Business Commercial Auto Liability for claims of bodily injury and property damage for minimum limits of \$1,000,000.00 combined single limit.

C. WORKERS' COMPENSATION

The Consultant shall provide and maintain during the life of this Agreement, at his, its or their own expense, Workers' Compensation insurance coverage to apply for all employees for Florida statutory limits. Coverage B, Employers Liability, shall be written for a minimum liability at \$500,000.00 per occurrence.

D. PROFESSIONAL LIABILITY

The Consultant shall provide and maintain during the life of this Agreement, at his, its or their own expense, Professional Liability insurance on a claims made basis for a minimum of \$1,000,000.00 coverage.

E. OTHER INSURANCE PROVISIONS

The General Liability policy shall contain or be endorsed to contain, the following provisions:

1. The Town, its Officers, Officials, Employees, Agents, and Volunteers are to be covered as additional insureds for any and all liability arising out of the Consultant's performance of this Agreement. The coverage shall contain no special limitations on scope of protection offered to the Town, its Officers, Officials, Employee, Agents and Volunteers.

2. The Consultant's insurance coverage shall be primary insurance as respects the Town, its Officers, Officials, Employees, Agents and Volunteers for Consultant's activities. Any insurance or self-insurance maintained by the Town, its Officers, Officials, Employees, Agents, or Volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.

3. Any failure to comply with the reporting provisions of the policy shall not affect coverage provided to the Town, its Officers, Officials, Employees, Agents, or Volunteers.

4. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of insurer's liability.

13. INDEMNIFICATION

The Consultant covenants and agrees at all times to indemnify and hold harmless the agency, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the design professional in the performance of the Agreement. The Consultant hereby acknowledges that the payments made under this Agreement include specific consideration for the indemnification herein provided. It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statute 725.08 (Chapter 725).

14. ASSIGNMENT

The Town and Consultant each binds itself and its successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives, and permitted assigns of such other party, in respect to all covenants of this Agreement; and, neither the Town nor the Consultant will assign or transfer its rights and obligations in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

The Consultant agrees that the persons named in the scope of work shall provide services as described therein. The services of the person(s) so named are a substantial inducement and material consideration for this Agreement. In the event such persons can no longer provide the services required by this Agreement, the Consultant shall immediately notify the Town in writing and the Town may elect to terminate this Agreement without any liability to the Consultant for unfinished work product. The Town may elect to compensate the Consultant for unfinished work product, provided it is in a form that is

sufficiently documented and organized to provide for subsequent utilization in completion of the work product.

15. PUBLIC RECORDS

The Consultant shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Consultant in conjunction with this Agreement. Specifically, the Consultant shall:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the Town in order to perform the service.

- B. Provide the public with access to public records on the same terms and conditions that the Town would provide the records and at a cost that does not exceed the cost provided in state law or as otherwise provided by law.

- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

- D. Meet all requirements for retaining public records and transfer, at no cost, to the Town all public records in possession of the Consultant upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Town in a format that is compatible with the information technology system of the Town.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (321) 727-7764, TOWNCLERK@TOWNOFMALABAR.ORG, TOWN ATTORNEY'S OFFICE, SCHILLINGER & COLEMAN, P.A., KARL W. BOHNE, JR, 1311 BEDFORD DRIVE MELBOURNE, FL 32940.

16. CONFLICT OF INTEREST

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The Consultant further represents that no person having any interest shall be employed for said performance.

The Consultant shall promptly notify the Town in writing by certified mail of all potential conflicts of interest prohibited by existing state law for any prospective business association, interest or other circumstance which may influence or appear to influence the Consultant's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Consultant may undertake and request an opinion of the Town as to whether the association, interest or circumstance would, in the opinion of the Town,

constitute a conflict of interest if entered into by the Consultant. The Town agrees to notify the Consultant of its opinion by certified mail within thirty (30) days of receipt of notification by the Consultant. If, in the opinion of the Town, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Consultant, the Town shall so state in the notification and the Consultant shall, at his/her option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the Town by the Consultant under the terms of this Agreement.

17. EXCUSABLE DELAYS (FORCE MAJEURE)

Neither party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform results from causes beyond its reasonable control (financial difficulty shall not be considered a cause beyond a party's control), all of which causes herein are called "Force Majeure", including, but without being limited to, strikes, lockouts, or other industrial disturbances; fires; unusual climatic conditions; acts of God (which includes local, state, national or world health crisis and/or pandemics); acts of a public enemy; acts of war or terrorism; or inability to obtain transportation or necessary materials in the open market, acts of any governmental body, declaration of emergency, and all other similar conditions and situations. Provided, however, that market conditions, labor conditions, construction industry price trends and similar matters which normally impact on the bidding process shall not be considered a Force Majeure. The party unable to perform as a result of force majeure promptly shall notify the other of the beginning and ending of each such period, and Town shall compensate Consultant at the rates set forth herein, for the services performed by Consultant hereunder, up to the date of the beginning of such period. If any period of force majeure continues for thirty (30) days or more, either party shall have the right to terminate this Agreement upon ten (10) days prior written notice to the other party.

18. PLEDGE OF CREDIT / ARREARS

The Consultant shall not pledge the Town's credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

19. DISCLOSURE AND OWNERSHIP OF DOCUMENTS

All original sketches, tracings, drawings, computations, details, design calculations, and other documents and plans that result from the Consultant's services under this Agreement are and remain the property of the Town as instruments of service. The Consultant shall furnish copies to the Town upon completion of such documents.

The Town shall, at no additional expense, be furnished one (1) set of reproducible copies of any maps and/or drawings prepared for it by the Consultant. Consultant shall likewise submit copies of all field notes, calculation sheets and computer discs to the Town.

20. INDEPENDENT CONSULTANT RELATIONSHIP

The relationship of the Consultant to the Town will be solely that of a consultant. The Consultant is an independent contractor and is not an employee or agent of the Town. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the Town and the Consultant, its employees, agents, subcontractors, or assigns, during or after the performance of

this Agreement. The Consultant will provide the professional and technical services required for the successful completion of this Agreement in accordance with practices generally acceptable within the industry and good ethical standards.

21. VERIFICATION OF EMPLOYMENT STATUS

The Consultant agrees that it shall bear the responsibility for verifying the employment status, under the Immigration Reform and Control act of 1986, of all persons it employs in the performance of this Agreement.

22. PROHIBITION AGAINST CONTINGENT FEES

The Consultant warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for the Consultant, to solicit or secure this Agreement, and that he has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bonafide employee working solely for the Consultant, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of making this Agreement.

23. AUDIT

The Consultant agrees that the Town or any of its duly authorized representatives shall, until the expiration of three years after expenditure of funds under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Consultant involving transactions related to this Agreement. The Consultant agrees that payment(s) made under this Agreement shall be subject to reduction for amounts charged thereto which are found on the basis of audit examination not to constitute allowable costs under this Agreement. The Consultant shall refund by check payable to the Town the amount of such reduction of payments. All required records shall be maintained until an audit is completed and all questions arising therefrom are resolved, or three years after completion of the project and issuance of the final certificate, whichever is sooner.

24. NON-DISCRIMINATION

The Consultant covenants and agrees that the Consultant shall not discriminate against any employee or applicant for employment to be employed in the performance of the Agreement with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex or physical handicaps (except where based on a bonafide occupational qualification); or because of marital status, race, color, religion, national origin or ancestry.

25. ENFORCEMENT COSTS

It is understood and agreed that the Consultant's services under this Agreement do not include any participation, whatsoever, in any litigation. Should such services be required, a supplemental agreement may be negotiated between the Town and the Consultant describing the services desired and providing a basis for compensation to the Consultant.

26. AUTHORITY TO PRACTICE

The Town represents that it is a political subdivision of the State of Florida with the authority to engage the professional service described herein and to accept the obligation for payment for the services.

The Town and Consultant each binds itself and its successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives, and assigns of such other party, in respect to all covenants of this Agreement; and, neither the Town nor the Consultant will assign or transfer their interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the party of any officer or agent of any public body which may be a party hereto.

The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the Town's representative on an annual basis.

27. SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

28. COMPLETE AGREEMENT

This Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. The Consultant recognizes that any representations, statements or negotiations made by the Town staff do not suffice to legally bind the Town in a contractual relationship unless they have been reduced to writing, authorized, and signed by an authorized Town representative. This Agreement shall bind the parties, their assigns, and successors in interest.

29. AMENDMENT

This Agreement may be amended only with the written approval and agreement of the parties.

30. MODIFICATIONS OF WORK

The Town reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the Consultant of the Town's notification of a contemplated change, the Consultant shall, **in writing**:

- A. Provide a detailed estimate for the increase or decrease in cost due to the contemplated change,
- B. Notify the Town of any estimated change in the completion date, and
- C. Advise the Town if the contemplated change shall affect the Consultant's ability to meet the completion dates or schedules of this Contract.

If the Town so instructs in writing, the Consultant shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the Town's decision to proceed with the change. If the Town elects to make the change, the Town shall initiate a Contract Amendment and the Consultant shall

not commence work on any such change until such written Amendment is signed by the authorized representative for the Town.

31. NOTICE

All notices, requests, consents, and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated, or mailed by registered or certified mail (postage prepaid) return receipt requested, addressed to:

As To Town:

Town of Malabar Town Manager
2725 Malabar Road
Malabar, FL 32950

As To the Consultant:

Engineering Design & Construction, Inc.
10250 SW Village Parkway, Suite 201
Port St. Lucie, Florida 34987
Phone: (772) 462-2455
Email: rodkenedy@edc-inc.com

With a Copy To:

Town of Malabar Town Clerk
2725 Malabar Road
Malabar, FL 32950

Or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery, (b) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

32. CAPTIONS AND PARAGRAPH HEADINGS

Captions and paragraph headings contained in this Contract are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Contract, nor the intent of any provisions hereof.

33. WAIVER

No waiver by the Town of any provision of this Contract shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by of the same, or any other provision or the enforcement thereof. Town's consent to or approval of any act by Consultant requiring consent or approval shall not be deemed to render unnecessary the obtaining of Town's consent to or approval of any subsequent act by Consultant requiring consent or approval, whether or not similar to the act so consented or approved.

34. COMPLIANCE WITH LAWS

The Consultant, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement. The Town undertakes no duty to ensure such compliance, but will attempt to advise Consultant, upon request, as to any such laws of which it has present knowledge.

35. INTERPRETATION; VENUE

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior verbal or written agreements between the parties with respect thereto. This Agreement may only be amended by written document, properly authorized, executed and delivered by both parties hereto. This Agreement shall be interpreted as a whole unit and section headings are for convenience only. All interpretations shall be governed by the laws of the State of Florida. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial circuit for Brevard County, Florida, for claims under state law and the Middle District, Orlando Division of Florida for any claims which are justiciable in federal court.

36. DISPUTE RESOLUTION

Any disputes relating to interpretation of the terms of this Contract or a question of fact or arising under this Contract shall be resolved through good faith efforts upon the part of the Consultant and the Town Manger. or its Project Manager. At all times, the Consultant shall carry on the work and maintain its progress schedule in accordance with the requirements of the Contract and the determination of the Town or its representatives, pending resolution of the dispute. Any dispute which is not resolved by mutual agreement shall be decided by the Town Administrator Manager who shall reduce the decision to writing. The decision of the Town Manager shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not be supported by substantial evidence.

37. MEDIATION

Prior to initiating any litigation concerning this Contract, the parties agree to submit the disputed issue or issues to a mediator for non-binding mediation. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for Brevard County and/or the Florida Supreme Court. . Preference shall be given to mediators located in Brevard County. Should the parties fail to come to an agreement on a Brevard County mediator then a mediator certified by the Florida Supreme Court located in any other county in Florida may be chosen by the parties. All mediations shall occur in Brevard County, Florida at a mutually agreeable location between the parties. The fee of the mediator shall be shared equally by the parties. To the extent allowed by law, the mediation process shall be confidential and the results of the mediation or any testimony or argument introduced at the mediation shall not be admissible as evidence in any subsequent proceeding concerning the disputed issue. In the event that mediation is unsuccessful, either party may bring an action to enforce its rights in a Florida court of appropriate venue and jurisdiction.

38. ANTITRUST ASSIGNMENT

The Consultant and the Town and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida and local

governments. Therefore, the Consultant assigns to the State of Florida and the Town any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement in counterparts each of which shall be treated as an original upon the terms and conditions above stated.

ATTEST:

TOWN COUNCIL,
TOWN OF MALABAR, FLORIDA

TOWN CLERK

BY: _____
MAYOR

APPROVED AS TO FORM AND CORRECTNESS:

TOWN ATTORNEY

WITNESSES:

ENGINEERING DESIGN & CONSTRUCTION, INC.

(1) _____

BY:

(2) _____

PRINT NAME: _____



ENGINEERS ⊕ SURVEYORS ⊕ ENVIRONMENTAL

EDC Hourly Rates

Principal Engineer/Planner/Environmental Scientist/Professional Land Surveyor	\$165.00
Senior Project Manager/Professional Land Surveyor	\$155.00
Survey Crew	\$135.00
Project Manager (Planning/Environmental/Engineering/Surveying)	\$135.00
Project Engineer/Planner/Environmental Scientist/Surveyor	\$100.00
CADD Tech	\$90.00
Inspector/Environmental Field	\$95.00
Admin	\$50.00

**CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES
CIVIL ENGINEERING**

THIS CONTRACT is made as of the day of 2021 by and between **TOWN OF MALABAR**, a political subdivision of the State of Florida, hereinafter referred to as the "Town", and **KIMLEY-HORN and Associates, INC.**, hereinafter referred to as "Consultant".

WHEREAS, pursuant to Section 287.055, Florida Statutes, the Town solicited proposals for non-exclusive Contracts to perform professional services for Professional Engineering Services with engineering firms for the performance of services; and,

WHEREAS, at the regularly scheduled meeting on March 3, 2020, The Town Council approved the short list of firms, permission to negotiation a continuing contract, and authorized the execution of an agreement for Continuing professional services between Town and Consultant hereinafter referred to as "Contract"; and,

WHEREAS, the Consultant is willing and able to render professional services for various projects on an as-needed basis and for the compensation and on the terms hereinafter set forth; and,

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, agreements, terms, and condition contained herein, do agree as follows:

1. RECITALS

The Recitals set forth above are fully incorporated into the Contract by reference.

2. SERVICES

The Consultant's responsibility under this Contract is to provide professional/consultation services in the area of Professional Civil Engineering Services.

3. TERM

The term of the Contract shall be for a period of 5 (five) years beginning on March 2, 2021 and continuing through March 1, 2026.

4. TECHNICAL AND PROFESSIONAL SERVICES

It shall be the responsibility of the Consultant to work with the Town to provide Professional Civil Engineering Services for consulting, design and construction management services on selected projects for Town of Malabar whereby the construction fees will not exceed \$2,000,000. The scope of services may include, but not limited to, construction/project management and design, capital improvements planning and implementation, feasibility and engineering studies, contract administration, construction phase services, interior engineering, representation for the Town in matters concerning other government or regulatory agencies, preparing construction cost estimates, prepare preliminary and final design,

construction/equipment specifications, prepare bid documents using Town templates, assist in bid award and analysis, determine applicable permits and licenses necessary for project and provide permit application and submittals services. Each project will require a separate work authorization using the form issued by the Town. The work authorization shall set out the scope of work, time of performance and compensation schedule for each project.

5. PERIOD OF SERVICE; WORK AUTHORIZATIONS

- A. The Consultant will be available to begin work promptly after receipt of a fully executed copy of this Agreement. It is agreed that this Agreement shall be considered as a continuing contract and work will be initiated on an assignment by assignment basis. The Town is under no obligations to assign any minimum amount of projects/work to the Consultant. The Town reserves the right to select the respective Consultant who the Town, in its sole discretion, believes is in its best interest to perform the specified work.
- B. If the Consultant's services called for under this Agreement are delayed for reasons beyond the Consultant's control, the time of performance may be adjusted appropriately.
- C. Specific work assignments shall be set forth in individual Work Authorizations which will be issued to the Consultant. All Work Authorizations shall be executed on behalf of the Town in accordance with the Town Purchasing Policy. The Work Authorization shall describe the scope of the work to be performed and shall set forth the schedule for completion of the work.

The Town shall provide all criteria and full information as to Town's requirements for the assignment and designate in writing a person with authority to act on Town's behalf on all matters concerning this assignment.

6. COMPENSATION PAYMENTS

The Consultant shall be compensated for all services satisfactorily completed in accordance with the terms and conditions of this Agreement and each work authorization pursuant to the approved hourly rate schedule attached hereto as Exhibit "A". All invoices presented to the Town for payment shall be on a Request for Payment form approved by the Town. Services provided under each work authorization issued pursuant to this contract may meet the definition of "Construction Services" as defined in F.S. §218.72.

7. GENERAL CONDITIONS

- A. It is understood and agreed that the Consultant's services under this Agreement do not include participation, whatsoever, in any litigation. Should the services of the Consultant be required by the Town as an expert witness on behalf of the Town, a supplemental agreement may be negotiated between the Town and the Consultant describing the services desired and providing a basis for compensation to the Consultant. If however the Consultant is subpoenaed by a third-party in any litigation or proceeding where the Consultant has not been hired by the town as an expert witness, the Town shall not be required to compensate Consultant for such service and response to or compliance with the subpoena.
- B. Upon the Consultant's written request, the Town will furnish or cause to be furnished such reports, studies, instruments, documents, and other information as the Consultant and Town

mutually deem necessary; and the Consultant may rely upon same in performing the services required under this Agreement.

8. TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement by Consultant shall act as the execution of as truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete and current at the time of execution of the Agreement. The original Agreement rates and any additions thereto shall be adjusted to exclude any significant sums by which Town determines the Agreement rate(s) was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such rate adjustments shall be made within one year following the end of this Agreement.

9. DEFAULT TERMINATION

A. FOR CAUSE

If either party fails to fulfill its obligations under this Agreement in a timely and proper manner, the other party shall have the right to terminate this Agreement by giving written notice of any deficiency and by allowing the party in default seven (7) calendar days to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, this Agreement shall terminate at the expiration of the seven (7) calendar day time period.

With regard to the Consultant, the following items shall be considered a default under this Agreement:

- (1) If the Consultant should be adjudged bankrupt, or if he, or it, should make a general assignment for the benefit of his, or its, creditors, or if a receiver should be appointed on account of his, or its, insolvency.
- (2) If the Consultant should persistently or repeatedly refuse or fail, except in cases for which an extension of time is provided, to provide the services contemplated by this Agreement.
- (3) If the Consultant disregards laws, ordinances, or the instructions of the Project Manager or otherwise is guilty of a substantial violation of the provisions of the Agreement.

In the event of termination, the Consultant shall only be entitled to receive payment for work satisfactorily completed prior to the termination date.

B. WITHOUT CAUSE

Either party may terminate the Agreement without cause at any time upon thirty (30) calendar days prior written notice to the other party. In the event of termination, the Town shall

compensate the Consultant for all authorized work satisfactorily performed through the termination date.

C. SCRUTINIZED COMPANIES TERMINATION

The Town may immediately terminate the Contract without cause at any time upon ascertaining that pursuant to § 287.135, Florida Statutes, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local government entity for goods or services if at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, or at any time thereafter, the company: (1) is on the Scrutinized Companies that Boycott Israel List, created pursuant to § 215.4725, Florida Statutes, or is engaged in a boycott of Israel; (2) is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to § 215.473, Florida Statutes; or (3) is engaged in business operations in Cuba or Syria. Furthermore, the Town may immediately terminate the Contract if it is determined that the company submitted a false certification stating that it was not (1) on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel; (2) was not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; (3) or was not engaged in business operations in Cuba or Syria when in fact the company was engaged in such activities at the time of the bid or proposal, or at the time of entering into or renewing the Contract.

10. SUB-CONSULTANTS AND SUBCONTRACTORS

In the event the Consultant requires the services of any sub-consultant, subcontractor or professional associate in connection with the services to be provided under this Agreement, Consultant shall secure the written approval of Town Project Manager before engaging such sub-consultant, subcontractor or professional associate.

If a sub-consultant fails to perform or make progress, as required by this Contract, and it is necessary to replace the sub-consultant to complete the work in a timely fashion, the Consultant shall promptly do so, subject to acceptance of the new sub-consultant by the Town. The substitution of a subcontractor shall not be adequate cause to excuse a delay in the performance of any portion of this contract as set forth in the Scope of Work.

The Consultant, its sub-consultants, agents, servants, or employees agree to be bound by the Terms and Conditions of this Contract and its agreement with the sub-consultant for work to be performed for the Town the Consultant must incorporate the terms of this contract.

11. FEDERAL AND STATE TAX

The Town is exempt from payment of Florida State Sales and Use Taxes. The Town will sign an exemption certificate if submitted by the Consultant. The Consultant shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the Town, nor is the

Consultant authorized to use the Town's Tax Exemption Number in securing such materials. The Consultant shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

12. INSURANCE

The Consultant shall procure and maintain during the life of this Agreement insurance of the types and subject to the limits set forth below. The Consultant shall also provide the Town with evidence of this insurance in the form of Certificates of Insurance which shall be subject to the Town's approval for adequacy. The Town shall be an Additional Insured on policies of Commercial General Liability with respect to all claims arising out of the work performed under this Agreement. The Town shall be given thirty (30) days prior written notice of any material changes or cancellations of the policies. If sub-contractors are used by the Consultant, it shall be the responsibility of the Consultant to ensure that all its sub-contractors comply with all the insurance requirements contained herein relating to such sub-contractors.

Except as otherwise stated, the amounts and types of insurance shall conform to the following minimum requirements:

A. COMMERCIAL GENERAL LIABILITY

The Consultant shall provide and maintain during the life of this Agreement, at his, its or their own expense, Commercial General Liability insurance on an occurrence basis for a minimum combined single limit of \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate for claims of bodily injury including death, property damage and personal injury. Contractual Liability coverage shall be included.

B. COMMERCIAL AUTO LIABILITY

The Consultant shall provide and maintain during the life of this Agreement, at his, its or their own expense, Business Commercial Auto Liability for claims of bodily injury and property damage for minimum limits of \$1,000,000.00 combined single limit.

C. WORKERS' COMPENSATION

The Consultant shall provide and maintain during the life of this Agreement, at his, its or their own expense, Workers' Compensation insurance coverage to apply for all employees for Florida statutory limits. Coverage B, Employers Liability, shall be written for a minimum liability at \$500,000.00 per occurrence.

D. PROFESSIONAL LIABILITY

The Consultant shall provide and maintain during the life of this Agreement, at his, its or their own expense, Professional Liability insurance on a claims made basis for a minimum of \$1,000,000.00 coverage.

E. OTHER INSURANCE PROVISIONS

The General Liability policy shall contain or be endorsed to contain, the following provisions:

1. The Town, its Officers, Officials, Employees, Agents, and Volunteers are to be covered as additional insureds for any and all liability arising out of the Consultant's performance of this Agreement. The coverage shall contain no special limitations on scope of protection offered to the Town, its Officers, Officials, Employee, Agents and Volunteers.

2. The Consultant's insurance coverage shall be primary insurance as respects the Town, its Officers, Officials, Employees, Agents and Volunteers for Consultant's activities. Any insurance or self-insurance maintained by the Town, its Officers, Officials, Employees, Agents, or Volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.

3. Any failure to comply with the reporting provisions of the policy shall not affect coverage provided to the Town, its Officers, Officials, Employees, Agents, or Volunteers.

4. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of insurer's liability.

13. INDEMNIFICATION

The Consultant covenants and agrees at all times to indemnify and hold harmless the agency, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the design professional in the performance of the Agreement. The Consultant hereby acknowledges that the payments made under this Agreement include specific consideration for the indemnification herein provided. It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statute 725.08 (Chapter 725).

14. ASSIGNMENT

The Town and Consultant each binds itself and its successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives, and permitted assigns of such other party, in respect to all covenants of this Agreement; and, neither the Town nor the Consultant will assign or transfer its rights and obligations in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

The Consultant agrees that the persons named in the scope of work shall provide services as described therein. The services of the person(s) so named are a substantial inducement and material consideration for this Agreement. In the event such persons can no longer provide the services required by this Agreement, the Consultant shall immediately notify the Town in writing and the Town may elect to terminate this Agreement without any liability to the Consultant for unfinished work product. The Town may elect to compensate the Consultant for unfinished work product, provided it is in a form that is

sufficiently documented and organized to provide for subsequent utilization in completion of the work product.

15. PUBLIC RECORDS

The Consultant shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Consultant in conjunction with this Agreement. Specifically, the Consultant shall:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the Town in order to perform the service.

- B. Provide the public with access to public records on the same terms and conditions that the Town would provide the records and at a cost that does not exceed the cost provided in state law or as otherwise provided by law.

- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

- D. Meet all requirements for retaining public records and transfer, at no cost, to the Town all public records in possession of the Consultant upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Town in a format that is compatible with the information technology system of the Town.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (321) 727-7764, TOWNCLERK@TOWNOFMALABAR.ORG, TOWN ATTORNEY'S OFFICE, SCHILLINGER & COLEMAN, P.A., KARL W. BOHNE, JR, 1311 BEDFORD DRIVE MELBOURNE, FL 32940.

16. CONFLICT OF INTEREST

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The Consultant further represents that no person having any interest shall be employed for said performance.

The Consultant shall promptly notify the Town in writing by certified mail of all potential conflicts of interest prohibited by existing state law for any prospective business association, interest or other circumstance which may influence or appear to influence the Consultant's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Consultant may undertake and request an opinion of the Town as to whether the association, interest or circumstance would, in the opinion of the Town,

constitute a conflict of interest if entered into by the Consultant. The Town agrees to notify the Consultant of its opinion by certified mail within thirty (30) days of receipt of notification by the Consultant. If, in the opinion of the Town, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Consultant, the Town shall so state in the notification and the Consultant shall, at his/her option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the Town by the Consultant under the terms of this Agreement.

17. EXCUSABLE DELAYS (FORCE MAJEURE)

Neither party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform results from causes beyond its reasonable control (financial difficulty shall not be considered a cause beyond a party's control), all of which causes herein are called "Force Majeure", including, but without being limited to, strikes, lockouts, or other industrial disturbances; fires; unusual climatic conditions; acts of God (which includes local, state, national or world health crisis and/or pandemics); acts of a public enemy; acts of war or terrorism; or inability to obtain transportation or necessary materials in the open market, acts of any governmental body, declaration of emergency, and all other similar conditions and situations. Provided, however, that market conditions, labor conditions, construction industry price trends and similar matters which normally impact on the bidding process shall not be considered a Force Majeure. The party unable to perform as a result of force majeure promptly shall notify the other of the beginning and ending of each such period, and Town shall compensate Consultant at the rates set forth herein, for the services performed by Consultant hereunder, up to the date of the beginning of such period. If any period of force majeure continues for thirty (30) days or more, either party shall have the right to terminate this Agreement upon ten (10) days prior written notice to the other party.

18. PLEDGE OF CREDIT / ARREARS

The Consultant shall not pledge the Town's credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

19. DISCLOSURE AND OWNERSHIP OF DOCUMENTS

All original sketches, tracings, drawings, computations, details, design calculations, and other documents and plans that result from the Consultant's services under this Agreement are and remain the property of the Town as instruments of service. The Consultant shall furnish copies to the Town upon completion of such documents.

The Town shall, at no additional expense, be furnished one (1) set of reproducible copies of any maps and/or drawings prepared for it by the Consultant. Consultant shall likewise submit copies of all field notes, calculation sheets and computer discs to the Town.

20. INDEPENDENT CONSULTANT RELATIONSHIP

The relationship of the Consultant to the Town will be solely that of a consultant. The Consultant is an independent contractor and is not an employee or agent of the Town. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the Town and the Consultant, its employees, agents, subcontractors, or assigns, during or after the performance of

this Agreement. The Consultant will provide the professional and technical services required for the successful completion of this Agreement in accordance with practices generally acceptable within the industry and good ethical standards.

21. VERIFICATION OF EMPLOYMENT STATUS

The Consultant agrees that it shall bear the responsibility for verifying the employment status, under the Immigration Reform and Control act of 1986, of all persons it employs in the performance of this Agreement.

22. PROHIBITION AGAINST CONTINGENT FEES

The Consultant warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for the Consultant, to solicit or secure this Agreement, and that he has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bonafide employee working solely for the Consultant, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of making this Agreement.

23. AUDIT

The Consultant agrees that the Town or any of its duly authorized representatives shall, until the expiration of three years after expenditure of funds under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Consultant involving transactions related to this Agreement. The Consultant agrees that payment(s) made under this Agreement shall be subject to reduction for amounts charged thereto which are found on the basis of audit examination not to constitute allowable costs under this Agreement. The Consultant shall refund by check payable to the Town the amount of such reduction of payments. All required records shall be maintained until an audit is completed and all questions arising therefrom are resolved, or three years after completion of the project and issuance of the final certificate, whichever is sooner.

24. NON-DISCRIMINATION

The Consultant covenants and agrees that the Consultant shall not discriminate against any employee or applicant for employment to be employed in the performance of the Agreement with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex or physical handicaps (except where based on a bonafide occupational qualification); or because of marital status, race, color, religion, national origin or ancestry.

25. ENFORCEMENT COSTS

It is understood and agreed that the Consultant's services under this Agreement do not include any participation, whatsoever, in any litigation. Should such services be required, a supplemental agreement may be negotiated between the Town and the Consultant describing the services desired and providing a basis for compensation to the Consultant.

26. AUTHORITY TO PRACTICE

The Town represents that it is a political subdivision of the State of Florida with the authority to engage the professional service described herein and to accept the obligation for payment for the services.

The Town and Consultant each binds itself and its successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives, and assigns of such other party, in respect to all covenants of this Agreement; and, neither the Town nor the Consultant will assign or transfer their interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the party of any officer or agent of any public body which may be a party hereto.

The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the Town's representative on an annual basis.

27. SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

28. COMPLETE AGREEMENT

This Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. The Consultant recognizes that any representations, statements or negotiations made by the Town staff do not suffice to legally bind the Town in a contractual relationship unless they have been reduced to writing, authorized, and signed by an authorized Town representative. This Agreement shall bind the parties, their assigns, and successors in interest.

29. AMENDMENT

This Agreement may be amended only with the written approval and agreement of the parties.

30. MODIFICATIONS OF WORK

The Town reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the Consultant of the Town's notification of a contemplated change, the Consultant shall, **in writing**:

- A. Provide a detailed estimate for the increase or decrease in cost due to the contemplated change,
- B. Notify the Town of any estimated change in the completion date, and
- C. Advise the Town if the contemplated change shall affect the Consultant's ability to meet the completion dates or schedules of this Contract.

If the Town so instructs in writing, the Consultant shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the Town's decision to proceed with the change. If the Town elects to make the change, the Town shall initiate a Contract Amendment and the Consultant shall

not commence work on any such change until such written Amendment is signed by the authorized representative for the Town.

31. NOTICE

All notices, requests, consents, and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated, or mailed by registered or certified mail (postage prepaid) return receipt requested, addressed to:

As To Town:

Town of Malabar Town Manager
2725 Malabar Road
Malabar, FL 32950

As To the Consultant:

Kimley-Horn and Associates, Inc.
S. Orange Avenue, Suite 1000
Orlando, Florida 32801
Phone: (407) 898-1511
Email: Brian.Ashby@kimley-horn.com

With a Copy To:

Town of Malabar Town Clerk
2725 Malabar Road
Malabar, FL 32950

Or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery, (b) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

32. CAPTIONS AND PARAGRAPH HEADINGS

Captions and paragraph headings contained in this Contract are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Contract, nor the intent of any provisions hereof.

33. WAIVER

No waiver by the Town of any provision of this Contract shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by of the same, or any other provision or the enforcement thereof. Town's consent to or approval of any act by Consultant requiring consent or approval shall not be deemed to render unnecessary the obtaining of Town's consent to or approval of any subsequent act by Consultant requiring consent or approval, whether or not similar to the act so consented or approved.

34. COMPLIANCE WITH LAWS

The Consultant, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement. The Town undertakes no duty to ensure such compliance, but will attempt to advise Consultant, upon request, as to any such laws of which it has present knowledge.

35. INTERPRETATION; VENUE

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior verbal or written agreements between the parties with respect thereto. This Agreement may only be amended by written document, properly authorized, executed and delivered by both parties hereto. This Agreement shall be interpreted as a whole unit and section headings are for convenience only. All interpretations shall be governed by the laws of the State of Florida. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial circuit for Brevard County, Florida, for claims under state law and the Middle District, Orlando Division of Florida for any claims which are justiciable in federal court.

36. DISPUTE RESOLUTION

Any disputes relating to interpretation of the terms of this Contract or a question of fact or arising under this Contract shall be resolved through good faith efforts upon the part of the Consultant and the Town Manger. or its Project Manager. At all times, the Consultant shall carry on the work and maintain its progress schedule in accordance with the requirements of the Contract and the determination of the Town or its representatives, pending resolution of the dispute. Any dispute which is not resolved by mutual agreement shall be decided by the Town Administrator Manager who shall reduce the decision to writing. The decision of the Town Manager shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not be supported by substantial evidence.

37. MEDIATION

Prior to initiating any litigation concerning this Contract, the parties agree to submit the disputed issue or issues to a mediator for non-binding mediation. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for Brevard County and/or the Florida Supreme Court. . Preference shall be given to mediators located in Brevard County. Should the parties fail to come to an agreement on a Brevard County mediator then a mediator certified by the Florida Supreme Court located in any other county in Florida may be chosen by the parties. All mediations shall occur in Brevard County, Florida at a mutually agreeable location between the parties. The fee of the mediator shall be shared equally by the parties. To the extent allowed by law, the mediation process shall be confidential and the results of the mediation or any testimony or argument introduced at the mediation shall not be admissible as evidence in any subsequent proceeding concerning the disputed issue. In the event that mediation is unsuccessful, either party may bring an action to enforce its rights in a Florida court of appropriate venue and jurisdiction.

38. ANTITRUST ASSIGNMENT

The Consultant and the Town and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida and local

governments. Therefore, the Consultant assigns to the State of Florida and the Town any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement in counterparts each of which shall be treated as an original upon the terms and conditions above stated.

ATTEST:

TOWN COUNCIL,
TOWN OF MALABAR, FLORIDA

TOWN CLERK

BY: _____
MAYOR

APPROVED AS TO FORM AND CORRECTNESS:

TOWN ATTORNEY

WITNESSES:

KIMLEY-HORN and Associates, INC.

(1) _____

BY: _____

(2) _____

PRINT NAME: _____

Kimley-Horn and Associates, Inc.

Hourly Labor Rate Schedule

Classification	Rate
Principal	\$295.00
Sr. Vice President	\$252.00
Sr. Engineer	\$215.00
Sr. Project Manager	\$184.00
Professional Engineer (PE)	\$154.00
Engineer (EI)	\$106.00
Sr. CAD Designer	\$112.00
CAD Technician	\$91.00
Sr. Landscape Architect / Planner	\$252.00
Landscape Architect (PLA) / Planner	\$135.00
Landscape Architect (EI)	\$90.00
Clerical / Admin	\$75.00

Effective through June 30, 2021

Subject to annual adjustment thereafter

Internal Reimbursable Expenses will be charged at 5% of Labor Billings

External Reimbursable Expenses will be charged at 15% mark-up, or per the Contract

Sub-Consultants will be billed per the Contract

TOWN OF MALABAR

COUNCIL MEETING

Staff Report 8.a

Meeting Date: March 1st 2021

Prepared By: Lisa Morrell, Interim Town Manager on March 1st 2021

SUBJECT: Town Manager Report for March 1st, 2021 Council Meeting

Cares Act Reimbursement

The Town has received the last available reimbursement for approved expenditures related to the COVID-19 Pandemic electronically on February 24, 2021 totaling \$10,979.11; which included electronic meeting devices, display, accessories, and board/council computing devices for continued participation with a quorum.

Hunter Lane Paving

Per my telephone conversation on Friday, February 19th 2020 with E.S. Williams, vice president for KSM, providing geotechnical data for the project; KSM will internally correct the dispatch of appropriate filed staff and equipment to perform compaction testing of the soils on Hunter Lane and provide the laboratory analysis and rating of the road base for the scope of work materials required to pave the street.

SAI – Stormwater Asset Management Master Planning and Design

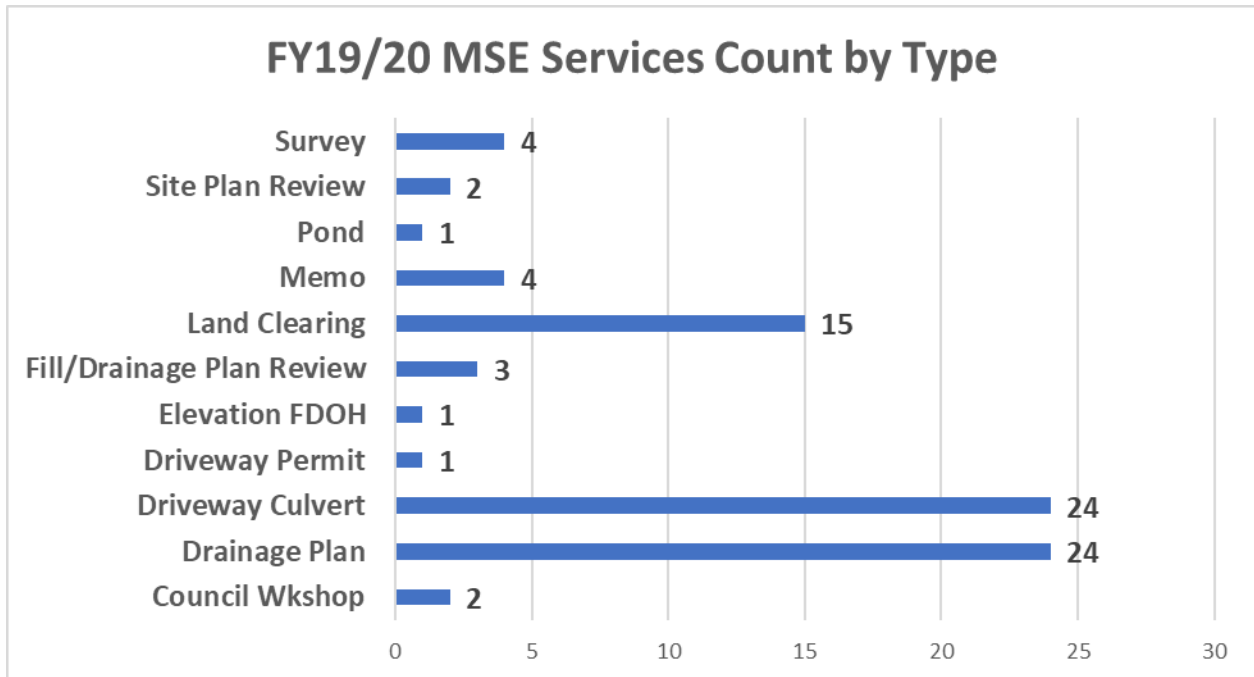
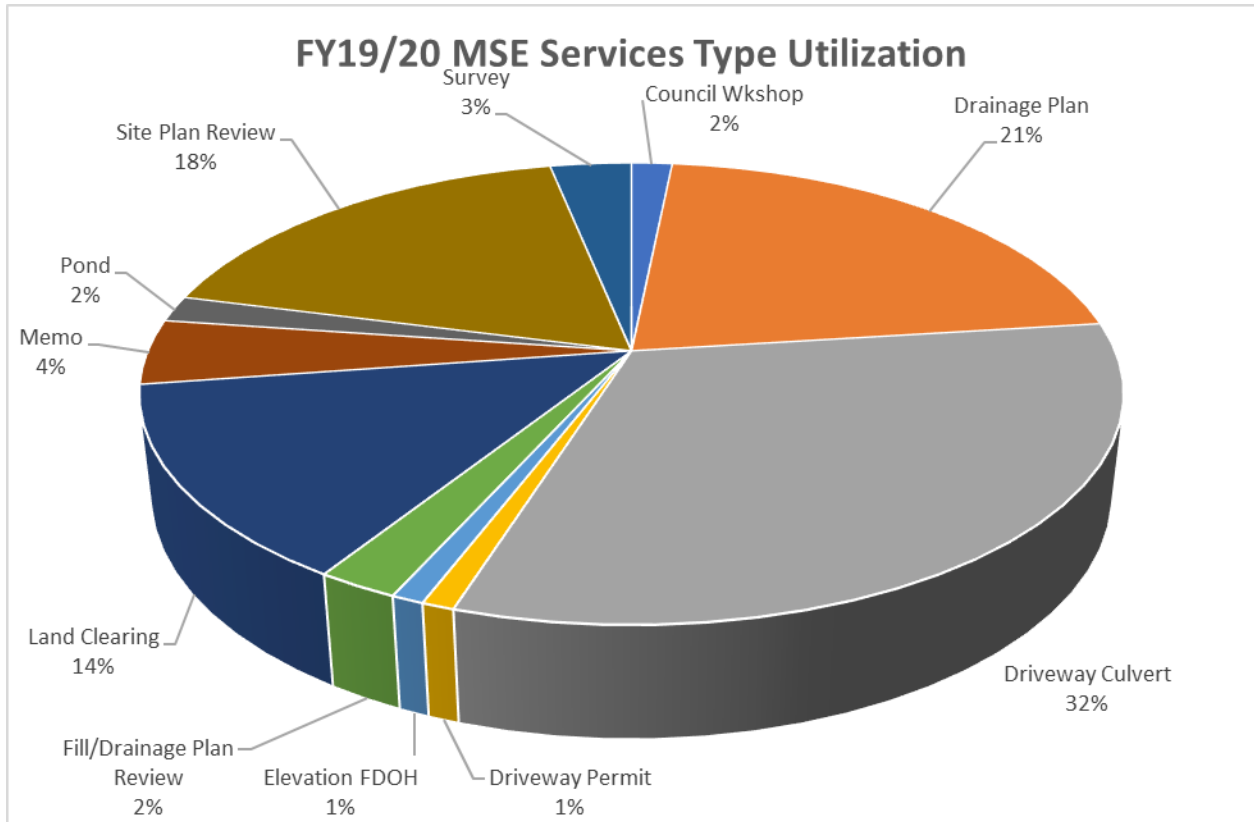
Staff participated in an online training session as an overview and use of the ArcGIS mapping and asset program developed with Applied Ecology Inc, a subcontractor of SAI on Tuesday, February 23, 2021. The mobile application training for field staff for inspections and Realtime updates is slated for the week of March 15th. During the training, SAI provided an update that the modeling is in work with quality control checks of data points as collected from the field and inputted into the database; there are some error corrections that are occurring and full project update on the modeling is forthcoming.

Engineering Service Analysis

In reviewing the invoices and services rendered for the Town of Malabar and Morris Smith Engineering (MSE) for fiscal year 2019-2020, the analysis revealed services totaled 81 invoices with 219.50 total hours rendered for expenditures totaling \$13,170.00. The majority of services rendered are review of building permits, specifically, site plans, drainage, driveway culverts, land clearing, fill, elevations, and surveys as depicted in the charts for utilization of engineering service types.

MSE has been contracted and designated the Town Engineer since September 17, 2009 with a flat hourly rate of \$60 per hour, according to the executed contract on file with The Town. It is recommended to provide the Town Engineer with an updated contract for specific projects related to development and large-scale site plan reviews, NPDES and floodplain services or as needed by The Town. The Town shall explore contracted services for building plan review and inspection services under the advisement of a building official to serve the single family homes, additions, renovations, property improvements; to better serve day to day operations in a manner necessary for the volume of building permit submittals. Currently the average number of building permits applied and issued is 30 per month or 120 for fiscal year to date with approximately 400 inspections requests. A contracted service for theses could be increased or decrease with a contracted firm of many State of Florida Licensed Building Official, Inspection

and Plan Reviewer personnel that can be assigned to the Town of Malabar more easily than a search and award solicitation process by The Town. Piggy-Back Contracts are readily available and are comparable in hourly rates for services rendered.



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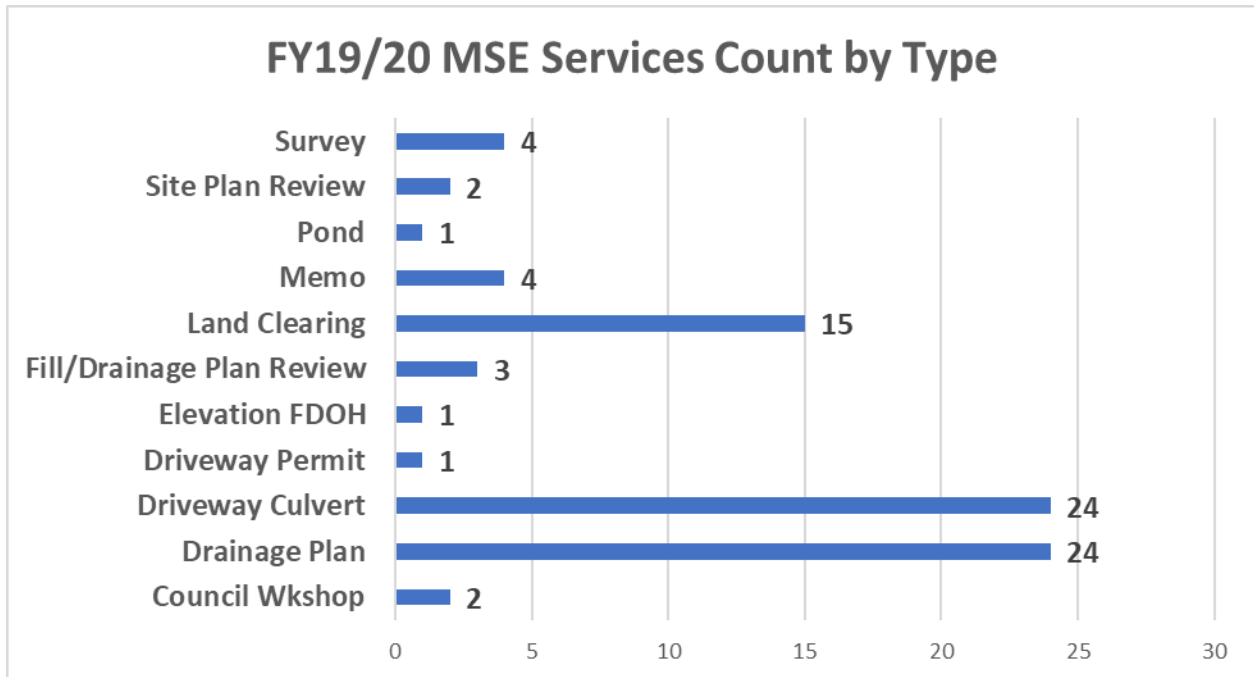
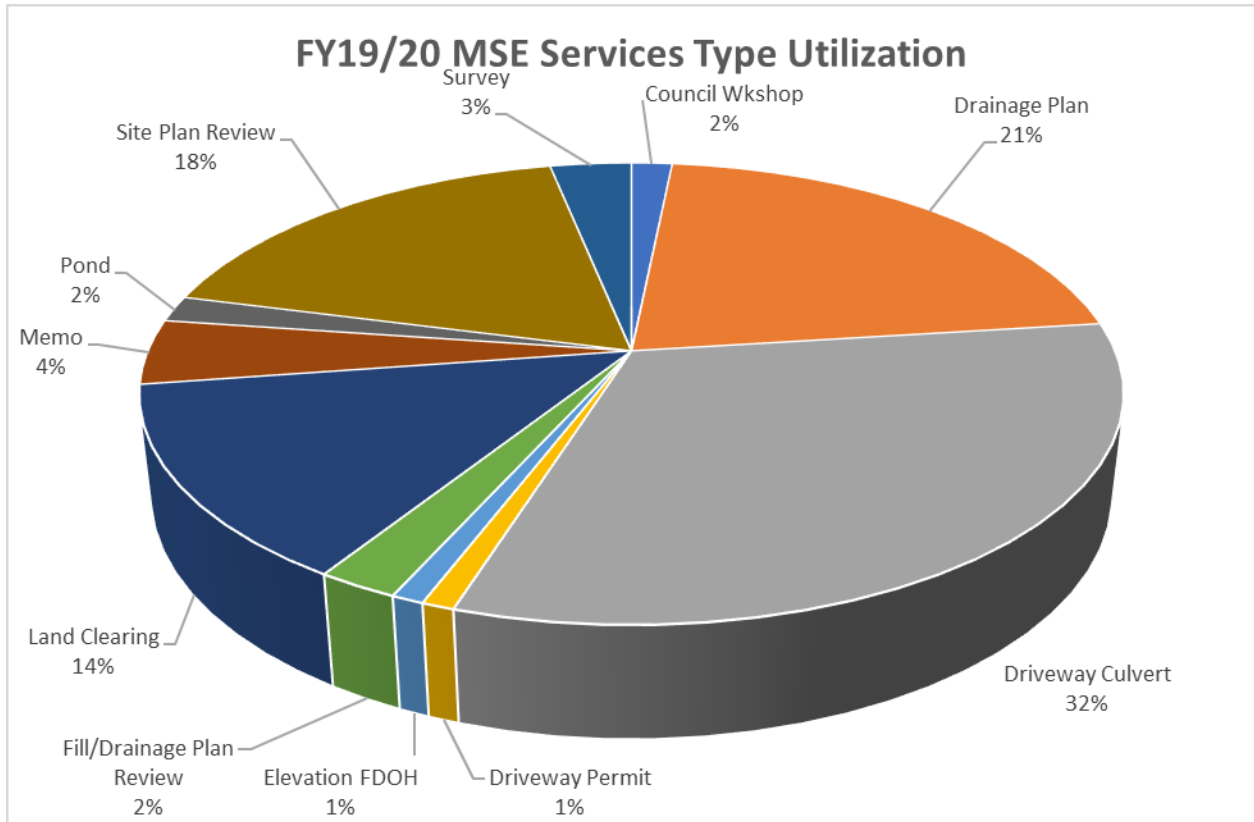
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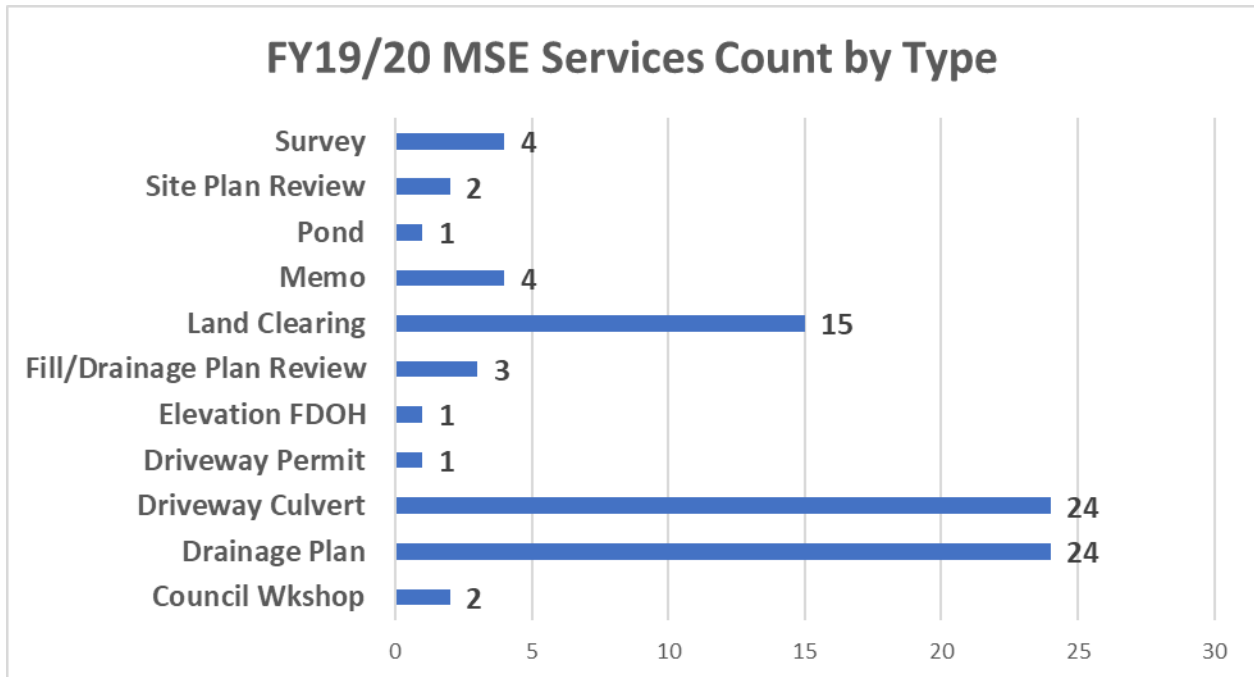
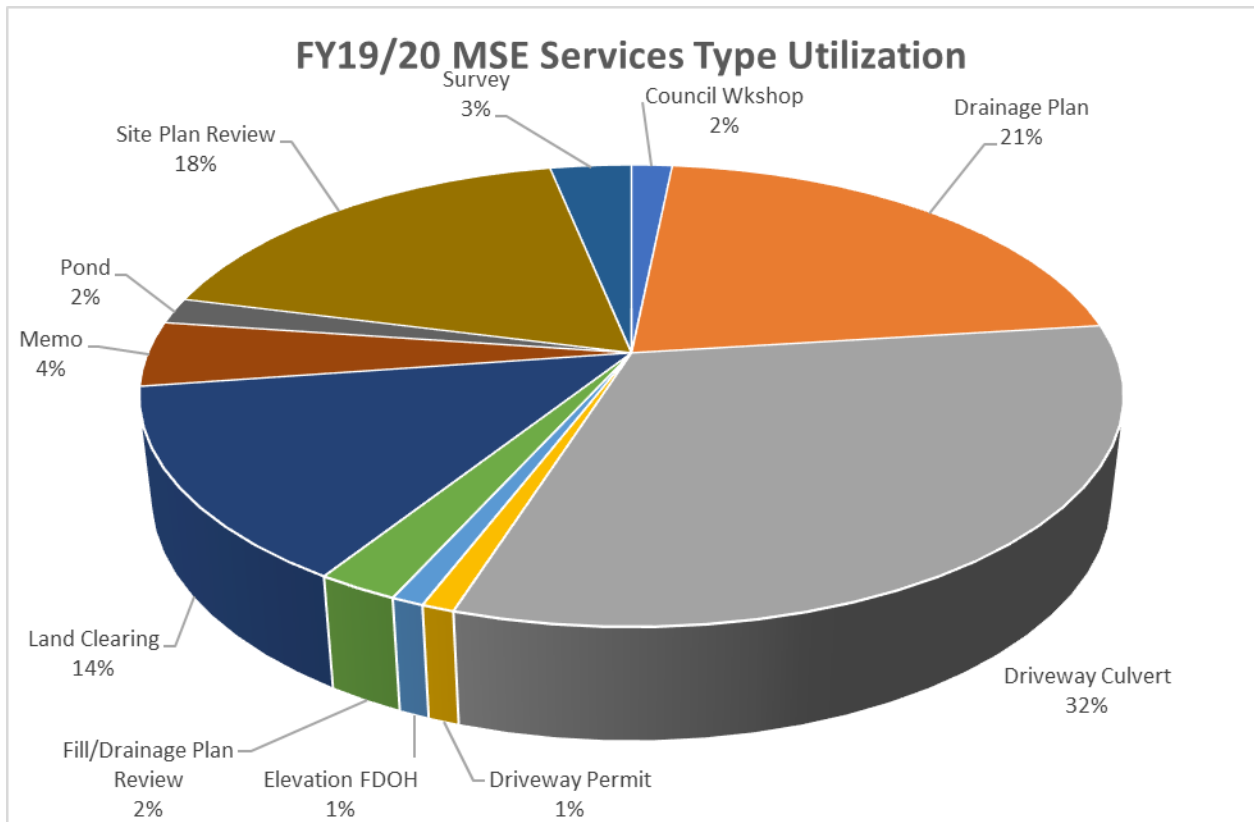
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TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 10.a.

Meeting Date: March 1, 2021

Prepared By: Debby Franklin, Town Clerk/Treasurer

SUBJECT: Public Hearing, 2nd Reading of Ordinance 2021-01 Amending Table 1-19.8 of the Land Development Code, Article XIX – Signage, Section 1-19.18 entitled District Sign Regulations.

BACKGROUND/HISTORY:

Amending the Land Development Code, Article XIX Signage, Section 1.19.18 District Sign Regulations, Table 1-19.8, to change the maximum square footage area of a permitted sign, within Residential Zoning Districts from 32 square feet to 16 square feet and Non-Residential Zoning Districts from 3 square feet to 32 square feet for a detached sign, for sign type General Outdoor Advertising for each zoning districts.

The Planning and Zoning Board recommended Council approval and Council voted 5 to 0 to approve at the RTCM of 2/1/2021.

Ordinance was legally advertised for Public Hearing and 2nd reading at this meeting.

ATTACHMENTS:

Ordinance 2021-01

ACTION OPTIONS:

Action adoption of Ordinance 2021-01

ORDINANCE 2021-01

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTION 1-19.18 OF THE TOWN CODE OF ORDINANCES, LAND DEVELOPMENT CODE, ARTICLE XIX - SIGNAGE RELATING TO DISTRICT SIGN REGULATIONS; AMENDING THE PROVISIONS OF TABLE 1-19.8 OF THE TOWN CODE RELATING TO THE MAXIMUM AREA PERMITTED IN RESIDENTIAL AND NON-RESIDENTIAL ZONING DISTRICTS PERTAINING TO GENERAL OUTDOOR ADVERTISING; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the current Town of Malabar Code of Ordinances, Land Development Code, Article XIX – Signage states that the maximum area allowed for General Outdoor Advertising in Residential Zoning Districts is 32 square feet; and

WHEREAS, the maximum area allowed for General Outdoor Advertising in Non-Residential Zoning Districts is 3 square feet for detached; and,

WHEREAS, the Town Council recognizes the need to adjust the maximum general outdoor advertising area proportionate to the zoning district activity for residential and non-residential zoning districts.

NOW, THEREFORE BE IT ORDAINED BY THE TOWN OF MALABAR OF BREVARD COUNTY, FLORIDA that:

SECTION 1. Section 1-19.18. - District sign regulations of the Malabar Code of Ordinances, Land Development Code, Table 1-19.8 is hereby amended to read as follows:

“(1) Sign Regulations Within Residential Zoning Districts.

Sign Type:	Accessory	Construction	Directory	Directional
Construction Class	Wall or Detached	Wall or Detached	Wall or Detached	Wall or Detached
Maximum Number	1	1	1	1
Maximum Area	4 sq. ft.	32 sq. ft.	10 sq. ft.	3 sq. ft.
Maximum Height	10 ft.	Detached: 10 ft. Wall: Roof line of building	10 ft.	Detached: 3 ft. Wall: 12 ft.
Placement	Must observe all yard regulations	Front setback: 10 ft. Side and Rear: 25 ft.	Must observe all yard regulations	Non-Restricted
Illumination	None	None	Indirect	None

Sign Type:	Accessory	Construction	Directory	Directional
Special Regulations	Permitted only in conjunction with a permitted home occupation. See Footnote 1.	Must be removed immediately upon completion of construction or occupancy	None	None

Sign Type	Future Improvement	General Outdoor Advertising
Construction Class	Detached	Wall or Detached
Maximum Number	1	1
Maximum Area	10 sq. ft.	32 16 sq. ft.
Maximum Height	10 ft.	10 ft.
Placement	Front setback: 10 ft. Side and Rear: 25 ft.	No signs to impede vision at any intersection
Illumination	None	None
Special Regulations	None	See Footnotes 1 and 2

“(2) Sign Regulations Within Non-Residential Zoning Districts.

Sign Type	Accessory	Accessory	Temporary
Construction Class	Wall	Detached, Marquee, and Projecting	Snipe/Signs
Maximum Number	3	2 total from this group	4
Maximum Area	10% of the wall area, and no more than 60 sq. ft. of cumulative area	60 sq. ft. total cumulative area	4 sq. ft. each
Maximum Height	Roof line of building	Detached: 25 ft. Others: Roof line of building	Roof line of building
Placement	Non-Restricted	Must observe yard regulations and Front setback: 10 ft.	Must observe yard regulations
Illumination	Direct, Indirect	Direct, Indirect	None

Sign Type	Accessory	Accessory	Temporary
Special Regulations	See Footnotes 1, 3, and 4	See Footnotes 4 and 5	See Footnote 7

Sign Type	Construction	Directory	Directional	General Outdoor Advertising
Construction Class	Wall or Detached	Wall or Detached	Wall or Detached	Wall or Detached
Maximum Number	1	2	2	1
Maximum Area	32 sq. ft.	Sum of 30 sq. ft.	3 sq. ft. each	Detached: 3- 32 sq. ft. Wall: 10 sq. ft.
Maximum Height	Detached: 10 ft. Wall: Roof line of building	10 ft.	Detached: 3 ft. Wall: 10 ft.	10 ft.
Placement	Front Setback: 10 ft. Rear and Side: 25 ft.	Must observe all yard regulations	Non-Restricted	Front setback: 10 ft. Rear and Side: 25 ft.
Illumination	Indirect	Indirect	Indirect	Indirect
Special Regulations	Must be immediately removed upon completion of construction or occupancy	None	None	See Footnotes 1 and 2

SECTION 3. CODIFICATION. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida that the provisions of this Ordinance shall be made a part of the Charter of the Town of Malabar, Florida; and codified into the Municipal Code and any section or paragraph may be renumbered or re-lettered to accomplish such intention.

SECTION 4. SEVERABILITY. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, such decision shall not affect the validity of the remainder hereto as a whole or part thereof to be declared invalid.

SECTION 5. CONFLICT. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 6. EFFECTIVE DATE. The ordinance shall take effect immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council Member _____. The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Council Member Marisa Acquaviva	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
Council Member Danny White	_____

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County, Florida this 1st day of March 2021.

BY: TOWN OF MALABAR

Mayor Patrick T. Reilly, Council Chair

First Reading: 2/01/2020 - Vote: 5 Aye – 0 Nay
Second Reading: 3/01/2021

ATTEST:

Debby K. Franklin, Town Clerk/Treasurer

(seal)

Approved as to form and legal sufficiency by:

Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 10.b.

Meeting Date: March 1, 2021

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Public Hearing on Final Plat for 'Twin Lakes' – a 16 homesite subdivision in RR-65 zoning on the south side of Malabar Road, east of Weber Road on a vacant 24-acre site. Applicant Malcom Kirschenbaum, Weber Woods LLC

BACKGROUND/HISTORY:

The applicant's representative Mr. Bruce Moia PE, MBV Engineering has submitted the Final Plat for the "Twin Lakes" Subdivision, which is in RR-65 Zoning on Malabar Road east of Weber Road.

The owner, Malcolm Kirschenbaum, Weber Woods LLC, started the process back in 2018 to develop his vacant 23.91+ acres into a subdivision. There was a pre-site plan meeting held with Town Staff on November 21, 2018. This was to go over all required information to submit a formal Preliminary Plat for staff to review and comment and forward to this Board.

The Preliminary Plat was approved by Council in November 2019. The applicant chose to move forward with making the improvements before bringing the Final Plat to P&Z and Council for Final Plat approval. The submittals have been reviewed by appropriate Town staff and the applicant's Final Plat for Twin Lakes subdivision appears to be in compliance.

The Performance Bond will be retired and a new Warranty Bond will be required before final recording of the Plat with the Brevard County Clerk of Court.

They are not allowed to sell any lots until the Final Plat has been approved by Malabar and recorded with Brevard County Clerk of Court.

FINANCIAL IMPACT:

Application fees offset the review by professional staff, legal advertising and public hearing notices.

ATTACHMENTS:

- Final Plat for Twin Lakes subdivision package and related required documents
- Recommendation from the Planning and Zoning Board Mtg of 2/24/21 will be sent separately

ACTION OPTIONS:

- Action on Final Plat for Twin Lakes

TOWN OF MALABAR
2725 Malabar Road, Malabar, Florida 32950
(321) 727-7764 – Telephone
(321) 727-9997 - Fax

TOWN OF MALABAR

OCT 08 2020

RECEIVED

APPLICATION FOR FINAL PLAT OF MAJOR SUBDIVISION

Before completing this application, please refer to the attached and attach all information requested:

- Article XVI – Subdivision Administration and Procedures
- Article V – General Provisions
- Article VII – Site Plan Review
- Article VIII – Surface Water Management
- Article IX – Off-Street Parking and Internal Traffic Circulation
- Article XIII – Concurrency Management
- Article XIV – Landscape Regulations
- Article XV – Tree Protection
- Article XVII – Required Improvements and Design Standards
- Article XVIII – Construction of Required Improvements
- Florida Statutes, Chapter 177

pd
10/8/2020
Final Plat
\$1200.00
CK #2106

This application must be completed, with required attachments, and returned to the Town Clerk's office.

Name of Applicant(s): Weber Wood LLC Telephone: 321-258-3076
Mailing Address: 516 Delannoy Avenue, Cocoa, FL 32922

Name of Property Owner(s): Same as applicant Telephone: _____
Mailing Address: _____

Legal Description of Property covered by application: _____ Acreage: 24.2

Township: 29 Range: 37 Section: 02 Lot/Block: 00 Parcel(s): 253
Other Legal: Lots 26 and part of Lot 25 of PB 1 Pg 165 as described in Orb 5447 Pg 7116

Proposed Subdivision Name: Twin Lakes Subdivision Present Zoning Classification: RR-65

Fees:

- Site Plan Pre-Application Conference ----- \$1500.00
- Preliminary Plat ----- \$1500.00
- Final Plat ----- \$1200.00

(*Includes advertising, administrative time, and mailing. Any additional costs shall be paid by the applicant. Additional costs may include, but are not limited to, engineering fees, attorney fees, etc.)

Required Attachments:

- Completed application, including Disclosure of Ownership (Pages 1 and 2).
- Fee of \$ 1200.00 in cash or check, payable to the Town of Malabar.
- Hold Harmless, Article XVI, Section 1-16.2(D).
- Documentation as required in Article XVI, Section 1-16.4.
- Copies of all Federal, State, and Local agency permits. It shall be the applicant's responsibility to obtain such outside permits.
- Check payable to Brevard Clerk of Court in amount required to Record final plat.

**REVISED TOWN OF MALABAR
MEMORANDUM**

Date: ~~January 26, 2024~~ February 16, 2020
To: Lisa Morrell, Interim Town Administrator
Denine Sherear, Building Department Manager
From: Morris Smith, Town Engineer
Ref: Twin Lakes Subdivision – Final Plat Review

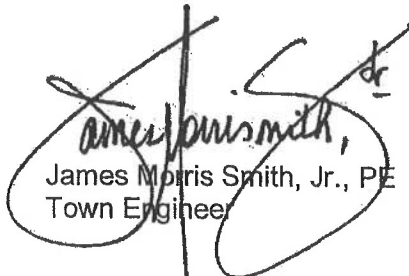
Memo: 21-CE-02
Project No.
Variance No.:

As per your request, I have made a review of the submitted Final Plat.

Based upon the land developer having provided a bond, I have no objections to the tree removal and replacement issues that I have previously brought forward, in my Memo 20-CE-20.

I recommend approval of this Final Plat.

Very Truly Yours,


James Morris Smith, Jr., PE
Town Engineer

Prepared by and return to:

Jessica Swann Ward, Esq.
516 Delannoy Avenue
Cocoa, Florida 32922

Revised 10/29/2020

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
TWIN LAKES OF MALABAR**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TWIN LAKES OF MALABAR (“Declaration”) is made this ____ day of _____, 2020, by WEBER WOODS, LLC, a Florida limited liability company (“Developer”).

ARTICLE I

INTRODUCTION AND DEFINITIONS

1. Introduction.

a. Developer hereby restricts the use of Property (defined below) and declares that all of any portion of the Property shall be held, occupied, sold and transferred subject to the easements, restrictions, covenants, charges and liens of this Declaration, each and all of which is and are for the benefit of the real property subjected to this Declaration and each owner of any portion thereof, for the purpose and with the intent of preserving the value and maintaining the desirability of the Property.

b. This Declaration shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. Every Person acquiring title to any portion of the Property shall be deemed to have agreed to all of the terms and provisions of this Declaration and shall be entitled to its benefits and subject to its obligations.

2. Definitions. Unless the context expressly requires otherwise, the words defined below whenever used in this Declaration and in the Governing Documents shall have the following meanings:

a. “ACOE” means the U.S. Army Corps of Engineers.

b. “Annual Maintenance Assessment” means the Association’s annual maintenance assessment for each Lot as determined in accordance with the provisions of this Declaration.

c. “Association” means Twin Lakes of Malabar Homeowners Association Inc., a corporation not for profit organized and operated pursuant to Chapters 617 and 720, *Florida Statutes*, its successors and assigns.

d. “Assessments” means all assessments established, imposed or levied under or pursuant to the terms of this Declaration.

e. “Board” or “Board of Directors” means the Association’s Board of Directors.

f. “Builder” means any person designated in writing as such by Developer who purchases Lots within the Property for the purpose of constructing Residential Units thereon for sale to Lot Owners.

g. “Common Area” means all real property or any interest in real property (including easements), including any improvements thereto from time to time, owned by the Association or designated for ownership by the Association for the common use and enjoyment of all Lot Owners, subject to any restrictions or limitations set forth in this Declaration or the Rules. The Common Area includes, without limitation, any private roadways, private drainage areas, private pump station, entry gate facilities, if installed, and associated hardscaping, landscaping, irrigation, lighting, signage, and/or other improvements owned and/or maintained by the Association, from time to time. Notwithstanding anything contained herein to the contrary, no Lot Owner may be denied access to a private roadway due to failure of such Lot Owner to pay any dues or assessments hereunder.

h. “Common Maintenance Areas” means all real property and tangible personal property interests, including improvements, fixtures and landscaping, from time to time, designated by this Declaration, the Association (with Developer’s consent if prior to Turnover) or Developer, as a maintenance responsibility of the Association for the benefit of all Owners. Common Maintenance Areas may or may not be owned by the Association and may or may not be located within the Property. The Common Maintenance Area includes, without limitation, the Surface Water Management System, Private Drainage Easements designated on the Plat and Conservation Areas (defined below).

i. “County” means Brevard County, Florida.

j. “Declaration” means this Declaration of Covenants, Conditions and Restrictions, together with any amendments and supplements hereto.

k. “Deficit Fund” has the meaning set forth in Article V, Section 2 of this Declaration.

l. “Design Guidelines” has the meaning set forth in Article VIII of this Declaration.

m. “Developer” means Weber Woods, LLC, a Florida limited liability company, whose address is 516 Delannoy Avenue, Cocoa, Florida 32922, and its successors and assigns to whom rights of the Developer hereunder are specifically assigned by instrument recorded in the Public Records. Developer may assign all or a portion of such rights in one or more assignments and on an exclusive or non-exclusive basis. In the event of a partial assignment, the assignee shall not be deemed the Developer unless expressly stated in the assignment. Notwithstanding the foregoing, the Developer shall not be liable for any acts or omissions made by a successor Developer.

n. “Governing Documents” collectively means this Declaration, the Association’s Articles of Incorporation (the “Articles”) and the Association’s Bylaws (the “Bylaws”), together with any amendments thereto. A copy of the Articles is attached hereto as Exhibit B, and a copy of the Bylaws is attached hereto as Exhibit C. The Articles and Bylaws may be amended as provided in such documents.

o. “Initial Contribution Assessment” has the meaning set forth in Article V, Section 4 of this Declaration.

p. “Law” means any statute, ordinance, rule, regulation, or order adopted or enforced by the United States of America, or any agency, officer, or instrumentality thereof, or by the State of Florida, or any agency, officer, municipality, or political subdivision thereof, from time to time applicable to the Property or to any activities thereon.

q. "Lot" means any plot of land shown on any recorded Plat of the Property that is designated or intended as a building site for a Residential Unit, and does not include any areas designated as Common Area or any other tract of land that is not a residential parcel.

r. "Members" means the members of the Association.

s. "Mortgage" means any mortgage, deed of trust, or other instrument validly transferring any interest in any Lot, or creating a lien on any Lot, in either case as security for performance of an obligation. The term "Mortgage" does not include judgments, involuntary liens, or liens arising by operation of Law. "First Mortgage" means any Mortgage constituting a lien prior in dignity to all other Mortgages encumbering the same property.

t. "Mortgagee" means the Person(s) named as the obligee under any First Mortgage, or the successor in interest to any such Person, including the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Authority and similar guarantors or insurers of First Mortgages.

u. "Owner" or "Lot Owner" means the record owner of the fee simple title to any Lot, whether one or more Persons, including Developer, Builders and contract sellers, but excluding contract buyers, any Person holding such fee simple title merely as security for the performance of an obligation, the Association, and governmental authorities that have received dedications or conveyances of title to any portion of the Property.

v. "Person" means any natural person or entity having legal capacity.

w. "Plat" means the plat of the Property, to be recorded in the Public Records. The term "Plat" shall include any recorded revisions or re-plats of the Property.

x. "Property" means the real property located in Brevard County, Florida described in Exhibit A attached to this Declaration.

y. "Property Boundary Buffer" has the meaning set forth in Article II, Section 4 of this Declaration.

z. "Public Records" means the public records of the County.

aa. "Rules" means any rules and regulations regarding the use of the Property duly adopted by the Association in accordance with the Governing Documents, as amended from time to time.

bb. "Residential Unit" means any improvements on a Lot intended for use as a single-family residential dwelling unit, including, without limitation, any single-family attached or detached dwelling. Improvements shall constitute a Residential Unit at such time as construction of the dwelling unit is completed and a certificate of occupancy is issued therefor.

cc. "Special Assessments" has the meaning set forth in Article V, Section 5 of this Declaration.

dd. "Specific Assessments" has the meaning set forth in Article V, Section 7 of this Declaration.

ee. "Supplemental Declaration" means any instrument which extends the effect of this Declaration to Additional Property pursuant to Article II of this Declaration.

ff. “SJRWMD Permit” means any and all permits issued by the St. Johns River Water Management District (“SJRWMD”) applicable to the Property, as may be amended or modified from time to time. A copy of the SJRWMD Permit is attached hereto as Exhibit D.

gg. “Surface Water Management System” means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapter 62-330, Florida Administrative Code (“F.A.C.”). The Surface Water Management System may include, but is not limited to: inlets, littoral areas, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands and any associated buffer areas, wetland mitigation areas, drainage easements, underdrains and filtration systems. The Surface Water Management System may be owned by the Association.

hh. “Turnover” has the meaning set forth in Article IV, Section 3 of this Declaration.

ii. “Town” means the Town of Malabar, Florida.

jj. “Work” means the initial development of all or any portion of the Property, including the construction and installation of streets, utility systems, community facilities, buildings, and other improvements, and the sale, lease, or other disposition of the Property as improved or unimproved parcels, but does not include the construction of individual Residential Units by a Builder. Such term is to be broadly construed to include any and all activities, uses, structures, and improvements necessary, convenient, or desirable to accomplish such construction and disposition.

ARTICLE II

PROPERTY RIGHTS AND COMMON AREA

1. Common Area and Common Maintenance Areas.

a. Conveyance of Common Area. The Developer will convey or cause to be conveyed to the Association in one or more conveyances, and the Association shall accept, the title in the Common Area. The conveyance shall be subject to taxes for the year of conveyance, restrictions, conditions, and limitations of record, including this Declaration and the Plat, and easements for ingress, egress, drainage and public utilities in favor of governmental entities or private parties as deemed appropriate by the Developer. Upon recordation of any deed or deeds conveying Common Area to the Association, the Association shall be conclusively deemed to have accepted the conveyance evidenced by such deed or deeds. No title insurance or title opinion shall be provided to the Association by the Developer.

THE ASSOCIATION SHALL ACCEPT “AS IS” THE CONVEYANCE OF SUCH COMMON AREA PROPERTY WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, WITH RESPECT THERETO, OR WITH RESPECT TO THE IMPROVEMENTS AND REPAIRS TO BE COMPLETED AFTER THE CONVEYANCE, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR THE ORDINARY OR ANY PARTICULAR PURPOSE, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES REGARDING FUTURE REPAIRS OR REGARDING THE CONDITION, CONSTRUCTION, ACCURACY, COMPLETENESS, DESIGN, ADEQUACY OF THE SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS OR FURNITURE WHICH HAS BEEN OR WILL BE USED IN SUCH PROPERTY OR REPAIRS, EXCEPT AS SET FORTH HEREIN.

All costs and expenses of any conveyance of any property to the Association shall be paid by the Association.

b. Right of the Developer to Designate Property as Common Area. Notwithstanding anything to the contrary contained in this Declaration or any Plat, the Developer shall have the right, in its sole discretion, to designate land, easements, use rights and personal property owned by the Developer as Common Area provided only that such land shall be located within the Property or contiguous to the Property (for purposes of this subsection, property separated only by public or private roads, water bodies, or open space shall be deemed contiguous). For so long as the Developer shall own any portion of the Property, no land owned by the Developer shall be deemed to be Common Area unless such land is expressly referenced as such herein, or subsequently conveyed or designated as such by the Developer, even if the Developer consents or acquiesces to the use of such land by the Owners.

c. Use by Developer and Other Persons. Notwithstanding the transfer of ownership of the Common Area to the Association, the Developer shall have the right to use and occupy, and to allow Builders to use and occupy, portions of the Common Area without payment of any rent or use fee for purposes of a sales and marketing center, special events, the placement of sales and construction trailers and equipment, vehicular parking, and the placement of sales signs, until Developer and all Builders have sold all Lots within the Property, notwithstanding Turnover. Developer shall have the right to cause the Association to enter into a written agreement evidencing this right and no such agreement shall be deemed to be a violation of any fiduciary or other duty of the officers or directors of the Association authorizing or executing such written agreement. The Association shall have the right and authority to allow, by easement, license, rental agreement or otherwise, the use of Common Area by Persons providing utility, telecommunications, security or other services to the Property. The Association shall also have the right and authority to allow school, civic charitable social groups, and other non-profit organizations to use the Common Area as determined from time to time by the Board of Directors, provided such use does not unreasonably interfere with the Owners' use of the Common Area.

2. Owner's Easements of Enjoyment. Every Owner of a Lot and his or her lessees have a nonexclusive right and easement of enjoyment in and to the Common Area, including but not limited to a right of ingress and egress through the private roadways, that is appurtenant to, and passes with, the title to every Lot subject to the easements and other property rights granted in this Article, and subject to the following:

a. Assessments. Assessments for maintenance, repair, replacement, and operation of the Common Area and improvements and facilities, if any, situated on the Common Area, as provided in this Declaration or other applicable recorded instruments.

b. Dedication. The right of the Developer to dedicate or transfer all or portions of the Common Area or interests therein to any public agency, authority, or utility. Any dedication or transfer made by Developer as part of the Work or prior to Turnover shall not require the approval of the Members or the Association. Any other dedication or transfer must be approved by at least two-thirds (2/3) of the votes of the Members present and voting in person or by proxy at a meeting duly convened for such purpose, and must be evidenced by a recorded certificate of the Association executed by the Association with the formalities from time to time required for a deed under the laws of the State of Florida.

c. Developer. The rights of the Developer hereunder to designate portions of the Property as Common Area and to occupy and use, and allow Builders and other third parties to use and occupy, portions of the Common Area for a sales and marketing center, the placement of sales and construction trailers and equipment, vehicular parking, and the placement of sales signs.

d. Rules and Regulations. The Association's right to adopt, alter, amend, rescind and enforce reasonable Rules governing the use of the Common Area.

e. Governing Documents and Additional Restrictions. The provisions of the Governing Documents and all matters shown on any Plat of all or part of the Property.

f. Suspension. Pursuant to applicable Florida Statutes as amended from time to time, the Association's right to suspend any Owner's right to use any facility owned or controlled by the Association for a period of unpaid Assessments or for any infraction of the Association's Rules.

g. Easements. The right of the Developer and, following the conveyance of the Common Area to the Association, the Board of Directors of the Association, to grant easements for utilities or drainage across all or any part of the Common Area, whether to governmental entities or private parties.

h. Requirements of Law. The provisions of applicable Laws and all permits issued in connection with the development of the Property.

i. General. Real estate taxes and special assessments levied by governmental authorities having jurisdiction over the Common Area, and restrictions, limitations and easements of record.

3. General Association Easements. All Lots are subject to the following perpetual, non-exclusive easements:

a. The Association is hereby granted a perpetual, non-exclusive easement for ingress and egress upon, over and across each Lot for the exercise of the Associations rights, and performance of the Association's duties, under this Declaration; provided that such easement will not encroach on any portion of the building pad on which a Residential Unit is constructed.

b. Developer hereby grants to the Association perpetual non-exclusive easements over all areas designated on the Plat as dedicated for the purpose of constructing, maintaining, repairing and replacing the landscaping, fences, utilities and any other improvements lying therein, each for construction, maintenance, repair and replacement of the improvements designated on the Plat as to such area, and purposes incidental thereto. Lot Owners are prohibited from obstructing the Association's access to, or constructing any improvements within, the easement areas described in this subsection b. without the Association's express written consent, which may be withheld. If any Lot Owner or occupant, or their respective agents, guests or invitees, constructs any unpermitted improvements within the easement area described in this subsection, then the Association shall have the right to remove the same at the Owner's expense, and to assess such Lot Owner for the cost thereof as a Specific Assessment.

c. Each portion of the Property is hereby burdened with a perpetual, non-exclusive easement in favor of each other portion of the Property for the drainage of ground and surface waters into, over and throughout the Surface Water Management System in the manner established by Developer as part of the Work.

4. Property Boundary Fence or Landscape Buffer. As part of the Work, Developer may construct privacy fence(s), wall(s) and/or landscaped buffer(s) across some of the Lots and/or portions of the Common Area to separate the Property or portions thereof from adjoining portions of the Property, rights-of-way or other properties (as applicable, the "**Property Boundary Buffer**"). All Lots adjacent to any Property Boundary Buffer, or upon which portions of the Property Boundary Buffer are located, are subject to an exclusive perpetual easement for the location of the Property Boundary Buffer. All such Lots are also subject to easements to the Association for maintenance, repair and replacement of the Property Boundary Buffer and the landscaping associated therewith, which may be exercised by the Association if the Lot Owner fails to properly maintain the Property Boundary Buffer as hereinafter provided. Additionally, with respect to Property Boundary Buffers, the following rules shall apply:

a. If any portion of a Property Boundary Buffer is located on or adjacent to any Lot, (i) the Owner of the adjacent Lot shall maintain, at such Lot Owner's cost and expense, the interior of such Property Boundary Buffer facing such Owner's Lot, (ii) the Association shall maintain the exterior of the Property Boundary Buffer, and (iii) the Association shall restore and repair such Property Boundary Buffer at its expense as and when required.

b. If any portion of a Property Boundary Buffer is located between adjacent Lots, even if located on only one of said Lots, then: (i) each applicable Lot Owner shall maintain, at such Lot Owner's cost and expense, the interior of such portion of the Property Boundary Buffer facing such Owner's Lot, and (ii) the Owners who own the adjacent Lots shall restore or repair it and shall each equally share in the cost of such restoration and repair of the Property Boundary Buffer.

c. Notwithstanding the above, a Lot Owner who by his or her negligent or willful act causes damage to or the destruction of a Property Boundary Buffer shall pay the entire cost of repair or replacement of the damaged portion. The Association shall have the right, but not the obligation, to maintain, repair or replace any Property Boundary Buffer that is the responsibility of a Lot Owner in the event the applicable Lot Owner fails to do so, and to assess such Lot Owner for the cost thereof as a Specific Assessment.

5. Plat Easements. Reference is made to the utilities, drainage, ingress and egress, non-access, and other easements shown on the Plat. The Developer shall have the unrestricted right without the approval or joinder of any other Person to designate the use and to alienate, release or otherwise assign the easements shown on the Plat unless such easements have been previously conveyed or dedicated. The easements may be used to construct, maintain and operate water mains, drainage ditches, sewer lines and other suitable installations for drainage and sewage disposal, or for the installation, maintenance, transmission and use of electricity, gas, telephone, cable systems, reclaimed irrigation water or treated effluent and other utilities, whether or not the easements are shown on the Plat to be for drainage, utilities, or other purposes. The Owners of the Lots subject to easements shown on the Plat shall acquire no right, title or interest in any of the cables, conduits, pipes, mains, lines, or other equipment or facilities placed on, over or under the easement area. The Owner of a Lot subject to any easement shall not construct any improvements on the easement areas, nor alter the flow of drainage, nor landscape such areas with hedges, trees or other landscape items that might interfere with the exercise of the easement rights. If any Owner constructs any improvements on such easement areas or landscapes such areas as aforesaid, the Owner of the Lot shall remove at the Owner's expense the improvements or landscape items upon written request of Developer, the Association or the grantee of the easement. If the Owner fails to promptly remove improvements or landscaping, the Developer, the Association or the grantee of the easement may enter on the Lot and remove the improvements or landscaping at the expense of the Owner, who shall reimburse the cost of removal within fifteen (15) days of demand. The party removing the improvements or landscaping shall not be liable for trespass, nor responsible for any damage caused by the removal and shall not be required to restore any portion of the Lot damaged by the removal.

6. Lake or Pond and Surface Water Management Easements. It is anticipated that the Association will own and/or maintain, as applicable, portions of the Surface Water Management System. The Association is hereby granted: (a) perpetual non-exclusive unobstructed drainage easements over and through the Surface Water Management System and the ponds, lakes, marshes and other wetlands situated in whole or in part on the Property, whether part of the Surface Water Management System or otherwise; (b) perpetual non-exclusive easements for access and maintenance, including an easement for ingress and egress over and across all areas of the Surface Water Management System and all streets, roadways, Common Areas, driveways and walkways, including the right to enter upon any portion of any Lot which is a part of, or adjacent to the Surface Water Management System or any pond, lake, marsh or wetland, whether part of the Surface Water Management System or otherwise, at any reasonable time and in a reasonable manner, for purposes of operating, maintaining and repairing the Surface Water Management System as required by this Declaration, any Plat, any instrument recorded in the Public Records, the SJRWMD Permit or by Law, as applicable, including, but not limited to, work within the retention areas, drainage structures, and drainage easements; and (c) perpetual non-exclusive easements over and across

each Lot bordering on or encompassing any portion of the Surface Water Management System, or a pond, lake, marsh or wetland, whether part of the Surface Water Management System or otherwise, from the top of the embankment to the rear lot line (including any submerged portions of the Lot), for the installation, use, maintenance, repair and replacement of the Surface Water Management System.

7. All Rights and Easements Appurtenant. The benefit of all rights and easements granted by this Article constitute a permanent appurtenance to, and pass with, the title to every portion of the Property enjoying such benefit. Whenever any such right or easement is described as nonexclusive by this Article, its benefit nevertheless is exclusive to the portions of the Property granted such benefit by this Article unless expressly granted to additional Persons. In no event does the benefit of any such easement extend to the general public.

8. Ownership Rights Limited to Those Enumerated. No transfer of title to any Lot passes any rights in and to the Common Area, except as expressly enumerated in this Declaration. No provision in any deed or other instrument of conveyance of any interest in any Lot shall be construed as passing any right, title, and interest in the Common Area, except as expressly provided in this Declaration. Any Owner may delegate his or her right of enjoyment and other rights in the Common Area to any Persons from time to time lawfully occupying such Owner's Lot, subject to the Association's Rules.

9. Platting and Subdivision Restrictions. Developer may, from time to time, replat all or any part of the Property owned by Developer, and may widen or extend any right-of-way shown on the Plat or convert a Lot or other portions of the Property for use as a right-of-way or other uses, provided that Developer owns the lands where such changes occur. Developer may also establish covenants and restrictions and amendments thereto with respect to any such portion of the Property. No Owner, other than Developer, shall subdivide or change the boundary lines of its Lots or combine its Lots without the prior written approval of (a) Developer, if prior to Turnover, or (b) the Board, if after Turnover. Any such action shall only be effective upon the prior written approval described in subsection (a) or (b) above, if required by this section, and recording in the Public Records of the Plat or other instrument reflecting the subdivision or new boundaries of the affected Lots.

ARTICLE III

USE RESTRICTIONS AND NOTICES

1. Residential Use. Each Lot and the buildings constructed thereon shall be used for single family residential purposes only. Only one (1) single family dwelling may be constructed on each Lot. No trade, business, commercial activity or profession may be conducted in, on, or from any Lot. The foregoing does not prohibit a "home office" within a Residential Unit, provided that: (a) no work or service is conducted on the Lot that can be seen or heard outside of the Residential Unit; (b) there is not a material increase in traffic to and from the Lot; and (c) no one other than the Owner or lawful occupants of the Residential Unit shall regularly work at or visit the "home office" for business purposes. The letting, renting, or leasing of Residential Units for non-transient residential purposes shall not constitute a trade or business. The restriction herein does not prohibit Builder's operation of a model home or sale center on any Lot and/or Residential Unit.

2. Design Guidelines. In addition to this Declaration, the Property is subject to the Design Guidelines. Each Owner, by acceptance of title to Owner's Lot acknowledges and agrees that Owner's ownership, improvement and use of Owner's Lot is subject to the terms of the Design Guidelines and this Declaration. To the extent that the Design Guidelines are more restrictive as to any matter set forth in this Article III, then the provisions of the Design Guidelines shall control.

3. Parking Restrictions and Garages.

a. Parking. No vehicle, boat, mobile home, or trailer may be parked, stored, or repaired anywhere within the Property except that functional passenger automobiles, vans, motorcycles, and non-

commercial trucks of one (1) ton capacity or less (collectively "Permitted Vehicles") may be parked in the garage or driveway of the Residential Unit, or in any approved parking areas on the Lot. Street parking within the Property is prohibited during the hours of 2:00 a.m. to 5:00 a.m. No Permitted Vehicle may be parked on any sidewalk, including any sidewalk which crosses over a driveway. Boats, trailers, motor homes, recreational vehicles and other vehicles that are not Permitted Vehicles may be regularly parked only in the garage of a Residential Unit. No parking places may be constructed on any Lot, except as constructed in accordance with plans and specifications approved by Developer. Commercial vehicles or any Permitted Vehicles with advertising thereon shall not be parked within public view on a regular basis. The Association may enforce the foregoing restrictions in any lawful manner, including the imposition of reasonable, uniform fines for willful or repeated violations. Nothing in this subsection prohibits the emergency repair or servicing of Permitted Vehicles, so long as such repair or servicing is completed within forty-eight (48) hours, or the occasional parking of vehicles by delivery personnel or guests of Owners in a manner not complying with this subsection.

b. Garages. All Residential Units must be constructed with a garage, which shall contain at least two (2) standard size parking places usable for parking vehicles. All garages must have electric door openers which shall be maintained in a useful condition and shall be kept closed when not in use. No garage shall be permanently enclosed or converted to another use.

c. Driveways. All improved Lots shall have a paved driveway constructed of a material approved by the Developer as part of the plans and specifications for the Residential Unit.

4. Occupancy and Leasing Restrictions.

a. Occupancy. Each of the Residential Units shall be occupied only by the Owner or lessee of a Residential Unit, members of their family, their servants and nonpaying social guests. Entire (but not portions of) Residential Units may be rented provided the occupancy is only by the lessee and the members of their family, servants and nonpaying social guests.

b. Lease Requirements. All rentals of Residential Units shall be documented by a written lease which shall set forth, among other things, the address of the Residential Unit, the name(s) of the tenants, the lease commencement date and the term. A copy of the fully executed lease shall be delivered by the Owner to the Secretary of the Association within five (5) days of the full execution of such lease. Rentals of less than seven (7) months in duration, or the operation of a rooming house, hostel or hotel, shall be deemed to be a commercial use for purposes of enforcement of this Declaration, and are prohibited. The tenants who are occupying a Residential Unit pursuant to a written lease shall be permitted to use the Common Area during the lease term, provided that (i) the tenants comply with any and all policies, and Rules of the Association, and (ii) the Owner assigns to such tenant and relinquishes Owner's right to use the Common Area during the lease term. Sub-leasing is strictly prohibited, and the tenant under any lease must be the occupant of the Residential Unit.

c. Compliance. All tenants shall be subject to the terms and conditions of the Governing Documents and the rules and regulations promulgated thereunder as though such tenant were an Owner. Each Owner agrees to cause his or her lessee, and the occupants, or persons living with Owner or with his or her lessee to comply with the Governing Documents and the Rules. Each Owner is responsible and liable for all violations and losses caused by such tenants or occupants, notwithstanding the fact that the occupants of the Residential Unit are also fully liable for any violation of the documents and regulations. In the event that a lessee or occupant violates a provision of the Governing Documents or the Rules, the Board shall have the power to bring legal proceedings against the lessee to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity. The Owner will be jointly and severally liable with the tenant to the Association for any amount (as determined in the sole discretion of the Association) which is required by the Association to repair any damage to any portion of the Property or to pay any claim for personal injury, death or damage to property caused by the act or omission of the tenant. Special Assessments may be levied against the Lot for such amounts.

5. Animals. No animals, livestock, or poultry shall be raised, bred, or kept anywhere within the Property, except that common household pets may be kept by the occupants of each Residential Unit, provided such pets are not kept, bred or maintained for any commercial purpose and provided further that such pets are neither dangerous nor a nuisance to the residents of the Property. "Common household pets" means dogs (excluding Pit Bull and Rottweiler breeds), cats, rabbits, domestic birds, fish, gerbils, hamsters, and other types of pets that are contained inside the home within an aquarium, terrarium, small cage or similar type device as long as they are not poisonous or hazardous should they escape. Dogs must be kept on a leash or within enclosed areas at all times. Owners of a cat or dog shall be required to remove immediately all forms of animal waste from the Property, including, without limitation, lawns, walks, driveways, and parking areas. The maximum number of pets that may be kept on a Lot shall be two (2), unless otherwise set forth from time to time in the Rules of the Association.

6. Owner Maintenance. All Owners of Lots with completed residences thereon shall keep and maintain such Owner's Lot (including that portion of the Lot between sidewalks, if any, and the street), together with the exterior of all buildings, structures and improvements located thereon, in a first class, neat, attractive, sanitary and substantial condition and repair, including without limitation: having the grass regularly cut and exercising generally accepted landscape management practices including, without limitation, pruning, edging, weeding, insect control, and removal of dead plant material; painting, repairing, replacing and caring for roofs, gutters, downspouts, garage doors, exterior building surfaces, lighting fixtures, fences and gates, decks and patios, shutters, windowpanes, storm windows, house numbers, shrubs and other vegetation, walks, driveways and other paved areas, recreational equipment, playhouses, and all other exterior improvements, such as to keep the same in a condition comparable to their original condition, normal wear and tear excepted. All lawns must be kept free of clutter, including, without limitation, toys and play items and yard equipment.

No structure shall be permitted to stand with its exterior in an unfinished condition for longer than twelve (12) months after the commencement of construction. In the event of fire, windstorm, extreme weather or other damage, the exterior of a structure shall not be permitted to remain in a damaged condition for longer than three (3) months, unless expressly permitted by the Board in writing. The Association shall have the right to enter upon a Lot for the purposes of bringing a Lot in compliance with this Section, and this right shall include the right to mow grass, trim landscaping, and remove trash or debris. The cost for the Association to undertake this work shall be assessed against the Lot as a Specific Assessment.

7. Storage of Fuel Tanks, Garbage and Trash Receptacles. No on-site storage of liquefied petroleum, gas or other fuels shall be permitted on any Lot except as may be necessary or reasonably used for yard equipment, swimming pools, spas, barbecue grills, gas ranges, fireplaces or similar devices, and in compliance with the Rules and with all applicable laws and codes. Allowed propane tanks larger than five (5) gallons must be buried underground. This restriction is designed to reduce environmental risks associated with fuel storage and to minimize the hazards associated with on-site fuel storage. Except for regular collection and disposal, no rubbish, trash, garbage, or other waste material or accumulations shall be kept, stored, or permitted anywhere within a Lot, except inside the Residential Unit, or in refuse containers concealed from view. All trash, garbage and refuse shall be placed for pickup not earlier than the evening preceding pickup, and all containers for garbage and refuse shall be returned no later than the evening of pickup to their normal, hidden location. Except for normal construction debris on any Lot during the course of construction of the Residential Units, no weeds, garbage, refuse or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property.

8. Utilities.

a. All potable water facilities and service to the Property shall be supplied by the public water supply system installed by the City of Palm Bay or by the Developer as part of the Work. ~~Except for wells installed by Developer, no well of any kind~~ No individual water supply system shall be permitted on any Lot, except that wells may be dug or drilled on the Property, including wells used as necessary to provide irrigation for the landscaping located on Lots, provided that a method of stain reduction is utilized in conjunction with such irrigation well. The

irrigation systems for the Lots shall not draw upon water from creeks, streams, ponds, lakes, retention or detention areas, or other bodies of water within the Property. In the event and to the extent that a reclaimed or similar irrigation system is installed by Developer within the Property, then each Owner shall be required to use the same for irrigation in lieu of potable water. No wastewater may be discharged on the open ground or into any pond, lake, marsh or wetland. All electricity service lateral lines and installations on a Lot shall be located underground, and shall be installed and maintained in accordance with the specifications of the electric utility provider installing same. All Lots shall contain irrigation systems that are located entirely underground, and such system on each Lot must be maintained by the Lot Owner in good and operable condition and repair at all times, and in compliance with applicable governmental requirements. ~~The irrigation systems for the Lots shall not draw upon water from creeks, streams, ponds, lakes, retention or detention areas, or other bodies of water within the Property. In the event and to the extent that a reclaimed or similar irrigation system is installed by Developer within the Property, then each Owner shall be required to use the same for irrigation in lieu of potable water.~~

b. A septic tank and related system (“Septic System”) will be installed on each Lot to serve the Residential Unit to be constructed thereon, and such Septic System on each Lot must be maintained by the Lot Owner in good and operable condition and repair at all times, and in compliance with applicable Laws. Each Owner shall ensure that the Septic System located on such Owner’s Lot functions in a sanitary manner and does not create a sanitary nuisance or health hazard. The Association shall have the right to enter upon a Lot for the purposes of bringing a Lot in compliance with this Section 8(b), and this right shall include the right to repair the septic tank and related system. The cost for the Association to undertake this work shall be assessed against the Lot as a Specific Assessment.

9. Antenna Systems. No antennas, masts, towers, poles, aerials, satellite dishes, or similar appurtenances shall be erected, constructed, or maintained on the exterior of any Residential Unit or Lot, except that one satellite dish of one (1) meter or less may be installed, subject to reasonable architectural criteria established and reviewed by the Association regarding location and screening which do not unreasonably interfere with signal reception.

10. Renewable Resource Devices. Nothing in this Declaration shall be deemed to prohibit the installation of energy devices based on renewable resources (e.g., solar collector panels); provided, however, such devices shall be installed only in accordance with the reasonable standards adopted from time to time by the Board and with such Board’s approval. The standards shall be reasonably calculated to maintain the aesthetic integrity of the Property without making the cost of the aforesaid devices prohibitively expensive.

11. Signs, Banners, Flags and Mailboxes.

a. Signs. No sign of any kind shall be placed in the Common Area except by or with the approval of the Developer or the Board. No sign of any kind shall be displayed to public view within any Lot, except: (i) customary address signs; (ii) a lawn sign of not more than four (4) square feet in size advertising a Lot for sale or rent, which complies with the requirements of the Rules, and (iii) a sign no more than one (1) square foot in size provided by a contractor for security services located within ten (10) feet of any entrance to the Residential Unit on such Lot. All signs permitted by this subsection must be approved by the Developer (as to initial construction or address signs) or the Board.

b. Banners and Flags. The following flags may be displayed on each Lot in accordance with the Rules or the Design Review Guidelines: (i) one (1) flag of the United States of America; and (ii) one (1) flag of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag. No banners or other flags may be displayed on a Lot, except as permitted by the Board.

c. Mailboxes. The size, design and color of all mailboxes and the supporting structures must be approved by the Developer or the Board and must comply with United States Postal Service regulations. Developer or the Board may establish a uniform type of mailbox and supporting structure (including size, design

and color) for use within the Property, in which event only such uniform mailboxes shall be permitted within the Property. It is the responsibility of the Owner of each Lot to purchase and maintain its mailbox in an "as new" condition, and replace it as necessary with a mailbox approved by the Board. The Association shall have the right, but not the obligation, to maintain, repair or replace any mailboxes in the event the applicable Lot Owner(s) fail to do so, and to assess such Owner(s) for the cost thereof as a Specific Assessment.

12. Window Treatments and Air Conditioners. No reflective foil, reflective glass or other reflective material shall be installed or maintained on any windows of a Residential Unit. The portion of drapes, blinds, and other window coverings visible from the outside of the Residential Unit shall be a solid (non-patterned) color. No window air conditioning units shall be permitted. All exterior components of air conditioning units shall be screened from view from adjacent Lots and streets by approved fences, walls or shrubbery, which shall be installed to minimize noise from the air conditioning unit.

13. Barbeque Grills. No Barbeque grills shall be placed in the front yard of any Lot, except for temporary use during pre-approved neighborhood or special events.

14. Clothes Drying. No clothesline or similar device shall be erected or installed on any Lot or another part of the Property, and no exterior portion of any Lot shall be otherwise used as a drying or hanging area for laundry of any kind, unless erected, installed or used in such manner so as not to be visible from the streets within the Property or from any adjoining Lot, including Lots to the rear. This provision shall not be interpreted as a prohibition against clotheslines, but rather as a requirement that they be completely screened so as to not be visible to other Owners.

15. Security Alarms. Security alarms audible outside of the Residential Unit must be connected to a monitoring service that is able to shut-off the alarm, or the security alarm must automatically shut-off after not more than fifteen (15) minutes.

16. Obnoxious or Offensive Activity. No activity or use shall be allowed upon the Property which is a source of annoyance, embarrassment or discomfort to Owners or their tenants or invitees, or which interferes with the peaceful possession and proper use and enjoyment of the Property, nor shall any improper, unsightly, offensive or unlawful use be made of any Lot, Residential Unit or the Common Area, and all laws and regulations of applicable governmental bodies shall be observed. The Property shall be used, enjoyed and occupied in such manner as not to cause or produce any of the following effects discernible outside any Residential Unit; noise or sound that is objectionable because of its volume, duration, beat, frequency or shrillness; smoke; noxious, toxic or corrosive fumes or gases; obnoxious odors; dust, dirt or fly ash; unusual fire or explosive hazards; vibration; or interference with normal television, radio or other telecommunication by other Owners.

17. Soliciting. The distribution of any and all handbills, flyers or doorknob hangers, for the purpose of soliciting business or any other agenda is strictly prohibited. Door-to-door solicitation is not permitted within the Property.

18. Garage Sales. Owners may not advertise or hold garage sales or yard sales within the Property, except that community-wide garage sales may be held with prior approval of the Board.

19. Holiday Lights and Decorations. Outdoor holiday lighting and decorations may be placed upon the exterior portions of a residence or displayed upon a Lot during a period commencing thirty (30) days prior to a holiday and continuing for thirty (30) days after such holiday, after which time such lighting and decorations shall be removed.

20. Vegetable Gardens. No vegetable garden shall be erected, installed or maintained on any Lot unless erected, installed or maintained within a fenced-in rear yard in such manner so as not to be visible from the streets within the Property or from any adjoining Lot, including Lots to the rear.

21. Waterbodies and Wetlands.

a. Access by Owners. No Owner, other than the Owner of the particular Lot abutting a pond or lake, shall have any rights of access to the portions of the Property lying between the rear property line of any such Lot and the shoreline of any pond or lake.

b. Installations by Owners. Owners (other than Developer) and occupants of Lots located adjacent to ponds, lakes, marshes or wetlands have no right to attach docks, anchor or store boats or other watercraft, or to clear, or otherwise disturb vegetation between the boundary of the Lot and such ponds, lakes, marshes and wetlands. Owners and occupants of such Lots located adjacent to ponds, lakes, marshes or wetlands have no right to install landscaping, fences, retaining walls or other improvements along the boundary of their Lot or the pond, lakes, marsh or wetland, unless expressly permitted by the Design Review Committee.

c. Drainage and Irrigation Uses. No Owner except Developer shall have the right to pump or otherwise remove any water from any part of the Surface Water Management System for irrigation or any other use; however, Developer or the Association may do so in compliance with the SJRWMD regulations. Nothing other than stormwater or irrigation waters may be discharged into the Surface Water Management System. Notwithstanding any provision of this Declaration to the contrary, Developer reserves a perpetual easement and right to drain water into the Surface Water Management System in compliance with the SJRWMD Permit and to use the water within the Surface Water Management System for irrigation or any other use permitted pursuant to applicable governmental regulations and subject to obtaining appropriate permits therefor. Developer also reserves the right, subject to the SJRWMD Permit, to alter the Surface Water Management System from time to time to enhance the Surface Water Management Systems' operation and effectiveness, including dredging, reconstruction of banks, reconfiguration of shorelines, installation and removal of drainage facilities, and similar activities.

d. WARNING. ALL OWNERS, GUESTS, TENANTS, LICENSEES, INVITEES, AND ANY AND ALL OTHERS CONCERNED (COLLECTIVELY, "USERS"), ARE HEREBY NOTIFIED OF THE POTENTIAL DANGERS ASSOCIATED WITH THE PONDS, LAKES, MARSHES AND WETLANDS LOCATED WITHIN THE PROPERTY. ANY PONDS OR LAKES WITHIN THE PROPERTY ARE ARTIFICIAL AND MAY CONTAIN STEEP SLOPES, SHARP DROPS AND CHANGES IN DEPTH, UNRELIABLE EMBANKMENTS, AND/OR OTHER POTENTIAL HAZARDS OR DANGERS, INCLUDING, WITHOUT LIMITATION, ALLIGATORS, SNAKES AND OTHER WILDLIFE. ALL USERS ARE HEREBY FORMALLY NOTIFIED AND CAUTIONED OF THE POTENTIAL DANGERS ASSOCIATED WITH THE PONDS, LAKES, MARSHES AND WETLANDS. NEITHER THE DEVELOPER NOR THE ASSOCIATION ASSUMES ANY RESPONSIBILITY AS TO ANY PERSONAL INJURY OR DEATH THAT MAY ARISE IN CONNECTION WITH ANY PONDS, LAKES, MARSHES OR WETLANDS. ALL USERS ASSUME ALL RISKS AND ANY LIABILITY ASSOCIATED WITH ANY PERSONAL INJURY OR DEATH THAT MAY ARISE IN CONNECTION WITH ANY PONDS, LAKES, MARSHES OR WETLANDS.

Each Owner, by acceptance of title to a Lot, is deemed to have assumed all risks and liability associated with residing adjacent to, or near, any pond, lake, marsh or wetland, and is hereby deemed to have agreed to hold harmless the Developer and the Association from any claims associated with the ponds, lakes, marshes and wetlands within or adjacent to the Property, and to assume all risks and any liability associated with any personal injury or death that may arise in connection with the ponds, lakes, marshes and wetlands within or adjacent to the Property with respect to themselves, family members, invitees, licensees, social guests, lessees, or any others affiliated with the Owner. Any Person entering upon or near or otherwise using any pond, lake, marsh or wetland

shall be responsible for his or her own personal safety and shall assume all risks of personal injury or death relating to such entry or use. In particular, parents or caretakers of minors, or others which may require adult supervision or assistance, should exercise caution in connection with the ponds, lakes, marshes and wetlands within or adjacent to the Property. Developer and the Association shall not in any way be a guardian or insurer of safety in connection with the presence, entry upon, or use of any ponds, lakes, marshes or wetlands within or adjacent to or within the Property, and shall not be held liable or responsible for any personal injury or death, property damage, or any other loss due to, arising out of, or related to use thereof for any purpose. Because of the potential dangers, no Owner or his or her family members, invitees, licensees, social guests, lessees, or any others affiliated with the Owner shall have any right to utilize the ponds, lakes, marshes or wetlands for any recreational purposes, including, without limitation, swimming, fishing, boating, docks, or otherwise, except as expressly authorized by this Declaration, the Design Guidelines, the Association's Rules, the Lake Rules, the SJRWMD Permit, and/or any applicable County requirements, and subject to any prohibitions promulgated under any of the foregoing rules and regulations.

e. Disclaimer. Neither Developer nor the Association makes any warranties, representations or guaranties regarding the ponds, lakes, marshes and wetlands within or adjacent to the Property: (i) as to the use or fitness of the ponds, lakes, marshes or wetlands for a particular purpose, (ii) that the use of any ponds, lakes, marshes or wetlands may or may not be restricted or prohibited in the future, (iii) as to the water quality of any ponds, lakes, marshes or wetlands, (iv) that pond, lake, marsh or wetland levels will be maintained at any particular level, or that the elevation of such waters will remain the same, (v) that the view from any Lots abutting any ponds, lakes or wetlands will be maintained, remain unchanged or unobstructed, or (vi) that Common Docks will be provided or maintained, or that any personal watercraft will be approved, for use in any ponds or lakes. Neither Developer nor the Association makes any assurance or assumes any responsibility as to personal injury or death that may arise from residing adjacent to a pond, lake, marsh or wetland within or adjacent to the Property.

22. Conservation Areas. The Property includes conservation easements recorded against certain portions of the Lots as designated on Plats ("**Conservation Areas**"), as required by governmental or quasi-governmental authorities having jurisdiction over the Property. Each Owner, by acceptance of title to a Lot, acknowledges that such Conservation Areas have been created in compliance with applicable Law to provide for the perpetual restriction and maintenance of such areas to promote habitat preservation and to protect environmental resources within the Property. All such Conservation Areas are intended to be maintained by the Association as Common Maintenance Areas. Each Owner, by acceptance of title to a Lot, acknowledges that the Association is required to, and will conduct certain maintenance activities within the Conservation Areas from time to time, and each Owner agrees not to impede the same. Each Owner, by acceptance of title to a Lot, acknowledges and agrees that the Conservation Areas may be utilized only in such manner as permitted by the conservation easements established by the Plats, by separate conservation easements recorded against the Conservation Areas, by applicable Law, or as permitted by this Declaration, and for no other purposes. The Conservation Areas may not be utilized for development of any building sites and must, to the extent practicable, be left in their natural state. No Owner shall clear any Conservation Area, dump any materials into any Conservation Area, plant any nuisance or exotic species in or adjacent to any Conservation Area, or otherwise modify its natural state. The Developer reserves the right to provide for road and access crossings through Conservation Areas, and to otherwise make use of the Conservation Areas as permitted by applicable Law. Each Owner shall utilize Conservation Areas only in such manner as may be permitted from time to time by the Association or the Developer, and in no other manner and for no other purpose. The Association is hereby granted perpetual easements, across each Lot which abuts a Conservation Area or any portion of the Property adjacent to a Conservation Area, for ingress and egress to such Conservation Areas for the purposes of exercising any right or performing any obligation provided in this Declaration, the SJRWMD Permit or applicable County or Town requirements and criteria.

23. Permits and Restrictions. The Property has been or will be developed in accordance with requirements of the SJRWMD Permit, and the Association, or any permittee or successor permittee under the

SJRWMD Permit, has the right to assure that all terms and conditions thereof are enforced. The Association, or any permittee or successor permittee under the SJRWMD Permit, shall have the right to bring an action, at law or in equity, against a Lot Owner violating any terms or provision of the SJRWMD Permit. No person shall alter the drainage flow of the Surface Water Management System, including buffer areas or swales, without the prior written approval of the SJRWMD.

All Owners of Lots shall, by acceptance of title to a Lot, be deemed to have assumed the obligation to comply with the requirements of the SJRWMD Permit as such relate to the Lot. Except as required or permitted by the SJRWMD, no Owner of a Lot shall alter, fill, dredge, place sod or excavate, or perform similar activities on any portion of their Lot or adjacent areas which contains jurisdictional wetlands, uplands buffers, or conservation areas as established by the ACOE or SJRWMD, unless and until such activity is authorized by or exempt from the requirements of ACOE and SJRWMD. In the event that a Lot Owner violates the terms and conditions of the SJRWMD Permit and for any reason the Developer, the Association, or any permittee or successor permittee under the SJRWMD Permit, is cited therefor, the Lot Owner agrees to indemnify and hold the Developer, the Association, and any permittee or successor permittee under the SJRWMD Permit, harmless from all costs arising in connection therewith, including without limitation all costs and attorneys' fees as well as costs of curing such violation. Unless first approved by the Association and SJRWMD, no Owner other than the Developer may obstruct, alter or in any way modify the method and/or structures of drainage utilized or installed by Developer or the Association from, on or across any Lot, Common Area, Common Maintenance Area or easement area; nor shall any structure or material be erected, placed or maintained which shall in any way obstruct such drainage devices or facilities or impede their efficient operation. No elevation changes shall be permitted on any Lot which materially adversely affect the drainage of or to neighboring Lots or the Common Area.

The Owners shall not remove native vegetation (including cattails) that becomes established within the wet detention ponds abutting their Lot. Removal includes dredging, the application of herbicide, cutting, and the introduction of grass carp. Lot Owners shall address any questions regarding authorized activities within the wet detention ponds to SJRWMD.

No Owner of a Lot or other property within the Property may construct or maintain any building, Residential Unit, or structure, or undertake or perform any activity in or to any portion of the Surface Water Management System, including, without limitation, the wetlands, wetland mitigation areas, buffer areas, upland conservation areas and drainage easements described in the SJRWMD Permit and recorded Plat or Plats of the Property, unless prior approval is received from SJRWMD. Such prohibited activities shall include, without limitation, digging or excavation, depositing fill, debris or any other material or item, constructing or altering any water control structure, or any other construction to modify the Surface Water Management System.

Each Owner within the Property at the time of construction of a building, Residential Unit, or structure shall comply with the construction plans for the Surface Water Management System approved and on file with SJRWMD.

No Owner, except Developer, shall have the right to pump or otherwise remove any water from any part of the Surface Water Management System for irrigation or any other use; however, Developer or the Association may do so in compliance with the SJRWMD regulations. Nothing other than stormwater or irrigation waters may be discharged into the Surface Water Management System. Notwithstanding any provision of this Declaration to the contrary, Developer reserves a perpetual easement and right to drain water into the Surface Water Management System in compliance with the SJRWMD Permit and to use the water within the Surface Water Management System for irrigation or any other use permitted pursuant to applicable governmental regulations and subject to obtaining appropriate permits therefor. Developer also reserves the right, subject to the SJRWMD Permit, to alter the Surface Water Management System from time to time to enhance the Surface Water Management Systems' operation and effectiveness, including dredging, reconstruction of banks, reconfiguration of shorelines, installation and removal of drainage facilities, and similar activities.

24. General Prohibitions and Indemnity. No activity is permitted, nor shall any object or substance be kept, stored, or emitted, within the Property in violation of Law. Each Owner shall defend, indemnify, and hold the Association and other Owners harmless against all loss from damage or waste caused by such Owner, or by any occupant of such Owner's property. Notwithstanding the foregoing, or any other provision of the Declaration to the contrary, an Owner's liability to the Association for unintentional acts or omissions is limited to the available proceeds of any insurance maintained by such Owner or the Association if, at the time of such act or omission, such Owner or the Association has reasonably adequate insurance in force. Collection of such proceeds is at the Association's risk. To the extent from time to time available, the Association's insurance must provide for waiver of subrogation by the Association's insurer against any Owner because of any unintentional act or omission for which such Owner is responsible under this section.

25. Security. Neither Developer nor the Association shall be obligated to maintain or support certain activities within the Property designed to make the Property safer than they otherwise might be, and neither Developer nor the Association has assumed or shall be deemed to have assumed any such obligation by virtue of installing and maintaining an entry gate within the Property. Any such entry gate, if installed, is for privacy and appearance only and is not intended to serve as a security measure.

NEITHER THE ASSOCIATION NOR DEVELOPER SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY, HOWEVER, AND NEITHER THE ASSOCIATION NOR THE DEVELOPER SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND DEVELOPER DO NOT REPRESENT OR WARRANT THAT (A) ANY FIRE PROTECTION SYSTEM, ELECTRONIC MONITORING SYSTEM, GATEHOUSE OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DEVELOPER OR THE ARCHITECTURAL REVIEW COMMITTEE MAY NOT BE COMPROMISED OR CIRCUMVENTED, (B) THAT ANY FIRE PROTECTION OR ELECTRONIC MONITORING SYSTEMS, GATEHOUSE OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, OR (C) THAT FIRE PROTECTION OR ELECTRONIC MONITORING SYSTEMS, GATEHOUSE OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, AND DEVELOPER ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO HOMES AND TO THE CONTENTS OF HOMES AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, THE DEVELOPER HAS MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR ELECTRONIC MONITORING SYSTEMS, GATEHOUSES OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

26. Water Levels. Each Owner, by acceptance of title to such Owner's Lot, acknowledges that all lakes and ponds (singularly referred to as "Lake Area" and collectively referred to as "Lake Areas") within the Property are designed as Surface Water Management System areas and are not designed as aesthetic features. Permits from various regulatory agencies, including SJRWMD govern the control of water levels. Due to varying

climatic conditions, environmental conditions of water use requirements, including, without limitation, fluctuations in ground water elevations, water usage by applicable utilities, priorities established by governmental authorities, and other causes out of the control of Developer, the County, the Town, and the Association, the water levels in the Lake Areas, depending on conditions, will rise and fall as often as daily and on occasion the water level may decline significantly and result in changes to the appearance of the Lake Area. These water level fluctuations and changes in the appearance of the Lake Areas are considered normal occurrences. Each Owner further understands and acknowledges that neither Developer nor the Association have control over such water level fluctuation nor associated impacts to plant growth in the Lake Areas, therefore, by acceptance of title to such Owner's Lot, each Owner hereby releases and holds harmless Developer and the Association (the "Releasees") from and against any and all claims, demands, damages, costs and expenses, including attorneys' fee and costs, arising from water level fluctuations. No Owner, other than Developer and the Association, and then subject to the SJRWMD Permit, shall not alter, modify, expand, or fill any Lake Area.

27. **DRAINAGE EASEMENTS ON PLAT. THE PRIVATE DRAINAGE EASEMENTS SHOWN ON THE PLAT ("DRAINAGE AREAS") ARE COMMON MAINTENANCE AREAS TO BE MAINTAINED BY THE ASSOCIATION. NOTWITHSTANDING THE FOREGOING, THE OWNER OF A LOT LYING SUBJECT TO ANY SUCH DRAINAGE AREA SHALL SHALL MAINTAIN SUCH DRAINAGE AREA, KEEP IT FREE OF DEBRIS AND NOT CONSTRUCT ANY IMPROVEMENTS IN, OR LANDSCAPE THE DRAINAGE AREA EXCEPT AS EXPRESSLY ALLOWED BY THE ASSOCIATION. IF ANY OWNER OR OCCUPANT OF A LOT, OR THEIR RESPECTIVE AGENTS, GUESTS OR INVITEES, FAILS TO MAINTAIN SUCH DRAINAGE AREAS AS REQUIRED HEREIN, OR CONSTRUCTS ANY IMPROVEMENTS WITHIN ANY DRAINAGE AREA IN VIOLATION OF THIS SECTION 27, THEN THE ASSOCIATION SHALL HAVE THE RIGHT TO ENTER ONTO SUCH LOT AND MAINTAIN THE DRAINAGE AREA AND REMOVE THE SAME ANY IMPROVEMENTS THEREIN AT THE OWNER'S EXPENSE, AND TO ASSESS SUCH LOT OWNER FOR THE COST THEREOF AS A SPECIFIC ASSESSMENT.**

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

1. **Membership.** Every Owner of a Lot is a Member of the Association and is entitled to one (1) membership for each Lot owned. Each membership is appurtenant to the Lot upon which it is based and is transferred automatically by conveyance of title to the Lot whereupon the membership of the previous Owner automatically terminates. No Person other than an Owner of a Lot may be a Member of the Association, and a membership in the Association may not be transferred or encumbered except by the transfer of title of the Lot to which it is appurtenant.

2. **Classification.** The Association has two (2) classes of voting membership:

a. **Class A.** So long as there is Class B membership, Class A Members are all Lot Owners except Developer. Class A Members are entitled to one (1) vote for each Lot owned by the Lot Owner, except as herein provided regarding the Developer. Upon Turnover, Class A Members are all Lot Owners, including Developer so long as Developer is an Owner.

b. **Class B.** The Class B Member is the Developer who is entitled to three (3) votes for each Lot and proposed Lot owned by it within the Property. The provisions of Article V of the Declaration exempting portions of the Property owned by the Developer from the Association's assessments do not affect the calculation of the Class B Member's voting rights under this subsection. Developer's Class B membership will be converted to Class A membership upon Turnover.

3. Turnover of Association Control. Developer shall have the right to elect or appoint all members of the Board until such time as Members, other than Developer, are entitled to elect at least one (1) member of the Board in accordance with the Bylaws, provided the Members exercise such right. Thereafter, Developer shall be entitled to appoint or elect at least a majority of the Board until Turnover. Owners, other Developer, shall be entitled to elect at least a majority of the members of the Board when the earlier of the following events occurs ("Turnover"):

a. Three (3) months after ninety percent (90%) of the Lots in the Property have been conveyed to Owners other than Developer; or

b. When Developer, in its discretion, so determines and declares it in an instrument recorded in the Public Records; or

c. The occurrence of any event described in Section 720.307(1), *Florida Statutes*, or any successor provision thereto, which causes transition of control of the Association.

Upon Turnover, the Owners, other than Developer, shall be obligated to assume control of the Association, subject to Developer's rights set forth in this Declaration and in the Bylaws, which continue beyond Turnover. Notwithstanding Turnover, Developer shall be entitled to elect at least one (1) member of the Board of Directors as long as Developer holds for sale in the ordinary course of business at least five percent (5%) of the Lots in the Property. After Turnover, Developer may exercise the right to vote any Developer-owned voting interests in the same manner as any other Owner, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board of Directors.

4. Co-Ownership. If more than one Person holds the record title to any Lot, all such Persons are Members but only one (1) vote may be cast with respect to such Lot, and no fractional votes are permitted. Before any meeting at which a vote is to be taken, each co-owner must file the name of the authorized voting co-owner with the Secretary of the Association to be entitled to vote at any such meeting, unless such co-owners have filed a general voting authority with the Secretary applicable to all votes until rescinded. Notwithstanding the foregoing, if title to any Lot is held by husband and wife, either co-owner is entitled to cast the vote for such Lot unless and until a written voting authority is filed with the Association designating a voting co-owner. If title is held by a corporation, the secretary of the corporation shall file with the Association a certificate designating the authorized voting representative of the corporation, which shall be effective until rescinded by the corporation.

5. Inspection and Copying of Records. The official records of the Association shall be maintained, and shall be made available to Owners for inspection or photocopying, in accordance with the procedures and requirements of Section 720.303, *Florida Statutes*, and any changes thereto.

6. Extraordinary Action. Certain provisions of this Declaration, the Bylaws, or the Articles may provide the approval of a super-majority of the Members for certain actions. In addition, any such action shall require the written approval of the Developer for so long as the Developer is a Member of the Association.

7. Amplification. The Developer and/or Members of the Association shall elect (or appoint, as applicable) the Board of Directors of the Association, who shall manage the affairs of the Association as set forth herein and in the Bylaws. The Board of Directors shall appoint officers of the Association to administer the operation of the Association. The provisions of this Article are amplified by the Association's Articles and Bylaws, but no such amplification shall alter or amend substantially any of the rights or obligations of the Owners set forth in this Article. Developer intends that the provisions of this Declaration and the Articles and Bylaws be interpreted and enforced to avoid inconsistencies or conflicting results. If any such conflict necessarily results, however, Developer intends that the provisions of this Declaration shall control anything to the contrary in the Articles or Bylaws, and that the provisions of the Articles shall control anything to the contrary in the Bylaws.

8. Voting. Notwithstanding anything to the contrary in the Governing Documents, any provision in the Articles, the Bylaws or this Declaration requiring a vote of the Membership shall be deemed to require the vote of Members in good standing who are entitled to vote.

ARTICLE V

COVENANTS FOR ASSESSMENTS

1. Creation of the Lien and Personal Obligation for the Assessments. Each Owner of a Lot by acceptance of title to such Lot, whether or not it shall be so expressed in any deed or other conveyance, including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any assessments and other charges established and levied pursuant to the terms of this Declaration, including, without limitation, the Annual Maintenance Assessment, and the Initial Contribution Assessment, as applicable. Assessments shall be fixed, established and collected from time to time as hereinafter provided. All such assessments, together with interest thereon from the date due, at the highest lawful rate and costs of collection thereof, including reasonable attorneys' fees, shall be the personal obligation of the Owner of the Lot at the time the assessment was made. In addition, the assessments against Lots shall be secured by a lien in favor of the Association as set forth herein. No Owner of a Lot may waive, avoid or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or common services, or abandonment of his or her Lot.

2. Exempt Property. The following property shall be exempt from the assessments, charges and liens created herein: (a) Common Area; (b) lands dedicated to the County or other governmental authority, any utility company or the public; (c) Lots owned by Developer prior to Turnover; provided Developer has elected to assume the obligation to pay any operating expenses incurred by the Association that exceed the assessments receivable from other Members and other income of the Association ("**Deficit Fund**"); and (d) Lots owned by any designated Builder which are intended to be sold to third-party homebuyers ("**Builder Lots**") during the period of time that Developer is exempt from payment of Assessments pursuant to subsection (c) of this Section 2. No other land or improvements in the Property shall be exempt from these assessments, charges or liens. No Owner may waive, avoid or otherwise escape liability for the assessments by non-use of the Common Area or common services, or abandonment of his or her Lot.

3. Annual Maintenance Assessments.

a. General. The Annual Maintenance Assessments levied by the Association must be used exclusively to promote the recreation, health, safety, and welfare of the Lot Owners, residents, and occupants of the Property, and for the operation, management, maintenance, repair, renewal and replacement (including maintenance of adequate reserves) of the Common Area, the Common Maintenance Areas, and the Surface Water Management System, the payment of any cost sharing, lease, or other agreements to which the Association is a party, and for the performance of the Association's duties under the Governing Documents. The Annual Maintenance Assessment shall be used to fund all general activities and expenses of the Association incurred in the administration of the powers and duties granted under the Governing Documents and pursuant to Law, including the maintenance of adequate maintenance reserve accounts.

b. Amount. The Developer shall establish the initial Annual Maintenance Assessment in effect upon the recording of this Declaration. At least sixty (60) days prior to the end of each fiscal year, commencing with the fiscal year beginning January 1 immediately following the recording date of this Declaration, the Board shall prepare a budget of the estimated common expenses of the Association for the following fiscal year, which may include (without limitation), insurance, utilities, taxes, professional fees, repairs, reserves, maintenance, other operating expenses and capital improvement budget items approved by the Board. The Board shall establish the amount of the Annual Maintenance Assessment for the following fiscal year to meet

the projected financial needs of the Association as set forth in the budget for said fiscal year. The Board shall send a copy of the applicable budget, together with notice of the amount of the Annual Maintenance Assessments to be levied pursuant to such budget, to each Lot Owner at least thirty (30) days before the fiscal year begins. The Board shall determine the date of commencement, the amount of the assessments, and any payment schedule for each fiscal year. Unless later changed by the Board of Directors, the Annual Maintenance Assessments shall be paid in advance in four (4) equal quarterly installments. The Board of Directors' determination as to the amount of the Annual Maintenance Assessment and manner of collection shall be dispositive; provided, however, that the Annual Maintenance Assessment may not exceed the amount of Five Hundred Dollars (\$500.00) per year per Lot and may not be increased by more than fifteen percent (15%) above the Annual Maintenance Assessment for the previous year unless approved by at least two-thirds (2/3) of the votes of the Members, present in person or by proxy, at a meeting duly convened for such purpose, at which a quorum is present. If the Board fails for any reason to determine a budget for any fiscal year, or if the increase in any Annual Maintenance Assessment in excess of fifteen percent (15%) above the previous year is not approved as required above, then the budget and assessments most recently in effect shall continue in effect until a new budget is determined. The Board may revise the budget and adjust assessments subject to the same requirements set forth above for the initial adoption of each annual budget. The Board shall prepare or cause to be prepared a roster of the Owners and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member during normal business hours in accordance with Section 720.303, *Florida Statutes*.

c. Commencement of Annual Maintenance Assessment. The Annual Maintenance Assessment begins to accrue as to all Lots within the Property, excluding any portion of the Property expressly exempted in this Article, on the first day of the month following conveyance of the first Lot to an Owner other than Developer or a Builder. If the operation of this Declaration is extended to Additional Property as provided herein, then the Annual Maintenance Assessment begins to accrue against all Lots within such Additional Property, excluding any portion of the Property expressly exempted by this Article, on the first day of the first month following the recording in the Public Records of a supplement or amendment to this Declaration extending the operation of the Declaration to such Additional Property. The first Annual Maintenance Assessment against all Lots shall be prorated according to the number of months then remaining in the fiscal year. The first Annual Maintenance Assessment against any parcel shall be prorated according to the number of months then remaining in the fiscal year.

4. Initial Contribution Assessment. At the closing of each sale (other than by Developer to a Builder) and each resale of a Lot within the Property, the homebuyer shall pay to the Association an initial contribution in the amount of \$300.00 (the "Initial Contribution Assessment"). The Initial Contribution Assessment shall be in addition to, not in lieu of, the Annual Maintenance Assessment, any Special Assessment or Specific Assessment, levied on the Residential Unit, and shall not be considered an advance payment of such assessments. The Developer shall have no obligation to fund or pay the Initial Contribution Assessment. The Initial Contribution Assessment may be used by the Association to fund all general activities and expenses of the Association incurred in the administration of the powers and duties granted under the Governing Documents and pursuant to Law, including, without limitation, the maintenance of reserve accounts, and ongoing operating expenses and other expenses incurred by the Association, whether incurred prior to or after Turnover.

5. Special Assessments. The Association may levy special assessments in accordance with this section, payable in one or more installments, for the purpose of defraying, in whole or in part, any expense that is not reasonably expected to be incurred on a regular basis, including the cost of any purchase of additional real property for the use and benefit of Owners, or construction, reconstruction, renewal, repair, or replacement of a capital improvement upon the Common Area or Common Maintenance Areas ("Special Assessments"). Prior to Turnover, any Special Assessment shall require approval by the Developer, and at least a majority of the Members, other than Developer, present in person or by proxy, at a special meeting duly convened for such purpose, at which a quorum is present. After Turnover, any Special Assessment shall require approval by a majority of the votes of the Members, present in person or by proxy, at a duly convened special meeting of the Members, at which a quorum is present.

6. Property Taxes. The Association shall timely pay all real estate taxes, special assessments and other taxes, if any, levied on the Common Area, and shall assess each Lot Owner for his or her proportionate amount thereof (in the same proportion as Annual Maintenance Assessments are assessed). At the Board's discretion, such assessment may be payable in a lump sum within thirty (30) days after notice or all or any portion thereof may be assessed as a part of the Annual Maintenance Assessment described above. Each year the Board shall determine after receiving notice of the amount of taxes due, whether such assessment shall be levied, and its amount.

7. Specific Assessments. Any indebtedness of an Owner to the Association arising under any provision of the Governing Documents may be assessed by the Association against the Owner's Lot and enforced as an assessment (a "Specific Assessment"), including, without limitation, any indemnity obligation, any obligation by contract express or implied, and any financial obligation arising because of any act or omission of the Owner or any occupant of such Owner's Lot, including costs and expenses incurred by the Association by reason of any Owner's failure to properly maintain the exterior of his or her Lot and Residential Unit as herein provided.

8. Uniformity of Assessments; Deficit Funding. The Annual Maintenance Assessment and any Special Assessments assessed against all Lots within the Property shall be assessed uniformly in the amount determined in accordance with this Article, except as to any Lots owned by Developer and any Builder Lots during the period when such Lots are exempt from assessments as provided in Section 2.c., of this Article V. All Lots owned by Developer and all Lots owned by Builder shall be exempt from assessments during any period of time that Developer has elected to Deficit Fund. If Developer elects to Deficit Fund, Developer shall be obligated to fund such deficits only as they are actually incurred by the Association, and Developer shall be under no obligation to initially fund any reserves. From and after Turnover, or prior to Turnover in the event that Developer elects not to be exempt from assessments pursuant to Section 2.c., of this Article V, Developer and Builder shall pay the Annual Maintenance Assessment amount attributable to any Lots then owned by Developer or Builders, as applicable, provided, in any event, that Developer shall have no obligation to fund or pay the assessments described in Section 4 of this Article V. This provision is not and shall not be construed as a guaranty or representation as to the level of assessments imposed under the provisions of this Article.

9. Certificate of Payment. The Association or any management company engaged by the Association to handle the day-to-day operations of the Association, shall furnish to any interested Person a certificate signed by an officer of the Association, or representative of the management company, setting forth whether assessments against specific lands have been paid and, if not, its unpaid balance. To defray its costs, the Association may impose a reasonable, uniform charge for issuing such certificates. A properly executed certificate of the Association or the management company, as applicable, as to the status of assessments is binding on the Association as of the date of issuance.

10. Lien for Assessments. All sums assessed to any Lot, together with interest, late charges, and all costs and expenses of collection, including reasonable attorneys' fees, are secured by a lien against such Lot which is hereby reserved for the benefit of the Association and which shall be enforceable through appropriate legal proceedings.

11. Remedies of the Association.

a. Personal Obligation. Any assessment not paid within thirty (30) days after its due date shall be delinquent and shall bear interest from the due date, at the rate established from time to time by the Board of Directors, not to exceed the maximum lawful rate from time to time permitted under the laws of the State of Florida. The Board of Directors shall also have the right to impose a late fee against any Owner who is more than fifteen (15) days delinquent in the payment of any assessment, in an amount determined by the Board not to exceed the greater of: (i) Twenty-Five Dollars (\$25.00), or (ii) five percent (5%) of the amount past due. The Association

may bring an action at law against any Owner personally obligated to pay such assessment and/or may foreclose the lien against the Lot and any Residential Unit located thereon in accordance with subsection 11.c. below. No Owner may waive, avoid or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or common services, or abandonment of his or her Lot, or for any other reason except as determined by a court of competent jurisdiction. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing, waiving, or otherwise impairing the Association's lien, or its priority.

b. Lien for Assessments. When any sums assessed to any Lot are delinquent, the Association may record a claim of lien against such Lot signed by an officer of the Association, in accordance with and subject to the provisions of Section 720.3085, *Florida Statutes* or any successor provision. Each such assessment, together with interest, late charges and all costs and expenses of collection, including reasonable attorneys' fees, also is the personal obligation of the Person who was the Owner of such Lot when the assessment fell due. The personal obligation for delinquent assessments does not pass to an Owner's successors in title unless assumed expressly in writing.

c. Foreclosure. The Association's lien against Lots may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property from time to time may be foreclosed in the State of Florida. In any such foreclosure, the Owner is required to pay all costs and expenses of foreclosure, including reasonable attorneys' fees, and any assessments against his or her property that become due during the period of foreclosure. All such costs and expenses and assessments are secured by the lien foreclosed. The Association has the right to bid at the legal sale to acquire the property foreclosed, or to acquire such property by deed or other proceeding or conveyance in lieu of foreclosure, and thereafter to hold, convey, lease, encumber, and otherwise deal with such property as an owner, but for purposes of resale only.

12. Homesteads. By acceptance of title to a Lot, the Owner of each Lot is deemed to acknowledge that the assessments established by this Article are for the direct benefit of any homestead thereon and that the Association's lien has priority over any such homestead.

13. Subordination of Lien. The lien for the assessments provided in this Article is subordinate to the lien of any First Mortgage, unless the Association's lien was recorded prior to the recording of the Mortgage. Sale or transfer of any portion of the Property does not affect the assessment lien, except that the sale or transfer pursuant to a First Mortgage foreclosure or any proceeding or conveyance in lieu thereof, extinguishes the assessment lien as to payment that became due before such sale or transfer, unless such assessment was secured by a claim of lien for assessments that is recorded prior to recording of said First Mortgage. Any assessment extinguished by the foreclosure of a First Mortgage or conveyance in lieu thereof, shall be deemed to be an expense of the Association collectible from all Owners (including the foreclosing First Mortgagee) in accordance with the Association's normal assessment procedures. No such sale or transfer relieves such portion of the Property from liability for assessments thereafter becoming due, or from the Association's lien. The Association shall report to any First Mortgagee any assessments remaining unpaid for more than thirty (30) days and shall give such First Mortgagee thirty (30) days in which to cure such delinquency before instituting foreclosure proceedings, provided the First Mortgagee has given the Association written notice of its mortgage, designating by a proper legal description the portion of the Property encumbered and stating the address to which notices shall be given. Nothing herein shall be construed to impose on the First Mortgagee any duty to collect assessments.

ARTICLE VI

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

1. Common Area and Common Maintenance Areas.

a. General. Subject to the rights of the Developer and the Owners, as set forth in this Declaration, the Association has exclusive management and control of the Common Area, and all of its improvements, fixtures, furnishings, equipment, and other related personal property. The Association shall maintain the Common Area in a safe, clean, attractive, sanitary and serviceable condition, and in good order and repair. The Association's duties with respect to the Common Area commence upon substantial completion of each facility, whether or not title has been conveyed to the Association, and include the management, operation, maintenance, repair, replacement, and renewal of all improvements, equipment, and tangible personal property installed in the Common Area (including, without limitation, as part of the Work), and any replacements or additions thereto made in accordance with the provisions of the Governing Documents. The cost of maintaining, repairing, and replacing any Common Area shall be a common expense of the Association to be collected, and paid by the Lot Owners, in the manner prescribed by this Declaration. The Association shall maintain the Common Maintenance Areas designated as such by the Developer, the Association or this Declaration in a safe, clean, attractive, sanitary, and serviceable condition, and in good order and repair. The Association's duties with respect to each Common Maintenance Area commences upon designation of same as a Common Maintenance Area, and includes the management, operation, maintenance, repair, replacement, and renewal of all improvements to, and equipment and tangible personal property installed in, the Common Maintenance Areas, and any replacements or additions thereto made in accordance with the provisions of the Governing Documents. The cost of maintaining, repairing or replacing any Common Maintenance Areas shall be a common expense of the Association to be collected, and paid by the Lot Owners, in the manner prescribed by this Declaration.

b. Roadways and Entry Gate Facilities. All roadways and entry gate facilities associated therewith, if constructed, within the Property are intended to be private and owned and maintained by the Association as Common Area. Neither the Developer nor the Association shall have any obligation to install or maintain a gate. The Association shall maintain and repair any private roadways and rights-of-way within the Property- at common expense.

c. Surface Water Management System. The Association shall operate and maintain the Surface Water Management System in accordance with the permits issued by the Florida Department of Environmental Protection, the SJRWMD, and the ACOE and all regulations or conditions applicable thereto, including all lakes, ponds, streams, ditches, culverts, upland preserves, dry detention and/or wetlands located within the Property which serve as part of the Surface Water Management System, but excluding those portions located on a Lot and to be maintained by the Owner of such Lot in accordance with Article VII of this Declaration, including, without limitation, associated improvements and equipment, any other wetland, but not including any such areas, improvements, or equipment maintained by the County. All maintenance obligations of the Surface Water Management System of the Association, if any, shall be performed as ordered by the Board of Directors of the Association, and the cost of such maintenance incurred by the Association pursuant to this subsection, shall be a common expense of the Association to be collected, and paid by the Lot Owners, in the manner prescribed by this Declaration. Any modification of the Common Area that would adversely affect the Surface Water Management System must have the prior written approval of the SJRWMD. The provisions of this subsection do not supersede the provisions of Article VII hereof that require Owners of Lots bordering on or encompassing ponds, lakes, marshes or wetlands to maintain the shoreline thereof adjacent to their Lots.

d. Landscaped and Grassed Areas.

i. Unless conveyed or dedicated to the County or other governmental entity, the Association shall maintain, repair and replace all landscaping and grassed areas within Common Area, Common Maintenance Area or Association easement areas, except such portions of the aforesaid areas to be maintained by Lot Owners under the provisions of Article VII hereof. The foregoing shall include all sprinkler systems, pumps and other related improvements installed by Developer in such areas.

ii. For so long as Developer owns any ground wells within the Property, Developer grants to the Association a revocable license to use the water drawn from the ponds, lakes or ground wells within

the Property and supplied to the Association for the purpose of irrigating the above described landscaped areas, subject to applicable permits and the rights of the Developer. The Developer shall have the sole right to allocate the usage of the water among itself, the Association and others.

e. Fences and Walls. The Association shall maintain any fences and walls designated as Common Maintenance Areas by the Developer or the Association.

f. Signage. The Association shall maintain signage within the Property identifying the community developed therein.

g. Street Lights. Developer, the County or the Town may but are not obligated to establish a municipal service taxing unit, municipal service benefit unit, or similar mechanism (sometimes referred to in this Declaration as "MSTU/MSBU"), to provide for construction, operation or maintenance of street lighting or any other service or benefit to or for the Property authorized under the terms of this Declaration or the MSTU/MSBU, or by the applicable governmental authority. In such event, the costs incurred by the MSTU/MSBU may be billed directly to the Owners or to the Association for subsequent assessment to the Owners and Lots. Unless a MSTU/MSBU is established for the purpose of maintaining and paying for street lights within the rights-of-way within the Property, the Association shall either (i) maintain, repair and replace such street lights installed by Developer as part of the Work, and pay the electric charges for same, or (ii) contract with the County or Town for the installation, maintenance, repair and replacement of such street lights, and pay the electric charges for same, and in either of such events, all costs and expenses incurred by the Association in connection therewith shall be a common expense of the Association to be collected, and paid by the Lot Owners, in the manner prescribed by this Declaration.

h. Insurance. The Association shall keep any insurable improvements located on the Common Area or Common Maintenance Areas if the improvements are owned by the Association and/or if the Association has responsibility for repair or replacement of same, including fixtures and personal property of the Association, insured to the maximum insurable replacement value, as determined by the Board of Directors. The insurance shall provide coverage against loss or damage by fire or other hazards covered by a standard extended coverage endorsement and such other risks as from time to time are customarily covered with respect to improvements similar in construction, location and use, including vandalism and malicious mischief, and flood and water damage, if the Common Areas are at any time located in a federally designated flood area and flood insurance is available under the National Flood Insurance Program. The Association shall carry public liability insurance in amounts and with coverage as determined by the Board of Directors, but not less than \$1,000,000.00 for bodily injury and property damage for any single occurrence. To the extent available, the Association's insurance must provide for waiver of subrogation by the Association's insurer against any Owner because of unintentional acts or omissions. The Association may also carry such other types of insurance as the Board may deem appropriate, with such insureds, deductibles provisions and coverage types and amounts as shall be determined by the Board. Premiums for insurance carried by the Association shall be a common expense of the Association to be collected, and paid by the Lot Owners, in the manner prescribed by this Declaration. The Association may self-insure against any risk.

i. Right to Repair Private Roadways and Street Lights. The Town of Malabar shall have the right, but not the obligation, to maintain and repair any private roadways within the Property and associated rights of way, and improvements thereon. The Town may use the Special Assessment powers provided for in this Declaration to pay for such maintenance; provided, however, that the Town shall not be required to obtain any approval of the Members before instituting such Special Assessment. Any Owner who does not pay a special assessment assessed against such Owner's Lot pursuant to this subsection may have a lien placed upon their property, which lien shall be superior to any other lien prescribed by this Declaration and Chapter 720, *Florida Statutes*, and may be enforced as provided by law. In the event the Town does undertake the task of maintaining and/or repairing said private roadways and/or rights of way, including any improvement thereon, the Association does hereby assign to the Town any and all assessment rights to collect and retain Special Assessments instituted

pursuant to this subsection as they become due and to exercise such right as provided herein until the Town receives full reimbursement, including any costs, expenses and attorney's fees incurred for any such repair and/or maintenance, including such costs, expenses and attorney's fees incurred in enforcing the Town's rights as provided herein. The Town shall not be responsible to the Association, Owner, or any other person or entity as a consequence of the determination not to exercise or of the determination to exercise any of the rights granted to the Town or for failure of the Town to perform any rights granted to the Town herein or by virtue of applicable law. No Owner shall be discharged from any obligations provided herein without the written consent of the Town. This subsection may not be amended without the written approval of the Town Council.

2. Services. The Association may obtain and pay for the services of any Person, including the Developer or an affiliated entity of Developer, to manage its affairs to the extent it deems advisable and may contract for such other personnel as the Association determines are necessary, convenient, or desirable for the proper operation of the Common Area, the Common Maintenance Areas, or the performance of the Association's responsibilities hereunder, whether such personnel are furnished or employed directly by the Association or by any Person with whom it contracts. The Association may obtain and pay for legal and accounting services necessary, convenient, or desirable in connection with the operation of the Property or the enforcement of the Governing Documents or the Association's Rules

3. Rules. The Association may from time to time adopt, alter, amend, rescind, and enforce reasonable Rules governing the use of the Property including, without limitation, the Lots, the Residential Units and the Common Area, so long as such Rules are consistent with the rights and duties established by the Governing Documents. The validity of the Association's Rules and their enforcement shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of the Property as a residential community. The Rules shall be promulgated, and may be amended from time to time, by a majority vote of the Board of Directors. For so long as Developer owns any portion of the Property, no regulation, decision, amendment or other action that reasonably may have the effect of waiving, lessening, or otherwise interfering with the scope or enforcement of any Rules or restriction imposed on the Property by this Declaration will be valid without the prior written approval of the Developer. No Owner or other Person occupying any portion of the Property, or any invitee, shall violate the Association's Rules for the use of the Property, and all such Owners or other Persons shall at all times do all things reasonably necessary to comply with the Rules. Wherever any provisions of this Article prohibit any activity, condition, or structure within the Property, such restriction or prohibition is self-executing unless and until the Association issues Rules expressly permitting the same.

4. Implied Rights. The Association may exercise any right, power, or privilege given to it expressly by the Governing Documents and every other right, power, or privilege so granted or reasonably necessary, convenient, or desirable to effectuate the exercise of any right, power, or privilege so granted.

5. Access by Association. The Association has a right of entry on to all portions of the Property to the extent reasonably necessary to exercise any right granted or to discharge any duty imposed by the Governing Documents, or for any other purpose reasonably related to the Association's performance of any duty imposed, or exercise of any right granted, by the Governing Documents. Such right of entry must be exercised in a peaceful and reasonable manner at reasonable times and upon reasonable notice whenever circumstances permit, except in the event of an emergency and only then to the extent necessary to prevent personal injury or property damage. No Owner shall arbitrarily withhold consent to entry by the Association for the purpose of discharging any duty or right if such entry is upon reasonable notice, at a reasonable time, and in a peaceful and reasonable manner. The Association's right of entry may be exercised by its agents, employees, contractors, and managers.

6. Maintenance Reserves. The Board may annually prepare a maintenance reserve budget which shall take into account the number and nature of replaceable assets, the useful life of each asset and the anticipated repair and replacement cost. If a maintenance reserve budget is established, the Board shall set the required maintenance reserve contribution, in an amount sufficient to permit meeting the projected needs of the Association, as shown on the maintenance reserve budget, with respect both to amount and timing of Annual

Maintenance Assessments over the period of the budget. Any maintenance reserve contribution required shall be fixed by the Board and included within and distributed with the budget, as provided in Article V, Section 3 of this Declaration.

IF MAINTENANCE RESERVES ARE ESTABLISHED, DEVELOPER SHALL BE UNDER NO OBLIGATION TO FUND OR PAY THE MAINTENANCE RESERVE CONTRIBUTIONS- UNLESS OTHERWISE REQUIRED BY LAW. NOTHING IN THIS SECTION OR THIS DECLARATION SHALL REQUIRE THE ASSOCIATION TO COLLECT OR ASSESS FOR CAPITAL RESERVES. IF MAINTENANCE RESERVES ARE COLLECTED, NO REPRESENTATION IS MADE THAT THE AMOUNTS COLLECTED WILL BE SUFFICIENT FOR CAPITAL REPLACEMENTS OR REPAIRS.

ARTICLE VII

OBLIGATIONS OF OWNERS

1. Maintenance. In addition to any other express maintenance obligation of the Owners under this Declaration, each Owner at such Owner's expense, shall maintain in good order and repair and keep in a safe, clean, attractive, and sanitary condition, all portions of his or her Lot, and the improvements located thereon, or adjacent thereto, including, without limitation, any Surface Water Management System areas located within the Lot and not designated as Common Maintenance Area. Each Owner of a Lot on which improvements have been constructed shall maintain the lawn and other landscaped areas located within private right-of-way or adjacent Common Area, if any, between such Owner's Lot boundary and the paved portion of the street in a neat and attractive condition. Landscape maintenance shall include regular lawn mowing, fertilizing, pest control, irrigation, edging, replacement of street trees, and repair and replacement of sidewalks abutting such Owner's Lot. Each Owner of a Lot on which a pond, lake, marsh or wetland is located shall have the following obligations with respect to the shoreline of the pond, lake, marsh or wetland, from the rear boundary of such Owner's Lot to the water line of such pond, lake marsh or wetland, as applicable: (i) to clean and keep such area free of litter and debris, (ii) to exercise and maintain appropriate erosion control methods (including rip-rap and plantings, if necessary, or as required by the SJRWMD Permit, the Association's Rules or the Design Guidelines, as applicable), and (iii) to maintain, irrigate, mow, weed, fertilize and conduct such other routine maintenance of the lawn, landscaping and landscape materials, in accordance with the SJRWMD Permit, the Rules of the Association or the Design Guidelines, as applicable, from time to time. If the area between the rear of an Owner's Lot and the water line of any pond, lake, marsh or wetland is required to be maintained in its natural condition with native plant material, then such Owner shall not plant any non-native landscaping or landscape materials in such area or remove or alter any native plant material from such area, unless permitted by the Association, the SJRWMD Permit, and any applicable County requirements and criteria. All cleaning and maintenance by Owners, required by this section, shall be conducted in accordance with and subject to the requirements and limitations set forth in the Design Guidelines, the Association's Rules, the SJRWMD Permit, and any applicable County requirements and criteria.

2. Casualty Damage. In the event of damage or destruction by fire or other casualty to the improvements on any portion of the Property, unless the improvements are completely destroyed, the Owner shall repair or rebuild such damaged or destroyed improvements in a good and workmanlike manner, within a reasonable time not to exceed one year. In all cases, all debris must be removed and the parcel restored to an orderly condition as soon as possible, but not to exceed one hundred twenty (120) days after such damage or destruction.

ARTICLE VIII

ARCHITECTURAL CONTROL

The Property is subject to the Twin Rivers of Malabar Community Guidelines, as may be amended and supplemented from time to time ("**Design Guidelines**"). All architectural design, construction and improvements, whether the initial construction on a Lot or any modifications thereto, are subject to review and approval in accordance with the Design Guidelines, which may be enforced pursuant to the terms of this Declaration.

ARTICLE IX

AMENDMENTS

1. By Developer. Prior to Turnover, Developer shall have the right to unilaterally amend this Declaration for any reasonable purpose, except as prohibited by applicable Law. Any amendment made by Developer pursuant to this section shall not require the joinder or consent of any other Person.
2. By Association. This Declaration may be amended by the Association, from time to time, with the approval of at least two-thirds (2/3) of the votes of the Members, present in person or by proxy, at a meeting duly convened for such purpose, at which a quorum is present; provided, that prior to Turnover, any amendment of this Declaration by the Association shall require the prior written consent of Developer.
3. Relating to Surface Water Management System. Any amendment to this Declaration which affects the Surface Water Management System or the operation or maintenance thereof shall require the prior written approval of the SJRWMD.
4. Validity of Amendments. No amendment may remove, revoke, or modify any right or privilege of the Developer without the written consent of the Developer (or the assignee of any right or privilege of Developer affected by such amendment). If an Owner consents to any amendment to this Declaration, the Articles or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment to this Declaration will become effective upon recording unless a later effective date is specified in the amendment. A copy of any amendment to this Declaration shall be provided to the Owners within thirty (30) days after recording. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.
5. Mortgagee Consent. Except to the extent specifically required by Section 720.306(1)(d)1, *Florida Statutes*, amendments to this Declaration shall not require the consent of any Mortgagee, and all amendments shall be valid against all Mortgagees regardless of their consent. Any Mortgagee that receives written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Board does not receive a written response from the Mortgagee within sixty (60) days of the date of the Board's request, provided such request is delivered to the Mortgagee in a manner permitted under Section 720.306(4), *Florida Statutes*.

ARTICLE X

COMPLIANCE AND ENFORCEMENT

1. Compliance. Every Owner, occupant, and visitor to a Lot shall comply with the Governing Documents and the Rules, and shall be subject to sanctions for violations as described in this Article. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents or

Rules, whether by such Owner or the occupants or visitors to such Owner's Lot, and for any damage to the Common Area or Common Maintenance Areas that such Owner, its occupants or visitors may cause.

2. Enforcement; Remedies for Non-Compliance. The Developer, the Association, and any affected Owner shall have the right to enforce the Governing Documents and the Rules by any appropriate proceeding at law or in equity. In addition, the Board may impose sanctions for violation of the Governing Documents or Rules, including, without limitation, those listed below and any others described elsewhere in the Governing Documents, the Rules, or applicable Law.

a. Sanctions Requiring Prior Notice and Hearing. After written notice and an opportunity for a hearing in accordance with procedures adopted by the Board, pursuant to Article VI Section 1(c) of the Bylaws, the Board may:

i. impose reasonable monetary fines, not to exceed \$100.00 for a single violation or \$100.00 per day in the case of a continuing violation; provided, in the case of a continuing violation, only a single notice and opportunity for hearing is required. The Board may adopt a schedule of fines establishing a range of fines for particular types of violations, which range may vary depending on the nature of the violation. There is no limit on the aggregate amount of any fine for a continuing violation;

ii. suspend the right of any Owner and occupants of a Lot to use any Common Area (other than as required to provide vehicular and pedestrian access and utilities to the Lot which they own or occupy) for a reasonable period of time;

iii. suspend services the Association provides to the Lot if the Owner is more than ninety (90) days delinquent in paying any assessment or other charge owed the Association, which suspension may continue until such assessments or other charges have been paid in full; provided, nothing herein shall authorize the Board to suspend essential utilities (*i.e.*, electricity, natural gas, or water);

iv. exercise self-help or take action to abate any violation of the Governing Documents or Rules in a non-emergency situation (including removing personal property that violates the Governing Documents or Rules), except as to Common Area as to which Section 2.b.ii. below shall control;

v. without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who causes damage to any property within the Property owned by others, or fails to comply with the terms and provisions of Article VII and the Design Guidelines, from continuing or performing any further activities in the Property;

vi. levy Specific Assessments to cover costs the Association incurs in bringing a Lot into compliance with the requirements of the Governing Documents or Rules, or in repairing damage to any portion of the Common Area or Common Maintenance Area resulting from actions of any Owner or occupant of a Lot, their contractors, subcontractors, agents, employees, visitors or invitees; and

vii. record a notice of violation with respect to any Lot on which a violation exists.

If, after notice and an opportunity for a hearing, the violation continues or recurs within twelve (12) months after the date of such notice, the Board may impose any of the above sanctions without further notice or opportunity for another hearing.

b. Other Sanctions. The Board may take the following actions to obtain compliance with the Governing Documents or Rules without prior notice or a hearing, provided they are approved at a properly

noticed Board meeting and, upon approval, the Owner (and occupant, if applicable) is notified by mail or hand delivery:

- i. suspend the vote allocated to any Lot if the Owner is more than ninety (90) days delinquent in paying any monetary obligation to the Association pursuant to Article V, which suspension may continue until all of such Owner's monetary obligations to the Association are paid in full;
- ii. suspend the right of any Owners and occupants of a Lot to use any Common Area (other than as required to provide vehicular and pedestrian access and utilities to the Lot which they own or occupy) if the Owner is more than ninety (90) days delinquent in paying any monetary obligation to the Association, which suspension may continue until all of such Owner's monetary obligations to the Association are paid in full;
- iii. exercise self-help or take action to abate a violation on a Lot in any situation that requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);
- iv. exercise self-help or take action to abate a violation on the Common Area under any circumstances;
- v. require an Owner, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Lot that is in violation of any requirements of the Governing Documents or Rules and to restore the property to its previous condition;
- vi. enter the property and exercise self-help to remove or cure a violating condition if an Owner fails to take action pursuant to subsection 2.b.v. above within ten (10) days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or
- vii. bring suit at law for monetary damages or in equity to stop or prevent any violation, or both.

3. The Developer's Right to Impose Sanctions. In the event that the Association fails or refuses to take action or impose sanctions under this Article after notice from the Developer of a violation of the Governing Documents or Rules, the Developer shall have the right to levy monetary fines on behalf of the Association after notice and hearing (if required) in the same manner as the Association under Section 2 above. In addition, the Developer may exercise self-help or take action to abate a violation or bring suit at law or in equity in the same manner as the Association under this Section 3.

4. Attorneys' Fees. In any action to enforce the Governing Documents or any Rules against any Owner, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees and court costs, reasonably incurred in such action. Notwithstanding the foregoing, in no event may such costs and expenses be recovered against the Association or Developer, unless otherwise required by Law. If the Association (or Developer, on behalf of the Association) is the prevailing party against any Owner, such costs and expenses, including reasonable attorneys' fees, may be assessed against the Owner's Lot, as provided in Article V.

5. No Waiver. Failure by the Developer, the Association or any Owner to enforce any covenant, condition or restriction contained herein, in the other Governing Documents or in the Rules, or any delay in such enforcement, will not constitute a waiver of the right to do so at any time, nor shall such failure to enforce or delay in enforcement create any liability for the Developer or the Association to any Owner or any other Person.

6. Enforcement by SJRWMD or ACOE. Notwithstanding any other provisions contained elsewhere in this Declaration, SJRWMD and the ACOE shall have the rights and powers enumerated in this section. SJRWMD and the ACOE shall have the right to enforce, by a proceeding at law or in equity (including, without limitation, bringing a civil action for injunction and/or penalties), the provisions contained in this Declaration which relate to the maintenance, operation, and repair of the Surface Water Management System and/or jurisdictional lands subject to the regulation of SJRWMD and/or the ACOE. Any repair or reconstruction of the Surface Water Management System shall be as permitted, or if modified, as approved by SJRWMD and/or the ACOE, as applicable.

ARTICLE XI

GENERAL PROVISIONS

1. Term and Renewal. The provisions of this Declaration shall run with and be binding on the Property, and all other lands to which it may hereafter be extended as provided herein, and shall be binding on all Persons having any right, title, or interest therein, their respective heirs, successors, and assigns and shall inure to the benefit of and be enforceable by the Developer, the Association or any Owner, their respective heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded, whereupon these provisions shall be extended automatically for successive renewal periods of ten (10) years each, unless Members representing at least two-thirds (2/3) of the total votes of the Association elect not to reimpose this Declaration as evidenced by an instrument executed by such Owners and recorded in the Public Records during the six (6) month-period immediately preceding the beginning of any renewal period.

2. Interpretation. Unless the context expressly requires otherwise, the use of the singular includes the plural and vice versa; the use of one gender includes all genders; the use of the terms "including" or "include" is without limitation; and the use of the terms "will", "must", and "should" have the same effect as the use of the term "shall". Wherever any time period is measured in days, if any such time period expires on a Saturday, Sunday, or national bank holiday, it shall be extended to the next succeeding calendar day that is not a Saturday, Sunday, or national bank holiday. The terms "Lot" and "Property" mean all or any portion applicable to the context and include any and all improvements, fixtures, trees, vegetation and other property from time to time situated thereon, and the benefit of all appurtenant easements. This Declaration shall be construed liberally in favor of the party seeking to enforce its provisions to effectuate its purpose of protecting and enhancing the value, marketability, and desirability of the Property by providing a common plan for the development and enjoyment thereof. Headings and other textual divisions are for indexing purposes only and are not to be used to interpret, construe, apply or enforce any substantive provisions. The provisions of this Section apply to the interpretation, construction, application, and enforcement of all the Governing Documents.

3. Reservation of Right to Release Restrictions. Subject to applicable zoning requirements, in each instance where a structure has been erected, or the construction thereof is substantially advanced, in such a manner that some portion of the structure encroaches upon any set-back or easement area or the Common Area, or otherwise violates this Declaration, Developer reserves for itself the right to release the portion of the Property from the encroachment and to grant an exception to the requirements of this Declaration without the consent or joinder of any Person irrespective of who owns the affected lands, so long as Developer, in the exercise of its sole discretion, determines that the release or exception will not materially and adversely affect the health and safety of Owners, the value of adjacent Lots and the overall appearance of the Property. Upon granting of an exception to an Owner, the exception granted shall be binding upon all subsequent Owners of the affected Lots.

4. Rights of First Mortgagees. Any First Mortgagee and insurers or guarantors of First Mortgages have the following rights:

a. Inspection. During normal business hours, and upon reasonable notice and in a reasonable manner, to inspect current copies of the Governing Documents and Regulations and the books, records, and financial statements of the Association; and

b. Financial Statements. Upon written request to the Secretary of the Association, to receive copies of the annual financial statements for the immediately preceding fiscal year of the Association, provided, however, the Association may make a reasonable, uniform charge to defray its cost incurred in providing such copies; and

c. Meetings. To designate a representative to attend all meetings of the membership of the Association, who is entitled to a reasonable opportunity to be heard in connection with any business brought before such meeting but in no event entitled to vote thereon.

d. Notices. By written notice to the Secretary of the Association, and upon payment to the Association of any reasonable, uniform annual fee that the Association from time to time may establish for the purpose of defraying its costs, any First Mortgagee, insurer, or guarantor of a First Mortgage shall be entitled to receive any notice that is required to be given to the Class A members of this Association under any provision of the Governing Documents. Additionally, any such First Mortgagee, insurer, or guarantor of a First Mortgage giving written notice to the Association shall be entitled to written notice of: (i) any condemnation or casualty loss affecting a material portion of the Property or any Lot encumbered by its First Mortgage; (ii) any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Lot encumbered by its First Mortgage; (iii) lapse, cancellation or material modification of any insurance coverage or fidelity bond maintained by the Association; and (iv) any proposed action requiring the consent of a specified percentage of mortgage holders.

5. Provisions Inoperative as to Initial Construction. Nothing contained in this Declaration shall be interpreted, or enforced to prevent Developer, or Developer's contractors, subcontractors, agents, employees, successors or assigns from doing or performing on all or any part of the Property owned or controlled by Developer whatever it or they determine to be necessary, convenient, or desirable to complete the Work. The foregoing includes the right for Developer and any Person designated by Developer in writing to construct and use signs, construction trailers, or buildings, model units, design centers, and offices for sales and resales of Lots.

6. Assignment. Developer may assign to any Person, including persons engaged in the business of constructing improvements on Lots for resale purposes, all or some of the rights, privileges and exemptions granted herein to Developer in connection with the ownership, use, or development of a portion of the Property. Any such assignment shall be non-exclusive unless otherwise noted, and shall be effective only for so long as such right, privilege or exemption would inure to the benefit of Developer.

7. Severability. Invalidation of any provision of the Governing Documents by judgment or court order will not affect any other provision, all of which will remain in full force and effect; provided, however, any court of competent jurisdiction is hereby empowered, to the extent practicable, to reform any otherwise invalid provision contained in the Governing Documents when necessary to avoid a finding of invalidity while effectuating Developer's intent of providing a comprehensive plan for the use, development, sale, and beneficial enjoyment of the Property.

8. Notices. Any notice required to be sent to any Owner, occupant or tenant of any Residential Unit, the Developer or the Association under the provisions of this Declaration shall be delivered by such means as required or permitted by the Bylaws, or applicable law.

[Signatures on following pages]

TOWN OF MALABAR COUNCIL MEETING

AGENDA ITEM NO: 10.c.
Meeting Date: March 1, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Public Hearing (continued from 2/1/2021) on Road Improvement Waiver Request - Right of Way known as Beekeeper Lane – Applicant: Adam Hayward

BACKGROUND/HISTORY:

Adam Hayward of 2735 Woodside Avenue, Winter Park, Florida, and property owner of parcel id 29-37-03-00-38 with no address assigned on Beekeeper Lane is seeking a Road Improvement Waiver. The Town of Malabar's Comprehensive Plan and Land Development Regulations defines Beekeeper Lane as a *minor collector* roadway with a Level of Service "D" designation and requires an improved/accepted travelway within a 70-foot right-of-way. *Beekeeper Lane currently is named only for the purpose of firefighting (effective 2007) in the rights of way accepted streets for The Town of Malabar.*

Request from Applicant dated February 1, 2021:

- 1.) That the Town accept approximately 1660' of Beekeeper's current footprint as an *Interim Roadway* until appropriate dedications have been made to bring the roadway to its 70' width.
- 2.) That the conditions of this acceptance do not impede his ability to have a building permit issued in a timely manner.

As a condition to this acceptance, applicant would agree to the following:

- 1.) Provide much needed maintenance on the current road, including filling dips in elevation, trimming and removing hedges in swale, improving swale drainage towards Corey Rd etc. while working with the property owner on the corner (Jones) to keep the maintenance as unobtrusive as possible.
- 2.) Create a large turnaround area on the available 55' of Right of Way where it meets applicant's proposed driveway.
- 3.) Enter into an agreement with the Town stating that he would personally continue to keep the road maintained until the road is accepted for maintenance, at which time he would be responsible for paying his portion of the road improvement.
- 4.) He would also agree to have these agreements attached to the deed of my land so that any subsequent owners would be responsible to uphold them, should the council find that condition necessary.

Council requested an inquiry from the neighboring property for additional Right of Way at the February 1, 2021 Meeting:

Mr. Hayward provided information via an email on February 2, 2021 stating the "Following up on the hearing last night I spoke to the owner of lot 291 this morning and she has no interest in dedicating her portion of the ROW to the Town".

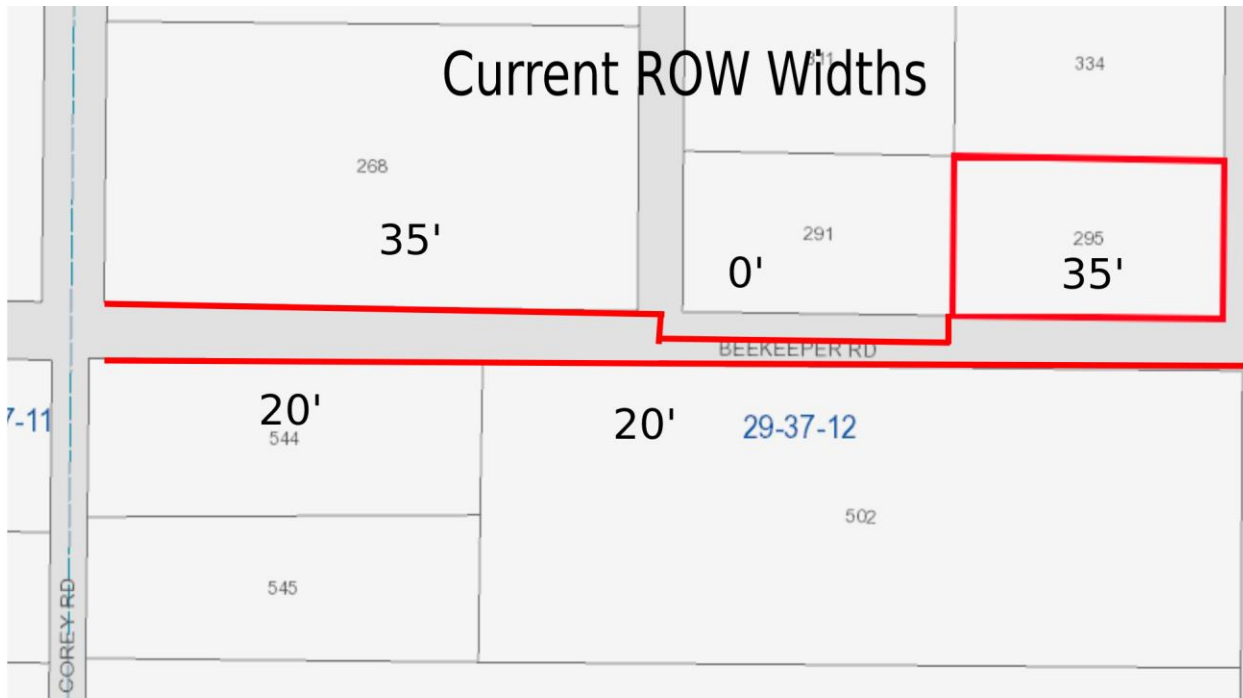
ATTACHMENTS:

Applicant's submittal from February 1, 2021

ACTION OPTIONS:

Action of Request: Approve Waiver; Deny Waiver; Approve Waiver with Conditions

Current Right of Way Dedications Exhibit from the location of Request:



Current Adopted Road Improvement Exhibits from the Town of Malabar Code of Ordinances, Chapter 13 condensed to the following table of information:

Chapter Exhibit:	13	Overall ROW	Overall Roadway	Travel Lane	Curb Requirement	Road Material
A		50'	24'	12'	Yes	Paved
B1		60'	24'	12'	No	Paved
B2		60'	24'	12'	No	Un-Paved
B3		25'	18'	9'	No	Un-Paved
B4		50'	22'	11'	No	Un-Paved
B5-Country Lane		50'	22'	11'	No	Un-Paved
B6-Country Lane		25'	18'	9'	No	Un-Paved

Applicant requests Consideration of Waiver from The Town of Malabar Road Improvement Regulations, Town of Malabar Code of Ordinances, Chapter 13, Section 13-38, Precondition to issuance of building permit – Completion of Road for Beekeeper Lane as adopted within the Town's Comprehensive Plan as a Minor Collector Road and incorporated into the Malabar Code of Ordinances.

(c) Waiver. The Town Council may grant a waiver to the provisions of section 13-38(b)(1) and (2).

(1) The below stated procedures shall in all respects be utilized for consideration of a waiver to subsection (b)(1) and (2). In order to authorize a waiver under this section the Town council must find the following:

- a. That special conditions and circumstances exist and that the presence of which would make complying with section 13-38(b)(1) or (2) unreasonable. Financial or economic reasons, conditions or circumstances shall not be grounds for a waiver under this section.
- b. The special conditions and circumstances are not caused in any way by the owner or applicant.
- c. That such waiver will not be injurious or detrimental to the public welfare.
- d. That the waiver granted is the minimum waiver that will make possible the reasonable use of the land.
- e. As a condition to the issuance of a waiver the owner of the property for which such waiver is granted shall dedicate the right of way required by section 13-39 of the Code, if no such public right of way exists at the time of the granting of a waiver authorized herein, through the furthest boundary of the lot of record on which a principal structure or accessory structure is to be constructed.

(2) The owner of the property for which such waiver is granted shall also execute an agreement in recordable form with the town that binds the owner and his/her successors in interest of the property for which such waiver is granted to pay for the completion of the entire width of the right of way as it existed on the date the waiver is granted by the town council through the furthest boundary of the lot of record on which a principal structure or accessory structure is constructed in the event the road is completed by another. The agreement shall provide, in part, that should the owner of the property for which the waiver was granted fail to pay for the completion of the entire width of the right of way through the furthest boundary of the lot of record when it is constructed by another then the town may reimburse the person who completed the road portion through the furthest boundary of the lot of record of the owner who was granted the waiver and the Town shall be entitled to record a lien against the property for which such a waiver was granted for the cost of the reimbursement and/or the town may withhold the issuance of any future building permit, development order or development permit, for the property for which such waiver is granted.

(3) By way of example, and not by way of limitation, "special circumstances" may include:

- a. Environmental conditions, and restrictions exist which prohibit any disturbance of such area and make it impossible to complete the road to the

furthest extent of the property; [for example where mitigation is not possible];
or

- b. There exists no dedicated public right of way immediately abutting and beyond the furthest boundary of the lot of record for which the waiver applies;
or
- c. The property immediately abutting and beyond furthest boundary of the lot of record for which the waiver applies is owned by a governmental agency and is designated as conservation or environmentally sensitive land; or
- d. The property immediately abutting and beyond the furthest boundary of the lot of record for which the waiver applies already has existing accepted access through the use of another public or private right of way

(4) Town Council may impose additional reasonable conditions and safeguards that it deems appropriate.

(5) The Town Council may prescribe a reasonable time limit within which the action for which the waiver is required shall be begun or completed or both.

(6) The decision of the Town Council regarding a request for a waiver is final and no reconsideration, rehearing or further appeal to the Town is available.

(7) Application process: Any person owning an interest in any real property may apply to the town council for a waiver hereunder. The application shall be accompanied by a fee established from time to time by the Town Council. The application shall be in such form as provided by the town, and shall contain the following information:

- a. The name of the owner of the particular real property shall be included.
- b. If the applicant is other than all the owners of the particular property, written consent signed by all owners of the particular real property shall be attached.
- c. The application shall contain the legal description of the particular real property, accompanied by a certified survey of that portion of the map maintained by the property appraiser reflecting the boundaries of the particular real property.
- d. The application shall contain the current zoning classification, and any specified conditions or conditional use designation as recorded on the official zoning maps.

(8) Public hearing; Notice upon receipt of an executed application pursuant to this section, the Town Clerk forthwith schedule a hearing on the application before the Town Council. Notice of the time and place of the public hearing shall be given to the applicant at least fifteen (15) days prior to the public hearing. Notice of the time and place of the public hearing on the application shall be mailed, at least fifteen (15) days prior to the public hearing, to all property owners abutting the road right of way in question. Such notice shall contain the name of the applicant, the legal description of the affected property, and that the owner of the affected property desires a waiver to section 13-38(b)(1) or (2). In addition, a notice containing such information shall be posted at Town Hall and on the Town's website.

Reasons for Request

As noted at the previous hearing, I have been seeking a building permit for a single-family residence at my lot on Beekeeper Lane approximately 1200 ft south of Corey Rd. Because Beekeeper is not an accepted road, I am prohibited from being issued a building permit under Town Ordinance Sections 13-38 (a) and (b). I am requesting a Waiver to these sections for the following reasons:

As a minor collector, Beekeeper is required to be widened to 70' in order to be accepted by the town for maintenance, however only 2 of the 5 lots abutting the section of Right of Way in question have dedicated the land necessary to achieve this width (mine and Jones'). There are no Town Ordinances that require a permit applicant to acquire the additional land dedication necessary, the town's only method of acquiring land dedications is when a property owner applies for a building permit. For this purpose, there is a provision for an Interim Roadway to be constructed on the available Right of Way until the entire width has been dedicated to the town, at which time all lots abutting the right of way will be required to pay their portion to convert the Interim Roadway to its ultimate width. Because there is already a well-engineered and functioning roadway in place that has been used by residents of the town for over 30 years, and that any significant modification to the width of the would require additional land dedications, as well as cause damage to the resident's property on the corner of Beekeeper and Corey, I would like to request the following:

- 1.) That the town accept approximately 1660' of Beekeeper's current footprint as an Interim Roadway until appropriate dedications have been made to bring the roadway to its 70' width.**
- 2.) That the conditions of this acceptance not impede my ability to have a building permit issued in a timely manner.**

As a condition to this acceptance, I would agree to the following:

- 1.) Provide much needed maintenance on the current road, including filling dips in elevation, trimming and removing hedges in swale, improving swale drainage towards Corey rd etc. while working with the property owner on the corner (Jones) to keep the maintenance as unobtrusive as possible.**
- 2.) Create a large turnaround area on the available 55' of Right of Way where it meets my proposed driveway.**
- 3.) Enter into an agreement with the town stating that I would personally continue to keep the road maintained until the road is accepted for maintenance, at which time I would be responsible for paying my portion of the road improvement.**

4.) I would also agree to have these agreements attached to the deed of my land so that any subsequent owners would be responsible to uphold them, should the council find that condition necessary.

Regarding Beekeeper's Current Width

The portion of Beekeeper in question was already approved for maintenance by the town in 2004 under an agreement contingent on a maintenance fee paid by a previous owner of my property. That agreement was voided when the lot was sold and the fee was refunded. According to the town's recent survey it is a 12' roadway with drainage on the south and north sides that terminate at 200' and 600' east of Corey respectively, though the travel way is much wider than this in many places. In Malabar there are currently 16 accepted roads and 2 not-accepted/not-approved roads serving more than 50 homes that are 13' or less with some as narrow as 8', all without issue. Therefore, I believe improving Beekeeper beyond its current width is neither necessary for single home access nor would it serve any current public need as it is a dead-end road with no other homes nor public property. My request is consistent with the town's comprehensive plan and does not impede its objective to acquire the Right of Way dedications necessary to build the road to its standards, and also has many additional benefits including; preserving the current quality of life of the homeowner's property involved (Jones), providing free and much needed maintenance to an access road that is critical to the Fire Department's ability to protect the surrounding homes, and has no unnecessary and disproportionate impact on the environment. And finally, it does not impede my constitutional right to use my property for its intended use without undue restrictions placed on it by any authority.





Current ROW Widths

268

35'

311

334

291

0'

295

35'

BEEKEEPER RD

7-11

20'

544

20'

29-37-12

502

545

COREY RD

BEEKEEPER RD

NO OUTLET

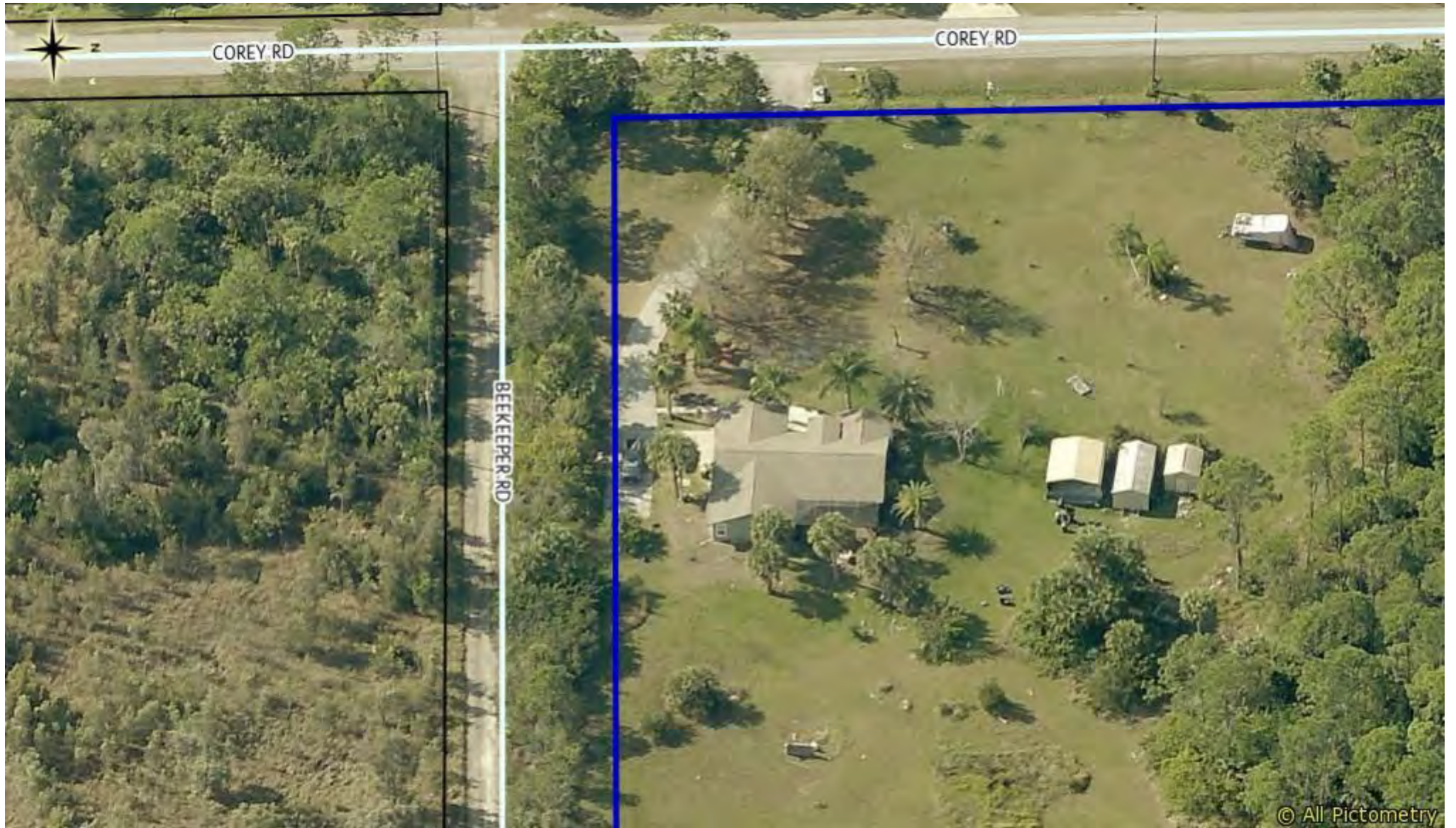








zoom



WARRANTY DEED

This Warranty Deed made and executed this 2nd day of October, 2009, by MISSION ROAD PROPERTY HOLDINGS, INC., a Florida Profit Corporation., whose mailing address is: 1715 So. Miramar Avenue, Indialantic, FL 32903 hereinafter called Grantor(s),

and Mary Beth Glorioso, a single woman, and Joan Sheppard, a married woman, Joint Tenants with Rights of Survivorship hereinafter called the grantee(s): whose mailing address is 1715 So. Miramar Avenue, Indialantic, FL 32903

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the grantee, all that certain land situated in Brevard County, Florida, viz:

**SECTION 12, TRACT 30, DESCRIBED AS FOLLOWS:
THE SOUTH 200 FEET OF THE WEST ¼ OF LOT 23, SECTION 12,
TOWNSHIP 29 SOUTH, RANGE 37 EAST, PLAT OF FLORIDA
INDIAN RIVER LAND CO., PLAT BOOK 1, PAGE 165, PUBLIC
RECORDS OF BREVARD COUNTY, FLORIDA, LESS THE WEST
25 FEET FOR ROAD, UTILITY AND DRAINAGE RIGHT OF WAY.**

**LOTS ALONG SECTION LINES AND HALF SECTION LINES ARE
MEASURED FROM SECTION LINES OR HALF SECTION LINES,
DISREGARDING RESERVATIONS SHOWN ON THE PLAT.**

Parcel I.D. No. 29-37-12-00-291

Subject to covenants, restrictions, easements of record and taxes for the current year.

Property is not homestead of grantor, pursuant to the laws of the State of Florida.

The Grantee understands there is no title insurance issued with the preparation of this Warranty Deed.

Vacant Land

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND the grantor hereby covenants with said grantee that it is lawfully seized of said land in fee simple: that it has good right and lawful authority to sell and convey said land: that it hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except easements and restrictions of record.

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal the day and year first above written.

MISSION ROAD PROPERTY HOLDINGS, INC.

By X Mary Beth Glorioso
(GRANTOR) MARY BETH GLORIOSO,
IN HER OFFICIAL CAPACITY AS PRESIDENT

[Signature]
Witness
Print Name: Glenn W. Tomason

[Signature]
Witness
Print Name: Mitzi B. Thompson

STATE OF Florida COUNTY OF Brevard

The foregoing WARRANTY DEED instrument was acknowledged before me this 2nd day of October, 2009, by Mary Beth Glorioso, in her official capacity as President, who produced Driver's License for identification.

WITNESS my hand and official seal in the County and State last aforesaid this 2nd day of October, 2009.

[Signature]
Notary Signature
My Commission Expires: _____
Printed notary signature.
(SEAL)



This instrument was prepared by:
Patty Augustine
Record and Return to:
Glenn W. Tomason, Esq.
1679 Garden Avenue
Melbourne, Florida 32935
Member Florida Bar #0096652

Return to: (enclose self-addressed stamped envelope)

Name: Fred & Peggy Hartmann
Address: 3140 Hield Rd.
Melbourne, FL 32904



CFN 2004283908 09-01-2004 09:24 am
OR Book/Page: 5356 / 0531

This Instrument Prepared by:
Name: Candice L. Miravalle/hg
Express Paralegal Services, Inc.
Address: 129 W. Hibiscus Blvd.
Melbourne, FL 32901

Scott Ellis

Clerk Of Courts, Brevard County

#Pgs: 1 #Names: 3
Trust: 1.00 Rec: 9.00 Serv: 0.00
Mig: 0.70 Excise: 0.00
Int Tax: 0.00

Property Appraisers Parcel Identification
Folio Number(s): 29-37-12-00-544/29-37-12-00-54

Grantee(s) S.S. # (s)

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR RECORDING DATA

This Quit Claim Deed, Executed the ___ day of ___, 2004, by
Frederick M. Hartmann, joined by his wife, Peggy S. Hartmann,
first party, to Hartmann Building Corp. of FLA, INC., a Florida Corporation,
whose post office address is 1384 Malabar Rd. SE, Palm Bay, FL 32907,
second party.

(Wherever used herein the terms "first party" and "second party" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, That the first party, for and in consideration of the sum of \$ 10.00,
in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release,
and quit claim unto the second party forever, all the right, title, interest, claim and demand which the said first
party has in and to the following described lot, piece or parcel of land, situate, lying and being in the County of
Brevard, State of Florida, County of Brevard, to-wit:

The North 1/2 of the following described property: The West 441.35
feet of the North 1/2 of Lot 9, Section 12, Township 29 South, Range
37 East, plat of FLORIDA INDIAN RIVER LAND COMPANY, Plat Book 1,
Page 165, Brevard County, Florida, LESS the North 20 feet and West
20 feet for road reservation.

and
The South 1/2 of the following described property: The West 441.35
feet of the North 1/2 of Lot 9, Section 12, Township 29 South, Range
37 East, plat of FLORIDA INDIAN RIVER LAND COMPANY, Plat Book 1,
Page 165, Brevard County, Florida, LESS the West 20 feet for road
reservation.

To Have and to Hold The same together with all and singular the appurtenances thereunto belonging
or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said
first party, either in law or equity to the only proper use, benefit and behoof of the said second party forever.

In Witness Whereof, the said first party has signed and sealed these presents the day and year first
above written.

Signed, sealed and delivered in the presence of:

[Signature]
Witness Signature (as to first Grantor)

[Signature]
Printed Name

[Signature]
Witness Signature (as to first Grantor)

[Signature]
Printed Name

[Signature]
Witness Signature (as to Co-Grantor, if any)

[Signature]
Printed Name

[Signature]
Witness Signature (as to Co-Grantor, if any)

[Signature]
Printed Name

[Signature]
Grantor Signature

Frederick M. Hartmann
Printed Name

3140 Hield Rd.
Melbourne, FL 32904
Post Office Address

[Signature]
Co-Grantor Signature, (if any)

Peggy S. Hartmann
Printed Name

3140 Hield Rd.
Melbourne, FL 32904
Post Office Address

STATE OF Florida)
COUNTY OF Brevard)

Frederick M. Hartmann and Peggy S. Hartmann

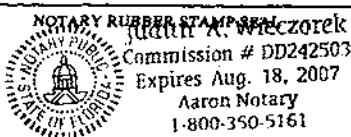
known to me to be the person S described in and who executed the foregoing instrument, who acknowledged before me that they
executed the same, and an oath was not taken. (Check one:) [] Said person(s) is/are personally known to me. [X] Said person(s) provided the
following type of identification: FLIDA

Witness my hand and official seal in the County and State last aforesaid

this 20th day of August 2004

[Signature]
Notary Signature

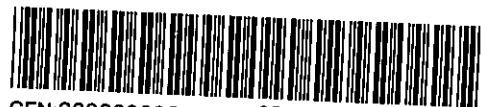
South A Wiczorek
Printed Name



©Form Design, Scanable Paper & Printing Co., Inc., 1994

This Warranty Deed

Made this 18th day of April A.D. 2000
by PIERRE L'ESPERANCE, MARRIED, JOINED BY
HIS WIFE JENNIFER L'ESPERANCE



CFN:2000080954 05-03-2000 03:41 pm
OR Book/Page: 4158 / 1024

hereinafter called the grantor, to
LYNDON T. JONES and LEE ANN JONES,
husband and wife

whose post office address is:
2885 COREY ROAD
MALABAR, FLORIDA 32950
Grantees' SSN:

Sandy Crawford
Clerk Of Courts, Brevard County
#Pgs: 2 #Names: 4
Trust: 1.50 Rec: 9.00 Serv: 0.00
Deed: 0.00 Excise: 0.00
Mtg: 0.00 Int Tax: 0.00

hereinafter called the grantee:
(Whenever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of \$ **10.00**
and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in **Brevard**
County, Florida, viz:

See Schedule A attached hereto and by this reference made a part hereof.

SUBJECT TO TAXES AND ASSESSMENTS FOR THE CURRENT YEAR AND ALL SUBSEQUENT YEARS. SUBJECT TO RESTRICTIONS, EASEMENTS, AND COVENANTS OF RECORD. SUBJECT TO ALL APPLICABLE ZONING RULES AND REGULATIONS.

THIS CORRECTIVE DEED IS BEING RECORDED TO CORRECT LEGAL DESCRIPTION ON DEED RECORDED IN OFFICIAL RECORDS BOOK 4045, PAGE 1242.

Parcel Identification Number: 29-37-12-00-268

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.
To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 1998

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:

Shelly Bauer
Name: Shelly Bauer
Witness Print Name:

Pierre L'Esperance
Name & Address: PIERRE L'ESPERANCE
9866 GUILFORD ROAD COLUMBIA, MD 21048 LS

Robin Barbara
Name: Robin Barbara
Witness Print Name:

Jennifer L'Esperance
Name & Address: JENNIFER L'ESPERANCE LS

Name: _____
Witness Print Name: _____

Name & Address: _____ LS

Name: _____
Witness Print Name: _____

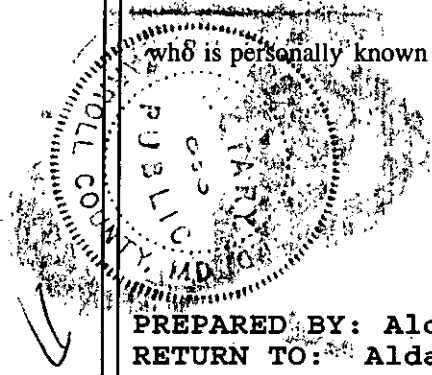
Name & Address: _____ LS

State of Maryland
County of Howard

The foregoing instrument was acknowledged before me this 18 day of April, 2000, by

PIERRE L'ESPERANCE and JENNIFER L'ESPERANCE

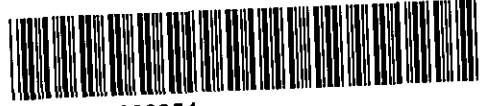
who is personally known to me or who has produced **Driver's License** as identification.



Sharon Satterfield
Notary Public
Print Name: Sharon Satterfield
My Commission Expires: 11-01-01

PREPARED BY: Alday-Donalson
RETURN TO: Alday-Donalson Title
175 E. Nasa Blvd., Suite 203
Melbourne, Florida 32901
File No: 1199306

SHARON SATTERFIELD
Notary Public, State of Maryland
My Commission Expires November 1, 2001



CFN:2000080954

OR Book/Page: 4158 / 1025

Schedule A

PARCEL 1:

A portion of the South 5 acres of Tract 24, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION in Section 12, Township 29 South, Range 37 East, as recorded in Plat Book 1, Page 165, of the Public Records of Brevard County, Florida and being more particularly described as follows: Commence at the original Southwest corner of said Tract 24, also being the Southwest corner of the Northwest 1/4 of said Section 12, thence go North 00°32'59" East along the West line of said Tract 24, a distance of 165.04 feet, thence go South 89°26'30" East a distance of 395.90 feet, thence go South 00°32'59" East a distance of 165.04 feet to the South line of aforesaid Tract 24, thence go North 89°26'30" West along said South line of Tract 24, a distance of 395.90 feet to the Point of Beginning. Subject to a 35.0 foot road, drainage and utility right-of-way along the West and South sides thereof.

PARCEL 2:

The South 5 acres of Tract 24, Section 12, Township 29 South, Range 37 East, LESS lands described in Official Records Book 3156, Page 2885, FLORIDA INDIAN RIVER LAND COMPANY, as recorded in Plat Book 1, Page 165, Public Records of Brevard County, Florida, subject to road Right of Way along South and West boundaries of said property.

Debby
Fyler



SCHILLINGER & COLEMAN, P.A.
ATTORNEYS AT LAW

1311 BEDFORD DRIVE
MELBOURNE, FLORIDA 32940

POST OFFICE BOX 410818
MELBOURNE, FLORIDA 32941-0818

TELEPHONE (321) 255-3737
FACSIMILE (321) 255-3141

Alison J. Moser
Richard W. Riehl
Stuart D. Sloan

Karl W. Bohne, Jr.
Christopher J. Coleman
Charles A. Schillinger

TC
8-6-07

July 19, 2007

Bonilyn Wilbanks-Free
Town of Malabar
2725 Malabar Rd.
Malabar, FL 32950-4472

Re: 1,675 feet of Old Mission Road

Dear Bonnie:

At the council meeting of July 16, 2007, the Town Council asked me for my opinion concerning whether the Town accepted the referenced roadway section under a contingent agreement with Deisha Wainuskis approximately in October 2004.

Based upon my review of the information provided to me, it would appear that the Council conditionally accepted the 1,675 of Old Mission Road, east of Corey Road in October of 2004. Based on my review of the verbatim tape recording of October 18, 2004, acceptance of the maintenance of the roadway was conditioned upon Ms. Wainuskis' contribution of \$14,000.00 for the maintenance of the road. During the council meeting the Town Administrator stated that the \$14,000.00 would cover 100% of the cost to bring the road to an acceptable standard for a 12 foot road.

Apparently, the \$14,000.00 was given to the Town and some portion of it was spent; however, in approximately June of 2005 Ms. Wainuskis asked for her money to be refunded because she could not meet certain St. John's River Water Management District criteria. Ms. Wainuskis was refunded \$13,162.50 on June 30, 2005. A note on a copy of the check provided to me indicates that the Town will not be improving the road.

I now understand that Ms. Joan Shepherd Glorioso is requesting the Town accept her \$14,000.00 for the construction and acceptance of the maintenance for this road.

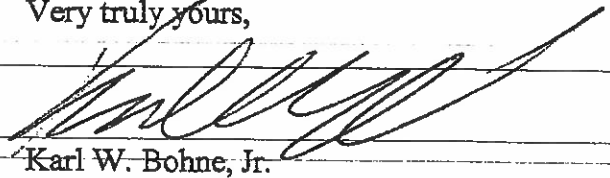
I am of the opinion that the original acceptance of the 1,675 feet of Old Mission Road was contingent upon the deposit of \$14,000.00 from Ms. Wainuskis and the Town's subsequent use of those funds. Unfortunately, in June of 2005 Ms. Wainuskis demanded a return of the balance of her money. In my opinion, this was a mutual cancellation of the agreement.

Bonilyn Wilbanks-Free
July 19, 2007
Page 2 of 2

Therefore, the contingency for accepting the 1,675-feet of Old Mission Road has failed and, in my opinion, the Town has not accepted the maintenance responsibility of that road segment. Also, the Town is not compelled, under any circumstances, to enter into a new agreement with any other party for the acceptance of that road.

Thank you very much for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Karl W. Bohne, Jr.

KWB/lfb



Town of Malabar
 2725 Malabar Road
 Malabar, Florida 32950-4427

NO. 11339
10/20 19 2001

RECEIVED FROM Debbie Wainstock

For: Road Maintenance - Old Mission Road \$ 14,000.00

Acct. No.:

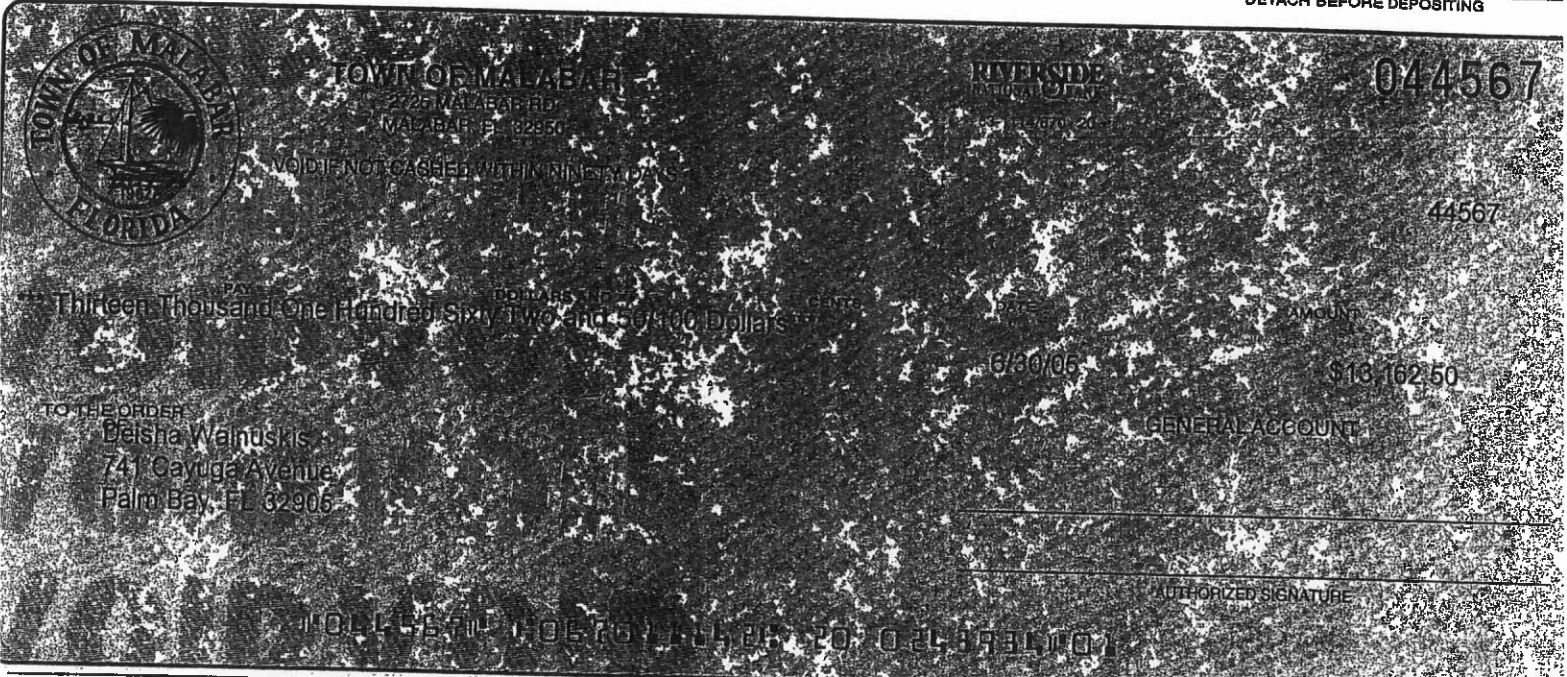
Cash _____ Check (Check No) #2442

[Signature]
 Office of Town Clerk

04450

INVOICE NO.	GROSS AMOUNT	DISCOUNT	NET AMOUNT
			TOTAL 13,162.50

DETACH BEFORE DEPOSITING



Date: 6/30/05	Check: 44567	Amount: 13,162.50	Discount: 0.00	Vendor: Deisha Wainuskis
Invoice	Amount	Reference	Amount	Description
		10235	13,162.50	refund of road monies held for building road
				Distribution 001-229.3020
				Amount
				13,162.50

6/30/05 - Refunded. Will not be improving road (Old Mission Rd.)
V.

Record & Return to 03-5404

CFN:2003040582 02-12-2003 09:27 am
OR Book/Page: 4817 / 0313

C. GUY BATSEL, ESQUIRE
PENINSULA TITLE SERVICES, LLC
1400 Palm Bay Road, Ste B
Palm Bay, Florida 32905

Parcel ID Number:
Grantee #1 TIN:
Grantee #2 TIN:

Scott Ellis
Clerk Of Courts, Brevard County
#Pgs: 2 #Names: 6
Trust: 1.50 Rec: 11.00 Serv: 0.00
Deed: 350.00 Excise: 0.00
Mtg: 0.00 Int Tax: 0.00

Warranty Deed

This Indenture, Made this 31st day of January, 2003 A.D., Between Norma M. Defuria and Diane Defuria Herrera, individually and as Trustees or their successors in the Norma M. Defuria Trust u/d/t April 28, 1994, and all amendments thereto. of the County of Brevard, State of Florida, grantor, and DEISHA WAINUSKIS, a single woman,

whose address is: 741 CAYUGA AVENUE, NE, PALM BAY, FL 32905

of the County of BREVARD, State of Florida, grantee.

Witnesseth that the GRANTOR, for and in consideration of the sum of -----TEN DOLLARS (\$10)----- DOLLARS, and other good and valuable consideration to GRANTOR in hand paid by GRANTEE, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said GRANTEE and GRANTEE'S heirs, successors and assigns forever, the following described land, situate, lying and being in the County of Brevard, State of Florida to wit: see exhibit "A" attached hereto and made a part hereof.

Subject to restrictions, reservations and easements of record, governmental authority, if any and taxes for the year 2003 and subsequent years.

Grantor covenants that the marriage between Norma M Defuria and Frank P. Defuria, deceased was continuous and uninterrupted from a time prior to their taking title to the subject property until the death of Frank P. Defuria on January 18, 1994.

and the grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

In Witness Whereof, the grantor has hereunto set its hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Printed Name: Gloria Robaina
Witness

By:
NORMA M. DEFURIA (Seal)
individually and as Trustee
P.O. Address: 2965 Corey Road, Malabar, FL 32950

Printed Name: LOATZ
Witness

By:
DIANE DEFURIA HERRERA (Seal)
individually and as Trustee
P.O. Address: 2965 Corey Road, Malabar, FL 32950

STATE OF Florida
COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 31st day of January, 2003 by NORMA M. DEFURIA, individually and as Trustee and DIANE DEFURIA HERRERA, individually and as Trustee on behalf of said Florida trust who are personally known to me or who have produced their Florida driver's license as identification.



Gloria Robaina
MY COMMISSION # DD092610 EXPIRES
April 11, 2006
BONDED THRU TROY FAIR INSURANCE, INC.

Printed Name: _____
Notary Public
My Commission Expires: _____

EXHIBIT "A"

The North 1/4 of Lots 9 and 10, Section 12, Township 29 South, Range 37 East, FLORIDA INDIAN RIVER LAND COMPANY, a subdivision according to the plat thereof, recorded in Plat Book 1, Page 165, Public Records of Brevard County, Florida, LESS road reservations on the North, LESS the West 441.35 feet of the North 1/4 of Lot 9, Section 12, Township 29 South, Range 37 East, FLORIDA INDIAN RIVER LAND COMPANY, a subdivision according to the plat thereof, recorded in Plat book 1, Page 165, Public Records of Brevard County, Florida, LESS the North 20 feet and the West 20 feet for road reservations.

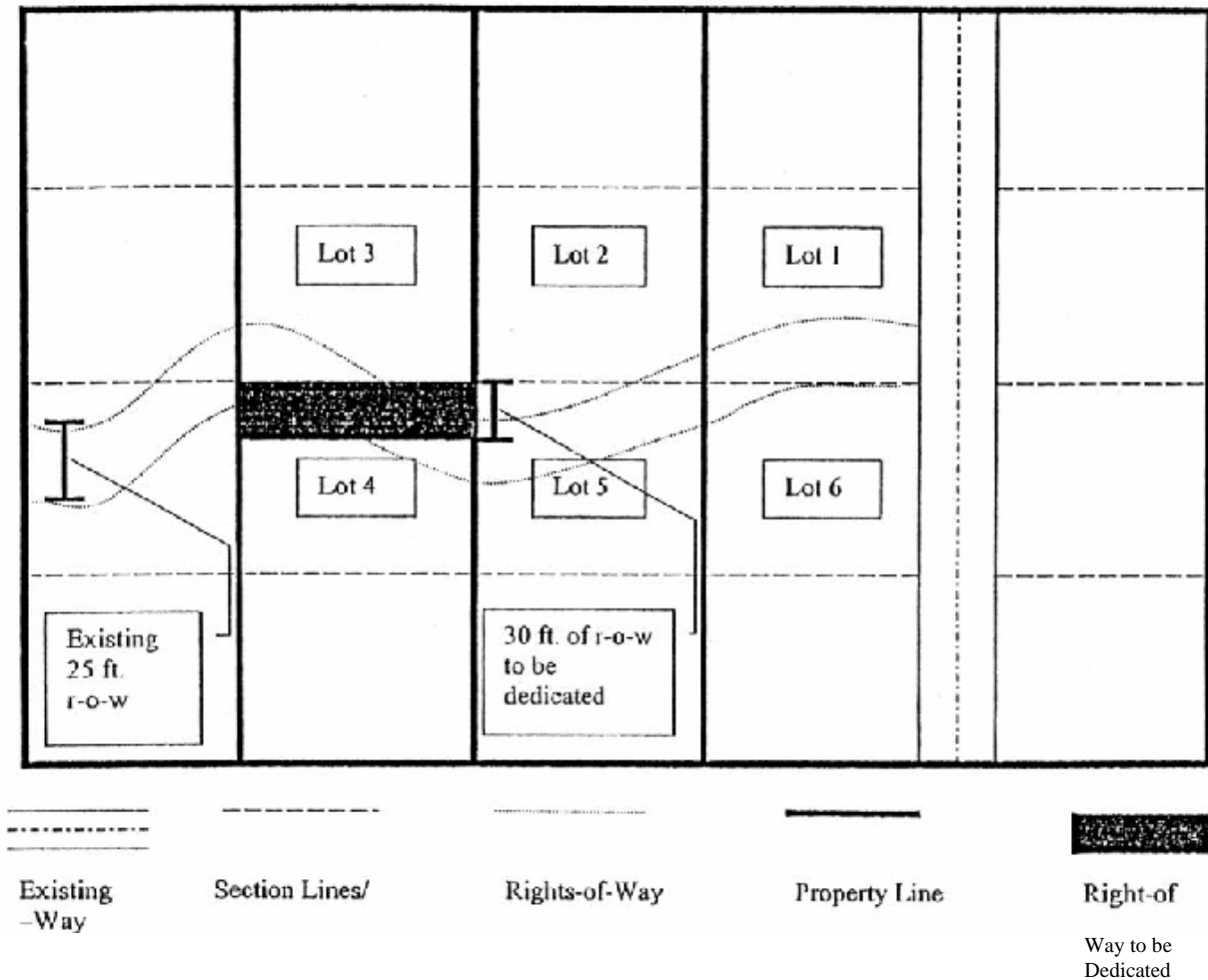


CFN:2003040582

OR Book/Page: 4817 / 0314

feet of right-of-way on each side of the section line or property line; otherwise a building permit will not be issued. (See illustration No. 5 below.)

Illustration #5



(Illustration No. 5 depicts the property that the owner of Lot No. 4 must be dedicated to the town as a right-of-way before a building permit will be issued. Illustration No. 5 assumes that the original dedication of the right-of-way was dedicated such that there was an unequal distribution of right-of-way along the section line.)

All landowners whose property abuts the twenty-five (25) foot right-of-way which is being or is improved pursuant to the provisions of this division must comply with the dedication provisions aforementioned. No building permits shall be issued unless the landowner dedicates the required right-of-way.

Interim roadways are only permitted when property owners are unable to provide the sixty (60) feet right-of-way required by the Town's Land Development Code and Comprehensive Plan. Once a building permit is issued for all the parcels abutting the interim roadway, the owners of said parcels must, by any means necessary, pay the assessments necessary to bring the roadway up to the standards for sixty (60) foot rights-of-way in effect when the permit was issued.

(Ord. No. 01-01, § 1-4, 2-5-01)

Sec. 13-40. Cost of improvement (bond).

Each owner who applies for a building permit, either personally or through an agent or contractor, shall complete an application for a road permit, in the form approved by the town council and shall execute a written agreement with the Town of Malabar, Brevard County, Florida, in a form approved by the town council and town attorney, to construct a road as described hereinabove in accordance with the town's standards. The entire cost of constructing such road shall be the responsibility of the owner and, prior to the issuance of such road permit, the owner shall post a cash bond with the town. The amount of the bond shall be set by the town council after receiving public bids for said improvements and shall be equal to the estimated cost of completion of the improvement plus twenty (20) percent of such amount. The procedure for establishing the road bond shall be established by town council. Procedure shall be adopted by resolution and may be amended by resolution of the town council from time to time, as needed.

The applicant shall have thirty (30) days from the date the bond is set to post said bond. Failure to post a bond within thirty (30) days shall result in revocation of all road and building permits issued.

Any person desiring to appeal any decisions made by the town council related to bonds shall do so by filing a notice of appeal with a court of competent jurisdiction as required by the laws of the State of Florida. All procedural requirements for taking an appeal to a court of competent jurisdiction must be complied with by the party making the appeal.

(Ord. No. 01-01, § 1-5, 2-5-01)

Sec. 13-41. Road permit application and fee.

In order to obtain a road permit, an applicant must complete a road permit application. The application for a road permit shall be in a form approved by the town and shall include the following:

- (1) Such surveys and drawings as are required by the standards attached hereto as Exhibit "A" or "B", whichever is applicable. The standards set forth in Exhibit "A" and "B" may be amended from time to time by resolution of the town council of the town.
- (2) Such reports as to soil composition as are required by the standards attached

Public Rights of Way Accepted Streets 13' wide or less as of 9/23/2019

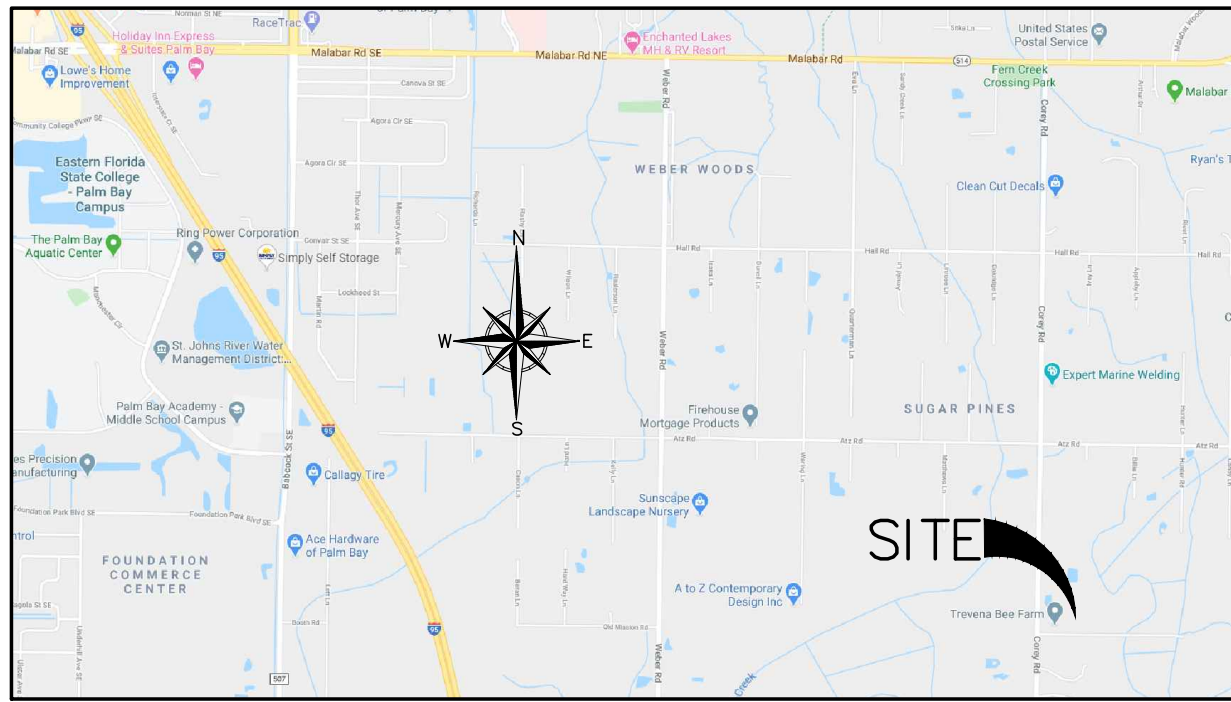
<u>Street Name.</u>	<u>Width</u>	<u>Number of Homes</u>	
Crescent rd.	13'	4	
Flashy Ln.	10'	2	
Gator Way.	10'	3	
Hard Ln.	13'	3	
Hawthorne ave	8'	1	
Hunter Ln.	13'	8	
Johnston Ave.	11'	4	
Leghorn rd.	13'	2	
Linrose Ln.	12'	4	
Moss Rose ave.	12'	4	
New Jersey Ave.	9'	3	
Nord St.	10'	3	
Orange ave.	13'	4	
Raulerson Ln.	12'	3.	*approved by council 9/23/19
Rivet Ln.	13'	3	
Ski Ln.	11'	3	

Not Accepted/Not Improved roads

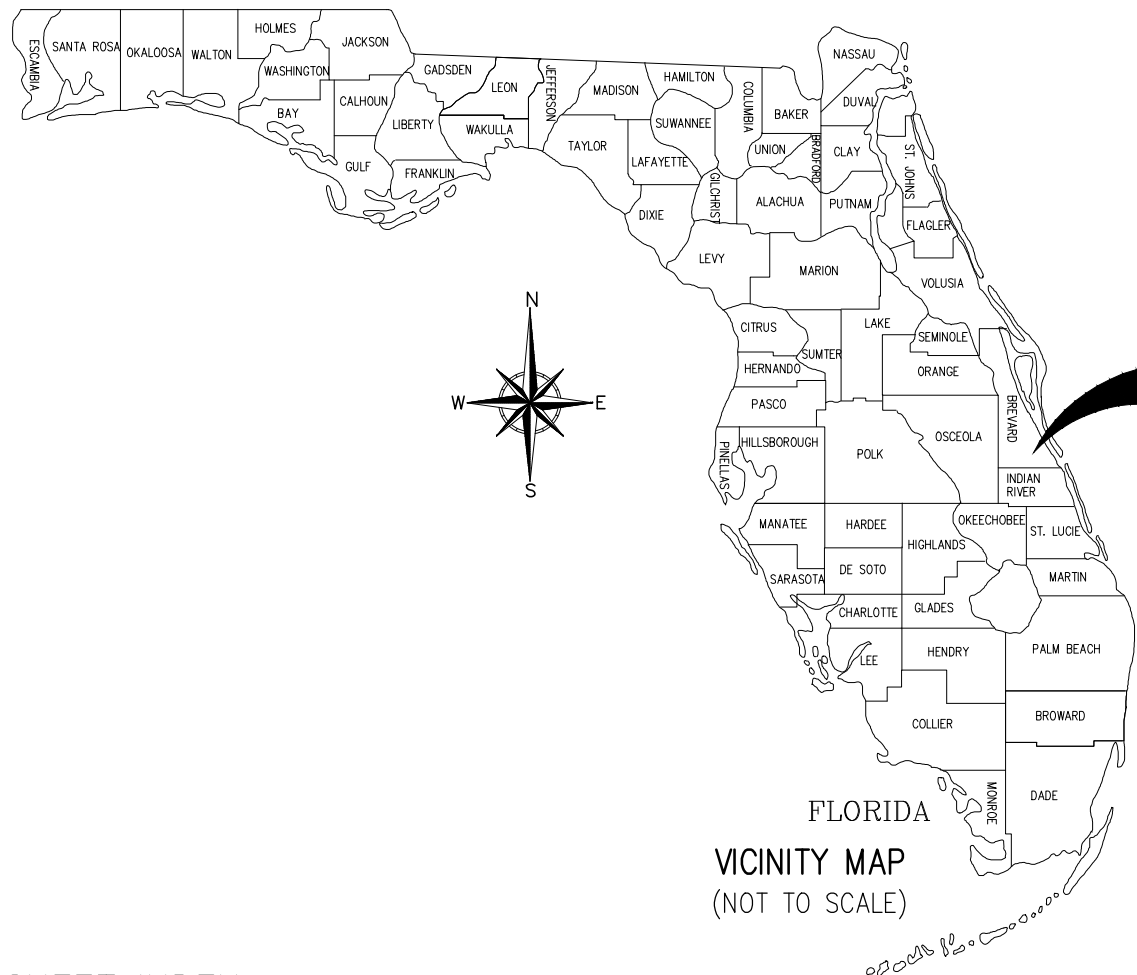
Candy Ln.	8'	2	
Christian Ln.	10'	?	

Private Easement not maintained by town

Alexander Lane	13'	6	
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LOCATION MAP
(NOT TO SCALE)



FLORIDA
VICINITY MAP
(NOT TO SCALE)

SYMBOL LEGEND

x 23.4 FIELD LOCATED POINT WITH ELEVATION

ABBREVIATIONS

- CL CENTERLINE
- CM CONCRETE MONUMENT
- EL. ELEVATION
- FND. FOUND
- IP IRON PIPE
- IR IRON ROD
- NO. NUMBER
- P.C. PROPERTY CORNER
- PK PARKER KALON NAIL
- P.L.S. PROFESSIONAL LAND SURVEYOR
- RNG. RANGE
- SEC. SECTION
- TWP. TOWNSHIP

SURVEYOR'S NOTES

1. BEARINGS AS SHOWN HEREON ARE BASED ON STATE PLANE COORDINATES, NORTH AMERICAN DATUM OF 1983/2011 ADJUSTED (N.A.D. 83/11), FLORIDA EAST ZONE, REFERENCE A BEARING OF N89°33'01"W ALONG THE NORTH RIGHT OF WAY LINE OF BEEKEEPER ROAD.
2. ELEVATIONS AS SHOWN HEREON REFERENCE THE NATIONAL GEODETIC VERTICAL DATUM OF 1988 (N.A.V.D. 88), REFERENCE NATIONAL GEODETIC SURVEY (N.G.S.) BENCHMARK "BREVARD GPS 5024", ELEVATION = 23.36 FEET. THE ELEVATIONS AS SHOWN HEREON HAVE A VERTICAL TOLERANCE OF 0.10 FEET.
3. THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A TITLE COMMITMENT.
4. THIS SURVEY IS BASED ON A CLOSED GEOMETRIC FIGURE EXCEEDING A HORIZONTAL CLOSURE OF 1:10,000.
5. THERE WAS NO ATTEMPT TO LOCATE ANY SUBSURFACE FOUNDATIONS.
6. NO UNDERGROUND UTILITIES WERE LOCATED OR SHOWN HEREON.
7. THIS SURVEY IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR UNLESS DIGITALLY SIGNED.
8. THIS SURVEY WAS DONE IN THE FIELD UTILIZING GLOBAL POSITIONING SYSTEM (G.P.S.) WITH REAL TIME KINEMATIC (R.T.K.). ALL DISTANCES GIVEN ARE GRID DISTANCES. THE SCALE FACTOR IS 0.999961624.

LEGAL DESCRIPTION

THE EAST 1/2 OF THE SOUTH 200 FEET OF LOT 23, SECTION 12, TOWNSHIP 29 SOUTH, RANGE 37 EAST, PLAT OF FLORIDA INDIAN RIVER LAND CO., PLAT BOOK 1, PAGE 165, BREVARD COUNTY, FLORIDA, LESS THE EAST 25 FEET FOR ROAD, UTILITY AND DRAINAGE RIGHT OF WAY AND LESS THE SOUTH 35 FEET FOR ROAD, UTILITY AND DRAINAGE RIGHT OF WAY.

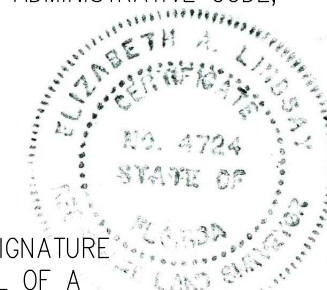
SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE "BOUNDARY SURVEY" AS SHOWN HEREON IS A TRUE AND CORRECT REPRESENTATION OF A FIELD SURVEY MADE UNDER MY DIRECTION AND CHARGE ON MARCH 2, 2020 AND SAID "BOUNDARY SURVEY" IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. IT IS FURTHER CERTIFIED THAT THIS "BOUNDARY SURVEY" COMPLIES WITH THE STANDARDS OF PRACTICE FOR "BOUNDARY SURVEY" SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

BETSY LINDSAY, INC.
SURVEYING AND MAPPING

ELIZABETH A. LINDSAY, P.L.S.
FLORIDA REGISTRATION NO. 4724

NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER UNLESS DIGITALLY SIGNED



B BETSY LINDSAY, INC.
SURVEYING AND MAPPING
7997 SW JACK JAMES DRIVE STUART, FLORIDA 34997
(772)286-5753 (772)286-5933 FAX
LICENSED BUSINESS NO. 6852

DATE	REVISIONS

DATE 03/02/2020
SCALE NOT TO SCALE
FIELD BK. BREVARD 2
DRAWN BY D.B.
CHECKED BY E.A.L.

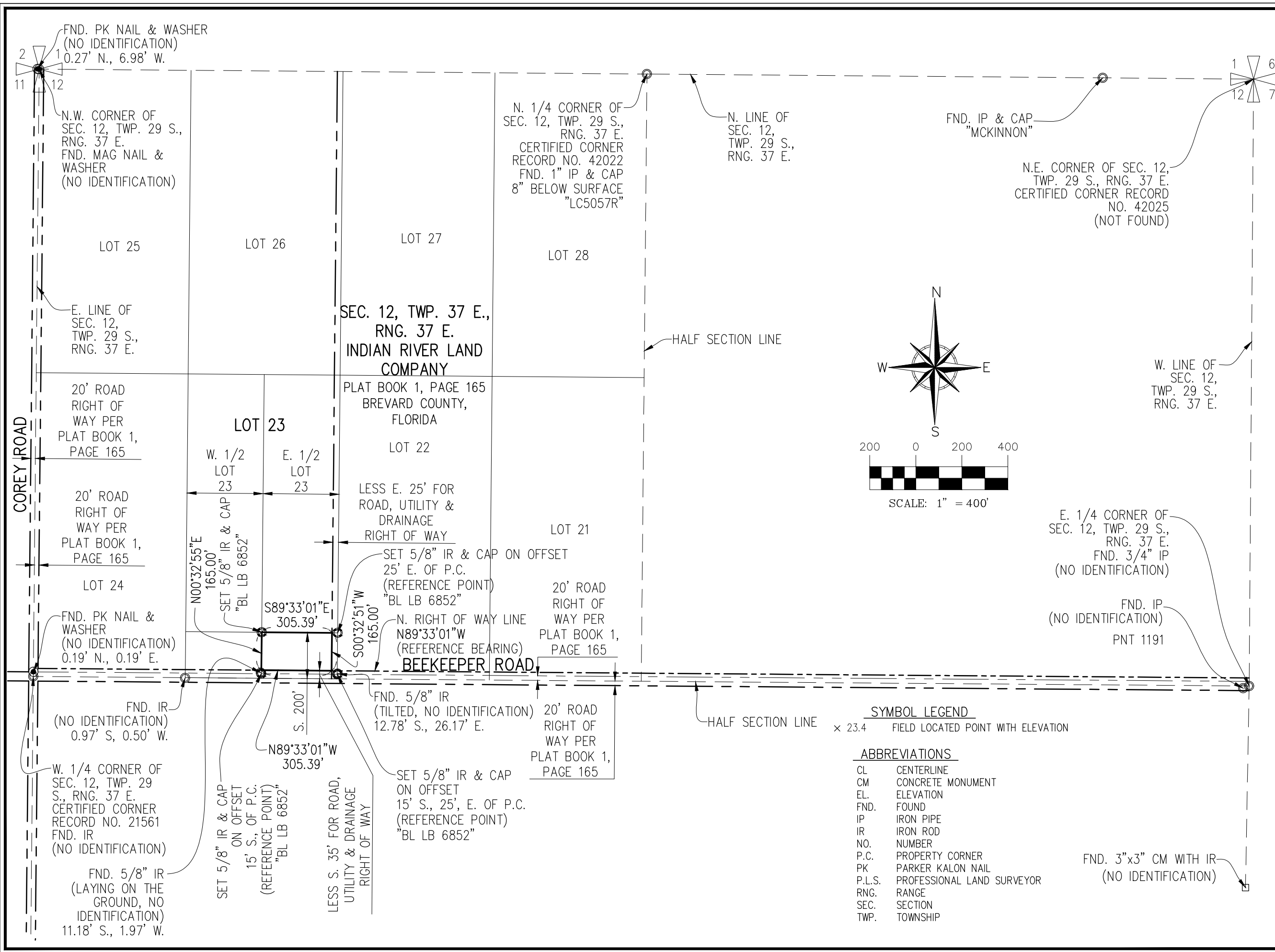
A PORTION OF LOT 23, SEC. 12, TWP. 29 S.,
RNG. 37 E., PLAT OF INDIAN RIVER LAND CO.,
BREVARD COUNTY, FLORIDA
BOUNDARY SURVEY
ADAM HAYWARD

SHEET NO. 1
OF 4 SHEETS
PROJECT NO.
20-16

SHEET INDEX

- SHEET 1 COVER SHEET
- SHEET 2 OVERALL BOUNDARY DETAILS
- SHEETS 3 & 4 TOPOGRAPHIC DETAILS

S:\2020 PROJECTS\20-16 Hayward\dwg\BND-11x17-ptr23.dwg, Sheet 2, 3/13/2020 11:14:01 AM, DWG To PDF, pc3, 1:1, DB-2018VS



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 SURVEYING AND MAPPING
 7997 SW JACK JAMES DRIVE STUART, FLORIDA 34997
 (772)286-5753 (772)286-5933 FAX
 LICENSED BUSINESS NO. 6852

DATE	REVISIONS

DATE 03/02/2020
 SCALE 1"=400'
 FIELD BK. BREVARD 2
 DRAWN BY D.B.
 CHECKED BY E.A.L.

A PORTION OF LOT 23, SEC. 12, TWP. 29 S.,
 RNG. 37 E., PLAT OF INDIAN RIVER LAND CO.,
 BREVARD COUNTY, FLORIDA

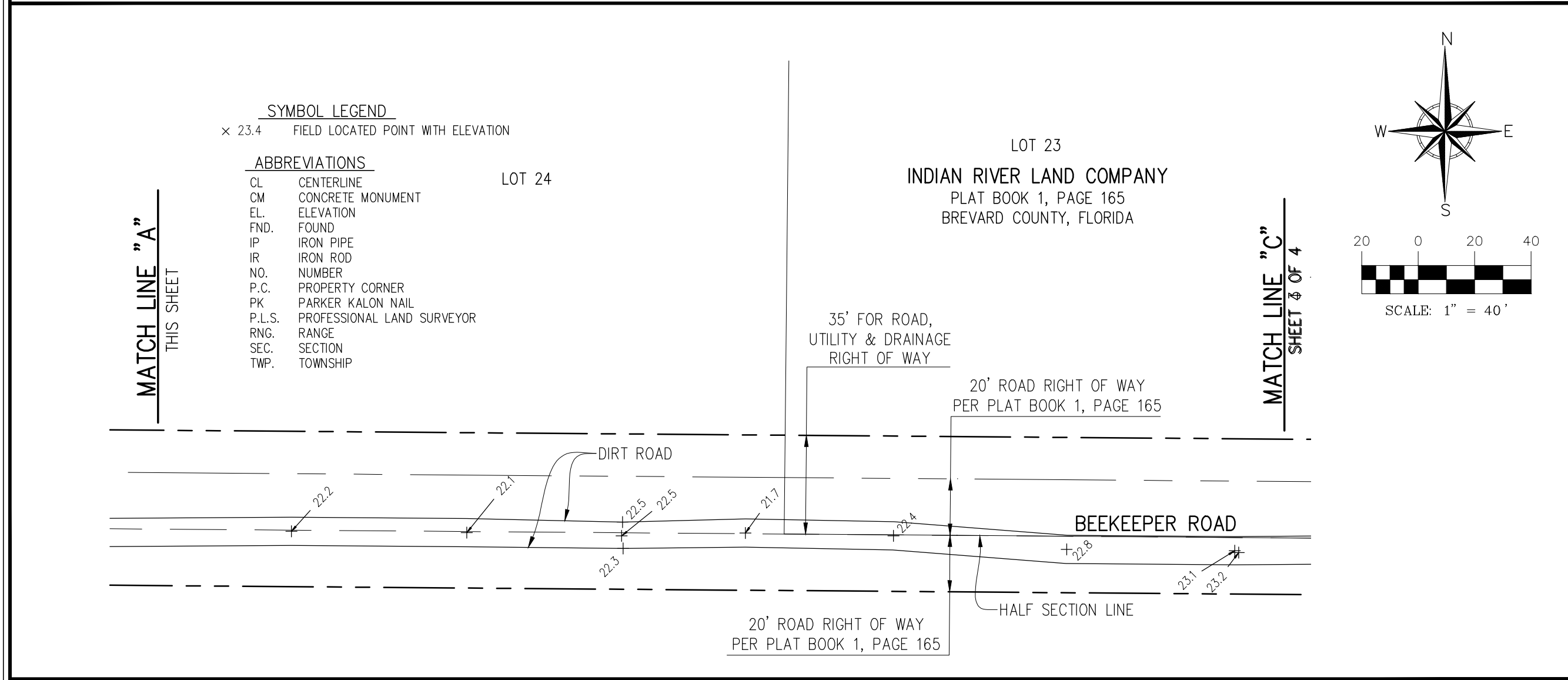
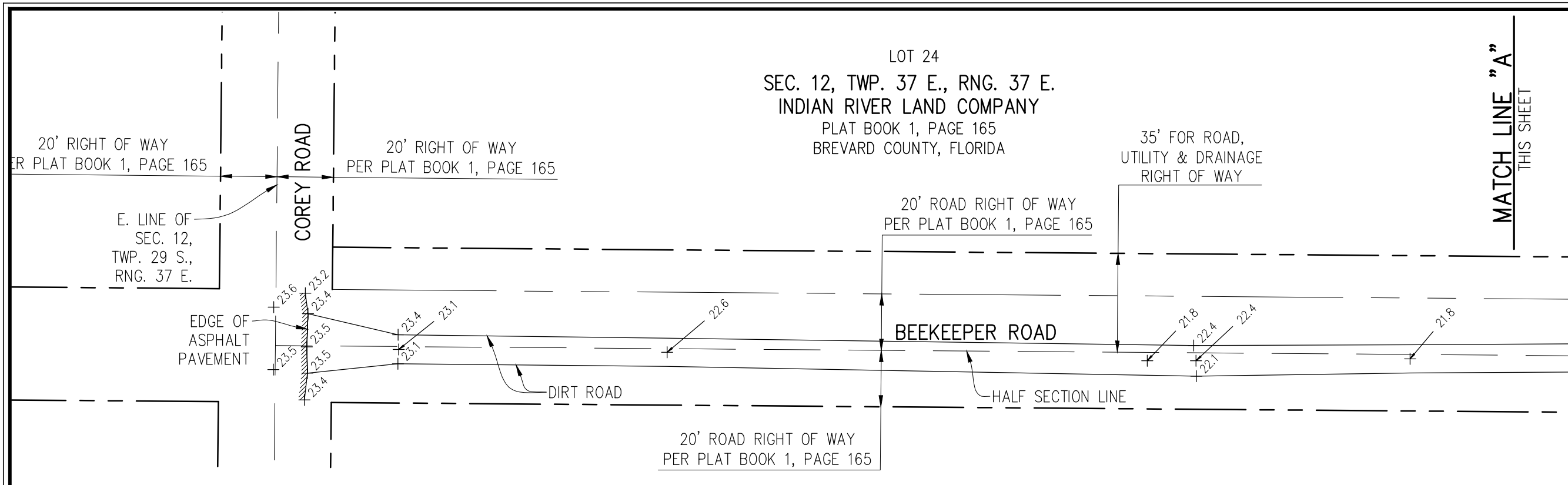
BOUNDARY SURVEY
 ADAM HAYWARD

SHEET NO. 2
 OF 4 SHEETS
 PROJECT NO. 20-16

- SYMBOL LEGEND**
 x 23.4 FIELD LOCATED POINT WITH ELEVATION
- ABBREVIATIONS**
- CL CENTERLINE
 - CM CONCRETE MONUMENT
 - EL. ELEVATION
 - FND. FOUND
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 - P.C. PROPERTY CORNER
 - PK PARKER KALON NAIL
 - P.L.S. PROFESSIONAL LAND SURVEYOR
 - RNG. RANGE
 - SEC. SECTION
 - TWP. TOWNSHIP

FND. 3"x3" CM WITH IR
 (NO IDENTIFICATION)

S:\2020 PROJECTS\20-16 Hayward\dwg\BND-11x17-ptr23.dwg, Sheet 3, 3/13/2020 11:14:16 AM, DWG To PDF.pc3, 1:1, DB-2018VS



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(772)286-5753 (772)286-5933 FAX
LICENSED BUSINESS NO. 6852

DATE	REVISIONS

DATE 03/02/2020
SCALE 1"=40'
FIELD BK. BREVARD 2
DRAWN BY D.B.
CHECKED BY E.A.L.

A PORTION OF LOT 23, SEC. 12, TWP. 29 S.,
RNG. 37 E., PLAT OF INDIAN RIVER LAND CO.,
BREVARD COUNTY, FLORIDA

BOUNDARY SURVEY
ADAM HAYWARD

SHEET NO. 3
OF 4 SHEETS
PROJECT NO. 20-16

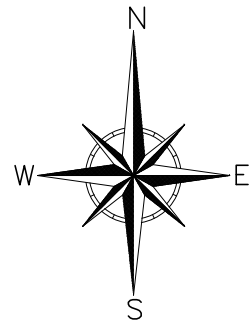
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SYMBOL LEGEND

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 P.L.S. PROFESSIONAL LAND SURVEYOR
 RNG. RANGE
 SEC. SECTION
 TWP. TOWNSHIP



MATCH LINE "C"

SHEET 3 OF 4

LOT 23

LOT 23
 SEC. 12, TWP. 37 E., RNG. 37 E.
 INDIAN RIVER LAND COMPANY
 PLAT BOOK 1, PAGE 165
 BREVARD COUNTY, FLORIDA

LOT 22

E. 1/2 LOT 23

S89°33'01"E
 305.39'

SET 5/8" IR & CAP
 "BL LB 6852"

SET 5/8" IR & CAP ON OFFSET
 25' E. OF P.C.
 (REFERENCE POINT)
 "BL LB 6852"

LESS E. 25' FOR
 ROAD, UTILITY &
 DRAINAGE
 RIGHT OF WAY

FND. 5/8" IR
 (LAYING ON THE GROUND,
 NO IDENTIFICATION)
 11.18' S., 1.97' W.

20' ROAD
 RIGHT OF WAY
 PER PLAT
 BOOK 1,
 PAGE 165

LESS S. 35' FOR ROAD,
 UTILITY & DRAINAGE
 RIGHT OF WAY

FND. 5/8" IR
 (TILTED, NO IDENTIFICATION)
 12.78' S., 26.17' E.

N. RIGHT OF WAY LINE
 (REFERENCE BEARING)

N89°33'01"W
 305.39'

BEEKEEPER ROAD

HALF SECTION LINE

20' ROAD RIGHT OF WAY
 PER PLAT BOOK 1, PAGE 165

DIRT ROAD

SET 5/8" IR & CAP
 ON OFFSET
 15' S., 25' E. OF P.C.
 (REFERENCE POINT)
 "BL LB 6852"

WATER LINE

DATE REVISIONS

DATE	REVISIONS

DATE 03/02/2020

SCALE 1"=40'

FIELD BK. BREVARD 2

DRAWN BY D.B.

CHECKED BY E.A.L.

A PORTION OF LOT 23, SEC. 12, TWP. 29 S.,
 RNG. 37 E., PLAT OF INDIAN RIVER LAND CO.,
 BREVARD COUNTY, FLORIDA

BOUNDARY SURVEY
 ADAM HAYWARD

SHEET NO. 4

OF 4 SHEETS

PROJECT NO.
 20-16

B **BETSY LINDSAY, INC.**
 SURVEYING AND MAPPING

7997 SW JACK JAMES DRIVE STUART, FLORIDA 34997
 (772)286-5753 (772)286-5933 FAX
 LICENSED BUSINESS NO. 6852

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8.C. Clerk – Deputy Clerk Kohler informed Council of an upcoming Ethics Training Webinar provided by the Florida League of Cities taking place on 2/24 from 10 AM to 3:30 PM. It is a free class and it will cover the annual requirements for ethics training. A date has been set for Fall in Love with Springfest, March 20th from 9 AM to 1 PM. Malabar BTR holders will pay no vendor fee and Dolphin Auto will be presenting the car show. Social distancing will be encouraged.

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Five (5) Minute Limit per Speaker.

10. PUBLIC HEARINGS: 1

10.a. Road Improvement Waiver Request – right-of-way know as Beekeeper Lane – tabled from July 6, 2020; applicant Adam Hayward

Exhibit: Agenda Report No. 10.a.

CM Vail / CM White to un-table the issue. 5-0 approve.

Applicant Adam Hayward was asked to come to the podium and present his case. He is trying to build a house, but his property is not on an accepted road. The code states he needs to put in 70' ROW which would cut into current residents' yard. There have only been 2 35' dedications. Old owner had an agreement to improve the road in 2004. He is requesting a waiver to the requirement for the road to be widened to its planned width if he maintains it. As each person builds, they dedicate more road.

Mayor asked if there is anyone using the road past his property? Applicant stated that there is an agricultural goat farm at the end of the road.

ITM Morrell gave a brief overview of the history on this item. Waiver is in the authority of Council. Engineer's report has not changed since his letter advising against a waiver.

Mayor opened the Public Hearing.

Lyndon Jones, 2885 Corey Road, lived there 20 years. He asked the Town to dig out the ditch along Beekeeper Lane and was told by the Town it was wetlands 7-10 years ago. Mayor asked if he is in favor or against this waiver? He states he is in support of it as he believes it will improve his drainage situation.

Mayor Closed Public Hearing

MOTION: CM Rivet / CM Scardino to approve the waiver.

CM Rivet stated the petitioner is looking to make a bad situation better. Asked himself if it was right to deny this man the best use of his property. We should make every effort to help him.

CM Vail agreed we can't deny people the use of their property. If there is a ROW issue, it will still be better than many existing roads in Malabar. He does not believe the 70' portion is applicable here, but you need at least 24' for emergency services. The Town has code for 50' and 25' roads, use them. Can we find a way to make this 50' all the way? We should reach out to the owner of the undedicated lot and let them know how beneficial the road will be for them.

Attorney Bohne stated the current road is below standard. If we are going to accept the road, it needs to be brought up to a standard that will hold emergency vehicles. This isn't so much a waiver as it is a delay of getting this done.

CM Acuaviva asked if everyone has dedicated, and if the neighbors need to be noticed.

Attorney Bohne stated that no, one lot west of Mr. Hayward (lot 291) has not dedicated property, and notices are issued after a Building Permit, and the building of a road is a requirement for getting a Building Permit.

CM Rivet asked if this road should be re-classified? It probably isn't a collector.

CM Vail agreed, but urged caution. Eau Gallie Blvd was developed through a swamp. This could also help with stormwater. It can connect the properties around it with the Town's Stormwater system.

CM Scardino reminded Council this is only about Mr. Hayward's property. Not the neighborhood in the future.

CM White stated eminent domain is no way to make friends. However, if there is no other way to improve the road without a dedication, then we should get the land.

CM Vail asked who should reach out to the owner not dedicating land? Town – Attorney. He asks ITM Morrell to reach out to owner of lot 291 and ask if they would be interested in dedicating ROW.

Applicant stated that there are 16 roads that are under 13'. There are about 60 homes served by roads in worse condition than Beekeeper Lane is right now.

Attorney Bohne stated that is the problem. We should not create anymore of these situations.

CM Vail reminded the applicant of the Town's road payback program and states it has worked in the past for Malabar residents. Road was built, and development followed.

Attorney Bohne stated that the applicant isn't interested in giving the road to the Town for improvements, so there would be no payback.

Applicant stated he wants to improve the road on the current footprint to build an "Interim Roadway" that he will maintain.

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Chief Foley stated he can't get a fire engine to the applicant's property due to the poor road quality, but he can get a brush truck. It'll matter the road base and stability. He would love to see 50', but 25' road surface would suffice.

CM White stated he is sympathetic to the applicant. If he follows the Town standards, he's going to build an expensive road with a small possibility of the payback program. However, that doesn't mean we should ignore our standards.

CM Acquaviva asked if this qualifies as a hardship?

Attorney Bohne stated that Council has the power to grant relief, but the only hardship is getting the dedicated ROW.

ITM Morrell stated the difficulty is our Code says 70 feet. Council has the authority to grant a waiver. The applicant is looking for relief from the vision of the Town.

Mayor stated he believes the applicant should build a 25' road.

CM Vail stated it should be built as 50' road where applicable, and narrow where its needed. If we build a 25' road now, how do we enforce building it up to 50'?

ITM Morrell stated that if lot 291 would dedicate the ROW, a 25' road is possible and could be accepted.

CM White suggested the Town accept the improved road so it can be maintained to the Town's standard.

Applicant stated he does not want to improve the road; he wishes to use the current path as an interim roadway.

Attorney stated that then the answer is to deny the request because it would not meet the Town's standard for an accepted road.

Mayor suggested the Council table this item until the owner of lot 291 can be contacted.

CM Vail stated the request seems to be to do a minimal improvement to the existing two trail, provide no drainage, and build a house at the end. We already have 60 of those houses and do not need anymore.

Mayor Reilly stated he sees four options, Council can table the request, they can deny the request, they can approve the request, or they can deny the request and come up with a different agenda item.

Motion: CM Vail / CM Rivet to table this item for 30 days until the owner of lot 291 can be reached by ITM Morrell.

VOTE: 5-0 (all ayes).

CM White stated that this proposal was to keep the road at its current dimensions with minimal improvements and the applicant would maintain it. That idea is a nonstarter. Our policy is if you build a house, you build a road. Recommends the applicant meet with ITM Morrell to develop a plan that can meet the Town's standard.

11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES) 0

12. ACTION ITEMS:

ORDINANCES for FIRST READING: 1

12.a. Amend Signage Code, Article XIX (Ord 2021-01).

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTION 1-19.18 OF THE TOWN CODE OF ORDINANCES, LAND DEVELOPMENT CODE, ARTICLE XIX - SIGNAGE RELATING TO DISTRICT SIGN REGULATIONS; AMENDING THE PROVISIONS OF TABLE 1-19.18 OF THE TOWN CODE RELATING TO THE MAXIMUM AREA PERMITTED IN RESIDENTIAL AND NON-RESIDENTIAL ZONING DISTRICTS PERTAINING TO GENERAL OUTDOOR ADVERTISING; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

after hours, Chief stated they do not use the siren in residential areas after dark, but require the lights stay on while performing emergency services. CM White asked about EMS services. Chief explained the Malabar Fire Fighters are all EMT certified, and the department provides BLS services. The County is the only transport system, and they perform ALS.

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Mayor suggested the Council table this item until the owner of lot 291 can be contacted.

CM Vail stated the request seems to be to do a minimal improvement to the existing two trail, provide no drainage, and build a house at the end. We already have 60 of those houses and do not need anymore.

Mayor Reilly stated he sees four options, Council can table the request, they can deny the request, they can approve the request, or they can deny the request and come up with a different agenda item.

Motion: CM Vail / CM Rivet to table this item for 30 days until the owner of lot 291 can be reached by ITM Morrell.

VOTE: 5-0 (all ayes).

CM White stated that this proposal was to keep the road at its current dimensions with minimal improvements and the applicant would maintain it. That idea is a nonstarter. Our policy is if you build a house, you build a road. Recommends the applicant meet with ITM Morrell to develop a plan that can meet the Town's standard.

11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES) 0

12. ACTION ITEMS:

ORDINANCES for FIRST READING: 1

12.a. Amend Signage Code, Article XIX (Ord 2021-01).

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTION 1-19.18 OF THE TOWN CODE OF ORDINANCES, LAND DEVELOPMENT CODE, ARTICLE XIX - SIGNAGE RELATING TO DISTRICT SIGN REGULATIONS; AMENDING THE PROVISIONS OF TABLE 1-19.18 OF THE TOWN CODE RELATING TO THE MAXIMUM AREA PERMITTED IN RESIDENTIAL AND NON-RESIDENTIAL ZONING DISTRICTS PERTAINING TO GENERAL OUTDOOR ADVERTISING; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.a.

Meeting Date: March 01, 2021

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Continue or Sunset Policy Requiring Face Coverings and Social Distancing per Reso 17-2020


BACKGROUND/HISTORY:

Town Council approved this policy on October 5, 2020 and formalized it into Reso 17-2020 on October 19, 2020 to require face coverings and social distancing in all Town owned buildings effective October 5, 2020.

It is set to sunset at 12:01 a.m. on March 2, 2021, if not extended by Council at this meeting.

Staff will update the information and signage at Town Hall and share the decision on the policy with the Boards and employees.

ATTACHMENTS:

 Reso 17-2020 – see page 3

ACTION OPTIONS:

Council Action on extending or sunsetting the Face Covering and Social Distancing Policy adopted in Reso 17-2020.

At the RTCM of 01/04/2021 the Face Covering Policy was extended until March 2, 2021.*

RESOLUTION 17-2020 -extended

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PURSUANT TO THE GENERAL POWERS RESERVED TO THE TOWN COUNCIL IN THE TOWN CHARTER; MAKING LEGISLATIVE FINDINGS; PROVIDING FOR DEFINITIONS; REQUIRING ALL PERSONS TO WEAR FACE COVERING AT DESIGNATED TOWN FACILITIES; PROVIDING FOR EXCEPTIONS; PROVIDING FOR SUNSET; PROVIDING FOR SEVERABILITY, CONFLICTS AND EFFECTIVE DATE.

WHEREAS, Novel Coronavirus Disease (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and causes symptoms similar to those of influenza, and in some cases death; and

WHEREAS, guidance released by the CDC on June 15, 2020 states that (i) the COVID-19 virus is mostly spread by respiratory droplets released when people cough, sneeze and talk and (ii) that a person can get COVID-19 by touching a surface or object that has the virus on it and then by touching their mouth, nose or possibly their eyes. This guidance goes on to state that "personal prevention practices (such as staying home when sick, social distancing, wearing a cloth face covering, and handwashing) and environmental prevention practices (such as cleaning and disinfection) are important are important ways to prevent the spread of COVID-19; and

WHEREAS, the CDC has expressly found that "COVID-19 spreads mainly from person to person through respiratory droplets produced when a person coughs, sneezes or talks. These droplets can land on the mouths or noses of people nearby and possibly inhaled into the lungs. Studies and evidence on infection control report that these droplets usually travel around 6 feet (about "2 arms' length"); and

WHEREAS, the CDC therefore specifically recommends that as communities reopen, and people resume their daily activities, people should wear face coverings to slow the spread of COVID-19 particularly in "public settings where other social distancing measures are difficult to maintain"; and

WHEREAS, based on the advice of medical professionals, the number of COVID-19 cases may continue to rise unless measures are instituted to slow the spread and stop the introduction of the COVID-19 virus; and

WHEREAS, the State of Florida has the highest percentage of population in the United States 65 years of age and older, as well as the second largest population of that demographic; and

WHEREAS, according to the CDC, the vast majority of persons that test positive for the COVID-19 virus that are hospitalized are persons over the age of 65 years and/or have underlying health conditions; and

WHEREAS, according the CDC the highest percentage of severe outcomes among persons are aged 85 years of age and older; and

WHEREAS, the Town Council finds that it is in the best interest of the residents of the Town of Malabar and the general public, and it is in furtherance of the public health, safety, and welfare, to formally adopt this Resolution to require face coverings at and in designated Town Facilities.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, FLORIDA, as follows:

Section 1. The above recitals are adopted by the Town Council as legislative findings.

Section 2. Definitions.

"Face Covering" shall mean a uniform piece of material, made of paper or cloth and including plastic shield coverings, that securely covers a persons' nose and mouth and remains affixed in place without the use of one's hands, whether store-bought or homemade, concurrent with CDC guidelines.

"Social Distancing" shall mean keeping space between yourself and other people by staying at least 6 feet.

Section 3. Face Coverings Required in Designated Town Owned and Operated Facilities.

(a) Every Person living, working, or visiting the Town of Malabar shall wear a face covering in the following Town owned and operated facilities:

1. Town Hall 2725 Malabar Road
2. Malabar Fire Dept, 1840 Malabar Road
3. Malabar Public Works Building 1435 Centre Street

(b) Exceptions:

1. Persons under the age of 6 years old; and
2. Persons observing social distancing under the CDC guidelines; and
3. Persons for whom a face covering would cause impairment due to an existing health condition; and
4. When a person who is hearing impaired needs to see the mouth of someone wearing a face covering in order to communicate.

Section 4. Severability. In the event a court of competent jurisdiction shall hold or determine that any part of this Resolution is invalid or unconstitutional, the remainder of the Resolution shall not be affected and it will be presumed that the Town did not intend to enact such invalid or unconstitutional provision. It shall further be

assumed that the Town Council would have enacted the remainder of this Resolution without said invalid and unconstitutional provision thereby causing said remainder to remain in full force and effect.

Section 5. Conflicts. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. Effective Date and Sunset. This Resolution shall become effective ~~on~~ pro tunc on October 5, 2020, and shall sunset at 12:01 a.m. on March 02, 2021 unless extended by the Town Council.

The foregoing Resolution was moved for adoption by Council Member White. The motion was seconded by Council Member Rivet and, upon being put to a vote, the vote was as follows:

- | | |
|-------------------------------|-----|
| Council Member Grant Ball | Aye |
| Council Member Brian Vail | Aye |
| Council Member Steve Rivet | Aye |
| Council Member David Scardino | Aye |
| Council Member Danny White | Aye |

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County, Florida this 19th day of October 2020.

BY: TOWN OF MALABAR

original signed
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby K. Franklin, C.M.C., Town Clerk/Treasurer

(seal)

Approved as to form and legal sufficiency by:

Karl W. Bohne, Jr., Town Attorney

At the RTCM of 1/04/2021 the following motion was approved:

- MOTION: CM Vail / CM White to extend until March 2, 2021. Vote: All Ayes

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.b.

Meeting Date: March 01, 2021

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Authorization for Legal Review of Code by Municode

BACKGROUND/HISTORY:

Municode Corporation provides codification services to the Town for the ordinances adopted by Council. The Malabar Code is available through a link on our website and also directly on its own website of www.municode.com. The codes of all their clients are available for research purposes using their library function.

Municode Corporation also provides a Legal Review service to its clients. I have recently requested a quote in order to bring this item before you for consideration. It is their recommendation that the codes are reviewed for legal consistency every ten years.

This is a chapter by chapter legal analysis done by their attorneys to identify obsolete provisions, inconsistencies, and contradictions.

The Town Council last authorized a legal review of the Malabar Code of Ordinances and Land Development Code in 2009. Prior to that it had been done in 1998. Once the legal review is done by Municode, the analysis is sent to the Town's Attorney for review.

The timing for this review is consistent with the recommended of every ten years. Staff requests affirmative authorization.

FINANCIAL IMPACT:

The funds to accomplish this have been provided in the current budget:

001-511.3400 for \$3,000.00

001-524.3120 for \$3,000.00

ATTACHMENTS:

Quote from Municode for Legal Review Services

ACTION OPTIONS:

Action on Authorization

LETTER OF INTEREST

February 3, 2021

Ms. Debby K. Franklin
Town Clerk/Treasurer
Town of Malabar
2725 Malabar Road
Malabar, FL 32950

via email: townclerk@townofmalabar.org

Ms. Franklin:

Thank you for your interest in Municode's Legal Review services! To ensure that your Code and Land Development volumes remain legally sound and accurate, we recommend a Legal Review or complete recodification every 5 to 10 years. Because recodification is an expensive and time-consuming process, some of our clients choose a Legal Review as a less expensive and faster way to achieve a similar result.

A Legal Review provides a snapshot of possible conflicts and inconsistencies within the material. During the Legal Review process, one of our attorneys will conduct a separate chapter-by-chapter legal analysis of the Code and/or Land Development Code volumes to identify obsolete provisions, eliminate internal conflicts and inconsistencies and ensure conformity with State Law. We will provide a Legal Memorandum outlining the findings of our analysis and schedule a conference to discuss Municode's recommendations to resolve any issues of concern. Our staff includes a large team of in-house experienced codification attorneys who have completed hundreds of codification and recodification projects nationwide.

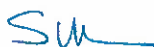
If this project is contracted for concurrently with a separate Legal Review of the Code and/or the Land Development Code, please note that the Legal Review project and the Gender Neutralization project will be separate projects with separate timelines, as they cannot be conducted concurrently.

With over 70 years of experience, Municode is the oldest and most trusted codifier in the nation. We currently provide codification services to over 4,000 municipalities throughout the United States and host over 3,700 municipal codes online via our code hosting platform, MunicodeNEXT. We invite you to visit our corporate website at <https://www.municode.com/> to explore our full suite of government services.

In addition to codification services, we provide a "circle of governance" that offers website design, meetings management and document archival tools in one seamless experience. Customers who trust Municode with their online codes, meetings software, and municipal website enjoy a unified search engine and integration of the Meetings, Web, and Code Hosting platforms. From the Meetings platform, agendas and minutes can automatically be uploaded to the website and ordinances can be sent to Municode for codification with permanent links created within the code for the ordinances and the specific meeting from which the legislation was adopted, via our OrdBank service.

Please contact Account Manager Susan Webb (SWebb@municode.com, 850-692-7119) if you have any questions regarding this proposal! Thank you for your continued confidence in Municode!

Sincerely,



Steffanie W. Rasmussen
Vice President of Client Services
Phone: 800-262-2633 ext. 1148
steff@municode.com

LEGAL REVIEW QUOTATION SHEET

Legal Review Fees – Code of Ordinances

- | | |
|--|----------------------------|
| <input type="checkbox"/> Legal Review of Code of Ordinances ¹ | \$3,000² |
| <input type="checkbox"/> Teleconference or web-based conference with a Municode attorney, per hour | \$150 |

Legal Review Fees – Land Development Code

- | | |
|--|----------------------------|
| <input type="checkbox"/> Legal Review of Land Development Code ³ | \$3,000⁴ |
| <input type="checkbox"/> Teleconference or web-based conference with a Municode attorney, per hour | \$150 |

State Law Reference Hyperlinking (optional)

- | | |
|---|--------------------------|
| <input type="checkbox"/> State Law Reference Hyperlinking, per hour
(estimated at 10 hours for Code & 5 hours for LDC. Invoiced upon completion of project) | \$75 |
| <input type="checkbox"/> Annual State Law Reference Hyperlinking to ensure links remain correct
(invoiced annually upon completion of project – cost includes both the Code and the LDC volumes) | \$300⁵ |

Payment Schedule for Legal Review Services:

- | | |
|-------------------------------------|----------------|
| • Upon Execution of Agreement | 50% |
| • Upon Delivery of Legal Memorandum | Balance |

This proposal shall be valid for a period of ninety (90) days from the date appearing below unless signed and authorized by Municode and the Town of Malabar, Florida.

Term of Agreement. This Agreement shall begin upon execution by both parties and end upon completion of the Legal Review process. Should ongoing supplementation and online Code hosting services be provided following the Legal Review, those services shall be automatically renewed from year to year provided that either party may cancel or change this agreement with sixty (60) days written notice.

Submitted by: MUNICIPAL CODE CORPORATION

Municode Officer: SW

Title: Steffanie W. Rasmussen, Vice President of Client Services

Date: February 3, 2021

Accepted by: TOWN OF MALABAR, FLORIDA

Signature: _____ Printed Name: _____

Title: _____ Date: _____

¹ Material to be reviewed as published by Municode through Supplement No. 23 of June 29, 2020. Legislation not currently included can be reviewed for an additional fee.

² Legislation added to the project must be approved and received prior to the established cutoff date. Proofs not returned within 45 days may be subject to a proof update fee, if applicable.

³ Material to be reviewed as published by Municode through Supplement No. 23 of June 29, 2020. Legislation not currently included can be reviewed for an additional fee.

⁴ Legislation added to the project must be approved and received prior to the established cutoff date. Proofs not returned within 45 days may be subject to a proof update fee, if applicable.

⁵ Does not include review of links to ensure accuracy. Subscribing to this ongoing annual service requires that the initial State Law Reference Hyperlinking has already occurred.

LEGAL REVIEW SCOPE OF SERVICES

During the Legal Review process, the attorney assigned to your project will examine every Title, Chapter and Section of the Code and/or Land Development Code to ensure that it is free from conflicts and inconsistencies and conforms to the laws of the State of Florida. Your Municode attorney will be available to consult with you and your staff at any time during the Legal Review process, which is outlined below.

Attorney Analysis and Review of Material. Our legal team will review the most current volume version to ensure conformity with state statutes and to identify any areas of possible legal concern. The review will also determine if there are any inconsistencies or conflicts within the legislation itself. Ordinances enacted, or added, subsequent to the established cut-off date for the Legal Review, or items not contemplated within the scope of service, may be included later at an agreed upon page rate.

References. We will notate any State Law References that need to be updated in the memorandum.

Legal Memorandum. We will provide you with a user-friendly Legal Memorandum containing all of our analyses and recommendations. This memorandum will reflect our attorney's Legal Review and will provide you with recommendations to remove conflicts and inconsistencies; conform to State Law, when appropriate; and ensure compliance with your charter (if applicable). This approach facilitates collaboration and dissemination among departments, thus making the process as easy for you as possible. Our goal is to make the Legal Review process simple and smooth for you.

Conference. Within 30 days of your receipt of the Legal Memorandum we will conduct a conference, via telephone or webinar, to review the Legal Memorandum and our recommendations. All interested personnel may be included, but your attorney and clerk are essential. Issues discovered during the legal analysis will be discussed at the conference, with the goal of the conference being to come to agreement on any required changes. Your attorney has the final decision-making authority for resolution of issues brought up at the conference or noted in the Legal Memorandum.

Implementation. Corrections to the Code and/or Land Development Code can be integrated via individual ordinances via supplementation; however, if changes are extensive, republishing the volume(s) may be more cost effective. An estimate for republication can be provided once the Legal Review is completed and the extent of changes is known. If the issues are too numerous or complex, a full recodification may be recommended. Should recodification be recommended, the expense incurred in the Legal Review may be credited toward its cost.

4,100+

Municipal Clients

70 Years

Serving Municipalities

200 Million

Citizens using our solutions