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**COMMUNITY CHARTER**

**FOR**

**FISHHAWK RANCH WEST**

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# COMMUNITY CHARTER FOR FISHHAWK RANCH WEST

## PREAMBLE

FishHawk Ranch West is a planned community located in Hillsborough County, Florida ("**FishHawk Ranch West**"). NNP IV-Lake Hutto, LLC, a Delaware limited liability company, its successors and assigns ("**Founder**"), as the developer of FishHawk Ranch West, has established this Community Charter ("**Charter**") to provide a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of the properties within FishHawk Ranch West. A key component of the governance structure is FishHawk Ranch West Homeowners Association, Inc. ("**Association**"), a corporation not-for-profit, created to administer and enforce this Charter and the other Governing Documents referenced in this Charter.

This document provides for automatic and mandatory membership in a homeowners association subject to Florida Statutes Chapter 720.

## DECLARATION OF COVENANT

The property described in Exhibit "A" and any additional property made subject to this Charter in the future by amendment or supplement shall constitute the "**Community**" referred to in this Charter. This Charter shall run with the title to the real property comprising the Community, shall govern the development and use of such property, and shall be binding upon and benefit every person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of the Community, including the Association, its successors and assigns.

## PART ONE: INTRODUCTION TO THE COMMUNITY

### Chapter 1 - Governing Documents

*A community is guided and governed by certain principles that each owner and resident, by choosing to own property or reside in the community, agree to uphold. Those principles are set forth in the community's governing documents, which bind the community together, give it structure, and provide guidance to all who become a part of or have an interest in the Community.*

#### 1.1. Scope and Applicability

The Community has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. Such documents,

| GOVERNING DOCUMENTS                                                                                |                                                                                                                                                                                                                                                                                                                    |
|----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Charter:</b><br>(recorded)                                                                      | this Community Charter for FishHawk Ranch West, which creates obligations that are binding upon the Association and all present and future owners of property in the Community                                                                                                                                     |
| <b>Supplement:</b><br>(recorded)                                                                   | a recorded Supplement to this Charter, which may submit additional property to this Charter, create easements over the property described in the Supplement, impose additional obligations or restrictions on such property, designate special areas as described in Chapter 3, or any of the foregoing            |
| <b>Articles of Incorporation:</b><br>(filed with Department of State)<br>(attached as Exhibit "D") | the Articles of Incorporation of FishHawk Ranch West Homeowners Association, Inc., as they may be amended, which establish the Association as a corporation not-for-profit under Florida law. A copy of the Articles is attached to this Charter as Exhibit "D."                                                   |
| <b>By-Laws:</b><br>(attached as Exhibit "E")                                                       | the By-Laws of FishHawk Ranch West Homeowners Association, Inc. adopted by its Board of Directors, as they may be amended, which govern the Association's internal affairs, such as voting, elections, meetings, etc. A copy of the By-Laws is attached to this Charter as Exhibit "E."                            |
| <b>Design Guidelines:</b><br>(Founder adopts)                                                      | the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 5, as they may be amended, which govern new construction and modifications to property in the Community, including structures, landscaping, and other items constructed or installed by anyone other than the Founder |
| <b>Rules:</b><br>(initial set attached as Exhibit "C")                                             | the rules of the Association adopted pursuant to Chapter 7, which regulate use of property, activities, and conduct within the Community                                                                                                                                                                           |
| <b>Board Resolutions:</b><br>(Board adopts)                                                        | the resolutions which the Association's board of directors adopts to establish rules, policies, and procedures for internal governance and Association activities and to regulate the operation and use of property the Association owns or controls                                                               |

Table 1.1 - Governing Documents

## Governing Documents

referred to in this Charter as the "**Governing Documents**," include this Charter and the other documents described in Table 1.1, as they may be amended. All owners and occupants, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

### 1.2. Additional Covenants

The Owner of any property within the Community may impose additional covenants on its property with such approval as may be required pursuant to Section 18.5. If the provisions of any such additional covenants are more restrictive than the provisions of this Charter, the more restrictive provisions control. The Association shall have standing and the power, but not the obligation, to enforce any such additional covenants.

### 1.3. Conflicts

If there are conflicts between any of the Governing Documents and Florida law, Florida law shall control. If there are conflicts between or among any of the Governing Documents, then the Charter, the Articles, and the By-Laws (in that order) shall control, to the extent not inconsistent with Florida law. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants), the Governing Documents shall control.

The Governing Documents use diagrams, tables, and keynotes (text set apart in boxes with "key" icons) to illustrate concepts and assist the reader. If there is a conflict between any diagram and the text of the Governing Documents, the text shall control.

If any court determines that any provision of this Charter is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

### 1.4. Definitions

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. An index to defined terms follows the Table of Contents. All other terms used in the Governing Documents have their natural, commonly accepted definitions.

### 1.5. Interpretation of Certain References

**Community-Wide Standard.** Where the Governing Documents require compliance with the "**Community-Wide Standard**," the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community, or (b) the minimum standards described in this Charter, the Design Guidelines, the Rules, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the Reviewer (as defined in Chapter 5). The Community-Wide Standard may or may not be set out in writing. The Founder initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as the Community matures.

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

**Discretion and Determination.** All references in the Governing Documents to "**discretion**" or to the right to "**determine**" any matter shall refer to the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, any one authorized in the Governing Documents to

## Governing Documents

exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

***Maintenance.*** Unless otherwise expressly limited, any reference in this Charter to "**maintenance**" shall refer to maintenance, repair, and replacement.

***Person.*** References in the Governing Documents to a "**Person**" or "**Persons**" shall refer to an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

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

## Chapter 2 - Community Administration

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*Vibrant communities depend upon all of their stakeholders working together to uphold community standards and achieve the vision and goals for the community. The Founder, the Association, the Owners, the Builders, and others have a role in the functioning of the community and in helping to fulfill that vision. This Chapter identifies these stakeholders and describes their roles in administering the Community.*

### 2.1. The Founder

The Founder has established the vision for the Community and, through the Governing Documents, has set forth the founding principles that will guide the Community during the initial period of development and sale and thereafter. The Founder's proposed plan for development of the Community is described in the land use plan(s) for FishHawk Ranch West approved by Hillsborough County, Florida, as it may be supplemented and amended from time to time, which plan encompasses all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B" ("**Development Plan**"). However, the Founder reserves the right to make changes in the Development Plan and is not obligated to submit property shown on or otherwise included in the Development Plan to this Charter. In addition, the Founder may submit property to this Charter that is not a part of the Development Plan. No representation is made that the Community will be developed as shown on the Development Plan.

The Founder has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Founder may exercise certain of these rights throughout the "**Development and Sale Period**," which is the period of time during which the Founder or any "Founder Affiliate" owns real property in the Community or has an unexpired option to expand the Community pursuant to

Chapter 17. A "**Founder Affiliate**" is any Person that controls, is controlled by, or is under common control with the Founder, and any Person that is an owner, a member, a partner, or a shareholder of the Founder.

The Founder has reserved other rights that may be exercised during the "**Founder Control Period**." The Founder Control Period begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

- (a) three months after 90% of the total number of Units permitted by applicable zoning for the property described in the Development Plan have been conveyed to Persons other than the Founder;
- (b) December 31, 2030; or
- (c) when, in its discretion, the Founder so determines and declares in a recorded instrument.

During the Founder Control Period, the Founder has the right to elect at least a majority of the members of the Association's board of directors ("**Board**") as provided in Article 3 of the By-Laws, subject to the limitations set forth in Florida Statutes §720.307. The Founder has certain approval rights over Association actions for a limited period as provided in the By-Laws after the termination of the Founder Control Period.

The Founder may assign its status and/or rights as the Founder under the Governing Documents, in whole or in part, and with respect to all or any portion of the Community, to one or more persons who take title to any portion of the property described in Exhibit "A" or "B" for the purpose of development and/or sale; however, there shall be no more than one Founder at a time. Any such assignment shall be made only in

## Community Administration

a recorded instrument signed by all parties to the assignment.

### 2.2. The Association and its Board

The Association is the entity primarily responsible for administering the Community in accordance with the Governing Documents. On most matters, the Association acts through the Board, which is selected as provided in Section 2.1 and the By-Laws. However, in some instances the Governing Documents or applicable law limit the Board's ability to act without the approval of the Association's members. Unless the Governing Documents or Florida law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

The Association may exercise all rights and powers that the Governing Documents and Florida law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents and Florida law. It may also take any action reasonably necessary to effectuate any such right or privilege.

Although the Association has the power to institute, defend, and settle lawsuits pertaining to the Area of Common Responsibility (as defined in Section 3.1) and enforcement of the Governing Documents, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances), and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

### 2.3. The Owners

Each Person that holds record title to a Unit (as defined in Section 3.1) is referred to in the Governing Documents as an "**Owner**." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Unit is sold under a recorded contract of sale, and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Unit has more than one Owner, all co-Owners shall enjoy the benefits to which Owners are entitled and are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

Every Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in Part Two of this Charter. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Association and through service to the Community in other committee and leadership roles, as described in the By-Laws.

### 2.4. Builders

The Founder intends to sell property in the Community to builders for the purpose of constructing dwellings for resale in the ordinary course of their business ("**Builders**"). Builders are considered Owners during the time that they own property in the Community for development, construction, and/or resale, and are entitled to the privileges and subject to the obligations of membership in the Association for each Unit that they own, except as otherwise specifically provided in this Charter. In addition, the Founder may extend any of the rights it has reserved under the Governing Documents with respect to development, marketing, and sale of property in the Community to such Builders as it may designate, but in no event shall any such ex-

## Community Administration

tension of rights deprive the Founder of the right to continue to exercise such rights on its own behalf.

### 2.5. Additional Associations

Portions of the Community may be developed under a condominium form of ownership or may have special requirements that warrant a separate owners association to administer additional covenants applicable to that particular area ("**Additional Association**"). However, nothing in this Charter requires the creation of an Additional Association, and the jurisdiction of any Additional Association shall be subordinate to that of the Association.

Any Additional Association shall be responsible for administering the additional covenants applicable to the property within its jurisdiction and for maintaining, in accordance with the Community-Wide Standard, any property that it owns or that its covenants designate as being for the common benefit of its members.

### 2.6. Mortgagees

If a Unit is made subject to a mortgage or other form of security instrument affecting title to a Unit ("**Mortgage**"), then the holder or beneficiary of that Mortgage ("**Mortgagee**") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 16.

### 2.7. Community Development Districts

A "**Community Development District**" or "**CDD**" is a special taxing district formed in accordance with the provisions of Chapter 190 of the Florida Statutes. The Founder has established FishHawk IV Community Development District to finance the construction of, own, operate, and maintain certain infrastructure improvements within all or a portion of FishHawk Ranch West, including surface water management system facilities, parks, and other facilities. At any time, and

from time to time, the Founder or the Association may grant easements to the CDD, enter into agreements with the CDD for maintenance and/or use of certain properties within the Community, and/or transfer ownership and/or maintenance responsibility for properties within the Community to the CDD. As a result of any such transfer, the scope of the Association's maintenance responsibilities under this Charter may be reduced. Each Unit will be subject to assessment by the CDD in addition to such assessments as may be levied by the Association pursuant to Chapter 12 of this Charter.

### 2.8. Village Center Association

The Founder has established a Florida not-for-profit corporation known as Circa FishHawk Village Center Association, Inc. to serve as a mandatory membership owners association with jurisdiction over certain commercial properties and rental apartments adjacent to or in the vicinity of the Community ("**Village Center Association**") and to administer the Charter for Circa FishHawk Village Center recorded by the Founder ("**Village Center Charter**") and various governing documents referenced in such Village Center Charter (collectively referred to as the "**Village Center Documents**"). The Founder intends for the Association and the Village Center Association to cooperate in the administration of the property within their respective jurisdictions and in the enforcement of their respective governing documents, to maintain and preserve high standards of architecture, maintenance, and use throughout the properties subject to the jurisdiction of each.

## **Chapter 3 - Community Structure and Organization**

*The Community consists of Units intended for the use of the Owner and other occupants of the Unit, as well as property that is intended for common use. Units are grouped into Neighborhoods to facilitate voting on Association matters. Units also may be assigned to Service Areas to permit the Association to provide special services and benefits to particular areas of the Community.*

### **3.1.Designations of Properties Comprising the Community**

**Units.** The Governing Documents refer to the homes and home sites in the Community as "**Units.**" A Unit is a portion of the Community which is depicted as a separately identified lot or parcel on a recorded subdivision plat or as a separate unit on a condominium plat or plan, and which is intended for development, use, and occupancy as a residence for a single family. The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures or other improvements on the Unit. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling that may be independently owned and conveyed shall be deemed to be a separate Unit.

A parcel of land intended for further subdivision and development into one or more Units is considered a single Unit until a subdivision plat, survey, or condominium instrument is recorded subdividing it into more than one Unit. The term "Unit" does not include Common Areas, as defined below, common property of any Additional Association, property dedicated to the public, or property which a CDD owns.

**Common Area.** Any property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit is referred to as "**Common Area.**" The Common Area also includes easements in favor of the Asso-

ciation and any property that the Association holds under a lease.

**Limited Common Area.** Certain portions of the Common Area may be designated as "**Limited Common Area**" and assigned for the exclusive use or primary benefit of one or more Units in specified portions of the Community. Limited Common Areas might include, for example, easements for retaining walls supporting multiple lots.

The Founder may designate property as Limited Common Area and assign it to particular Units on the recorded plat depicting such property, in the deed conveying such property to the Association, or in the Supplement by which the property is submitted to the terms of this Charter. At any time during the Development and Sale Period, the Founder may assign use of the same Limited Common Area to additional Units.

**Area of Common Responsibility.** All of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility, are collectively referred to in the Governing Documents as the "**Area of Common Responsibility,**" regardless of who owns them. The Area of Common Responsibility includes all of the Common Area and may also include Units or portions of Units and property dedicated to the public, such as public rights-of-way adjacent to the Community. The initial Area of Common Responsibility is described in Chapter 9.

**CDD Property.** Portions of the Community, including, without limitation, infrastructure, landscaping, open space, and recreational facilities, may be owned by or dedicated to a CDD for purposes consistent with those for which the CDD was established ("**CDD Property**"). CDD Property shall not be considered a Unit and

## Community Structure and Organization

shall not be subject to assessment so long as it is owned or operated by the CDD or its designated agent. The CDD shall not be a member of the Association or entitled to votes in the Association for CDD Property. Notwithstanding the general authority granted to the Association in this Charter or By-Laws to adopt and enforce rules regulating activities within the Community, the Association shall not, without the prior written consent of the CDD, seek to exercise such authority in any manner which interferes with the lawful operation by the CDD or its authorized agent of facilities constructed on CDD Property, it being the intent that the Association's authority to adopt and enforce rules be limited, with respect to CDD Property, to regulation of conduct and activities of the Association's members, their tenants, and their respective guests and invitees on the CDD Property to the same extent that the Association regulates their conduct and activities in other portions of the Community.

### 3.2. Neighborhoods

Units are grouped into "**Neighborhoods**" to facilitate a system of representative voting on matters as to which the Governing Documents require approval of the Association's membership. A Neighborhood may be comprised of any number of Units and may include Units of more than one housing type, as well as Units that are not contiguous to one another. Each Neighborhood will elect one "Voting Delegate" to cast the votes allocated to Units in that Neighborhood on matters requiring a vote of the Owners, as described in Chapter 4. Each Neighborhood will also elect an alternate Voting Delegate to cast the Neighborhood's votes in the absence of the Voting Delegate.

The Founder initially will assign Units to a specific Neighborhood (by name or other identifying designation) either in Exhibit "A" or in a Supplement. During the Development and Sale Period, the Founder may unilaterally record a Supplement, or an amendment to this Charter or any previously recorded Supplement, to design-

nate or change Neighborhood boundaries. Thereafter, the Board may amend this Charter or any Supplement to re-designate Neighborhood boundaries; however, the Board may not combine two or more existing Neighborhoods without the consent of Owners of a majority of the Units in the affected Neighborhoods.

### 3.3. Service Areas

Units also may be part of one or more "**Service Areas**" in which the Units share Limited Common Areas or receive special benefits or services from the Association that it does not provide to all Units within the Community. A Unit may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Units of more than one housing type and may include Units that are not contiguous.

The Founder may initially designate Service Areas (by name or other identifying designation) and assign Units to a particular Service Area either in Exhibit "A" to this Charter or in a Supplement applicable to Units comprising the Service Area. During the Development and Sale Period, the Founder may unilaterally amend this Charter or any Supplement to change Service Area boundaries. In addition, the Board may, by resolution, designate Service Areas and assign Units to them upon petition of Owners of at least 67% of the Units affected by the proposed designation pursuant to Section 10.2.

The Owners of Units within each Service Area may elect a "Service Area Committee" in accordance with the By-Laws to represent, and act on behalf of, the Owners with respect to the services and benefits that the Association provides to the Service Area. References to Service Areas in the Governing Documents shall also refer to such Service Area Committees, if appropriate from the context.

## Community Structure and Organization

### 3.4. Shared Properties and Services.

The Founder may execute and record a declaration of easements and covenant to share costs or similar instruments affecting all or any portion of the Community ("**Covenant to Share Costs**") which provides for:

(a) the maintenance and operation of landscaping, community signage, infrastructure, facilities and improvements ("**Shared Properties**") and/or the provision of various services ("**Shared Services**") which benefit all or any portion of the Community and all or any portion of the property subject to the Village Center Charter or other property outside of the Community;

(b) the sharing of costs of maintaining, operating, and insuring such Shared Properties and providing any Shared Services, and

(c) easements over any portion of the Common Area, or over any other portion of the Community with the consent of the Owner thereof, for the benefit of any real property subject to the Village Center Charter or any property within or adjacent to the Community; and/or

(d) easements over any other property for the benefit of all or portions of the Community.

Any such Covenant to Share Costs shall be binding upon the Association and the Owners of any portion of the Community submitted to such Covenant to Share Costs; however, the Founder may not submit to any such Covenant to Share Costs property which the Founder does not own at the time of submission except with the joinder and consent of the owner of such property, and no such Covenant to Share Costs shall obligate the Association to share costs incurred by the Village Center Association or to maintain common property of the Village Center Association if the Association's share of such costs would be a Common Expense hereunder, unless such cost sharing or maintenance obligation is first ap-

proved by Owners entitled to cast a majority of the votes of Units owned by Persons other than the Founder that would be subject to assessment for a share of such costs, if any.

## **Chapter 4 - Association Membership and Voting Rights**

*The Association is the entity primarily responsible for the governance and administration of the Community. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in the Owners allow the Owners to participate in administration of the Community and influence the outcome of major decisions.*

### **4.1.Membership**

The Association initially has two classes of membership: the "Owner Membership," which is comprised of all Owners (including Builders and the Founder, if they own Units), and the Founder Membership, which consists solely of the Founder and is not dependent on ownership of a Unit. All persons holding a membership in the Association are referred to in this Charter as "**Members**"

(a) **Owner Members.** Every Owner is automatically a member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a writing to the Association's Secretary, except that only the individuals residing in the Unit shall be entitled to use any Common Area recreational facilities available for use by Owners.

(b) **Founder Member.** The Founder holds the sole Founder Membership. The Founder membership shall terminate two years after expiration of the Founder Control Period or on such

earlier date as the Founder determines and declares in a recorded instrument.

Unless the Founder specifically delegates such authority, the Founder shall act as, and on behalf of, the Founder Membership on all matters.

### **4.2.Voting**

Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Charter and the other Governing Documents. No vote shall be exercised for any property exempt from assessment under Section 12.8.

Due to the number of Units that may be developed in the Community, the Governing Documents provide for a representative system of voting. The Owners of Units in each Neighborhood elect a "**Voting Delegate**" and an alternative Voting Delegate, in the manner provided in the By-Laws, to cast the votes of all Units in the Neighborhood (other than Units owned by the Founder) on matters requiring a vote of the membership, except where the governing documents specifically require a vote of the Owners. However, until such time as the Board first calls for election of a Voting Delegate for a particular Neighborhood, each Owner of a Unit in such Neighborhood shall be considered a "Voting Delegate" and may personally cast the vote allocated to such Owner's Unit on any issue requiring a vote of the Voting Delegates under the Governing Documents. The Founder shall be considered the Voting Delegate for, and may personally cast the vote(s) allocated to, any Units which it owns until expiration of the Development and Sale Period.

The Voting Delegate or, in his or her absence, the alternative Voting Delegate, attends Association meetings and casts all votes allocated to Units in the Neighborhood that he or she repre-

## **Association Membership and Voting Rights**

sents on any matters as to which such Voting Delegate is entitled to vote under the Governing Documents. A Voting Delegate may vote all votes it is entitled to cast in its discretion and may, but need not, poll the Owners of Units in the Neighborhood which he or she represents prior to voting. On any matter for which a Voting Delegate is entitled to cast more than one vote, the Voting Delegate may cast all such votes as a block or split them but shall not be entitled to fractionalize any single vote.

Voting Delegates are elected solely to facilitate the voting process. They are subordinate to the Board, and their responsibility and authority does not extend to policymaking, supervising, or otherwise being involved in Association governance beyond voting on matters put to a vote of the membership. Voting Delegates shall have no authority to meet in their capacity as Voting Delegates or to conduct business outside of a meeting duly called in accordance with the By-Laws provisions for membership meetings.

In any situation in which an Owner is entitled personally to exercise the vote for his or her Unit, if there is more than one Owner of a Unit, any co-Owner or any proxy duly appointed by a co-Owner may cast the vote for such Unit or consent to any action requiring approval of the Owners on behalf of all co-Owners of the Unit; however, no single vote may be split and no more than one vote may be cast for any Unit. If two or more co-Owners or their proxies seek to exercise the Unit's vote independently, neither shall be recognized except that the Unit's vote may be counted as an abstention for purposes of establishing a quorum. The Unit's vote may not be split, and no more than one vote may be cast for any Unit.

## PART TWO: COMMUNITY STANDARDS

### Chapter 5 - Architecture, Landscaping, and Aesthetic Standards

*The Community derives its unique character from a mix of compatible architectural styles and from the cooperation of all Builders and Owners in upholding minimum design, landscaping, and aesthetic standards. This Chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on property within the Community initiated by anyone other than the Founder or the Association during the Founder Control Period.*

#### 5.1. General

Except as otherwise specifically authorized by Florida Statutes §720.304 with respect to certain flags and flagpoles, all site work, landscaping, structures, improvements, and other items (including sports, play, and maintenance equipment, outdoor furniture and storage, and decorative items) placed or stored on any property in the Community in a manner or location visible from outside of any existing structure ("**Improvements**") are subject to standards for design, landscaping, and aesthetics adopted pursuant to this Chapter ("**Design Guidelines**") and the approval procedures set forth in this Chapter, except as this Chapter or the Design Guidelines may otherwise specify.

Nothing in this Chapter or the Design Guidelines shall authorize the Reviewer to preclude an Owner from displaying a portable, removal United States flag in a respectful manner, consistent with Title 36 U.S.C. Chapter 10, or to prohibit an Owner from implementing xeriscape or Florida friendly landscape, as defined in Florida Statutes §373.185(1), on his or her Unit; however, the Owner shall first comply with the application and review procedures set forth in this Chapter

and such application shall be subject to review and approval or disapproval as to number, location, size, manner of installation and other matters described in Section 5.3(b) and the Design Guidelines. Approval of applications for installation of landscaping may be conditioned upon the Owner's execution and recording of an agreement to maintain such landscaping at the Owner's expense.

No prior approval is necessary to repaint the exterior of existing structures using the most recently approved color scheme or to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, patios, and any other portions of a structure visible from outside of the structure do require prior approval.

Any dwelling constructed on a Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect or a residential designer approved by Hillsborough County, unless the Founder or its designee in its sole discretion otherwise approves. In addition, during the Development and Sale Period, only builders that the Reviewer (as defined in Section 5.2) approves may construct dwellings on Units.

All construction on Units shall comply with all applicable building codes and requirements. In addition, each Owner, at the time of construction of a building, residence, or structure on the Unit, shall comply with the construction plans for the Surface Water Management System Facilities approved and on file with the

## Architecture, Landscaping, and Aesthetic Standards

Southwest Florida Water Management District (SWFWMD).

Approval under this Chapter shall be in addition to, not in lieu of, any approvals or reviews required by Hillsborough County or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters. However, approval under this Chapter shall be obtained prior to requesting any building or other permit or submitting any documentation to any governmental authority whose review or approval may be required for the proposed work. The Founder and the Association shall have the right and standing to take action to suspend or enjoin processing of any request for review or approval by a governmental authority submitted prior to any necessary approval being granted hereunder. Approval under this Chapter is not a substitute for any approvals or reviews required by Hillsborough County or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

This Chapter shall not apply to the Founder's design and construction activities or to the Association's activities during the Founder Control Period.

### 5.2. Design Review Authority

**(a) Founder.** The Founder shall have exclusive authority to review and act upon all applications for review of proposed Improvements until the later of (i) the expiration of the Development and Sale Period, or (ii) such time as all Units planned for the property described in Exhibits "A" and "B" have been improved with dwellings for which a certificate of occupancy has been issued. The Founder may designate one or more persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, or otherwise exercising or declining to exercise its authority under this Chapter, the Founder and its designee act solely in the Founder's interest and owe no duty and

shall have no liability to the Association or any other Person.

From time to time, the Founder may delegate any or all of its rights under this Chapter to other Persons or committees, including the committee appointed pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the Founder's right to revoke such delegation at any time and reassume its prior control, and (ii) the Founder's right to veto any decision that it determines, in its discretion, to be inappropriate or inadvisable. So long as the Founder has any rights under this Chapter, the jurisdiction of others shall be limited to such matters as the Founder specifically delegates.

**(b) Design Review Committee.** Upon the Founder's delegation of authority pursuant to Section 5.2(a), or upon expiration or termination of the Founder's rights under this Chapter, the Board shall appoint a Design Review Committee ("**Design Review Committee**" or "**DRC**") to assume jurisdiction over matters within the scope of the delegated authority or this Chapter, respectively. The DRC shall consist of at least three persons who shall serve and may be removed and replaced in the Board's discretion. DRC members need not be Owners or representatives of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. The Association may compensate DRC members in such manner and amount, if any, as the Board may determine appropriate.

Until expiration of the Founder's rights under this Chapter, the DRC shall notify the Founder in writing within three business days of any action (*i.e.*, approval, partial approval, or disapproval) it takes under this Chapter. A copy of the application and any additional information the Founder may require shall accompany the notice. The Founder shall have 10 business days after receipt of such notice to veto any such action, in its discretion, by written notice to the DRC.

## Architecture, Landscaping, and Aesthetic Standards

Unless and until such time as the Founder delegates all or a portion of its reserved rights to the DRC or the Founder's rights under this Chapter terminate, the Association shall have no jurisdiction over architectural matters.

(c) **Reviewer.** For purposes of this Chapter, the entity having jurisdiction in a particular case shall be referred to as the "**Reviewer.**"

(d) **Fees; Assistance.** The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include reasonable costs incurred in having professionals review any application. The Board may include the compensation of such persons in the Association's annual operating budget.

 Initially, the Founder reviews applications for proposed Improvements. Thereafter, the Board of Directors will appoint a Design Review Committee to review applications for proposed Improvements. The Founder or the Design Review Committee, as applicable, is referred to as the "Reviewer." The Reviewer sets fees for reviewing applications.

### 5.3.Guidelines and Procedures

(a) **Design Guidelines.** The Founder may prepare the initial Design Guidelines, which may contain general provisions applicable to all of the Community as well as specific provisions that vary among uses, housing types, or locations within the Community. The Design Guidelines are intended to provide guidance to Owners and contractors regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval.

The Founder shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 5.2(a). The Founder's right to amend the Design Guidelines shall continue even if it delegates reviewing au-

thority to the DRC, unless the Founder also delegates the power to amend to the DRC. Upon termination or delegation of the Founder's right to amend, the DRC may amend the Design Guidelines with the Board's consent.

Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and their contractors upon request and may charge a reasonable fee to cover reproduction costs. In the Founder's discretion, such Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) **Procedures.** Unless the Design Guidelines provide otherwise, no activities within the scope of this Chapter (as described in Section 5.1) may begin on any portion of the Community until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications and such other information as the Reviewer or the Design Guidelines require.

Meetings of the DRC shall be open to all members, subject to the same exceptions as Board meetings under the By-Laws. This provision shall not apply when the Founder is the Reviewer.

## Architecture, Landscaping, and Aesthetic Standards

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to the procedures in Chapter 19 or judicial review so long as they are made in good faith and in accordance with required procedures.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information and fees. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

The Reviewer shall notify the applicant in writing of the final determination on any application no later than 30 business days after its receipt of a completed application and all required submissions; however, with respect to any DRC determination subject to the Founder's veto right under Section 5.2(b), the Reviewer shall notify the applicant of the final determination within 45 business days after its receipt of the final determination and all required submissions. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

If the Reviewer fails to respond within the time period required above, the applicant may send written notice to the Reviewer requesting action on the application and if the Reviewer fails to respond within 30 business days after receipt of such written notice, then approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.5.

No approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.5.

As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing.

The Reviewer may exempt certain activities from the application and approval requirements of this Chapter, if such activities are undertaken in compliance with the Design Guidelines and the Community-Wide Standard.

**(c) Appeals Process.** After the Board's appointment of the DRC, an applicant may appeal any disapproval of its application to the Board. To request an appeal, the applicant must submit to the Association's Secretary, no later than 15 days after the delivery of the notification of disapproval, a copy of the original application, the notification of disapproval, and a letter requesting review of the decision. The appeal request also shall contain a response to any specific concerns or reasons for disapproval listed in the notifica-

## Architecture, Landscaping, and Aesthetic Standards

tion of disapproval. The Board may (i) affirm the DRC's decision, (ii) affirm a portion and overturn a portion of the DRC's decision, or (iii) overturn the DRC's entire decision.

The Board shall notify the applicant and the DRC in writing of its decision no later than 30 days after its receipt of the request for appeal with all required information. The Board's decision shall include a description of its reasons for overturning the DRC's decision. During the appeal process, the Owner shall not commence any work requiring approval hereunder.

This subsection shall not apply while the Founder is the Reviewer.

### 5.4.No Waiver of Future Approvals

The people reviewing applications under this Chapter will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the Reviewer may elect not to require changes to objectionable features. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

### 5.5.Variances

 *When unusual circumstances exist that make it difficult or impossible to comply with a particular requirement of the Design Guidelines, the Owner may file a request with the Reviewer to be excused from complying with such requirement. The Reviewer has the discretion to determine when a variance is appropriate.*

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures set forth in this Chapter or in the Design Guidelines when, in its judgment,

circumstances justify an exception. No variance shall (a) be effective unless in writing; (b) be contrary to this Charter; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires the Founder's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.

### 5.6.Limitation of Liability

This Chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community; it does not create any duty to any Person. Review and approval of any application pursuant to this Chapter may be based purely on aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, for ensuring that structures are fit for their intended purpose, or for ensuring that all dwellings are of comparable quality, value, size, or design or are aesthetically pleasing or otherwise acceptable to other Owners.

Neither the Reviewer nor any member of the Reviewer shall have any liability for approving plans that are inconsistent with the Design Guidelines provided that such person acted in good faith in approving such plans.

With respect to any property owned or improved by any Person subject to the requirements of this Chapter, the Founder, the Association, its officers, the Board, any committee, and member of any of the foregoing shall not be liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any architect or contractor, or their respective subcontractors, employees, or agents, whether or not the Founder has approved or featured such architect or such contractor as a Builder in the Community;

## **Architecture, Landscaping, and Aesthetic Standards**

(d) view preservation; (e) construction delays or schedule modifications resulting from any Person's failure to obtain, or delay in obtaining, approval of plans or approval for modifications to previously approved plans; or (f) any injury, damages, or loss arising out of the manner or quality or other circumstances of construction or modifications, whether or not approved hereunder. In all such matters, the Association shall defend and indemnify the Board, the Reviewer, and the members of each, as provided in the By-Laws.

### **5.7.Final "As Built" Plans**

Upon completion of structural improvements approved pursuant to this Chapter, the Owner shall submit to the Reviewer a final, "as built" site plan, utility plan, and elevations.

### **5.8.Certificate of Compliance**

Any Owner may request in writing that the Reviewer issue a certificate of compliance certifying that there are no known violations of this Chapter or the Design Guidelines. The Reviewer shall either grant or deny such written request within 30 days after receipt, and may charge a reasonable administrative fee.

## **Chapter 6 - Maintenance, Repair, and Replacement**

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*One of the benefits of owning property in a planned community is the commitment among neighbors to maintain their property in a neat and attractive condition to enhance the overall beauty and aesthetic appeal of the community. This Chapter describes the Owners' responsibilities for maintenance and repair of their Units and for insuring their Units against property damage so that funds will be available for repair and restoration if needed.*

### **6.1.Maintenance by Owners**

Each Owner shall maintain his or her Unit, including all structures, landscaping, and other improvements comprising the Unit, in a manner consistent with the Governing Documents and the Community-Wide Standard unless such maintenance responsibility is otherwise assumed by or assigned to the Association, an Additional Association, or a CDD pursuant to this Charter, any Supplement, other recorded covenants, written agreement, or by law.

In addition, Owners of Units adjacent to CDD property or Common Area containing any lake or pond shall be responsible for landscaping and maintaining the area between the Unit boundary and the shoreline of any such lake or pond lying within 30 feet of the Unit boundary. However, Owners may not remove or install trees or shrubs in such area without prior approval pursuant to Chapter 5.

### **6.2.Maintenance by Additional Associations**

An Additional Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants. An Additional Association responsible for maintaining property adjacent to CDD property or Common Area containing any lake or

pond shall be responsible for landscaping and maintaining the area between the property for which it otherwise has responsibility and the shoreline of any such lake or pond lying within 30 feet of such property. However, it may not remove or install trees or shrubs in such area without prior approval pursuant to Chapter 5

The Association may assume maintenance responsibility for any Additional Association property, either upon designation of the Additional Association as a Service Area pursuant to Section 3.3 or upon the Board's determination, pursuant to Chapter 8, that the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard. The Association need not treat all similarly situated Additional Associations the same.

### **6.3.Responsibility for Repair and Replacement**

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either an Additional Association (if any) or the Association carries such insurance, which they may but are not obligated to do unless otherwise specified in a recorded Supplement or other recorded covenants applicable to the Unit. If the Association assumes responsibility for insuring a Unit pursuant to this Charter or any Supplement, the premiums for such insurance shall be assessed against the benefited Unit and the Owner as a Service Area Assessment pursuant to Chapter 12. This requirement is for the

## **Maintenance, Repair, and Replacement**

benefit of all Owners and failure to maintain required insurance shall subject an Owner to disciplinary action by the Association pursuant to Chapter 8; however, nothing in this section shall obligate the Association to monitor compliance or ensure that Owners maintain the required insurance on Units.

Within 90 days after any damage to or destruction of a structure on a Unit, the Owner shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Chapter 5 unless the Board, in its discretion, agrees to extend such period. Alternatively, the Owner shall clear the Unit of debris and maintain it in a neat and attractive condition consistent with the Community-Wide Standard. The Owner shall pay any costs that insurance proceeds do not cover.

Additional recorded covenants applicable to any portion of the Community may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Units and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

This Section shall apply to an Additional Association with respect to common property of the Additional Association in the same manner as if the Additional Association was an Owner and the common property was a Unit.

### **6.4. Maintenance and Repair of Party Walls and Similar Structures**

Except as may otherwise be provided by Supplement to this Charter, by law, by a written agreement between Owners of adjacent Units, or other recorded documents applicable to two or more adjacent Units:

(a) Each wall, fence, driveway, or similar structure built as part of the original construction on the Units that serves and/or separates any two

adjoining Units shall be considered a party structure. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners whose Units are served by the party structure.

(b) If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner whose Unit is served by the structure may restore it. Other Owners whose Units are served by the structure also shall contribute to the restoration cost in equal proportions, subject to the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(c) The right to and the obligation of contribution for party walls and similar structures between Owners, as provided in this Section, shall be appurtenant to the land and shall pass to such Owners' successors-in-title.

(d) To the extent not in conflict with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to any party structure. Any dispute concerning a party structure shall be subject to the provisions of Chapter 19.

## Chapter 7 - Use and Conduct

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*This Chapter sets forth basic standards regarding use, occupancy, and transfer of interests in Units. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct, and activities within the Community to address particular needs and desires of the Community over time.*

### **7.1. Use, Occupancy, and Transfer of Interests in Units**

**(a) Residential and Related Uses.** Units may be used only for residential and related purposes, except as the Founder may otherwise authorize with respect to construction, marketing, and sale activities of the Founder and Builders it designates, and as otherwise authorized in this Section.

A business activity within a Unit shall be considered "related" to a residential use and thus permitted under this Section only if conducted by a person or persons residing in the Unit and only if the business activity:

- (i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;
- (ii) complies with applicable zoning requirements;
- (iii) does not involve regular visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and
- (iv) is consistent with the Community's residential character and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

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

Leasing a Unit for residential purposes shall not be considered a "business" within the meaning of this subsection, provided that the Owner and any other Owners with whom such Owner is affiliated, individually or collectively, do not collectively lease or offer for lease more than one Unit at any time. This provision shall not preclude an institutional lender from leasing a Unit upon taking title following foreclosure of its security interest in the Unit or upon acceptance of a deed in lieu of foreclosure.

**(b) Leasing.** For purposes of this Charter, the terms "**Lease**" and "**Leasing**" shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit. Leasing of Units is prohibited except in strict compliance with the following:

- (i) A dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased or subleased and any detached "in-law suite," "guest house," garage apartment or other accessory structure may be leased only to a tenant who is also leasing the main dwelling;
- (ii) The Owner and any other Owners to whom such Owner is related or with whom such Owner is affiliated, shall not individually or

## Use and Conduct

collectively lease or offer for lease more than one Unit at the same time;

(iii) No signs shall be posted on the Unit, elsewhere in the Community, or on right-of-way adjacent to the Community, advertising the availability of the Unit for rent or for lease, except as may be permitted by the Design Guidelines;

(iv) The lease shall provide for a minimum initial term of at least seven months. The Unit may not be leased or subleased and the lease may not be assigned during the initial seven-month term. In the event of termination of the lease after the tenant has taken occupancy and prior to the end of such seven-month minimum initial term, the Owner may not enter into a new lease with a term commencing prior to the date on which the previous lease would have expired without prior approval of the Board, which shall not be granted unless the Board determines, after consideration of the facts and circumstances, that the Owner acted in good faith, with no intent to circumvent the requirements of this subsection (b), and could not reasonably have anticipated the early termination of the previous lease at the time the lease was signed.

**All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.**

Prior to a tenant taking occupancy under a lease or rental agreement of any kind, the Owner of the leased Unit shall give the tenant copies of the Governing Documents and shall notify the Board or the Association's managing agent of the lease and provide an alternate mailing address for the Owner, a copy of the lease, and any additional information the Board may reasonably require. The Association or the Board may adopt Rules

governing leasing and subleasing in accordance with Sections 7.2 and 7.3, consistent with this subsection (b).

If a Unit is occupied by a tenant and the Owner is delinquent in paying any monetary obligation due to the Association, the Association may demand that the tenant pay to the Association the rental payments due as of the date of such demand and thereafter continue to pay all rent due under the lease to the Association as it comes due until all the monetary obligations of the Owner related to the Unit have been paid in full to the Association and the Association releases the tenant or until the termination of the lease, whichever occurs first. Any such demand shall be in substantially the form required by Florida Statutes §720.3085 and shall be delivered to the tenant by hand or by United States mail. The tenant shall be entitled to a credit against rents due to the Owner under the terms of the lease in the amount of all rent paid by the tenant to the Association pursuant to this paragraph.

This subsection and any Rules governing leasing and subleasing shall not apply to Units leased by or on behalf of the Founder or any Founder Affiliate.

**(c) *Transfer of Title.*** Any Owner other than the Founder desiring to sell or otherwise transfer title to his or her Unit shall give the Association or its manager at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Association receives such notice, notwithstanding the transfer of title.

Upon acceptance of title to a Unit, the new Owner of the Unit shall pay to the Association an administrative transfer fee to cover the adminis-

## Use and Conduct

trative costs incurred by the Association to update its records to reflect the change in ownership. Such fee shall be in such amount as the Board may reasonably determine necessary to cover its costs, including, but not limited to, any fees charged by a management company retained by the Association for updating its records.

**(d) Subdivision and Combination of Units.** No Person other than the Founder or a Founder Affiliate shall subdivide or change the boundary lines of any Unit or combine Units without the Founder's prior written approval during the Development and Sale Period and the Board's prior written approval thereafter. Any such action shall be effective only upon recording of a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Unit(s). In the absence of such recorded instrument, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling.

**(e) Timesharing.** No Unit shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, unless such program is established by the Founder or with the Founder's prior written approval.

### 7.2. Rulemaking Authority and Procedures

The Governing Documents establish a framework of covenants and conditions that govern the Community. The initial Rules attached as Exhibit "C" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board and the Voting Delegates are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 7.3.

**(a) Founder Authority.** So long as the Founder has the right unilaterally to amend this Charter pursuant to Chapter 21, the Founder may unilaterally amend Exhibit "C" to add new Rules or to modify or rescind existing Rules.

**(b) Board Authority.** Subject to the notice requirements in Section 7.2(c) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its Members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting. Such Rules may regulate use of and conduct on Units as well as Common Area, and may include operating policies and fees relating to use of the Common Area, which policies and fees may be different for different classifications of users (e.g., owners, tenants, guests, etc.).

**(c) Membership Authority.** Subject to the notice requirements in Section 7.2(d), the Voting Delegates representing a majority of the votes in the Association also may adopt new Rules and modify or rescind existing Rules relating to use of and conduct on Units at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. The Voting Delegates shall have no authority to adopt, modify, or rescind Rules relating to the operation or use of and conduct on the Common Area.

**(d) Notice.** The Board shall send notice to all Owners concerning any proposed Rule change relating to use and conduct on Units at least five business days prior to the meeting of the Board or the Voting Delegates at which such action is to be considered. At any such meeting, Voting Delegates shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

The procedures set forth in this section do not apply to Rules that the Board may adopt establishing operating policies relating to the Common Areas, such as hours of operation of a recreational facility, safety regulations, use fees for use of As-

## Use and Conduct

sociation property, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules. The posting of such policies and fees in a conspicuous manner and location within the Community or the publication in a community newsletter of general circulation within the Community shall be deemed sufficient notice to all users.

In addition, the Board shall have discretion, without the necessity of complying with such notice requirement, to enact such Rules as are necessary or appropriate to comply with the terms of any order, permit, or approval of any governmental or quasi-governmental body which is applicable to the Community (*e.g.*, a development order).

**(e) Effective Date.** A Rules change adopted under this Section shall take effect 15 days after the date on which written notice of the Rules change is given to the affected Owners or on such later date may be specified in the resolution adopting the change; provided, during the Development and Sale Period, any Rules change under this Section is subject to the Founder's approval.



*Since it is impossible to foresee all potential situations and problems that may arise within the Community, the Founder, the Board, and the Voting Delegates have the authority to adopt and modify rules as needed to address new or changing circumstances.*

**(f) Conflicts.** No action taken under this Section 7.2 shall have the effect of modifying or repealing the Design Guidelines or any provision of this Charter other than the Rules. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Charter (exclusive of the Rules), the Charter shall control.

## 7.3. Protection of Owners and Others

Except as may be set forth in this Charter (either initially or by amendment) or in the initial Rules set forth in Exhibit "C," all Rules shall comply with the following provisions:

**(a) Similar Treatment.** Similarly situated Units shall be treated similarly; however, the Rules may vary by location within the Community or by housing type.

**(b) Displays.** No Rule shall abridge an Owner's right to display on his or her Unit one United States flag and political, religious, or holiday symbols and decorations of the kinds normally displayed in single-family residential neighborhoods, nor shall any Rule regulate the content of political signs. However, the Association may adopt time, place, and manner restrictions with respect to flags, signs, symbols, and displays visible from outside structures on the Unit, including reasonable limitations on size and number.

**(c) Household Composition.** No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Area, so long as in compliance with applicable fair housing laws.

**(d) Activities Within Dwellings.** No Rule shall interfere with the activities carried on within a dwelling, except that the Association may prohibit activities not normally associated with residential property and may adopt rules to further define, clarify, and implement the restrictions in Section 7.1. It also may restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance.

## Use and Conduct

**(e) *Allocation of Burdens and Benefits.*** No Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Chapter 12.

**(f) *Leasing and Transfer of Units.*** Except as set forth in Section 7.1(b), no Rule shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit. The Rules may require that Owners use Board-approved lease forms (or include specific lease terms) and may impose a reasonable review or administrative fee in connection with the Board's review of a lease. Nothing in this Section shall affect the validity of any Supplement to this Charter which imposes additional restrictions regarding leasing of Units subject to that Supplement.

**(g) *Abridging Existing Rights.*** No Rule shall require that an Owner dispose of, or prohibit an Owner from replacing, personal property kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule.

**(h) *Reasonable Rights to Develop.*** No Rule may unreasonably interfere with the ability of the Founder, any Founder Affiliate, or any Builder to develop, market, and sell property in the Community.

**(i) *Interference with Easements.*** No Rule may unreasonably interfere with the exercise of any easement, except as set forth in Section 13.1(d).

**(j) *Compliance with Governmental Requirements.*** The Association may not enact any Rule or take any action, which is in violation of, or which prevents actions required to comply with, the terms of any order, permit, or approval of any governmental or quasi-governmental body which is applicable to the Community (e.g., a development order).

### **7.4. Owners' Acknowledgment and Notice to Purchasers**

**By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document.**

A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

## Chapter 8 - Compliance and Enforcement

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*The covenants, standards, and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the stakeholders in the Community to comply with them, and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This Chapter sets forth the obligation to comply and the remedies available to the Association in the event of noncompliance.*

### 8.1.Compliance



*All Owners and occupants of Units, as well as their tenants, guests, and other visitors, must abide by the Governing Documents. If any of them fail or refuse to comply with the Governing Documents, they may be subject to various penalties, including fines and the loss of the right to use the Common Areas.*

Every Owner, occupant, and visitor to a Unit must comply with the Governing Documents and shall be subject to sanctions for violations as described in this Chapter. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants or visitors to their Units, and for any damage to the Area of Common Responsibility that occupants or visitors may cause.

### 8.2.Remedies for Non-Compliance

The Association, the Founder, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those listed below and any others described elsewhere in the Governing Documents.

**(a) Sanctions Requiring Prior Notice and Hearing.** After written notice and an oppor-

tunity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, not to exceed \$100.00 for a single violation or \$100 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 Unit to use any Common Area facilities (other than as required to provide vehicular and pedestrian access and utilities to the Unit which they own or occupy) for a reasonable period of time for failure to comply with the Governing Documents;

(iii) suspend services the Association provides to the Unit if the Owner is more than 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 in a non-emergency situation (including removing personal property that violates the Governing Documents);

(v) without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who causes damage to any property in the Community owned by others or fails to comply with the

## Compliance and Enforcement

terms and provisions of Chapter 5 and the Design Guidelines from continuing or performing any further activities in the Community;

(vi) levy Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Community-Wide Standard or other requirements under the Governing Documents, or in repairing damage to any portion of the Area of Common Responsibility resulting from actions of any Owner or occupant of a Unit, their contractors, subcontractors, agents, employees, or invitees; and

(vii) record a notice of violation with respect to any Unit on which a violation exists.

If, after notice and an opportunity for a hearing, the violation continues or recurs within 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 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 Unit if the Owner is more than 90 days delinquent in paying any monetary obligation to the Association pursuant to Chapter 12, 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 Owner and occupants of a Unit to use any Common Area facilities (other than as required to provide vehicular and pedestrian access and utilities to the Unit which they own or occupy) if the Owner is more than 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 Unit 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 or an Additional Association, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit or on the Additional Association's property, respectively, that is in violation of the Community-Wide Standard or other requirements under the Governing Documents 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 or Additional Association fails to take action as required pursuant to Section 8.2(b)(iv) within 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.

**(c) Powers Relating to Additional Associations.** The Association may require specific action to be taken by any Additional Association in connection with its obligations and responsibilities under this Charter or any applicable Supplement, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include cer-

## Compliance and Enforcement

tain items and that expenditures be made therefore.

An Additional Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Additional Association fails to comply, the Association shall have the right to effect such action on behalf of the Additional Association and levy Specific Assessments against the Units within the Additional Association's jurisdiction to cover the costs, as well as an administrative charge and sanctions.

**(d) *The Founder's Right to Impose Sanctions.*** In the event that the Association fails or refuses to take action or impose sanctions under this Chapter after notice from the Founder of a violation of the Governing Documents, the Founder shall have the right to levy monetary fines on behalf of the Association after notice and hearing in the same manner as the Association under Section 8.2(a). In addition, the Founder 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 Section 8.2(b).

### 8.3. Board Decision to Pursue Enforcement Action

The Association's decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

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

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

(c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable per-

son or to justify expending the Association's resources; or

(d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

### 8.4. Attorneys Fees and Costs

In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action, in addition to such other amounts as may be authorized by Florida law.

### 8.5. Enforcement of Ordinances

The Association, by contract or other agreement, may enforce applicable laws, regulations, ordinances, and governmental requirements. In addition, Hillsborough County, and other governmental entities having jurisdiction, may enforce laws, regulations, ordinances, and governmental requirements within the Community.

## PART THREE: ASSOCIATION OPERATIONS

### Chapter 9 - Property Management

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*One of the Association's primary functions is maintaining and operating property and facilities for the common benefit of the Owners and residents of the Community. This Chapter establishes the Association's obligation to accept property that the Founder designates as Common Area or Limited Common Area and to maintain, operate, and insure it, along with certain other properties, for the benefit of the Community.*

#### **9.1. Acceptance and Control of Association Property**

**(a) Transfers and Conveyances by Founder.** The Founder and its designees may transfer or convey to the Association interests in and obligations imposed with respect to real or personal property within or for the benefit of the Community, and the Association shall accept such transfers and conveyances, assume and hold the Founder harmless from such obligations, and cooperate with and support any effort by the Founder, Founder Affiliates, or their designees to be released from such obligations. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon the Founder's written request, the Association shall reconvey to the Founder, or to a third party whom the Founder may designate, any real property that the Founder originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

**(b) Management and Control.** The Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Association.

The Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area for payment or no payment, as the Board deems appropriate, subject to the requirements of Florida law. The Association may permit use of Common Area facilities and Association property by persons other than Owners and occupants of Units and may charge use fees, in such amount as the Board may establish, for such use.

#### **9.2. Maintenance of Area of Common Responsibility**

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility includes, but is not limited to:

(a) the Common Area, if any;

(b) community signage, entry features, monumentation, and landscaping installed by the Founder at entrances to the Community and along roadways running through or adjacent to the Community, whether located on Common Area or in CDD or public rights-of-way, except to the extent that any CDD or other governmental or quasi-governmental authority is responsible for such maintenance;

(c) such portions of any additional property as may be dictated by the Founder, this Charter, any Supplement, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Association; and

(d) any property and facilities that the Founder owns and makes available, on a temporary or permanent basis, for the primary use and

## Property Management

enjoyment of the Association and its Members. The Founder shall identify any such property and facilities by written notice to the Association, and they shall remain part of the Area of Common Responsibility until the Founder revokes such privilege of use and enjoyment by written notice to the Association; and

(e) any wetlands located on Common Area or on property designated to be Common Area on a recorded plat of any portion of the Community, including ongoing monitoring and maintenance of the same in accordance with the rules and requirements of the Southwest Florida Water Management District; and

(f) the Surface Water Management System Facilities described below, if applicable.

Except to the extent that a CDD is responsible for maintenance and operation thereof, the Association shall be responsible for maintenance and operation of any surface water management system facilities located on Common Area or on any land designated to be Common Area on a recorded plat of any portion of the Community ("**Surface Water Management System Facilities**"), including maintenance, repair, and replacement, as needed, of pipes, culverts, and other structures and equipment located on the Common Area, unless and until such maintenance is assigned to or assumed by a CDD or another governmental or quasi-governmental authority. In the event that the Association ceases to exist, all Owners shall be jointly and severally responsible for operation and maintenance of such Surface Water Management System Facilities. The Association shall have no responsibility for landscaping or other maintenance of Units burdened by stormwater drainage easements unless otherwise specifically set forth in this Charter, a Supplement or in a recorded agreement or plat. This paragraph is for the express benefit of the Southwest Florida Water Management District, which shall have the right to take action to enforce this provision, including, without limitation, the right to perform any required maintenance

and recover from the Association all costs incurred in so doing.

The Association may maintain other property it does not own, including, without limitation, Units, property dedicated to the public, or property owned or maintained by an Additional Association, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

### 9.3. Discontinuation of Operation

After termination of the Founder Control Period, the Association shall maintain the Common Area facilities, if any, in continuous operation unless, with respect to Common Areas other than Limited Common Areas, Voting Delegates representing 75% of the total votes in the Association consent in writing to discontinue such operation. If the property is Limited Common Area, any discontinuation shall require the Board's approval and the approval in writing of Owners representing at least 75% (or such higher percentage as a Supplement may require) of the Units to which such Limited Common Area is assigned. In addition, the Founder's consent is required to discontinue operation of any Common Area facilities during the Development and Sale Period.

This Section shall not apply during the Founder Control Period and shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, or to preclude temporary closures or interruptions in operation, as the Board may determine appropriate to perform maintenance or repairs.

### 9.4. Restoring Damaged Improvements

In the event of damage to or destruction of portions of the Area of Common Responsibility

## Property Management

for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged Common Area improvements, unless:

(a) this Charter is terminated pursuant to Section 21.1;

(b) repair or restoration would be illegal under any state or local statute or ordinance governing health or safety;

(c) with respect to Common Areas other than Limited Common Areas, Voting Delegates representing at least 75% of the total votes in the Association, decide within 60 days after the loss not to repair or reconstruct, and with respect to Limited Common Area or Units within a Service Area, any decision not to restore the damaged improvements is approved by Owners representing at least 75% of the Units to which such Limited Common Area is assigned or the affected Service Area, respectively. In addition, the Founder's approval is required for the decision not to repair or reconstruct portions of the Common Area prior to the termination of the Development and Sale Period.

If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.



*This provision ensures that desirable Common Area improvements will be replaced if destroyed, but it also makes it possible not to repair or rebuild if the Owners who benefit from the Common Area prefer not to rebuild.*

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

The insurance proceeds, if any, attributable to any Units or Limited Common Areas that are not rebuilt shall be distributed to the Owners of the damaged Units or the Units to which such Limited Common Areas were assigned, or to their respective lienholders, as their interests may appear, in proportion to their relative liability for Association expenses. The Association shall retain and place in a capital improvements account for the benefit of all Owners or the Owners of Units within the affected Service Area, as appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Voting Delegates, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 11.4.

### 9.5. Relationships with Other Properties

The Founder may prepare, execute, and record a Covenant to Share Costs as described in Section 3.4, by which the Owners of Units in the Community and the owners of properties subject

## **Property Management**

to the jurisdiction of the Village Center Association or other properties located adjacent to or in the vicinity of the Community will be obligated to share costs of maintaining certain mutually beneficial properties and/or providing certain mutually beneficial services. In addition, the Association may contract with the owner of any neighboring property or any CDD to provide for an assumption by the Association of maintenance responsibility for areas or facilities benefiting the Community and/or the sharing of costs associated with (a) maintenance and operation of mutually beneficial properties or facilities, or (b) provision of mutually beneficial services.

## **Chapter 10 - Provision of Services**

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*In addition to its property management role, the Association is a vehicle for providing a variety of services for the benefit of the Community at large and individual Units. This Chapter describes some of the services the Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.*

### **10.1. Provision of Services to Units**

The Association may arrange for or provide services to Owners and their Units, directly or through contracts with the Founder or other third parties. The Association may enter into bulk service agreements by which a particular service is provided to all Units, or it may offer various services at the option of each Owner, or both, subject to the provisions of Florida Statutes §720.309, if applicable. By way of example and not limitation, such services might include such things as cable television, technology services, utilities, fire protection, security, trash collection, landscape maintenance, pest control, caretaker services, and concierge services.

Services may be provided to all Units, to all Units improved with a completed dwelling that is occupied or has been conveyed by the Builder for residential occupancy ("**Improved Units**"), to all Units in a Service Area, or to particular Units upon request. Services may be provided as a Common Expense pursuant to Section 12.1(a) or as a Service Area Expense pursuant to Section 12.1(b), as applicable, for which the Association may levy assessments pursuant to Chapter 12; provided, unimproved Units need not be assessed for services available only to Improved Units (e.g., cable television). The Association shall charge a separate use fee, in such amount as the Board may determine appropriate in its discretion, for any services offered at the option of an Owner, which fee shall be assessed against the benefited Unit as a Specific Assessment pursuant to Chapter 12.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination and any failure or refusal to participate shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as a Common Expense or Service Area Expense pursuant to Chapter 12.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

### **10.2. Provision of Services to Service Areas**

**(a) Service Areas Designated by Founder.** The Association shall provide services to Units within any Service Area designated by the Founder pursuant to Section 3.3 as required by the terms of any Supplement applicable to such Service Area.

**(b) Service Areas Designated by Board.** In addition to Service Areas the Founder may designate pursuant to Section 3.3, any group of Owners may petition the Board to designate their Units as a Service Area for the purpose of receiving from the Association (i) special benefits or services that are not provided to all Units, or (ii) a higher level of service than the Association otherwise provides. Any such petition shall be signed by Owners of a majority of the Units with-

## Provision of Services

in the proposed Service Area. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners representing at least 67% of the Units within the proposed Service Area approve the proposal in writing, the Board shall designate the Units as a Service Area and include the fees for such service as a line item in the Service Area budget pursuant to Section 12.2(c).

### 10.3. Community Technology

(a) *Community Systems.* Without limiting the generality of Sections 10.1 and 10.2, the Founder or any Founder Affiliate may provide, or may enter into and assign to the Association or cause the Association to provide or to enter into contracts with other Persons to provide, central telecommunication receiving and distribution systems (*e.g.*, cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software to serve the Community ("**Community Systems**"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Founder or Board determines appropriate.

The Founder specifically reserves for itself and Founder Affiliates, and their respective successors and assigns, the right to establish a community intranet for the Community, the right to contract with third parties to provide service, software, and support; the right to grant access to the community intranet to the Association and its members on such terms and conditions as the Founder or Founder Affiliate determines appropriate, and the right to sell advertising on such community intranet and retain all revenues from the sale of such advertising.

(b) *Opportunities for Community Interaction.* The Association may make use of available technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may, as a Common Expense, sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Association-sponsored activities. To the extent Florida law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices electronically, hold Board or Association meetings and permit attendance and voting by electronic means, and electronically send and collect assessment and other invoices.

## Chapter 11 - Association Insurance

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*The Association is responsible for insuring against various types of risks, including property damage, personal injury, and liability. This Chapter describes the minimum types and amounts of coverage that the Association must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.*

### 11.1. Required Coverages

The Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on

(i) the Common Area;

(ii) property within any Service Area, to the extent specified in any Supplement; and

(iii) other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty;

provided, if such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. If necessary, coverage for wind damage may be by separate policy, including any policy issued by a joint underwriting association or company or any company writing wind coverage exclusively or predominantly. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage; and

(e) Commercial crime insurance, including fidelity insurance covering all Persons the President, Secretary and Treasurer of the Association, any other Persons authorized to sign checks on behalf of the Association, the Association manager, if any, and any other Persons responsible for controlling, disbursing, or handling Association funds, in an amount sufficient to cover the maximum funds that will be in the custody of the Association or the management agent at any time; provided, this requirement may be waived in whole or in part if such waiver is approved annually by the affirmative vote of persons entitled to cast a majority of the votes represented in person or by proxy at a duly called meeting of the Association. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

## Association Insurance

**Unless otherwise required by an applicable Supplement, Association property and liability insurance does not cover individual Units, and it is the responsibility of each Owner to insure its Unit and the contents of its Unit as provided in Section 6.3.**

The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Hillsborough County, Florida area. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this Section requires.

### 11.2. Deductibles

The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment, but the right to do so shall not affect or impair any waiver of subrogation provision of any policy.



*The Board may hold any Persons who cause damage to insured improvements responsible for the insurance deductible payable on any insurance claim related to such damage.*

### 11.3. Policy Requirements

All Association policies shall provide for a certificate of insurance to be furnished to the Associ-

ation and, upon request, to each Owner and Mortgagee.

To the extent available at reasonable cost and terms, all Association insurance shall:

(a) be written with a company authorized to do business in Florida that satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Association as trustee for the benefited parties. All policies shall be for the benefit of the Association and its members, except that policies on Limited Common Area shall be for the benefit of the Owners of Units within the Service Area to which the Limited Common Area is assigned and their Mortgagees, as their interests may appear;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement;

(e) include a co-insurance waiver or an agreed amount endorsement, if the policy contains a co-insurance clause;

(f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association;

(g) provide a waiver of subrogation against any Owner or household member of an Owner; and

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand

## Association Insurance

to the Association and allowance of a reasonable time to cure the defect or violation.

In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners as additional insureds and provide:

(a) a waiver of subrogation as to any claims against the Association's directors, officers, employees, and manager;

 *Subrogation is a legal concept by which one person is substituted in the place of another with respect to a lawful claim or right. For example, once they have paid a claim by an insured party, insurance companies generally have the right to step into the shoes of the insured party and sue anyone that the insured party could have sued.*

(b) a waiver of the insurer's right to repair and reconstruct instead of paying cash;

(c) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(d) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(e) a cross liability provision; and

(f) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

### 11.4. Insurance Premiums

Premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Units within, or Limited Common Areas assigned to, a particular Service Area shall be a Service Area Expense unless

the Board reasonably determines that other treatment of the premiums is more appropriate.

## Chapter 12 - Association Finances

*This Chapter provides for various types of funding to cover expenses that the Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments this Chapter authorizes the Association to levy against the Units and collect from the Owner of each Unit. Assessments are secured by a lien on each Unit as described in this Chapter.*

### 12.1. Association Expenses

**(a) Common Expenses.** Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Owners, are considered "**Common Expenses.**" Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate.

Common Expenses shall not include any expenses incurred during the Founder Control Period for initial development or original construction costs unless Voting Delegates (other than

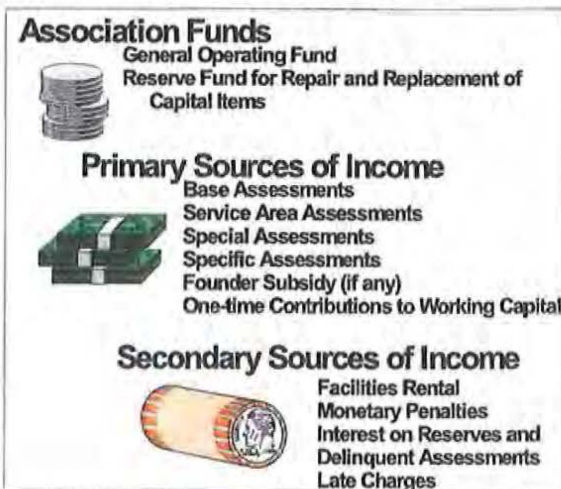
Founder appointees) representing a majority of the total vote in the Association approve such expenditure. Payments due under leases of capital improvements such as streetlights shall not be considered an initial development or original construction cost.

The characterization of a particular expense as a "Common Expense" shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Charter, any Supplement, or any other recorded covenants or agreements.

**(b) Service Area Expenses.** All expenses that the Association incurs or expects to incur in connection with the ownership, maintenance, and operation of Limited Common Areas or in providing other benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area, are considered "**Service Area Expenses.**" Service Area Expenses may include a reasonable administrative charge in such amount as the Board deems appropriate, provided that any such administrative charge is applied at a uniform rate per Unit among all Service Areas receiving the same service.

### 12.2. Budgeting for and Allocating Association Expenses

**(a) Preparation of Budget.** At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year ("**General Budget**"). In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Association expects to incur for the



## Association Finances

benefit of such Service Area in the coming year ("**Service Area Budget**").

The estimated expenses in each budget may include operating reserves and reserves to fund insurance deductibles, landscape replacements, and damage to uninsurable structures on the Common Area. The estimated expenses in each budget shall include a contribution to a reserve fund, in such amount as may be required by the funding formula set forth in Florida Statutes §720.303(6), for capital expenditures, deferred maintenance and repair and replacement of any capital improvements to be maintained as a Common Expense or as a Service Area Expense of the Service Area for which the budget is prepared, as applicable, unless the membership waives or reduces such reserves as provided in Florida Statutes §720.303(6). The budget shall designate the components for which the reserve accounts may be used. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost or deferred maintenance expense, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset, in accordance with the requirements of Florida Statutes §720.303(6), as amended. So long as the Board exercises business judgment, which may include relying in good faith on the advice of its accountants or other professional advisers in determining the amount or necessity of the reserve fund, the amount shall be considered adequate.

Each budget shall separately set forth all fees or charges to be paid by the Association for recreational amenities, whether owned by the Association, the Founder, or another Person.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied

against the Units (including amounts to which the Association is entitled pursuant to any covenant or agreement to share costs), and the amount to be generated through the levy of Base Assessments and Service Area Assessments pursuant to Sections 12.2(b) and (c). Each budget shall reflect the estimated surplus or deficit as of the end of the current year.

**(b) Calculation of Base Assessments.** The Board shall establish a rate of assessment which it believes will be sufficient to fund the General Budget when levied equally against all Units subject to assessment under Section 12.5. The total assessment against each such Unit for its share of the General Budget shall be levied as a "**Base Assessment**," subject to the provisions of subsection (e).

**(c) Calculation of Service Area Assessments.** For each Service Area Budget, the Board shall establish a rate of assessment which it believes will be sufficient to fund such Service Area Budget when levied against all Units in the Service Area that are subject to assessment under Section 12.5. The total assessment against each Unit for its share of the Service Area Budget shall be levied as a "**Service Area Assessment**," subject to the provisions of subsection (e). Unless otherwise specified in any Supplement applicable to a Service Area, Service Area Assessments shall be set at a uniform rate per Unit in the Service Area, except that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves that pertain to particular structures may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

All funds that the Association collects as Service Area Assessments shall be accounted for separately from the Association's general funds and expended solely for the benefit of the Service Area for which they were collected.

## Association Finances

(d) *Founder's Subsidy Option.* The Founder may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by the Founder under Section 12.6(b)). Any such subsidy may be treated as a contribution, an advance against future assessments due from the Founder, or a loan, in the Founder's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate the Founder to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Founder.

(e) *Notice of Budget and Assessment; Right to Disapprove.* The Board shall send a copy of each applicable budget, together with notice of the amount of the Base Assessment and any Service Area Assessment to be levied pursuant to such budgets, to each Owner at least 30 days before the fiscal year begins.

Notwithstanding any provision to the contrary, and except for assessment increases necessary for emergency situations, after termination of the Founder Control Period, any Base Assessment that is more than 10% greater than such assessment for the immediately preceding fiscal year is subject to disapproval at a meeting by Voting Delegates representing at least 75% of the votes allocated to Units subject to such assessment.

Except for increases necessary for emergency situations, after termination of the Founder Control Period, any Service Area Assessment that is more than 10% greater than such assessment for the immediately preceding fiscal year is subject to disapproval at a meeting by Owners representing a majority of the votes within the Service Area subject to such assessment.

An emergency situation is any one of the following:

(i) an extraordinary expense required by an order of a court;

(ii) an extraordinary expense necessary to repair or maintain any portion of the Community for which the Association is responsible where a threat to personal safety is discovered;

(iii) an extraordinary expense necessary to repair or maintain any portion of the Community for which the Association is responsible and which could not reasonably have been foreseen by the Board in preparing and distributing the pro forma budget. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Notice of the Board meeting at which such resolution is to be considered, explaining the nature of the assessment proposed, shall be provided to the Owners along with the notice of such assessment; or

(iv) to defend itself in litigation, arbitration, or other legal or administrative actions brought against it.

There shall be no obligation to call a meeting for the purpose of considering any budget except, in the case of the General Budget, on petition of the Voting Delegates as provided for special meetings in the By-Laws, and in the case of a Service Area Budget, on petition of Owners of at least 67% of the Units within the Service Area. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment. In addition, if required by Florida law, Owners shall be given notice of and the opportunity to attend Board meetings at which assessments are to be considered and levied.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in

## Association Finances

effect shall continue in effect until a new budget is determined.

**(f) Budget Revisions.** The Board may revise the budget and adjust the Base Assessment or Service Area Assessments anytime during the year, subject to the same notice requirements and rights to disapprove set forth in Section 12.2(e).

### 12.3. Special Assessments

In addition to other authorized assessments, the Association may levy "**Special Assessments**" against all Units, or against the Units within any Service Area, to cover non-routine or unanticipated expenses or expenses in excess of those anticipated by the applicable budget. During the Founder Control Period, any Special Assessment shall require such approval as is required by Florida Statutes §720.315. Thereafter, except as otherwise specifically provided in this Charter, any Special Assessment for Common Expenses may be adopted by the Board unless it would exceed, on a per Unit basis, 10% of the Base Assessment levied against each Unit for the year in which the Special Assessment is adopted, in which case it shall require the affirmative vote or written consent of Voting Delegates entitled to cast at least 75% of the votes attributable to Units subject to assessment under Section 12.5 and shall be allocated equally among all such Units. Any Special Assessment for Service Area Expenses may be adopted by the Board unless it would exceed, on a per Unit basis, 10% of the Service Area Assessment levied against each Unit in the Service Area for the year in which the Special Assessment is adopted, in which case it shall require the affirmative vote or written consent of Owners representing more than 50% of the total votes allocated to Units in the benefited Service Area and shall be allocated in the same manner as Service Area Assessments under Section 12.1(c). In addition, during the Development and Sale Period, any Special Assessment shall also be subject to the Founder's written consent.

Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

### 12.4. Specific Assessments

The Association may levy "**Specific Assessments**" against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of optional services the Association may offer pursuant to Section 10.1. Specific Assessments for optional services may be levied in advance of the provision of the requested service; and

(b) in the case of an Improved Unit, to cover the charges for services provided to all Improved Units pursuant to any bulk service or similar agreement entered into by the Association pursuant to Section 10.1;

(c) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws before levying any Specific Assessment under this subsection;

(d) to cover the Unit's pro rata share of any costs that the Association incurs in bringing any Additional Association of which the Unit is a part into compliance with the provisions of the Governing Documents; however, the Board must give prior written notice to the Additional Association and the Owners of Units comprising it and an opportunity for such Owners to be heard before levying any such assessment; and

## Association Finances

(e) to cover any deductible assessed against the Owner of Unit pursuant to Section 11.2; and

(f) to cover any other amounts that the Governing Documents authorize the Association to charge to a particular Owner or levy against any particular Unit.

The Association may levy Specific Assessments against an Additional Association to cover costs that the Association incurs in bringing the Additional Association into compliance with the provisions of the Governing Documents; however, the Board must give prior written notice to the Additional Association's board of directors and an opportunity for the Additional Association to be heard before levying any such assessment.

### 12.5. Authority to Assess Owners; Time of Payment

The Founder hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the later of: (a) the date on which the Association first adopts a budget and levies assessments; or (b) the date on which the Unit is made subject to this Charter. The first annual Base Assessment and Service Area Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Service Area Assessment shall be due and payable in advance on the first day of each fiscal year. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If any Owner is delinquent in paying any assessments or

other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

### 12.6. Obligation for Assessments

(a) *Personal Obligation.* By accepting a deed or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 18% per annum), late charges not to exceed the greater of \$25.00 or five percent (5%) of the amount of each installment not paid by the due date thereof, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable with the previous Owner for any assessments and other charges due at the time of conveyance, without prejudice to any right the grantee may have to recover from the prior Owner the amounts paid by the grantee, except that for purposes of this provision the term "previous Owner" shall not include the Association if the Association acquired title to the Unit through foreclosure or deed in lieu of foreclosure of its lien on the Unit. However, the liability of a Mortgagee who obtains title to a Unit by foreclosure or deed in lieu of foreclosure of its Mortgage for unpaid assessments that accrued prior to such acquisition of title shall be limited as provided in Florida Statutes §720.3085.



*By buying a Unit in the Community each Owner agrees to pay all assessments levied against his or her Unit. If the Owner does not pay on time, that Owner will be charged late fees on all past due amounts. Owners may not claim a reduction in their assessments due to action or inaction by the Association.*

Notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying the payment, all payments accepted by

## Association Finances

the Association on the account of any Owner shall be applied first to interest accrued, then to any late charge, then to any costs and reasonable attorney's fees incurred in collection, and then to the principal amount of the delinquent assessment.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Service Area Assessments at the rate established for the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

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

Within 15 days after receipt from an Owner or Mortgagee or its designee of a written request for an estoppel certificate, the Association shall provide a certificate in writing signed by an officer or authorized agent of the Association setting forth the amount of any unpaid assessments or other charges owed to the Association with respect to the Unit. If so authorized by Board resolution, the Association may require the payment of a reasonable fee for the preparation and issuance of such certificate and the amount of such fee shall be stated in the certificate.

**(b) Founder's Financial Obligations to Association.** The Founder shall be liable for assessments on any Units it owns that are subject to assessment under this Section, except that from the date of recording of this Charter through the termination of the Founder Control Period, the Founder shall be excused from its obligation to pay Base Assessments and Service Area Assessments on Units it owns so long as it is obligated to pay operating expenses incurred by the Association (exclusive of contributions to reserve funds) in excess of the assessments receivable from other members plus other income of the Association, if applicable ("**Excess Operating Expenses**").

The Founder shall be obligated to pay Excess Operating Expenses under this subsection (b) during any fiscal year for which it has given the Board written notice of its commitment to pay such Excess Operating Expenses in lieu of paying regular assessments and during each successive fiscal year, unless and until the Founder otherwise notifies the Board in writing at least 60 days before the beginning of the next fiscal year. After termination of the Founder Control Period, the Founder shall pay assessments on any Units it owns that are subject to assessment under Section 12.5 in the same manner as any other Owner liable for such assessments.

Regardless of the Founder's election under this Section, any of the Founder's financial obligations to the Association may be satisfied in the form of cash, by "in kind" contributions of services or materials, or by a combination of these.

### 12.7. Lien for Assessments

**(a) Existence of Lien.** Subject to Florida law, as it may be amended, the Association shall have a lien against each Unit to secure payment of assessments, as well as interest, late charges (subject to the limitations of Florida law), and costs of collection (including attorneys' fees and expenses), except that a Specific Assessment for monetary fines of less than \$1,000 in the aggregate shall not be secured by the Association's lien

## Association Finances

against the Unit unless and until they exceed \$1,000 in the aggregate. Subject to the limitations of Florida law, such lien shall be effective from and relate back to the date on which this Charter was recorded, except that as to any first Mortgage of record, it shall be effective from and after recording of a claim of lien in accordance with Florida Statutes §720.3085. Such lien shall be superior to all other liens except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) the lien or charge of any recorded Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit and recorded prior to the recording of the Association's claim of lien.

Prior to filing a claim of lien or otherwise taking any action to enforce its lien, the Association shall provide the delinquent Owner with written notice or demand for the past due assessments and any other amounts which the Owner owes to the Association pursuant to the Governing Documents. Such notice shall give the Owner at least 45 days within which to pay all amounts due, including, but not limited to, any attorneys' fees and actual costs which the Association has incurred in connection with the preparation and delivery of such notice. Such notice may inform the Owner of the Association's intent to file a claim of lien and to foreclose such lien and collect the amounts due if not paid within such 45-day or longer period. The notice shall be sent by registered or certified mail, return receipt requested, and by first class mail, to the last address of the Owner reflected in the Association's records and to the address of the Unit, if different from the address in the Association's records. If the Owner's address as reflected in the Association's records is located outside the United States, sending the notice to such address by first class United States mail shall be sufficient.

**(b) Enforcement of Lien.** The Association may take action to foreclose its lien in the same manner as the foreclosure of a mortgage and may also bring an action to recover a money judgment

for the amounts due without waiving its claim of lien; however, no such action shall be brought until 45 days after the Owner has been provided with notice of the Association's intent to foreclose and collect the unpaid amount as provided in subsection (a).

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association.

The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same in addition to pursuing any and all remedies allowed by law to enforce the lien.

**(c) Effect of Sale or Transfer.** Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit and the subsequent owner thereof from the personal obligation for assessments due at the time of transfer of title, except that the liability of a holder of a first Mortgage who acquires title to a Unit pursuant to foreclosure of the Mortgage or a deed in lieu of such foreclosure for assessments due prior to such acquisition of title shall be limited as provided in Florida Statutes §720.3085. Any unpaid assessments for which such holder is not liable shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 12.5, including such acquirer, its successors and assigns.



*If an Owner does not pay his or her assessments on time, the Association may foreclose its lien on the Owner's Unit, causing it to be sold to pay the past due assessments. The Association also may sue an Owner in court to recover past due assessments.*

## **Association Finances**

### **12.8. Exempt Property**

The following property shall be exempt from payment of Base Assessments, Service Area Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by the Founder as are included in the Area of Common Responsibility;

(b) Any property dedicated or conveyed to and accepted by the CDD or any governmental authority or public utility; and

(c) Property owned by any Additional Association for the common use and enjoyment of its members, or owned by the members of an Additional Association as tenants-in-common.

In addition, both the Founder and the Association shall have the right, but not the obligation, to grant exemptions to schools, houses of worship, hospitals, or Units owned by and used by Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code. Exemptions granted by the Founder shall be binding on the Association.

### **12.9. Capitalization of Association**

The first Owner of each Unit other than the Founder, a Founder Affiliate, or a Builder designated by the Founder shall make a contribution to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit levied by the Association for the year in which the transfer occurs. This amount shall be in addition to, not in lieu of, the annual Base Assessment and any Service Area Assessment levied on the Unit and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the Association immediately upon transfer of title for its use in covering initial start-up expenses, operating expenses, and other expenses that it incurs pursuant to this Charter and the By-Laws.

### **12.10. Use and Consumption Fees**

The Association may offer services or facilities for which it does not recover its costs through assessments under this Chapter. The Board may charge use and consumption fees to any Person who chooses to use such services, equipment, or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (*e.g.*, Owners and non-Owners).

## PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

### Chapter 13 - Easements

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*The easements created in this Chapter establish the rights of Owners to use the Common Area and create various rights for the benefit of owners, the Founder, the Association, and others over property within the Community. Some of these rights are related to development and construction within the Community and on adjacent property while others relate to the rights of the Association to come upon property of others to fulfill its responsibilities.*

#### 13.1. Easements in Common Area



*An easement is one person's right to go onto the property of another.*

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

- (a) the Governing Documents and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) certain Owners' rights to the exclusive use of those portions of the Common Area designated "Limited Common Area;" and
- (d) the Board's right to:
  - (i) adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use except that no such rule shall unreasonably restrict an Own-

er's right to peaceably assemble on the Common Area or to invite public officers or candidates for public office to appear and speak on the Common Area;

- (ii) suspend an Owner's or occupants' right to use Common Area facilities for nonpayment of assessments or other violations of the Governing Documents;

- (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Charter;

- (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area, which fees may vary by class of user as provided in Section 7.2(b);

- (v) require execution of an assumption of risk and waiver and release of liability in favor of the Association as a condition of using any facility or participating in any Association-sponsored activity or any activity taking place on the Common Area;

- (vi) rent all or a portion of any Common Area facility on an exclusive or non-exclusive short-term basis to any Person;

- (vii) permit use of any Common Area facility by persons other than Owners and occupants of Units, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion; and

## Easements

(vii) permit use of any Common Area facilities, at such charge or no charge as the Board may determine appropriate, for the purpose of offering and conducting classes or other activities for interested Owners and occupants, whether offered on a fee basis for profit or otherwise; and

(viii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) the right of the Founder and its designees to use the Common Area pursuant to Chapter 18.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease, except that an Owner who leases a garage apartment or similar accessory dwelling approved pursuant to Chapter 5 may extend such rights of use and enjoyment to the lessee of such accessory dwelling without relinquishing such rights for the benefit of the occupants of the main dwelling on the Unit.

### 13.2. Easements of Encroachment



*An encroachment occurs when a person's home, fence, or other structure extends onto his or her neighbor's property. This section permits minor, inadvertent encroachments to remain.*

The Founder grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of less than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the en-

croachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

### 13.3. Easements for Utilities and Other Infrastructure

**(a) Installation and Maintenance.** The Founder reserves for itself and grants to the Association and all utility providers perpetual non-exclusive easements throughout the Community (but not through a structure) to the extent reasonably necessary to:

(i) install utilities and other Community Systems, security and similar systems, drainage systems, and other infrastructure to serve the Community;

(ii) install walkways, pathways and trails, streetlights, and signage on property the Founder or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat;

(iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access and read utility meters.

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

**(b) Specific Easements.** The Founder also reserves the non-exclusive right and power to grant and record such specific easements consistent with Section 13.3(a) as it deems necessary to develop the property described in Exhibits "A" and "B." The location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

## Easements

(c) *Minimal Interference.* All work associated with the exercise of the easements described in Section 13.3(a) and (b) shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

### 13.4. Easements to Serve Additional Property

The Founder hereby reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," regardless of whether such property is made subject to this Charter. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property.

If the above easement grants permanent access to any property that is not submitted to this Charter, the Founder or its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property.

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



*The Association may come onto the exterior portions of a Unit to do maintenance or to address violations of the covenants but will give prior notice unless there is an urgent need to enter the property before notice can be given.*

By this Charter, the Founder grants to the Association easements over such portions of the Units as necessary to enable the Association to exercise its authority and fulfill its maintenance responsibilities under this Charter and the terms of any order, permit, or approval of any governmental or quasi-governmental body which is applicable to the Community and to exercise its enforcement rights under Chapter 8. The Association also shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

### 13.6. Easement for Fence and Landscape Maintenance.

The Founder reserves for itself, the Association, and their respective successors, assigns, and designees, a perpetual, nonexclusive right and easement over portions of the Community lying within 20 feet of the perimeter boundary of the Community, and within 20 feet of the back-of-curb of any public thoroughfare within or adjacent to the Community, for the purpose of constructing, installing, maintaining, repairing, and replacing perimeter fencing or walls and landscaping along the perimeter boundary of the Community, or along public thoroughfares adjacent to or running through the Community.

## **Easements**

Nothing in this Section shall obligate the Founder, the Association, or any Builder to install fencing, walls, or landscaping, the installation of such items being in the sole discretion of the Founder and the Association.

### **13.7. Easements for Maintenance of Water Bodies and Flooding**

The Founder reserves for itself, the Association, the CDD, and their respective successors, assigns, and designees, the nonexclusive right and easement, without obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility, and to enter upon exterior portions of Units lying within 20 feet of such bodies of water and wetlands, to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; (c) temporarily flood and back water upon and maintain water over such property; and (d) perform such maintenance and repair as the Board may deem appropriate, which may include maintenance of shorelines, bulkheads, and water quality, algae control, removal of silt and debris, removal of dead or diseased trees, shrubs, and plants; and taking action to control any condition or remove any thing that constitutes a potential health or safety hazard. The Founder, the Association, and their respective successors, assigns, and designees shall have an access easement over and across any portion of the Community that abuts or contains bodies of water or wetlands, to the extent reasonably necessary to exercise their rights under this Section.

All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make the Founder or any other Person liable for damage resulting from flooding due to weather events or other natural occurrences.

### **13.8 Easements for Stormwater Drainage and Runoff.**

Each portion of the Community is hereby burdened with a perpetual, non-exclusive easement for the benefit of each other portion of the Community for the discharge of stormwater into those surface water management system facilities constructed on the benefited property or in rights-of-way adjacent to the benefited property and for the flow of stormwater through those facilities located on the burdened property, all subject to and in accordance with the regulations of Southwest Florida Water Management District.

### **13.9. Easements over Alleys**

Certain tracts of land within the Community are designated as "(CDD) right-of-way" on recorded plats and are designed to provide rear access to dwellings on Units ("**Alleys**"). The Founder hereby establishes a perpetual, non-exclusive easement of access, ingress, and egress over each Alley for the benefit of the Units adjacent to and intended to be served by such Alley, which easement may be exercised by the Owners and occupants of the benefitted Units, their guests and invitees, including their contractors and others providing labor, materials and construction services to their Units, subject to such regulations as the CDD (or the Association, if so authorized) may establish governing their use.

The Founder hereby reserves for itself and its agents, employees, successors, and assigns, and invitees of the Founder or its successors and assigns, an easement for access, ingress and egress over all Alleys during the Development and Sale Period.

The Founder hereby creates a perpetual, non-exclusive easement for access, ingress, and egress over the Alleys for the Association, its agents and employees; for law enforcement, fire fighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel acting in their

## **Easements**

official capacities; for U.S. Postal Service delivery vehicles and personnel; and for vehicles, equipment, and personnel providing garbage collection service to the Community.

### **13.10.Easements for Potable Water and Sanitary Sewer Facilities.**

The Founder hereby grants to Hillsborough County, Florida, its successors and assigns, a perpetual, non-exclusive easement (which may be exercised by its employees and contractors) over, under, and through those 10-foot utility easements running parallel to Alleys within the Community for purposes of constructing, installing, maintaining, repairing, and replacing public underground potable water and sanitary sewer facilities servicing the Community, which easement shall specifically include the right to temporarily excavate and stockpile excavated dirt and debris within the 10-foot utility easement and adjacent Alley, block vehicular access over and through the adjacent Alley, and/or divert pedestrian and vehicular traffic away from the adjacent Alley; provided, such temporary rights with respect to any Alley may only be exercised while such construction, maintenance, or repair activity is actually occurring in the utility easement adjacent to such Alley.

## Chapter 14 - Private Amenities

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*Various recreational and other facilities may be located within or in the vicinity of the Community that are privately owned and operated by Persons other than the Association. Those facilities are not part of the Common Area of the Community, and ownership of property in the Community does not give any person the right to use them. This Chapter explains the right of the owners of those facilities to determine if and on what terms they wish to make their facilities available for use by Owners. It also establishes certain rights for the benefit of the owners of such facilities.*

### 14.1. General

Any such facilities, and any other property and facilities located within, adjacent to, or near the Community, which Persons other than the Association own and operate for recreational and related purposes, are referred to in this Charter as a **"Private Amenity"** or **"Private Amenities."**

Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity. Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as the owners of the Private Amenities may determine. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users and also shall have the right to reserve use rights and to terminate use rights altogether subject to the terms of any written agreements with their respective members.

### 14.2. Ownership and Operation of Private Amenities

All Persons, including Owners, are hereby advised that no representations or warranties have been or are made by the Founder, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenities. No purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenities.

Ownership or operation of the Private Amenities may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenities by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenities or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenities; or (c) the conveyance of any Private Amenities to one or more Founder Affiliates. Consent of the Association, any Additional Association, any Voting Delegate, or any Owner shall not be required to effectuate any change in ownership or operation of any Private Amenities, for or without consideration and subject to or free of any mortgage, covenant, lien, or other encumbrance.

## Chapter 15 - Disclosures and Waivers

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*This Chapter discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each Owner, by accepting a deed to property in the Community, also accepts and agrees to the matters set forth in this Chapter.*

### 15.1. Access by General Public

Certain facilities and areas within the Community may be owned by a CDD or dedicated to the public on recorded plats and, as such, may be open for use and enjoyment of the public. Any CDD owning facilities within the Community may enter into an interlocal agreement with other CDDs for reciprocal use of their respective facilities by the residents of all such CDDs and for sharing of the costs of operating such facilities among the participating CDDs. Such facilities and areas may include, by way of example: lakes, ponds, recreational facilities, greenbelts, trails and paths, alleys, roads, sidewalks, medians, and parks.

### 15.2. Safety and Security

**Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to promote or enhance the level of safety or security that each person provides for himself or herself and his or her property. However, neither the Association nor the Founder shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.**

**No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, or that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Unit and their guests that the Association, its Board and committees, and the Founder are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties. Owners shall include in each lease for any Unit or any portion thereof provisions informing and binding tenants to these provisions.**

### 15.3. Changes in Development Plan

The Founder reserves the right to make changes in the Development Plan in its sole discretion, subject to such governmental approvals as may be required. Each Owner acknowledges that the Community is a master planned community, the development of which is likely to extend over many years, and agrees that neither the Association nor any Additional Association shall, without the Founder's prior written consent, engage in or use Association funds to support any protest, challenge, or other form of objection to (a) changes in uses or density of property within the Community, or (b) changes in the Development Plan.

## **Disclosures and Waivers**

### **15.4. View Impairment**

Neither the Founder nor the Association guarantee or represent that any view over and across the Units, any open space within the Community, or any Private Amenity will be preserved without impairment. The Founder, Founder Affiliates, the Association, and any Private Amenity owner shall have no obligation to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association (with respect to the Common Area) and Private Amenity owners (with respect to any Private Amenity) have the right to add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

### **15.5. Notices and Disclaimers as to Community Systems**

Any Community System and its providers, managers, and operators may be subject to federal, state, or municipal regulations, laws, and ordinances. Such regulations, laws, and ordinances may have a significant impact on certain aspects of the system including, but not limited to, the fees charged, the method of delivery, the rights of the system users, as well as the rights of the system providers or operators. These regulations and their impact are beyond the Association's and Founder's control.

In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, neither the Founder nor any Founder Affiliate, the Association, nor any of their respective successors or assigns shall in any manner be liable for any interruption in Community Systems services.

The Owner of each Unit shall be responsible for ensuring that the dwelling on such Unit is pre-wired to connect to any Community System installed by or at the request of the Founder pur-

suant to Section 18.7. If such wiring is installed by a party other than the provider of the Community System, the Owner shall contact the provider of the Community System upon completion of such installation and arrange for the provider of the Community System to inspect the wiring to ensure compatibility with the Community System. If authorized by the Founder, the provider of the Community System may charge the Owner of the Unit a reasonable fee for such inspection. If it is determined that the wiring is not compatible, the Owner of the Unit shall promptly arrange for such wiring to be replaced with wiring that is compatible with the Community System.

Each Owner acknowledges and agrees that the Association, by virtue of contractual relationships with Community Systems providers, may gain access to information relating to individual use of the Community Systems, including account and content information. In recognition of this fact, each Owner waives any privacy rights he or she may have in such information and any claims against the Association, the Board, Founder, and Founder Affiliates relating to the acquisition of such information. Further, each Owner acknowledges and agrees that the acquisition of such information by the Association shall not create any duty on the part of the Association, Founder, or Founder Affiliates to any Person to act in any manner with respect to such information.

### **15.6. Construction Activities**

All Owners, occupants, and users of Units are hereby placed on notice that the Founder, any Founder Affiliates, and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, will be conducting development and construction activities within The Community and that such activities may be conducted in phases and may cause disturbance and disruption that impact the use and enjoyment of a Unit.

## **Disclosures and Waivers**

By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest and by using any portion of a Unit or the Community generally, the Owners and all occupants and users of Units acknowledge and agree: (a) that such activities shall not be deemed nuisances or noxious or offensive activities under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise), any property within or in proximity to the Unit or any other portion of the Community where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that the Founder, any Founder Affiliates, and all of their agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (d) that any purchase or use of any portion of a Unit or any other portion of the Community has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to the Founder or Founder Affiliates to sell, convey, lease, and/or allow the use of Units and other facilities within the Community.

### **15.7. Hurricane Preparedness**

FishHawk Ranch West is located in a region that is vulnerable to the dangerous effects of hurricanes, including extremely high winds, flooding, flying debris, and lightning. Each Owner and occupant of a Unit shall be responsible for his or her own safety in the event of a hurricane and should take appropriate safety precautions (which may include evacuating the Community and/or the region) to avoid personal injury, including death, and property damage. Each Owner and occupant of a Unit shall be obligated to adhere to

any established hurricane plan for Community residents.

### **15.8. Water Management**

Each Owner acknowledges and agrees that wetlands, stormwater ponds, and other bodies of water within or adjacent to the Community are not designed as aesthetic features and, due to fluctuations in rainfall and groundwater elevations within the immediate area, may be wet or dry at various times and will not likely maintain a constant water level. Each Owner further acknowledges and agrees that the Founder and the Association have no control over the presence or absence of water or water levels. Therefore, each Owner agrees to release and discharge the Founder, Founder Affiliates, and the Association from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claim relating to the aesthetic appearance of, the presence or absence of water in, or fluctuations in water level in such areas.

No person shall alter, modify, or expand, or deposit fill, debris, or any other material or item in, any part of the Surface Water Management System Facilities, or remove, cut, trim, or apply herbicides to any vegetation within any wetlands mitigation area or wet detention pond located within or in the vicinity of the Community, without the prior written approval of the Founder and the South Florida Water Management District, and any other local, state, or federal regulatory or permitting authorities as may have relevant jurisdiction over such matters.

### **15.9. Entry Onto and Use of Water Bodies**

Any Person entering upon or near or otherwise using any wetlands, ponds, or other water bodies and related facilities within or adjacent to the Community shall be responsible for his or her own personal safety in connection with such entry and use and shall assume all risks of personal

## Disclosures and Waivers

injury, including death, relating to such entry or use. The Founder, Founder Affiliates, 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 water bodies or features within or adjacent to the Community 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 of such water features for any purpose.

Some Units are located adjacent to lakes, ponds or stormwater detention or retention facilities that may from time to time contain water. Owners and occupants of such Units have no right to erect fences, attach docks, build retaining walls, anchor or store boats or other watercraft, or landscape, clear, or otherwise disturb vegetation between the boundary of the Unit and such lakes, ponds, or other facilities.

### 15.10. Natural Conditions.

The Community and surrounding areas contain a number of manmade, natural and environmentally sensitive areas, including a wetland mitigation area and a gopher tortoise preserve, that may serve as habitats for a variety of native plants and wildlife, including insects, venomous and non-venomous snakes, alligators and other reptiles, and other animals, some of which may pose hazards to persons or pets coming in contact with them. Each Owner and occupant of any Unit, and every person entering the Community or such surrounding areas (i) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movement within or through the Community or surrounding areas; and (ii) assumes all risk of personal injury arising from the presence of such plants and wildlife. Neither the Association, the Founder, any Builder, nor the members, partners, affiliates, officers, directors, agents or employees of any of them, shall have any duty to take action to control, remove, or eradicate any plant or wildlife in the Community or surrounding areas, nor shall they have any liability for any

injury resulting from the presence, movement or propagation of any plant or wildlife within or through the Community.

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

Portions of the Community and/or property adjacent to the Community are subject to the terms of that certain Wildlife Habitat Management Plan for Lake Hutto attached to this Charter as Exhibit "F" ("**Habitat Management Plan**"). No person shall engage in any activity which is inconsistent with such Habitat Management Plan.

### 15.11 Proximity to Tower Facilities; Adjacent Land Uses.

There are large broadcast/communication towers and related installations ("**Tower Facilities**") located in close proximity to the Community and visible from the Community. The Founder and the Association have no ability to control the use, appearance or maintenance of, or emissions from, the Tower Facilities or the land upon which they are located. Neither the Founder nor the Association have any special knowledge of potential risks associated with living in proximity to the Tower Facilities. The Founder and the Association make no representations, nor is any person or entity acting on the Founder's or the Association's behalf authorized to make any representations, with regard to any matters relating to the existing Tower Facilities, any other facilities which may be installed in the future, or the potential risk or impact of any such facilities (including the existing Tower Facilities)

## **Disclosures and Waivers**

on owners and occupants of the Community or their Property or homes.

Each Owner, by accepting a deed to the Property, and each occupant of a Unit, by taking occupancy, assumes all risk associated with living in the vicinity of the Tower Facilities and agrees that the Founder, Founder Affiliates, the Association, and Builders shall have no liability whatsoever for any property damage, personal injury, or death arising out of or related to the proximity of the Community to the Tower Facilities. All purchasers of property in the Community should conduct their own diligence with respect to adjacent landowners and uses of land in the vicinity of the Community.

### **15.12. Proximity to FishHawk Nature Preserve.**

The Community is located in close proximity to property known as the FishHawk Nature Preserve. Each purchaser, Owner, tenant, and other occupant of a Unit is hereby advised of those matters set forth in Exhibit "G," entitled "Notice of Proximity to FishHawk Nature Preserve," which Notice is incorporated by this reference.

## Chapter 16 - Rights of Lenders

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*In order to enhance each Owner's ability to obtain financing for the purchase of his or her Unit, this Chapter sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies that guarantee and insure mortgage loans made by institutional lenders.*

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Community. The provisions of this Chapter apply to both this Charter and to the By-Laws, notwithstanding any other provisions contained therein.

### 16.1. Notices of Action

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

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

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

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

(d) Any proposed action that would require the consent of a specified percentage of Eligible Holders.

### 16.2. Special FHLMC Provision

If a condominium has been established in the Community, then so long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 67% of the first Mortgagees or Voting Delegates representing at least 67% of the total votes in the Association consent, the Association shall not:

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

(b) change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner of a Unit (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Community regarding assessments for Service Areas or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Charter);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance, or maintenance of Units and the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not consti-

## **Rights of Lenders**

tute a change, waiver, or abandonment within the meaning of this provision);

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

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

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

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

To the extent not inconsistent with Florida law, if a condominium has been established in the Community, then:

(a) Any restoration or repair of the Community after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Charter and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which at least 51% of the votes of Units subject to Mortgages held by Eligible Holders are allocated, in addition to the approval required by Section 21.1 and 9.4, respectively.

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

(c) any election to terminate the Association under other circumstances shall require (i) the consent of Voting Delegates representing at least 67% of the total votes in the Association and of the Founder, so long as it owns any land subject to this Charter, and (ii) the approval of the Eligible Holders of first Mortgages on Units to which at least 67% of the votes of Units subject to a Mortgage are allocated.

### **16.4. Amendments to Documents**

If a condominium has been established in the Community, then the consent of Voting Delegates representing at least 67% of the total votes in the Association and of the Founder, so long as it owns any land subject to this Charter, and the approval of Eligible Holders of first Mortgages on at least 51% of the Units subject to a Mortgage held by an Eligible Holder, shall be required to amend materially any provisions of the Charter, By-Laws, or Articles of Incorporation, or to add any material provisions thereto that establish, provide for, govern, or regulate any of the following:

(a) voting;

(b) assessments, assessment liens, or subordination of such liens;

(c) reserves for maintenance, repair, and replacement of the Common Area;

(d) insurance or fidelity bonds;

(e) rights to use the Common Area;

(f) responsibility for maintenance and repair of property in the Community;

(g) expansion or contraction of the Community or the addition, annexation, or withdrawal of property to or from the Association's jurisdiction, except by the Founder as otherwise provided in Chapter 17;

(h) boundaries of any Unit;

## **Rights of Lenders**

(i) leasing of Units;

(j) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;

(k) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or

(l) any provisions included in the Governing Documents that are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

### **16.5. No Priority**

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

### **16.6. Notice to Association**

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit and the identifying number of the loan which such Mortgage secures.

### **16.7. Failure of Mortgagee to Respond**

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 60 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

### **16.8. Construction of Chapter 16**

Nothing contained in this Chapter shall be construed to reduce the percentage vote that must otherwise be obtained under this Charter, the By-Laws, or Florida law for any of the acts set out in this Chapter.

## **PART FIVE: COMMUNITY DEVELOPMENT**

### **Chapter 17 - Expansion of the Community**

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*Due to the need to pace development to the needs of the Community and the market demand for Units or Common Areas, the Community may be developed in phases. The Founder or the Association may expand the initial property submitted to the Charter as set forth in this Chapter.*

#### **17.1. Expansion by the Founder**

From time to time, the Founder may submit to the terms of this Charter all or any portion of the property described in Exhibit "B" by recording a Supplement describing the additional property to be submitted. The Founder may record such a Supplement without the consent of any Person except the owner of such property, if not the Founder.

The Founder's right to expand the Community under this Section expires when all property described in Exhibit "B" has been submitted to this Charter or 40 years after this Charter is recorded, whichever is earlier. Until then, the Founder may transfer or assign this right, in whole or in part, and with respect to all or any portion of the Exhibit "B" property (reserving all rights as to any portion not included in such assignment), to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Founder.

Nothing in this Charter shall require the Founder or any successor to submit additional property to this Charter or to develop any of the property described in Exhibit "B" in any manner whatsoever.

#### **17.2. Expansion by the Association**

The Association also may submit additional property to this Charter by recording a Supplement describing the additional property. Any Supplement that the Association records must be approved by Voting Delegates representing more than 50% of the total votes in the Association at a meeting duly called for such purpose and by the owner of the property to be submitted. In addition, during the Development and Sale Period, the Founder's consent is required. The Association's President and Secretary, the owner of the property, and the Founder, if the Founder's consent is required, shall sign the Supplement.

#### **17.3. Additional Covenants and Easements**

Any Supplement that the Founder records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Service Area Assessments. Such provisions may be included in a Supplement submitting new property to this Charter or may be set forth in a separate Supplement applicable to property previously submitted to this Charter. If someone other than the Founder owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Charter as it applies to the property described in the Supplement, in order to reflect the different character and intended use of such property.

## **Expansion of the Community**

### **17.4. Effect of Filing a Supplement**

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Charter shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Charter.

## **Chapter 18 - Additional Rights Reserved to the Founder**

*This Chapter reserves various rights to the Founder, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the Founder's development and sale of property in the Community, to enable the Founder to respond to Owners' concerns, and to protect various property rights and other interests of the Founder.*

### **18.1. Special Development Rights**

In addition the rights specifically reserved to the Founder under Chapter 17 with respect to expanding the Community, the Founder reserves the right, during the Development and Sale Period, to:

(a) create Units, Common Areas, and Limited Common Areas, and to designate roadways, within any portion of the Community which it owns;

(b) subdivide or combine any Unit or Units which it owns in order to create larger or additional Units, Common Areas, and/or Limited Common Areas;

(c) convert any Unit which it owns into Common Area, Limited Common Area, or roadways;

(d) adjust the boundaries of any Units that it owns and any Common Area or Limited Common Area; and

(e) amend this Charter or any Supplement to withdraw property from the Community and the coverage of this Charter, provided that such property has not been improved with a dwelling. Any such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Founder. If the property is Common Area, the Association shall consent to such withdrawal.

The foregoing rights shall specifically include the right, subject only to obtaining the requisite governmental approvals, to replat and record revised, amended, or additional plats affecting any property which it owns in the Community to accomplish any the foregoing. Such replats or revised or amended plats shall not require the consent of the Association, the Voting Delegates, any Owner, or any other Person (except appropriate governmental authorities), notwithstanding that they may vacate right-of-way, eliminate open spaces, convert right-of-way or open space to Units, or convert Units to open space or right-of-way, and neither the Association nor any Owner shall have the right to object to any such replatting; however, no replat or revised or amended plat shall alter the boundaries of any property owned by a Person other than the Founder without that owner's written consent. If a proposed replat or revised or amended plat would alter the boundaries of any property which Founder has conveyed to the Association as Common Area and such property has not been improved with recreational facilities, then the Association shall, upon the Founder's request, execute such documents as may be necessary to grant its consent to such replat or revised or amended plat.

### **18.2. Marketing and Sales Activities**

Notwithstanding anything in the Governance Documents to the contrary, during the Development and Sale Period the Founder and its designees or assigns may construct, use, and maintain upon portions of the Common Area and other property they own, such facilities and activities as, in the Founder's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units, subject to any limitations imposed by applicable zoning. Such permitted facilities and activities shall include business offices, signs, flags (whether hung from flag poles

## **Additional Rights Reserved to the Founder**

or attached to a structure), model homes, sales offices, parking facilities, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Founder and its employees, agents, and designees may park vehicles in designated parking areas. The Founder and authorized Builders whom the Founder may designate shall have easements for access to and use of such facilities at no charge. Such right shall specifically include the right of the Founder and its designees to use Common Area facilities for an information center and/or for administrative, sales and business offices at no charge during the Development and Sale Period and to restrict use or access to such facilities by the Association, its members and others as long as they are being used for any such purpose. There shall be no limit on the number or location of such facilities, except as otherwise restricted by state law or local ordinance or regulations.

After the Development and Sale Period, the Founder shall continue to have a right of access to and the right to use all Common Area facilities for parties, special events, and marketing activities in connection with the marketing and sale of other communities being developed, marketed, or sold by the Founder, its agents, or affiliates, subject to any limitations imposed by applicable zoning. Any such use after the Development and Sale Period shall be subject to reasonable notice to the Association and payment by the Founder of all reasonable costs the Association directly incurs in connection with such use (*i.e.*, over and above costs the Association would incur in the absence of such use).

### **18.3. Access for Development Purposes**

During the Development and Sale Period, the Founder and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area and roads within the Community for the purpose of:

(a) exercising any rights reserved to the Founder pursuant to this Charter, including the rights set forth in Sections 17.1 and 17.2; and

(b) making, constructing, and installing any improvements indicated on recorded subdivision maps or plats of the Community and such other improvements to the Common Area and to the Exhibit "B" property as it deems appropriate; and

(c) making repairs or correcting any condition on the Common Area or any Unit.

### **18.4. Right to Approve Changes in Community Standards**

During the Development and Sale Period, no amendment to or modification of any Rules or Design Guidelines shall be effective without prior notice to and the written approval of the Founder.

### **18.5. Additional Covenants and Restrictions**

During the Development and Sale Period, no one other than the Founder may record any additional covenants or restrictions affecting any portion of the Community without the Founder's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

### **18.6. Rights to Use Names; License Agreements**

The name "FishHawk Ranch West," along with all logos associated with such name, are the proprietary trade names and/or service marks of the Founder or Founder Affiliates. No Person shall use the name "FishHawk Ranch West," or any associated logo, for advertising or any other purpose in any promotional material, whether printed, audio, video, or otherwise, in any signage, on any Internet website, or in any logo or depiction, without the prior written consent of the Founder or the Person who owns such mark. In addition, due to the integrated nature of

## **Additional Rights Reserved to the Founder**

FishHawk Ranch West as a planned community and the public identification of the Units with FishHawk Ranch West, any name or "logo" to be used in connection with or displayed on any signage or in any sales or other materials or documentation related to any Unit, shall be subject to the Founder's prior written consent. Such approval may be given or withheld in the Founder's discretion and may be subject to such terms and conditions as the Founder deems appropriate.

The Founder or the mark or trademark owner may condition the Association's or any Owner's use of protected trade names or marks upon the signing of one or more license agreement(s), which are intended to protect the trade names and service marks from unauthorized use by others. Such license agreement(s) shall be non-exclusive, non-transferable, and in form and substance acceptable to the owner of the mark. Subject to such licensing agreements, the Association may use the words "FishHawk Ranch West" in its name. Other use by the Association or any Owner is subject to the restrictions set out in this Section or otherwise imposed by the Founder.

Notwithstanding the above, Owners may use the name "FishHawk Ranch West" where such term is used solely to specify that particular property is located within FishHawk Ranch West (subject, however, to such terms and conditions as the Founder may impose in order to protect its registered trade names and service marks).

### **18.7. Community Systems**

The Founder reserves for itself, Founder Affiliates, and their respective successors and assigns, a perpetual right and easement over all property in the Community to install and operate such Community Systems as the Founder, in its discretion, deems appropriate to serve any portion of the Community. Such right shall include, without limitation, the Founder's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the region. The

Founder also has the right to charge individual users a reasonable fee, not to exceed the maximum allowable charge for such service, as defined from time to time by the laws, rules, and regulations of the governmental authority having jurisdiction.

Notwithstanding the above, there is no guarantee or representation that any particular Community System will be made available.

### **18.8. Easement to Inspect and Right to Correct**



*The Founder, or someone it designates, may enter onto any Unit to inspect and correct problems with the Unit. The Founder must give the Owner of the Unit prior notice, and if entering an enclosed structure on the Unit, obtain the Owner's prior consent unless it is an emergency.*

The Founder reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition that may exist on any portion of the property within the Community, including Units, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.

### **18.9. Right to Notice of Design or Construction Claims**

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation

## **Additional Rights Reserved to the Founder**

of any potential or pending claim, demand, or litigation involving such design or construction unless the Founder and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

### **18.10. Right to Transfer or Assign the Founder's Rights**

Any or all of the Founder's rights and obligations set forth in this Charter or the By-Laws may be transferred in whole or in part to other Persons without transferring the status of the Founder. However, such a transfer shall not reduce an obligation or enlarge a right beyond that which the Founder has under this Charter or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded instrument the Founder signs. The foregoing sentence shall not preclude the Founder from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to the Founder in this Charter where the Founder does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless necessary to evidence the Founder's consent to such exercise.

### **18.11. Termination of Rights**

If the term of any rights contained in this Chapter is not specified, such right shall terminate upon the earlier of (a) termination of the Development and Sale Period; or (b) the Founder's recording of a written statement that all sales activity has ceased.

## PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS

### Chapter 19 - Dispute Resolution and Limitation on Litigation

*From time to time, disputes may arise between Owners or between an Owner and the Association, the Founder, or others involved in the Community. This Chapter commits the parties to any such dispute to work together in an attempt to resolve certain types of disputes without litigation in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's membership before the Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.*

#### **19.1. Agreement to Encourage Resolution of Disputes Without Litigation**

**(a) Bound Parties.** The Founder, the Association and its officers, directors, and committee members, all Persons subject to this Charter, and any Person not otherwise subject to this Charter who agrees to submit to this Chapter (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to:

(i) any dispute subject to the dispute resolution process set forth in Florida Statutes §720.311, without first complying with that process; and

(ii) with respect to any Claim described in Section 19.1(b) which is not subject to Florida Statutes §720.311 without first complying with the dispute resolution procedures set forth in Section 19.2 of this Chapter;

all in a good faith effort to resolve such Claim or dispute.

**(b) Claims.** As used in this Chapter, the term "**Claim**" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Chapter 5, which shall not be subject to review and shall not be subject to this Chapter.

**(c) Exceptions.** Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 19.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Charter (relating to creation and maintenance of community standards);

## Dispute Resolution and Limitation on Litigation

(iii) any suit that does not include the Founder, a Founder Affiliate, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 19.2;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 19.2(a) unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Chapter; and

(vi) any suit by the Association to enforce the Governing Documents where the Association has given the violator notice and either a hearing or an opportunity to cure the violation, or both, prior to the Association filing suit.

### 19.2. Dispute Resolution Procedures

(a) **Notice.** The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Hillsborough County area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys fees, and each Party shall pay an equal share of the mediator's fees.

Notwithstanding the above, in any dispute as to which the Association is a party, the parties

## Dispute Resolution and Limitation on Litigation

may waive mediation by mutual agreement and proceed to file suit or initiate other proceedings.

**(d) Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

### 19.3. Initiation of Litigation by Association

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote at a meeting of Voting Delegates entitled to cast 75% of the total votes in the Association, except that no such approval shall be required to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it, or for actions or proceedings where the amount in controversy is \$100,000 or less if initiated:

- (a) during the Founder Control Period;
- (b) to enforce the provisions of this Charter, including collection of assessments and foreclosure of liens;
- (c) to challenge *ad valorem* taxation or condemnation proceedings; or
- (d) against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies.

## Chapter 20. - Changes in the Common Area

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*Various influences and circumstances within and outside the Community may give rise to a need or desire to make changes in the ownership of or rights to use Common Area. This Chapter explains the procedures for dealing with matters such as changing use rights in Common Area or Limited Common Area, partition of the Common Area, and condemnation.*

### 20.1. Assignment and Reassignment of Limited Common Area

The Board may designate a portion of the Common Area as Limited Common Area, and may reassign Limited Common Area, upon approval of the Board and the vote of Voting Delegates representing a majority of the total votes in the Association, including a majority of the votes attributable to Units to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require the Founder's written consent.

Upon approval of a majority of Owners of Units to which any Limited Common Area is assigned, the Association may permit Owners of other Units to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area.

### 20.2. Condemnation



*A public entity such as a town, county, or state has the power to condemn property for its own uses and generally has to pay the value of the property to do so.*

If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Association in lieu of and under threat of condemnation with such approval as may be required under Sec-

tion 20.4, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Founder, during the Development and Sale Period, and Voting Delegates representing at least 75% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 9.4 regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 20.4.

### 20.3. Partition



*Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.*

Except as permitted in this Charter, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written

## **Changes in the Common Area**

consent of all Owners and Mortgagees and, during the Development and Sale Period, the Founder. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Charter, with such approval as may be required under Section 20.4.

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

The Association may transfer or dedicate portions of the Common Area to Hillsborough County, Florida or to any other local, state, or federal governmental or quasi-governmental entity, may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

(a) if Common Area other than Limited Common Area, upon the written direction of Voting Delegates representing at least 75% of the total votes in the Association, and the Founder during the Development and Sale Period; or

(b) if Limited Common Area, upon written approval of Owners of at least 75% of the Units to which such Limited Common Area is assigned.

Notwithstanding the above, no such approval shall be required: (i) to reconvey Common Area to the Founder as required by Section 9.1(a); or (ii) to grant easements for access and utility purposes over the Common Areas so long as they are not inconsistent with the intended use of the Common Area; and during the Founder Control Period, the Founder may cause the Association to dedicate to Hillsborough County, Florida, or to any other local, state, or federal governmental or quasi-governmental entity, any streets within the Community over which access is not limited, without the consent of the Owners (upon acceptance by the entity to whom they are being dedicated).

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines. The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner approved by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized.

No conveyance or encumbrance of Common Area may deprive any Unit of rights of access or support.

### **20.5. Acquisition of Common Area**

The Association may enter into agreements to purchase or otherwise acquire leaseholds, memberships, and other possessory or use interests in lands or facilities, including, but not limited to, country clubs, golf courses, marinas, submerged land, parking areas, conservation areas, and other recreational facilities, whether or not contiguous to the Community. However, any such agreement entered into more than 12 months after recording of this Charter shall be subject to approval of Voting Delegates representing at least 75% of the total votes in the Association. This Section shall not apply to require approval of transfers of Common Area by the Founder to the Association for no consideration pursuant to Section 9.1.

## **Chapter 21 - Termination and Amendment of Community Charter**

*As the Community matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan as well as changes in the needs and desires of the Community that inevitably will occur. This Chapter sets out procedures by which either the Founder or the Owners as a group may amend this Charter to address such changes.*

### **21.1. Term and Termination**

This Charter shall be effective, subject to amendments adopted pursuant to Section 21.2, for a minimum of 25 years from the date it is recorded. After 25 years, this Charter shall be extended automatically for successive 10-year periods unless at least 75% of the then Owners sign a document stating that the Community Charter is terminated and that document is recorded within the year before any extension. In such case, this Charter shall terminate on the date specified in the termination document.

In any event, if any provision of this Charter would be invalid under the Florida Uniform Statutory Rule Against Perpetuities, that provision shall expire 90 years after this Charter is recorded.

This Section shall not permit termination of any easement created in this Charter without the consent of the holder of such easement.

### **21.2. Amendment**

**(a) By Founder.** In addition to specific amendment rights granted elsewhere in this Charter, until termination of the Founder Control Period, the Founder may unilaterally amend this Charter for any purpose, except that no unilateral amendment by the Founder shall be arbitrary, capricious, or in bad faith; destroy the general plan of development; prejudice the rights of Owners other than the Founder to use and enjoy the Common Area; or materially shift economic

burdens from the Founder to Owners other than the Founder.

Thereafter, the Founder may unilaterally amend this Charter if and to the extent permitted by Florida law.

**(b) By Membership.** Except as otherwise specifically provided above and elsewhere in this Charter, this Charter may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Delegates entitled to cast not less than 75% of the total votes in the Association, or by Owners of not less than 67% of the Units. In addition, during the Development and Sale Period, any such amendment shall also require the Founder's written consent. The approval requirements set forth in Chapter 16 also shall be met, if applicable.

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

**(c) Approval of Southwest Florida Water Management District.** Notwithstanding Section 21.2(a) and (b), any amendment to this Charter that alters any provision relating to the Surface Water Management System Facilities or that materially affects the operation and maintenance of the Surface Water Management System Facilities, or any amendment to this Section 21.2(c), must have the prior approval of the Southwest Florida Water Management District.

**(d) Approval of CDD.** Notwithstanding Section 21.2(b), any amendment to this Charter or its exhibits (other than an amendment adopted by the Founder pursuant to its authority under Section 21.2(a)), which would interfere with the lawful operation by the CDD or its authorized agent of facilities constructed on CDD Property,

## Termination and Amendment of Community Charter

impose new obligations on the CDD, or alter any rights or protections specifically granted to the CDD under this Charter, shall require the prior written consent of the CDD.

**(e) *Validity and Effective Date.*** No amendment may remove, revoke, or modify any right or privilege of the Founder or the Founder Member without the written consent of the Founder or the Founder Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Charter or the By-Laws, 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 shall become effective upon recording unless a later effective date is specified in the amendment. A copy of any amendment shall be provided to the Owners within 30 days after recording. Any procedural challenge to an amendment must be made within six months of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Charter.

**(f) *Exhibits.*** Exhibits "A" and "B" are incorporated by this reference, and this Chapter shall govern amendment of those exhibits. Exhibit "C" is incorporated by this reference and may be amended under Chapter 7 or pursuant to this Section. All other exhibits are attached for informational purposes and may be amended as provided in those exhibits or in the provisions of this Charter that refer to such exhibits.

IN WITNESS WHEREOF, the Founder has executed this Charter this 27<sup>th</sup> day of June, 2013.

FOUNDER: NNP IV-LAKE HUTTO, LLC, a Delaware limited liability company

By: [Signature]  
Name: Thomas J. Panaseny  
Its: Vice President

ADDRESS: 777 S. Harbour Island Blvd., Suite 320  
Tampa, FL 33602

WITNESSES:

[Signature]  
Print Name: Janet L. Brantner

[Signature]  
Print Name: VICTOR BARROSA

STATE OF FLORIDA §  
§  
COUNTY OF HILLSBOROUGH §

The foregoing instrument was acknowledged before me on this the 27<sup>th</sup> day of June, 2013, by Thomas J. Panaseny, Vice President of NNP IV-Lake Hutto, LLC, a Delaware limited liability company, on behalf of such entity. He/she is personally known to me and did not take an oath.

Given under my hand and official seal this 27<sup>th</sup> day of June, 2013.



Name: [Signature]  
Title: Notary Public  
Serial Number, if any: \_\_\_\_\_  
My Commission Expires: 1/7/15

This document was prepared by:

Jo Anne P. Stubblefield  
HYATT & STUBBLEFIELD, P.C.  
Peachtree Center South Tower  
225 Peachtree Street, NE, Suite 1200  
Atlanta, Georgia 30303

551007/Resid/CharterFHRWest/062513/jps

## JOINDER, CONSENT AND SUBORDINATION OF MORTGAGEE

The undersigned holder of that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing by NNP IV - LAKE HUTTO, LLC, a Delaware limited liability company, as Mortgagor, to NASH FINANCING, LLC, a Delaware limited liability company, as Mortgagee, dated December 30, 2011, and recorded on January 5, 2012 in Official Records Book 20888, Page 1253 in the public records of Hillsborough County, Florida (the "Mortgage"), which Mortgage encumbers all or a portion of the property described on Exhibit "A" of the Community Charter for FishHawk Ranch West (the "Charter"), hereby joins in the execution of the Charter to evidence its consent to the Charter, including all exhibits thereto, and to subordinate its interest under the Mortgage to the Charter.

IN WITNESS WHEREOF, the undersigned hereby joins in execution of the Charter by and through its authorized representative this 24th day of June, 2013.

### WITNESSES:

Signed, sealed and delivered  
in the presence of:

[Signature]

Signature of Witness #1

Michiko Atman

Typed/Printed Name of Witness #1

[Signature]

Signature of Witness #2

Alex Baldwin

Typed/Printed Name of Witness #2

### MORTGAGE HOLDER:

NASH FINANCING, LLC,  
a Delaware limited liability company

By: [Signature]  
Authorized Signatory

### Address:

c/o North America Sekisui House, LLC  
2101 Wilson Boulevard, Suite 1004  
Arlington, Virginia 22201

STATE OF CALIFORNIA }

COUNTY OF San Diego }

On this 24 day of June, 2013 before me Jaclyn M. Briscoe (notary public), personally appeared Koji Yamada (print name), who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (notary public)

(NOTARY SEAL)



**EXHIBIT "A"**  
**Property Initially Submitted**

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Section 25, Township 30 South, Range 20 East, Hillsborough County, Florida, and being more particularly described as FishHawk Ranch West Phase 1A, according to the plat thereof recorded in Plat Book 121, Pages 6-10 of the official public records of Hillsborough County, Florida, as such property may be replatted from time to time or as such plat may be revised or amended; and

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Section 25, Township 30 South, Range 20 East and Section 30, Township 30 South, Range 21 East, Hillsborough County, Florida, and being more particularly described as FishHawk Ranch West Phase 1B/1C, according to the plat thereof recorded in Plat Book 121, Pages 11-34 of the official public records of Hillsborough County, Florida, as such property may be replatted from time to time or as such plat may be revised or amended;

the Units within such property being assigned to Neighborhoods pursuant to Section 3.2 of the Charter, as follows:

| Block/Lots                                                                                                                                            | Neighborhood |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Block 1, Lots 1-25<br>Block 14, Lots 1-8<br>Block 15, Lots 1-8<br>Block 16, Lots 1-4<br>Block 17, Lots 1-15                                           | 1            |
| Block 2, Lots 1-8<br>Block 3, Lots 1-14<br>Block 4, Lots 1-12<br>Block 7, Lots 1-9<br>Block 8, Lots 1-11                                              | 2            |
| Block 5, Lots 1-7<br>Block 6, Lots 1-9<br>Block 9, Lots 1-5<br>Block 10, Lots 1-10<br>Block 11, Lots 1-14<br>Block 12, Lots 1-8<br>Block 13, Lots 1-7 | 3            |

| Block/Lots                                                                                                                           | Neighborhood |
|--------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Block 18, Lots 1-10<br>Block 19, Lots 1-5<br>Block 20, Lots 1-11<br>Block 21, Lots 1-12<br>Block 22, Lots 1-13<br>Block 23, Lots 1-6 | 4            |
| Block 24, Lots 1-14<br>Block 25, Lots 1-6<br>Block 26, Lots 1-7<br>Block 27, Lots 1-14<br>Block 28, Lots 1-8<br>Block 29, Lots 1-11  | 5            |
|                                                                                                                                      |              |

such Neighborhoods being subject to expansion in accordance with Section 3.2 of the Charter as additional property is made subject to the Charter.

**EXHIBIT "B"**  
**Expansion Property**

DESCRIPTION: A parcel of land lying in Sections 24 and 25, Township 30 South, Range 20 East, and in Sections 19 and 30, Township 30 South, Range 21 East, Hillsborough County, Florida, and being more particularly described as follows:

Commence at the Southeast corner of said Section 25, run thence along the East boundary of said Section 25, N.00°21'49"E., 30.00 feet to a point on the Northerly maintained right-of-way line for BOYETTE ROAD, said point also being the **POINT OF BEGINNING**; thence along said Northerly maintained right-of-way line, N.89°59'18"W., 1330.05 feet to a point on the East boundary of the Southwest 1/4 of the Southeast 1/4 of said Section 25; thence along the East and North boundary lines of said Southwest 1/4 of the Southeast 1/4 of Section 25, the following two (2) courses: 1) N.00°15'35"E., 1285.79 feet; 2) S.89°52'02"W., 1299.00 feet to a point on the Easterly maintained right-of-way line for BOYETTE ROAD; thence along said Easterly maintained right-of-way line, the following two (2) courses: 1) N.00°10'21"E., 1492.95 feet; 2) N.00°08'14"E., 1136.30 feet to a point on the North boundary of the Northwest 1/4 of the Southwest 1/4 of the Northeast 1/4 of said Section 25; thence along said North boundary of the Northwest 1/4 of the Southwest 1/4 of the Northeast 1/4 of Section 25, N.89°49'45"E., 628.85 feet to the Northeast corner thereof; thence EAST, 842.85 feet; thence NORTH, 338.26 feet to a point of curvature; thence Northwesterly, 26.51 feet along the arc of a curve to the left having a radius of 25.00 feet and a central angle of 60°45'11" (chord bearing N.30°22'36"W., 25.28 feet) to a point of compound curvature; thence Westerly, 16.33 feet along the arc of a curve to the left having a radius of 32.00 feet and a central angle of 29°14'49" (chord bearing N.75°22'36"W., 16.16 feet) to a point of tangency; thence WEST, 22.82 feet; thence NORTH, 97.27 feet to a point on a curve; thence Northeasterly, 55.27 feet along the arc of a curve to the left having a radius of 182.00 feet and a central angle of 17°23'57" (chord bearing N.47°29'01"E., 55.06 feet) to a point of tangency; thence N.38°47'02"E., 25.51 feet to a point of curvature; thence Northeasterly, 55.16 feet along the arc of a curve to the left having a radius of 140.00 feet and a central angle of 22°34'22" (chord bearing N.27°29'51"E., 54.80 feet) to a point of reverse curvature; thence Northerly, 87.44 feet along the arc of a curve to the right having a radius of 1266.75 feet and a central angle of 03°57'18" (chord bearing N.18°11'19"E., 87.43 feet) to a point of compound curvature; thence Northeasterly, 113.15 feet along the arc of a curve to the right having a radius of 378.00 feet and a central angle of 17°09'02" (chord bearing N.28°44'29"E., 112.73 feet) to a point of reverse curvature; thence Northeasterly, 75.29 feet along the arc of a curve to the left having a radius of 500.00 feet and a central angle of 08°37'40" (chord bearing N.33°00'10"E., 75.22 feet) to a point of reverse curvature; thence Northeasterly, 148.24 feet along the arc of a curve to the right having a radius of 1247.00 feet and a central angle of 06°48'40" (chord bearing N.32°05'40"E., 148.15 feet) to a point of tangency; thence N.35°30'00"E., 3.85 feet to a point of curvature; thence Northerly, 102.10 feet along the arc of a curve to the left having a radius of 65.00 feet and a central angle of 90°00'00" (chord bearing N.09°30'00"W., 91.92 feet) to a point of tangency; thence N.54°30'00"W., 73.31 feet to a point of curvature; thence Westerly, 714.39 feet along the arc of a curve to the left having a radius of 1153.00 feet and a central angle of 35°30'01" (chord bearing N.72°15'00"W., 703.02 feet) to a point of tangency; thence WEST, 158.45 feet; thence S.45°00'00"W., 5.30 feet; thence WEST, 365.94 feet; thence NORTH, 3.75 feet; thence WEST, 362.87 feet to a point of curvature; thence Southwesterly, 93.73 feet along the arc of a curve to the left having a radius of 60.00 feet and a central angle of 89°30'20" (chord bearing S.45°14'50"W., 84.49 feet) to a point of tangency; thence S.00°29'40"W., 69.79 feet to a point on the Northerly maintained right-of-way line for BOYETTE ROAD; thence along said Northerly maintained

**EXHIBIT "B"**  
**Expansion Property**  
(continued)

right-of-way line, the following four (4) courses: 1) N.26°05'03"W., 145.59 feet; 2) N.56°03'17"W., 106.55 feet; 3) N.78°27'40"W., 101.77 feet; 4) S.89°27'32"W., 1125.49 feet to a point on the West boundary of the Southeast 1/4 of the Southwest 1/4 of the aforesaid Section 24; thence along said West boundary of the Southeast 1/4 of the Southwest 1/4 of Section 24, N.00°17'08"E., 668.06 feet; thence S.89°42'52"E., 1084.37 feet to a point of curvature; thence Easterly, 215.56 feet along the arc of a curve to the right having a radius of 525.00 feet and a central angle of 23°31'29" (chord bearing S.77°57'08"E., 214.04 feet) to a point of reverse curvature; thence Southeasterly, 29.32 feet along the arc of a curve to the left having a radius of 677.00 feet and a central angle of 02°28'53" (chord bearing S.67°25'50"E., 29.32 feet) to a point of compound curvature; thence Easterly, 28.28 feet along the arc of a curve to the left having a radius of 162.00 feet and a central angle of 10°00'03" (chord bearing S.73°40'18"E., 28.24 feet); thence N.27°28'16"E., 6.00 feet to a point on a curve; thence Easterly, 25.57 feet along the arc of said curve to the left having a radius of 156.25 feet and a central angle of 09°22'38" (chord bearing S.83°58'19"E., 25.54 feet) to a point of compound curvature; thence Northeasterly, 33.42 feet along the arc of a curve to the left having a radius of 30.00 feet and a central angle of 63°49'16" (chord bearing N.59°25'44"E., 31.72 feet) to a point of tangency; thence N.27°31'06"E., 71.10 feet to a point of curvature; thence Northerly, 529.75 feet along the arc of a curve to the left having a radius of 1103.00 feet and a central angle of 27°31'06" (chord bearing N.13°45'33"E., 524.68 feet) to a point of tangency; thence NORTH, 189.20 feet to a point of curvature; thence Northwesterly, 39.04 feet along the arc of a curve to the left having a radius of 25.00 feet and a central angle of 89°27'50" (chord bearing N.44°43'55"W., 35.19 feet) to a point of cusp on the Southerly right-of-way line of FISHHAWK BOULEVARD; thence along said Southerly right-of-way line, S.89°27'50"E., 159.76 feet to a point of cusp; thence Southwesterly, 39.50 feet along the arc of a curve to the left having a radius of 25.00 feet and a central angle of 90°32'10" (chord bearing S.45°16'05"W., 35.52 feet) to a point of tangency; thence SOUTH, 145.61 feet; thence S.13°52'47"W., 15.63 feet; thence SOUTH, 3.88 feet to a point of curvature; thence Southerly, 574.90 feet along the arc of a curve to the right having a radius of 1197.00 feet and a central angle of 27°31'06" (chord bearing S.13°45'33"W., 569.39 feet) to a point of tangency; thence S.27°31'06"W., 12.37 feet to a point of curvature; thence Southerly, 96.40 feet along the arc of a curve to the left having a radius of 323.75 feet and a central angle of 17°03'35" (chord bearing S.18°59'18"W., 96.04 feet) to a point of compound curvature; thence Southerly, 42.38 feet along the arc of a curve to the left having a radius of 50.00 feet and a central angle of 48°33'31" (chord bearing S.13°49'15"E., 41.12 feet); thence S.28°10'15"W., 76.59 feet to a point on a curve; thence Westerly, 5.74 feet along the arc of a curve to the left having a radius of 100.00 feet and a central angle of 03°17'26" (chord bearing S.89°51'29"W., 5.74 feet) to a point of compound curvature; thence Southwesterly, 51.03 feet along the arc of a curve to the left having a radius of 40.00 feet and a central angle of 73°05'47" (chord bearing S.51°39'53"W., 47.64 feet) to a point of compound curvature; thence Southerly, 369.03 feet along the arc of a curve to the left having a radius of 1103.00 feet and a central angle of 19°10'10" (chord bearing S.05°31'54"W., 367.31 feet) to a point of compound curvature; thence Southeasterly, 52.50 feet along the arc of a curve to the left having a radius of 35.00 feet and a central angle of 85°56'49" (chord bearing S.47°01'36"E., 47.72 feet) to a point of tangency; thence EAST, 901.18 feet to a point of curvature; thence Easterly, 209.61 feet along the arc of a curve to the right having a radius of 1247.00 feet and a central angle of 09°37'51" (chord bearing S.85°11'05"E., 209.36 feet) to a point of reverse curvature; thence Northeasterly, 15.38 feet along the arc of a curve to the left having a radius of 10.00 feet and a central angle of 88°07'51" (chord bearing N.55°33'55"E., 13.91 feet) to a point of tangency; thence N.11°30'00"E., 325.45 feet to a point of curva-

**EXHIBIT "B"**  
**Expansion Property**  
(continued)

ture; thence Northeasterly, 33.93 feet along the arc of a curve to the right having a radius of 81.00 feet and a central angle of 24°00'00" (chord bearing N.23°30'00"E., 33.68 feet) to a point of tangency; thence N.35°30'00"E., 229.94 feet to a point of curvature; thence Northeasterly, 28.27 feet along the arc of a curve to the right having a radius of 81.00 feet and a central angle of 20°00'00" (chord bearing N.45°30'00"E., 28.13 feet) to a point of tangency; thence N.55°30'00"E., 365.07 feet to a point of curvature; thence Northerly, 15.39 feet along the arc of a curve to the left having a radius of 10.00 feet and a central angle of 88°10'56" (chord bearing N.11°24'32"E., 13.92 feet) to a point of reverse curvature; thence Northerly, 606.43 feet along the arc of a curve to the right having a radius of 1305.05 feet and a central angle of 26°37'28" (chord bearing N.19°22'10"W., 600.99 feet); thence N.06°00'00"W., 12.06 feet to a point of curvature; thence Northwesterly, 36.42 feet along the arc of a curve to the left having a radius of 25.00 feet and a central angle of 83°27'50" (chord bearing N.47°43'55"W., 33.28 feet) to a point of cusp on the aforesaid Southerly right-of-way line of FISHHAWK BOULEVARD; thence along said Southerly right-of-way line, S.89°27'50"E., 191.77 feet to a point of cusp; thence Southwesterly, 42.29 feet along the arc of a curve to the left having a radius of 25.00 feet and a central angle of 96°54'50" (chord bearing S.42°04'45"W., 37.42 feet) to a point of compound curvature; thence Southeasterly, 1013.75 feet along the arc of a curve to the left having a radius of 1207.00 feet and a central angle of 48°07'21" (chord bearing S.30°26'20"E., 984.22 feet) to a point of tangency; thence S.54°30'00"E., 155.05 feet to a point of curvature; thence Easterly, 50.20 feet along the arc of a curve to the left having a radius of 35.00 feet and a central angle of 82°10'18" (chord bearing N.84°24'51"E., 46.00 feet) to a point of tangency; thence N.43°19'42"E., 24.87 feet to a point of curvature; thence Northeasterly, 41.26 feet along the arc of a curve to the left having a radius of 302.00 feet and a central angle of 07°49'42" (chord bearing N.39°24'51"E., 41.23 feet) to a point of tangency; thence N.35°30'00"E., 447.48 feet to a point of curvature; thence Northeasterly, 312.18 feet along the arc of a curve to the right having a radius of 325.00 feet and a central angle of 55°02'10" (chord bearing N.63°01'05"E., 300.32 feet) to a point of tangency; thence S.89°27'50"E., 245.00 feet; thence N.00°32'10"E., 400.00 feet to a point on the aforesaid Southerly right-of-way line of FISHHAWK BOULEVARD; thence along said Southerly right-of-way line, the following nine (9) courses: 1) S.89°27'50"E., 907.76 feet; 2) S.00°32'10"W., 47.00 feet; 3) S.89°27'50"E., 235.00 feet; 4) S.00°32'10"W., 160.00 feet; 5) S.89°27'50"E., 210.00 feet; 6) N.24°54'46"E., 210.79 feet; 7) S.89°27'50"E., 25.00 feet; 8) N.00°32'10"E., 60.00 feet; 9) S.89°27'50"E., 34.56 feet to a point on the centerline of FISHHAWK CREEK, said point also being hereinafter referred to as **POINT "B"**; thence Southerly along said centerline of FISHHAWK CREEK to a point hereinafter referred to as **POINT "A"**, (reference line between said **POINT "B"** and **POINT "A"** bears, S.01°19'06"E., 4848.77 feet); thence SOUTH, 1045.61 feet; thence S.55°55'06"W., 341.03 feet; thence S.08°19'38"E., 266.46 feet; thence S.09°16'33"E., 124.75 feet; thence S.10°23'32"E., 212.90 feet to a point on the aforesaid Northerly maintained right-of-way line of BOYETTE ROAD; thence along said Northerly maintained right-of-way line, S.89°58'08"W., 1272.07 feet to a point on the East boundary of the Southwest 1/4 of the Southwest 1/4 of the Southwest 1/4 of the aforesaid Section 30; thence along the East, North and West boundary lines of said Southwest 1/4 of the Southwest 1/4 of the Southwest 1/4 of Section 30, in their respective order, the following four (4) courses: 1) N.00°05'51"E., 629.42 feet; 2) N.89°55'26"W., 341.73 feet; 3) N.89°57'49"W., 341.66 feet; 4) S.00°21'49"W., 629.74 feet to the **POINT OF BEGINNING**.

Containing 589.856 acres, more or less; **LESS AND EXCEPT** the real property described on Exhibit "A," being the property initially submitted to this Charter;

**EXHIBIT "B"**  
**Expansion Property**  
(continued)

**IN ADDITION TO** the above described property, the Expansion Property shall include any other real property located within two (2) miles of the perimeter boundaries of the property described on Exhibit "A" or this Exhibit "B."

**Note to clerk and title examiners: This Charter is not intended to create an encumbrance on title to the property described on this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplement in accordance with Chapter 17.**

## **EXHIBIT "C"**

### **Initial Rules**

The following initial Rules shall be subject to amendment or modification in accordance with the procedures set forth in the Charter.

**1. Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board or the Charter, the following activities are prohibited within the Community, except to the extent undertaken by the Founder in the course of development of the Community:

(a) Parking any vehicles on streets or alleys within the Community except in designated on-street parking spaces, or parking commercial vehicles or equipment, motor homes, recreational vehicles, golf carts, boats, jet skis and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages; provided, construction, service, and delivery vehicles shall be exempt from this provision during normal business hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area;

(b) Raising, breeding, capturing, trapping, keeping, or killing animals or wildlife, except that (i) a maximum of three dogs, cats, or other usual and common household pets may be permitted in a Unit, and (ii) the Association, its contractors, agents, and employees may engage in such activities as part of a continuing resource management plan for the Community. Pets that are permitted to roam free or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed from the Community upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed, and inoculated as required by law;

(c) Any activity that emits foul or obnoxious odors outside the Unit or creates noise or other conditions that, in the Board's reasonable discretion, tend to disturb the peace or threaten the safety of or cause embarrassment, discomfort, annoyance, or nuisance to the occupants of other Units or persons using the Common Area, except that this Rule shall not restrict the ability of the Association and its contractors, agents, or employees to engage in such activities as part of a continuing resource management plan for the Community;

(d) Any activity that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take action to enforce such laws or regulations or to prevent a violation;

(e) Pursuing hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(f) Outside burning of trash, leaves, debris, or other materials, except that the Association and its contractors or agents may engage in ecological burning as part of a continuing resource management plan;

(g) Using or discharging any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except fire and security alarm devices used exclusively for such purposes;

## **EXHIBIT "C"**

### **Initial Rules**

(continued)

- (h) Using or discharging firecrackers and other fireworks;
- (i) Accumulating rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;
- (j) Discharging firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;
- (k) On-site storage of fuel, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of mowers and similar tools or equipment, and the Association shall be permitted to store and sell fuel for refueling of boats, operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Chapter 5;
- (l) Dumping, pumping out, or discharging fuel, gray water, pesticides, or toxic substances onto the land or into bodies of water within or adjacent to the Community;
- (m) Any activities that materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Community, that use excessive amounts of water, or that result in unreasonable levels of sound or light pollution;
- (n) Operating motorbikes, mini-bikes, or all terrain vehicles anywhere in the Community, on or off roadways;
- (o) Operating motorized boats on lakes or ponds within the Community, except that the CDD and its agents and contractors shall not be subject to this Rule;
- (p) Converting any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Chapter 5;
- (q) Constructing or modifying any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, or on or over any marsh, wetland, creek, pond, or waterway within or abutting any portion of the Community, except in strict compliance with the provisions of Chapter 5. This shall include, without limitation, signs, basketball hoops, and swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers, and similar structures; hedges, walls, dog runs, animal pens, or fences of any kind; and satellite dishes and antennas, except that:
  - (i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter;
  - (ii) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

## EXHIBIT "C"

### Initial Rules

(continued)

(iii) an antenna that is designed to receive television broadcast signals;

shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. The Founder and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of the Community, should any master system or systems be utilized by the Association and require such exterior apparatus.

2. **Prohibited Conditions.** The following shall be prohibited in the Community:

(a) Accumulation or storage of combustible materials or debris on Units, except to the extent reasonably necessary during construction of a dwelling on the Unit. This Rule shall not preclude storage of a reasonable amount of firewood on a Unit provided it is stacked and stored in a safe manner and location; and

(b) Structures, equipment, or other items on the exterior portions of a Unit that have become rusty, dilapidated, or otherwise fallen into disrepair.

**EXHIBIT "D"**  
**Articles of Incorporation of**  
**FishHawk Ranch West Homeowners Association, Inc.**

**EXHIBIT "E"**

**By-Laws of FishHawk Ranch West Homeowners Association, Inc.**

**EXHIBIT "F"**  
**Wildlife Habitat Management Plan**



# Biological Research Associates

Environmental and Natural Resource Management Consultants

A Division of ENTRIX, Inc.

## **WILDLIFE HABITAT MANAGEMENT PLAN LAKE HUTTO HILLSBOROUGH COUNTY, FLORIDA**

Prepared for:

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Newland Communities  
1137 Marbella Plaza Drive  
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Submitted to:

Mr. Keith Wiley  
Hillsborough County  
Planning & Growth Management  
601 E Kennedy Boulevard  
20th Floor  
Tampa, FL 33602

and

Ms. Daphne McCann  
Florida Fish and Wildlife Conservation Commission  
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Prepared by:



**Biological  
Research  
Associates**

A Division of ENTRIX, Inc.

*Michael Reyes*

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30 June 2008

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## 1.0 INTRODUCTION

The following Habitat Management Plan was prepared to satisfy the Development Order for DRJ No. 259 for Lake Hutto (Resolution #R06-271) and is in accordance with the Hillsborough County upland habitat protection provision. Lake Hutto (1,127.3 acres  $\pm$ ) is located in Sections 16, 19, 20, 21, 24, 25, and 30, Township 30 South, Range 20 and 21 East in Hillsborough County, Florida (Figure 1). The site is divided into three parcels. One parcel is located at the intersection of Lithia-Pinecrest Road and Lithia-Springs Road. The second parcel is located south of Lithia-Springs Road, north of FishHawk Ranch Boulevard, and west of Lithia-Pinecrest Road. The third parcel is bordered along the southern property boundary by Boyette Road and along the northern property boundary by FishHawk Ranch Boulevard, west of Lithia-Pinecrest Road (Figure 2). The site is bordered to the north by forested floodplain associated with the Alafia River, to the west by single-family housing, and to the south and east by ranchland, upland forest, and FishHawk Creek. The applicant is developing a long-term management strategy for the Lake Hutto Development. As part of this strategy, the applicant is preserving wildlife habitat areas within the site that will best serve the interests of the listed species that occur or potentially occur on the property. The holistic habitat management plan will focus on the specific needs of southeastern American kestrel (*Falco sparverius paulus*), gopher tortoise (*Gopherus polyphemus*), Sherman's fox squirrel (*Sciurus niger shermani*), gopher frog (*Rana capito*), Florida mouse (*Peromyscus floridanus*), Florida sandhill crane (*Grus canadensis pratensis*), and eastern indigo snake (*Drymarchon corais couperi*). To accomplish this, specific protective measures are proposed and different management strategies are recommended in the short-term (restoration) and for the long-term (maintenance). The following Wildlife Habitat Management Plan includes the descriptions of the Upland Habitat Preservation Areas, a summary of the management techniques proposed for these areas, and restrictions placed on these areas.

## 2.0 CURRENT CONDITION

### 2.1 Listed Species

Listed species surveys were conducted in general accordance with the FFWCC 1988 Wildlife Survey Methodology Guidelines and the FFWCC Technical Report No. 13: Ecology and Habitat Protection Needs of the Southeastern American Kestrel (*Falco sparverius paulus*) on Large-scale Development Sites in Florida (Stys 1993). BRA conducted pedestrian and vehicular surveys for listed species of wildlife on 27 - 31 August 2007, and 4 and 5 September 2007. During the surveys, all habitats within the site were canvassed for listed species. Observations of all listed species as well as physical features that may indicate the presence of these species such as tracks, scat, nests, burrows and cavity trees were mapped on a 1" = 1000' ortho-rectified color infrared (IR) aerial print of the site (Figure 3).

Additionally, BRA conducted field surveys on the referenced property to complete a 15 percent survey to locate gopher tortoise burrows and estimate the density of gopher tortoises in the appropriate habitats on the property. The tortoise survey was conducted in accordance with the standard methodology of the FFWCC. Observed burrows were categorized as "active," "inactive" or "abandoned." The approximate location of each burrow was marked on a 1" = 1300' aerial photograph of the site (Figure 3). Our surveys were field-verified by Eric Seckinger and Keith Wiley from the Natural Resource Team of the

Planning and Growth Management Department (PGMD) during a field visit on 27 September 2007.

BRA used an infrared burrow camera on Lake Hutto to determine a site-specific conversion ratio for gopher tortoises. The first gopher tortoise burrow inventory was completed on 4, 5, 6, 10, and 11 May 2004 between 0700 AM and 1000 AM. The camera survey yielded a site specific conversation factor of 0.306 tortoises per burrow. The second camera survey was conducted on 28 and 31 August 2007 and 4 and 5 September 2007 between 0630 and 1100. We successfully inventoried (reached the burrow terminus or found a tortoise) 78 (36 active and 42 inactive) burrows and found 18 tortoises. Based on our burrow survey the site-specific conversion factor is 0.35 tortoises per burrow.

During the listed species survey three listed species were observed on the property: gopher tortoise, Sherman's fox squirrel and southeastern American kestrel. Several listed gopher tortoise burrow commensals (e.g., Florida mouse, eastern indigo snake and gopher frog) might utilize the existing burrows as refugia. One Sherman's fox squirrel (*Sciurus niger shermani*) was observed on the property but no fox squirrel nests were found. The squirrel was observed foraging in the improved pasture in the northwest parcel. An adult southeastern American kestrel (*Falco sparverius paulus*) was observed perching on a snag in the center of the south parcel and we identified the nesting snag for this kestrel within the floodplain of Fishhawk Creek (Figure 3).

The open pastures on the site were canvassed for burrowing owls (*Athene cunicularia floridana*); however, no burrowing owls were found. Wetlands on the site were canvassed for sandhill crane nests, and no sandhill crane nests were found. In addition, no suitable nesting habitat for Florida sandhill crane exists on the site.

## 2.2 Habitat Preservation Areas

According to the *Hillsborough County Soil Survey* (US Department of Agricultural Soil Conservation Service, 1989) 11 soil types are present within the Habitat Preservation Areas (Figure 4 and 5). In their undisturbed state, most are well drained soils found in xeric habitats, however, some are poorly drained soils found in flatwoods habitats and wetlands. The habitats on-site (Figure 6) have been classified a land use code based on the Florida Land Use, Cover and Forms Classification System (FLUCFCS: Florida Department of Transportation, 1999). The Habitat Preservation Areas contain 141.9 acres of uplands (Figure 6). These natural upland land use forms are summarized below.

*Residential, Low Density <Less than two dwelling units per acre> (FLUCFCS 110, 1.0 acre)*

Dwelling units identified within this category are located in the southern portion of the south parcel of the Lake Hutto property.

*Improved Pasture (FLUCFCS 211, 23.3 acres)*

This habitat type is characterized by xeric well drained soils and the dominance of bahia grass (*Paspalum notatum*). Scattered saw palmetto (*Serenoa repens*) and live oak (*Quercus virginiana*) occur in these pastures.

*Woodland Pastures (FLUCFCS 213, 9.1 acres)*

These forested areas are adjacent to improved pastureland on this site. These lands are utilized as grazing pasture with a live oak dominant canopy and an herbaceous understory of bahia grass.

*Longleaf Pine-Xeric Oak (FLUCFCS 412, 21.3 acres)*

The canopy stratum is dominated by long-leaf pine (*Pinus palustris*), sand live oak (*Quercus geminata*) and turkey oak (*Quercus laevis*). The understory is mainly sparse saw palmetto and wiregrass (*Aristida stricta*).

*Sand Live Oak (FLUCFCS 432, 11.5 acres)*

This xeric habitat is characterized by a canopy of sand live oak, chapman oak (*Quercus chapmanii*), and blue jack oak (*Quercus incana*), and contains an understory dominated by running oak (*Quercus pumila*), saw palmetto, and wiregrass.

*Hardwood Conifer Mixed (FLUCFCS 434, 75.7 acres)*

This habitat type is characterized by an overstory of sand live oak, turkey oak, and long-leaf pine. The understory is dominated by saw palmetto with wiregrass prevalent in open areas. Currently the herbaceous stratum cover is 30%, the average shrub cover is 15% and consists of saw palmetto, and the average canopy cover is 70%.

### 3.0 LISTED SPECIES PROTECTIVE MEASURES

*Gopher Tortoise*

An incidental take permit for gopher tortoises will be obtained for the entire site. As mitigation for the permit, Newland Communities will preserve, under conservation easement, the required onsite upland acreage (99.8 acres) based on computed gopher tortoise densities and mitigation ratios for the site. The mitigation acreage is included within the Upland Habitat Preservation Areas (Figures 4 and 9). The Upland Habitat Preservation Areas (127.4 acres) are each contiguous areas, consisting of a minimum of 25 acres of suitable gopher tortoise habitat. The results from the tortoise survey indicate that tortoise population in the Upland Habitat Preservation Area is approximately 78 tortoises. The Upland Habitat Preservation Areas satisfy the FFWCC guidelines that a preservation area support approximately 40-50 tortoises. We feel confident that proper management of the Upland Habitat Preservation Areas will maintain the gopher tortoise population in perpetuity, as the Upland Habitat Preservation Areas will be managed for tortoises by a combination of prescribed fire and routine mechanical treatments (see Habitat Management section below). In addition, gopher tortoises and burrow commensals, located within the development footprint, will be relocated to the Upland Habitat Preservation Areas. The number of gopher tortoises relocated to the Upland Habitat Preservation Areas will not exceed the carrying capacity of 3 tortoises per acre. All the tortoises within the development footprint will be

relocated to the Upland Preservation Areas. We estimate that less than 300 gopher tortoises occur within the development footprint. Appropriate FFWCC permits will be obtained and Newland Communities will provide the Natural Resource Team of the Planning and Growth Management Department a copy of the gopher tortoise take permit prior to the issuance of the Natural Resource Permit for any site plan.

*Burrow Commensals including Gopher Frog and Florida Mouse*

The Upland Habitat Preservation Areas contain most of the suitable habitat for gopher frog and Florida mouse; therefore, impacts to these species are considered unlikely. In order to further reduce the impact to burrow commensals, gopher frogs and Florida mice will be relocated to the Upland Habitat Preservation Areas as part of the gopher tortoise relocation. Perpetual management of the Upland Habitat Preservation Areas (see Habitat Management section below) will provide suitable habitat for these species.

*Eastern Indigo Snake*

The Upland Habitat Preservation Areas contain some of the only suitable habitat for indigo snake on the site; therefore, impacts to this species are considered unlikely. In order to further reduce the impact to eastern indigo snakes, Newland Communities will implement the Standard Protection Measures for the Eastern Indigo Snake (USFWS 12 July 1999). In addition, any indigo snake encountered within the development footprint will be relocated to the Upland Habitat Preservation Areas. A copy of the approved plan will be provided 30 days prior to land clearing for any phases outside of the approved School site boundary. Perpetual management of the Upland Habitat Preservation Areas (see Habitat Management section below) will provide suitable habitat for this species.

*Southeastern American Kestrel*

Newland Communities will implement a southeastern American kestrel management program. Protection will be achieved by 1) protection of active nests and nest monitoring during the construction phases and 2) public education of the future residents. These components of the plan are discussed below.

Nest Protection and Nest Monitoring

Efforts will be made during the construction of the project to ensure the safety of the southeastern American kestrels. Prior to clearing snags, a qualified biologist will inspect all suitable trees that are to be cleared for the presence of kestrel nests. Particular care will be taken during the breeding season from April through August. If a nest is observed in a tree that is designated to be cleared, the biologist will verify the nest status (active: having eggs or young, inactive: no young present). If the nest is inactive (having no eggs or young) the snag will be removed. If eggs and young are observed in the nest, a buffer area with a radius of 150 meters will be demarcated around the active nest tree with silt fence. No construction will be performed in this buffer area until the nest is deemed inactive. Notification will be sent to the Natural

Resource Team of the Planning and Growth Management Department referencing the schedule of pre-clearing surveys and survey results will be sent within 5 days of the surveys.

#### Mitigation for Loss of Habitat

The loss of nesting and foraging habitat of southeastern American kestrel will be mitigated through the preservation of suitable foraging and nesting habitat and the installation of four kestrel nest boxes within the Upland Habitat Preservation Areas as shown in Figure 11. The cavity opening for the four nest boxes is shown on Figure 11. The nest boxes will be spaced so that the 150 meter buffer zones do not overlap. The nest box locations were selected based on information found within the FFWCC Technical Report No. 13: Ecology and Habitat Protection Needs of the Southeastern American Kestrel (*Falco sparverius paulus*) on Large-scale Development Sites in Florida (Stys 1993). We are proposing to place the nest boxes on: 1) the highest quality habitat; 2) habitat known to contain other listed species (e.g., gopher tortoises, borrow commensals, Sherman's fox squirrels; 3) areas within on-site protected lands; and 4) area adjacent to large tracts of suitable foraging and nesting habitat owned by Hillsborough County. The on-site foraging areas will be maintained as low-growing (< 25 cm) vegetation by periodic mowing or burning (see Habitat Management section below) in accordance with Stys (1993). The nest box locations will be installed in accordance with Stys (1993) recommendations.

#### Public Education

A program will be established to educate the contractors and future residents about kestrels. Educational placards will be posted near the nest boxes and will include a picture, description, life history, ecology, and status of the southeastern American kestrels. Contractors will be notified that workers should exercise caution within the potential kestrel habitat. Additionally, workers will be informed to cease work within 150 meters of an active kestrel nest and contract the FFWCC for approval.

#### *Florida Sandhill Crane*

No suitable crane nesting habitat exists on this site; therefore, pre-clearing surveys for Florida sandhill cranes are not proposed. The Natural Resource Team of the Planning and Growth Management Department will be notified if cranes are found nesting on the site.

#### *Sherman's Fox Squirrel*

Newland Communities will implement a Sherman's Fox Squirrel Management Plan. Fox squirrel protection will be achieved by 1) protection of active nests and nest monitoring during the construction phases and 2) public education of the future residents. These components of the plan are discussed below.

### Nest Protection and Nest Monitoring

Efforts will be made during the construction of the project to ensure the safety of the fox squirrel. Prior to any tree clearing activities, a qualified biologist will inspect all suitable trees that are to be cleared for the presence of fox squirrel nests. Particular care will be taken during the breeding season in January and February and again in May and June. If a nest is observed in a tree that is designated to be cleared, the biologist will verify the nest status (active: having young, inactive: no young present). If the nest is inactive (having no young) the nest will be removed to discourage squirrels from returning. If young fox squirrels are observed in the nest, a buffer area with a radius of 125 feet will be demarcated around the active nest tree with silt fence. No construction will be performed in this buffer area until after the young fox squirrels have left the nest.

Notification will be sent to the Natural Resource Team of the Planning and Growth Management Department referencing the schedule of pre-clearing surveys and survey results will be sent within 5 days of the surveys.

### Mitigation for Loss of Habitat

The loss of nesting and foraging habitat of the Sherman's fox squirrel will be mitigated through tree replacement and will include the following native tree species, in order of preference: turkey oak, longleaf pine, or live oak.

### Public Education

A program will be established to educate the contractors and future residents about fox squirrels. The attached educational pamphlet will be made available and will include a picture, description, life history, ecology, and status of the Sherman's fox squirrel as a listed species. The pamphlet will notify occupants that free roaming dogs and cats are predators of fox squirrels, and that molesting fox squirrels is illegal. Also the pamphlet will provide recommendations for supplemental planting of native trees beneficial to fox squirrels. Finally contractors will be notified that workers should exercise caution within the potential fox squirrel habitat. Additionally, workers will be informed to cease work within 125 feet of an active fox squirrel nest and contract the FFWCC for approval.

### *Other Wildlife Species*

Lighting Restrictions: Newland Communities will implement some lighting restrictions within the development. Lighting on homes adjacent to the Preservation Areas will be directed downward and inward toward homes to avoid light pollution.

#### 4.0 HABITAT MITIGATION

##### 4.1 Significant Wildlife Habitat Mitigation

One area (12.3 acres) of Significant Wildlife Habitat (SWH) is proposed to be impacted during site construction as shown on Figure 8 and in Table 1. The signed and sealed survey of the existing SWH is included as Appendix A. As mitigation for the 12.3 acres of impact to the sand live oak and pine flatwoods SWH, Newland Communities is proposing to set aside 12.9 acres of residential, woodland pasture, longleaf pine – xeric oak and hardwood-conifer mixed habitat, within the Upland Habitat Preservation Area (Figure 8). The soils within the added SWH are similar to the soils in the removed SWH (Table 1). In fact, the added SWH has 2.07 acres of additional xeric soils than the removed SWH. Table 1 details the impact and mitigation acreage for the land use and the soil type.

Table 1. Pre-development and post-development acres of land use, soil type and soil drainage class within the removed Significant Wildlife Habitat (SWH) and the Added SWH.

| Land Use (FLUCFCS)                            | Removed SWH<br>Acreage | Added SWH<br>Acreage |
|-----------------------------------------------|------------------------|----------------------|
| Residential, Low Density (110)                | 0.0                    | 0.34                 |
| Cropland and Pastureland (210)                | 0.01                   | 0.0                  |
| Woodland Pasture (213)                        | 0.0                    | 4.36                 |
| Pine Flatwoods (411)                          | 5.51                   | 0.0                  |
| Longleaf Pine - Xeric Oak (412)               | 0.0                    | 4.94                 |
| Sand Live Oak (432)                           | 6.78                   | 0.0                  |
| Hardwood Conifer Mixed Habitat (434)          | 0.0                    | 3.28                 |
| <b>Total</b>                                  | <b>12.30</b>           | <b>12.92</b>         |
| Soil Type                                     | Removed SWH<br>Acreage | Added SWH<br>Acreage |
| Archbold Fine Sand (003) Xeric Soil           | 0.19                   | 0.0                  |
| Candler Fine Sand (005) Xeric Soil            | 2.96                   | 1.90                 |
| Myakka Fine Sand (029) Mesic Soil             | 2.09                   | 2.24                 |
| Pomello Fine Sand (041) Xeric Soil            | 2.18                   | 0.0                  |
| St. John's Fine Sand (046) Mesic Soil         | 0.0                    | 0.01                 |
| Seffner Fine Sand (047) Mesic Soil            | 0.0                    | 2.03                 |
| Smyrna Fine Sand (052) Mesic Soil             | 2.88                   | 0.0                  |
| Tavares-Milhopper Fine Sands (053) Xeric Soil | 1.24                   | 6.74                 |
| Zolfo Fine Sand (061) Mesic Soil              | 0.76                   | 0.0                  |
| <b>Total</b>                                  | <b>12.30</b>           | <b>12.92</b>         |
| Soil Class                                    | Removed SWH<br>Acreage | Added SWH<br>Acreage |
| Mesic Soil                                    | 5.73                   | 4.28                 |
| Xeric Soil                                    | 6.57                   | 8.64                 |
| <b>Total</b>                                  | <b>12.30</b>           | <b>12.92</b>         |

In order to create in-kind mitigation for the SWH impacts, Newland Communities shall restore the residential and woodland pasture (4.7 acres) to native habitat through treatment of the bahia grass and direct seeding with native species. The restoration area is comprised of xeric soils suitable for the restoration and similar to the soil type found within the impact area. The restoration plan for this area is detailed in Section 5 Habitat Management.

#### 4.2 Essential Wildlife Habitat Mitigation

Essential Wildlife Habitat mitigation is required for gopher tortoise, Sherman's fox squirrel, and southeastern American kestrel. Newland Communities is proposing to provide habitat preservation and protection measures (see above in Listed Species Protective Measures) for each of the aforementioned species. The habitat preservation will minimize impacts to listed species by preserving and managing the highest quality habitats where most of the listed species currently occupy. The habitat preservation for each of these species is discussed below and included in Table 2.

##### *Gopher Tortoise*

As mitigation for the gopher tortoise take permit, Newland Communities will preserve, under conservation easement, the required onsite upland acreage (93.9 acres) based on computed gopher tortoise densities and mitigation ratios for the site. A portion of the Lake Hutto site qualified as essential wildlife habitat in accordance with the HC LDC Article 4.01.10 for gopher tortoises. The mitigation acreage is included within the Upland Habitat Preservation Areas (Figure 9) and shown in Table 2. Newland Communities has provided more than the required mitigation for gopher tortoises, as the Upland Habitat Preservation Areas has a total of 119.9 acres of suitable tortoise habitat. The Upland Habitat Preservation Areas will be managed for tortoises by a combination of prescribed fire and routine mechanical treatments (see Habitat Management section below) in perpetuity.

##### *Sherman's Fox Squirrel*

As mitigation for the loss of Sherman's fox squirrel habitat, Newland Communities will preserve a total of 249.6 acres of occupied and suitable habitat (133.2 upland acres) within the Upland Habitat Preservation Area and wetlands adjacent to the Upland Habitat Preservation Areas (Figure 10 and Table 2). All the upland and wetland habitats within these areas are suitable for nesting and foraging fox squirrels. The Upland Habitat Preservation Areas will be managed for fox squirrels by a combination of prescribed fire and routine mechanical treatments (see Habitat Management section below) in perpetuity.

##### *Southeastern American Kestrel*

Newland Communities will avoid the active kestrel nesting cavity that is currently on the property (Figure 3) and a 150 meter buffer (free of residential dwellings) will be established around the nesting cavity. In addition, Newland Communities will provide 139.8 acres of suitable kestrel foraging and nesting habitat on-site. The habitat will be managed in accordance with the FFWCC guidelines (Stys 1993). Newland Communities will install four kestrel nest boxes within the Upland Habitat

Preservation Areas as shown in Figure 11. The foraging area for any potential nesting kestrels within the Upland Habitat Preservation Areas is 429.7 acres, as the on-site placement of the nest boxes are adjacent to large tracts of suitable foraging and nesting habitat owned by Hillsborough County. The nest boxes have been located to avoid any non-compatible land uses overlapping with the 150 meter buffer zones and faced in the southerly to easterly direction. Also, nest boxes will be located at least 50 meters from the forested wetland edge. Outside of the wetland areas, canopy reduction to avoid predation potential may be permissible.

Table 2. On-site mitigation provided for gopher tortoise, Sherman's fox squirrel, and southeastern American kestrel.

| Land Use (FLUCFCS)              | Gopher Tortoise<br>Acreage | Sherman's Fox<br>Squirrel Acreage | Southeastern American<br>Kestrel Acreage |
|---------------------------------|----------------------------|-----------------------------------|------------------------------------------|
| Residential, Low Density (110)  | 0.4                        | 0.4                               | 0.4                                      |
| Improved Pasture (211)          | 8.9                        | 8.9                               | 23.9                                     |
| Woodland Pasture (213)          | 7.9                        | 7.9                               | 7.9                                      |
| Longleaf Pine – Xeric Oak (412) | 21.3                       | 21.3                              | 21.3                                     |
| Sand Live Oak (432)             | 11.5                       | 11.5                              | 11.5                                     |
| Mixed Conifer Hardwood (434)    | 69.9                       | 74.9                              | 74.8                                     |
| <b>Total</b>                    | <b>119.9</b>               | <b>124.9</b>                      | <b>139.8</b>                             |

#### *Gopher Frog*

Newland Communities will relocate gopher frogs within the development parcel to the preserves during the gopher tortoise relocation activities. Breeding habitat for gopher frogs occurs in the northern preserve but does not occur in the southern preserve. In an effort to create breeding habitat for gopher frogs in the southern preserve, Newland Communities will create an ephemeral breeding pond within the southern preserve. The pond will be designed to have a short hydroperiod (less than 120 days) to create suitable gopher frog breeding habitat. Figure 13 details the design and planting plan for the pond. Exact location of the pond will be provided to the Natural Resource Team of the Planning and Growth Management Department during the site plan permitting process.

#### *Florida Golden Aster*

Newland Communities will collect Florida golden aster seeds from plants within the development footprint and along the right-of-way of FishHawk Boulevard, at the appropriate time of year, and plant in the Upland Habitat Preservation Areas. In addition, individual plants (seedlings) may be transplanted from the development footprint and along the right-of-way of FishHawk Boulevard to the Upland Habitat Preservation Areas.

### **5.0 HABITAT MANAGEMENT**

The limits of the Upland Habitat Preservation Areas (Figure 4) will be determined by a professional land surveyor prior to construction, avoided, and managed as described below. In conjunction with the survey, fencing (corral style fencing, i.e., split rail) and signs will be established around the Upland

Habitat Preservation Area that will not restrict or inhibit the normal movements of wildlife. The perimeter signs will state "Listed Species Preserve, in accordance with Chapter 68A-27.002-004 F.A.C., 50 CFR 17, and Hillsborough County LDC Article 4.01.10. The Upland Habitat Preservation Area will be placed under conservation easement to the FFWCC. The following components comprise the maintenance plan for the Upland Habitat Preservation Area and are essential to the long-term viability of the existing flora and fauna. Please reference Table 3 for the short-term management and Table 4 for the long-term maintenance schedules.

*Residential, Low Density (FLUCFCS 110), Improved Pastures (FLUCFCS 211) and Woodland Pastures (FLUCFCS 213)*

Maintenance activities will be conducted in perpetuity and will involve routine mowing using the success criteria listed below. Herbicide treatment may be used as a management option if the applicator possesses a Florida Natural Areas Pesticide Certification. The objective for the management of the pasture is to maintain low grassland with scattered trees suitable for foraging and nesting southeastern American kestrels, gopher tortoise and burrow commensals, and Sherman's fox squirrels.

Success Criteria

- Tree canopy shall not exceed 5% canopy closure.
- A minimum of 60% of the ground cover shall be maintained at a height of less than 25 cm (Stys 1993).
- Percent cover of plant species identified by the Florida Pest Plant Council as exotic, nuisance or invasive plant species (Appendix C) must not exceed 5 percent for at least the final year of monitoring without maintenance activities.

*Restored Significant Wildlife Habitat (Longleaf Pine - Xeric Oak)*

A total of 4.7 acres of the Residential and Woodland Pasture within the Habitat Preservation Area will be restored to Longleaf – Pine Xeric Oak habitat as mitigation for the SWH impacts. The restoration plan involves removal of bahia grass and direct seeding of native grasses. Once the restoration is complete the maintenance activities will be conducted in perpetuity and will involve a combination of prescribed fire, mechanical treatment, and selective hand clearing. The objectives for the restoration of these areas are 1) to have a canopy of less than 40% and 2) promote herbaceous vegetation growth of more than 50%. A sandhill community with a 25% overstory is considered optimal habitat for gopher tortoise and burrow commensals (Cox *et al.*, 1987) along with nesting and foraging Sherman's fox squirrels and southeastern American kestrels. In order to accomplish these objectives, the following management schedule is proposed.

Year 1

Step 1: Herbicide the bahia grass with a 4% glyphosate at least 9 months prior to seeding. Due to the timing of when seed is ripe (November to December), herbiciding is normally performed in May or June of the year to seed. If necessary, a follow up herbicide application will be performed if new growth is noticed within three months of the initial application.

#### Year 2

Step 2: Two months prior to seeding (October), the site will be cleared of any remaining dead ground vegetation. The litter will be burned or lightly disked in. If the site is disked, it will be rolled to promote germination of any remaining weed seeds (including bahia) that are stimulated by disking. Final herbicide application will be six weeks prior to seeding and will be 2% glyphosate.

Step 3: Seeding will occur in late November through December, depending on when the seed is ripe. Seed will be harvested from a native site that was summer burned (May to July) in the same year to ensure the seed is viable. Seed will be harvested with a green silage chopper or by flail vac, depending on amount needed and length of transport from the donor site. If the site is harvested by green silage chopper, it will be seeded with a modified sod sprigger. If the site is harvested with a flail vac, a grasslander will be used for seeding. Both types of seed application result in good germination of native seeds. Additional seeds will be added to the mix (specifically love grasses, *Eragrostis sp*) as they do well in newly established sites.

#### Maintenance

Maintenance will be conducted over the next few years to spot treat any bahia that may germinate from seed. Groundcover can easily be monitored for success of the seeding. Once established, prescribed burns will be used on an as needed basis (at least every 2-5 years) to maintain the open canopy characteristics re-introduced during the restoration process. If burns are not practicable due to developmental encroachment, the habitat characteristics will be maintained by periodical (at least every 2-5 years) mechanical thinning of the oaks or palmetto as needed. Herbicide treatment may be used as a management option if the applicator possesses a Florida Natural Areas Pesticide Certification. Although not anticipated, removal of nuisance and exotic vegetation will be completed as needed.

#### Success Criteria

- Tree canopy shall not exceed 40% canopy closure.
- Shrub cover shall not exceed 30% cover.
- Percent ground cover must be minimum 50% herbaceous cover
- Ground cover vegetation shall consist of at least 50% native herbaceous vegetation indicative of a sandhill plant community one year following the 3<sup>rd</sup> m event.
- Percent cover of native sandhill vegetation (See Appendix B for Table of Sandhill Vegetation) must be at least 85% one year following the 3<sup>rd</sup> burn event.
- Percent cover of plant species identified by the Florida Pest Plant Council as exotic, nuisance or invasive plant species (Appendix C) must not exceed 5 percent for at least the final year of monitoring without maintenance activities.

*Longleaf Pine-Xeric Oak (FLUCFCS 412), Sand Live Oak (FLUCFCS 432) and Conifer Mixed Hardwood (FLUCFCS 434)*

Maintenance activities will be conducted in perpetuity and will involve a combination of prescribed fire,

mechanical treatment, and selective hand clearing. As this habitat is fire-suppressed, intensive habitat management is necessary to restore this habitat to a sandhill community. The objectives for the restoration of these areas are 1) to reduce the canopy to less than 40% and 2) promote herbaceous vegetation growth of 35% - 80%. A sandhill community with a 25% overstory is considered optimal habitat for gopher tortoise and burrow commensals (Cox *et al.*, 1987) along with nesting and foraging Sherman's fox squirrels and southeastern American kestrels. In order to accomplish these objectives, the following management schedule is proposed:

Year 1

Step 1: Flag all trees that need to be removed. These include all water oaks and laurel oaks, most live oaks, unhealthy older trees, older turkey oaks (DBH>8"), and younger hardwood trees leaving a canopy density of less than 25%.

Step 2: Remove trees using a cat grinder or equivalent type of machinery.

Step 3: Stockpile all larger lumber that was not mulched. Season wood piles for 6-12 months.

Step 4: Burn wood piles. This will effectively create several patches of open soil typical of sandhill communities. Bare soil patches are a habitat characteristic that occurs in optimal gopher tortoise habitat. In order to successfully burn the area, some cut trees might be left on the ground to create enough dry litter to carry a fire.

Step 5: Create a burn unit for each area.

Year 2 & 3

Burn each unit during the growing season if feasible.

Maintenance

Continue prescribed burns on an as needed basis (at least every 2-5 years) to maintain the open canopy characteristics re-introduced during the restoration process. If burns are not practicable due to developmental encroachment, maintain habitat characteristics by periodically (at least every 5-7 years) mechanically thinning oaks or palmetto as needed. Herbicide treatment may be used as a management option if the applicator possesses a Florida Natural Areas Pesticide Certification. Although not anticipated, removal of nuisance and exotic vegetation will be completed as needed.

Success Criteria

- Tree canopy shall not exceed 40% canopy closure.
- Shrub cover shall not exceed 30% cover.
- Percent ground cover must be minimum 50% herbaceous cover
- Ground cover vegetation shall consist of at least 50% native herbaceous vegetation indicative of a sandhill plant community one year following the 3<sup>rd</sup> burn event.
- Percent cover of native sandhill vegetation (See Appendix B for Table of Sandhill Vegetation) must be at least 85% one year following the 3<sup>rd</sup> burn event.

- Percent cover of plant species identified by the Florida Pest Plant Council as exotic, nuisance or invasive plant species (Appendix C) must not exceed 5 percent for at least the final year of monitoring without maintenance activities.
- If one year following the 3<sup>rd</sup> burn event it is determined that supplemental planting and/or seeding will be required to achieve the restoration objective species must be selected from the table of Sandhill Vegetation referenced in Appendix B.

*Stream and Waterways (FLUCFCS 510), Bay Swamps (FLUCFCS 611), Stream and Lake Swamps (FLUCFCS 615), Wetland Forested Mixed (FLUCFCS 630), Freshwater Marsh (FLUCFCS 641)*

No management is proposed for the wetland habitats. Herbicide treatment may be used as a management option if the applicator possesses a Florida Natural Areas Pesticide Certification. Although not anticipated, removal of nuisance and exotic vegetation will be completed as needed.

#### *Additional Management Practices*

Dead or naturally fallen trees (snags) within the preserves should not be removed except in circumstances of overriding fire hazard or public safety concerns. Exotic animal control shall be implemented. Of the several exotic animal species known to occur within Hillsborough County, control efforts should be focused on the feral hog (*Sus scrofa*), which is destructive to native habitats. Removal shall be performed on an as-needed basis by whatever mean available.

Table 3. Management schedule for the Lake Hutto Upland Habitat Preservation Areas.

| Task             | Year 1 |    |    |   |   | Year 2 |    |    |   |   | Year 3 |    |    |   |   |
|------------------|--------|----|----|---|---|--------|----|----|---|---|--------|----|----|---|---|
|                  | LP     | SL | HC | P | W | LP     | SL | HC | P | W | LP     | SL | HC | P | W |
| Tree removal     |        |    |    |   |   |        |    |    |   |   |        |    |    |   |   |
| Mulch            | 1      | 1  | 1  |   |   | 1      | 1  | 1  |   |   | 1      | 1  | 1  |   |   |
| Stockpile wood   |        |    |    |   |   |        |    |    |   |   |        |    |    |   |   |
| Mow              |        |    |    |   |   |        |    |    |   |   |        |    |    |   |   |
| Burn wood piles  |        |    |    |   |   |        |    |    |   |   |        |    |    |   |   |
| Burn             |        |    |    |   |   | 3      | 3  | 3  |   |   | 3      | 3  | 3  |   |   |
| Nuisance Control | 1      | 1  | 1  | 1 | 1 | 1      | 1  | 1  | 1 | 1 | 1      | 1  | 1  | 1 | 1 |
| Monitoring       |        |    |    |   |   |        |    |    |   |   |        |    |    |   |   |

SL = Sand Live Oak

LP = Longleaf Pine

W = Wetlands

1 = If Needed

HC = Hardwood Conifer Mixed

P = Pasture

2 = Mow

3 = 2010 or 2011

Table 4. Long-term maintenance schedule for the Lake Hutto Upland Habitat Preservation Areas.

| Year ending in | Burn LP, SL, HC | Mulch LP, SL, HC | Mow Pasture | Nuisance Control <sup>1</sup> | Monitoring <sup>2</sup> |
|----------------|-----------------|------------------|-------------|-------------------------------|-------------------------|
| 1              |                 |                  | X           | X                             | X                       |
| 2              |                 |                  | X           | X                             | X                       |
| 3              | X <sup>3</sup>  | X <sup>4</sup>   | X           | X                             | X                       |
| 4              | X <sup>3</sup>  | X <sup>4</sup>   | X           | X                             | X                       |

|   |                |                |   |   |   |
|---|----------------|----------------|---|---|---|
| 5 | X <sup>3</sup> | X <sup>4</sup> | X | X | X |
| 6 |                |                | X | X | X |
| 7 |                |                | X | X | X |
| 8 | X <sup>3</sup> | X <sup>4</sup> | X | X | X |
| 9 | X <sup>3</sup> | X <sup>4</sup> | X | X | X |
| 0 | X <sup>3</sup> | X <sup>4</sup> | X | X | X |

<sup>1</sup> = If needed in all habitats

<sup>2</sup> = In all habitats until release and bi-annually in Xeric Oak and Xeric Pasture

<sup>3</sup> = Management on a 2-5 year schedule. Consecutive years selected to plan for appropriate burn conditions.

<sup>4</sup> = Used if burning is not feasible.

## 6.0 RESTRICTIONS

### *Significant and Essential Wildlife Habitat*

Construction related intrusions into the Upland Habitat Preservation Areas are prohibited during clearing and construction operations and in perpetuity. Contractors will be supplied a copy of Figure 4, showing the Upland Habitat Preservation Areas and instructed regarding habitat protection. The Upland Habitat Preservation Areas will be flagged, delineated with silt fencing or other appropriate barrier and posted with appropriate signage prior to construction to prevent construction related intrusions. In addition to the aforementioned construction related protections, the following note shall be added to the construction plans and final plats.

#### *Significant and Essential Upland Wildlife Habitat Preservation Area Note:*

*The Significant and Essential Upland Wildlife Habitat Preservation Area shall be retained in a natural state pursuant to the Hillsborough County Land Development Code, Natural Resources Regulations, as amended. No filling, excavating, removal of vegetation or construction of permanent structures or other impervious surfaces shall occur within the Upland Preservation Area unless specifically conforming to a wildlife management plan as approved by the Hillsborough County Planning and Growth Management Department.*

### *Recreational Trails*

Passive recreational activities for educational purposes may be permitted in the Upland Habitat Preservation Areas. A walking path with interpretive signs would be designed in an effort to maintain the ecological integrity of the Upland Habitat Preservation Areas while providing environmental education to the residents. Any proposed trail system within the Upland Habitat Preservation Areas shall be depicted on all applicable preliminary plan submittals for approval by the Planning and Growth Management Department. All trail designs shall be passive in nature and designed to maintain the ecological integrity of the areas preserved.

### *Wildlife Crossings*

Currently, no roads are proposed to intersect the Upland Preservation Areas or FishHawk Creek; therefore, no wildlife crossings are proposed for Lake Hutto. In the event that a roadway is required to intersect FishHawk Creek, Newland Communities will provide an aquatic crossing of FishHawk Creek in accordance with FFWCC guidelines. The aquatic crossing will provide a minimum of 3 feet of clearance above the ordinary high water line. The design and dimensions of the crossing shall be resolved during construction plan permitting. Detailed plans of the crossings will be included within the construction plans for review and approval by the Planning and Growth Management Department.

## **7.0 MONITORING**

An assessment of the Upland Habitat Preservation Areas will be conducted annually by a qualified biologist to review current conditions of the areas and assess future management needs.

Detailed monitoring will be conducted within the Upland Habitat Preservation Areas to include a baseline monitoring event with established permanent line transects with photostations. The transects and photostations will be established to thoroughly cover the representative vegetation within the Upland Habitat Preservation Areas. The transects and photostations will be marked in the field with rebar and PVC pipe and plotted on an aerial photograph by collecting the locations using a sub-meter GPS unit. The location of the transects will be provided to the Natural Resource Team of the Planning and Growth Management Department prior to the baseline monitoring event. The data collected during the baseline monitoring event and all subsequent monitoring events should include the following:

- Total % canopy cover
- Total % cover of bare ground
- Total % cover of native herbaceous ground cover
- Total % cover of Cat. I and II exotic, invasive, or nuisance species
- Wildlife observations including nuisance and exotic species
- Maintenance schedule or method changes and discussion

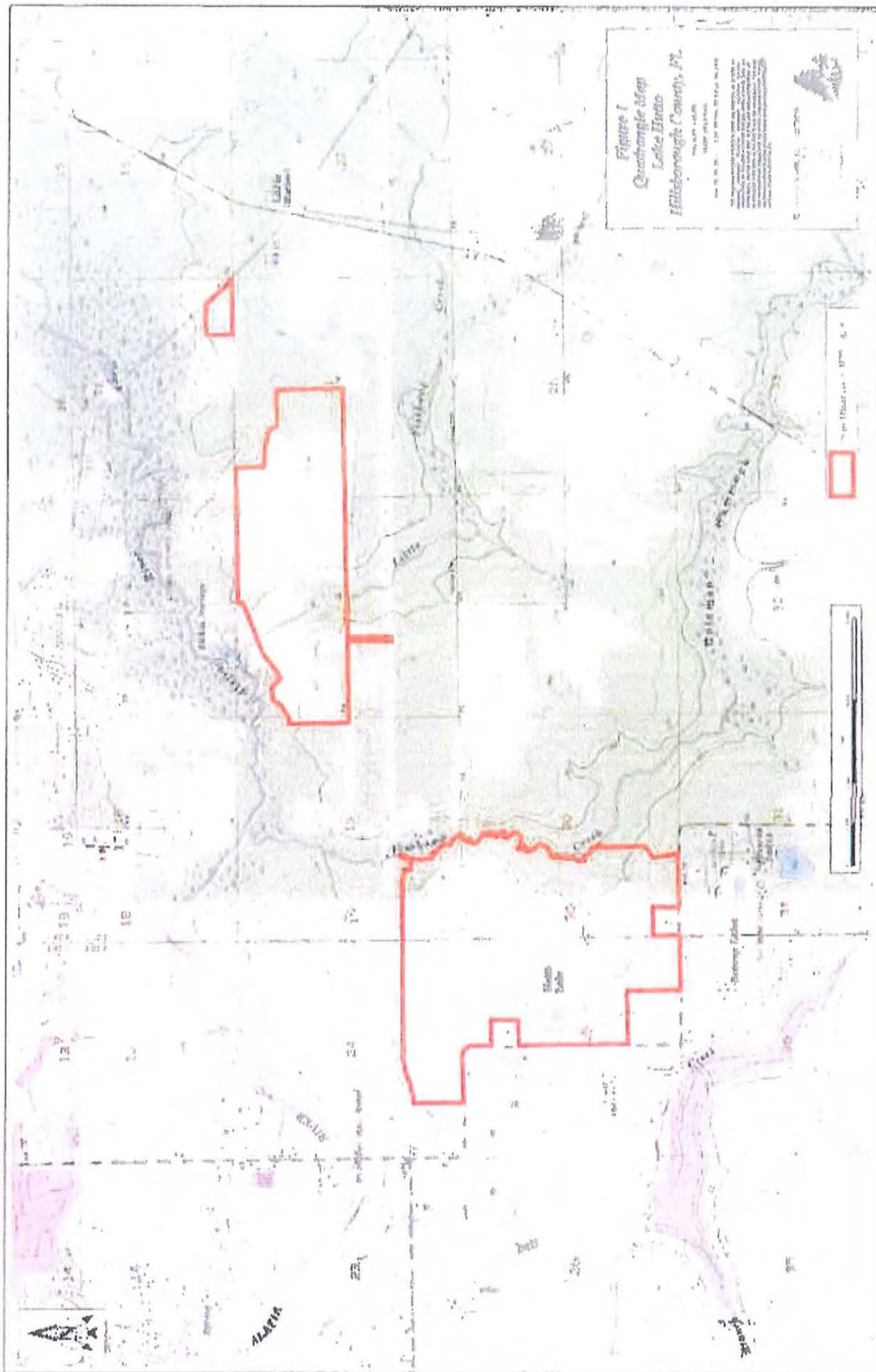
A listed species survey including a gopher tortoise survey, small mammal trapping (xeric areas only), herpetofauna surveys (xeric areas only), kestrel surveys (including kestrel box usage), Sherman's fox squirrel surveys, Florida sandhill crane surveys, wading bird surveys will be conducted in the Upland Habitat Preservation Areas every year until the success criteria have been met (outlined in Section 5.0). Lake Hutto Community Development District (CDD) or its assignee shall provide a report of the annual assessments, the listed species surveys, and the implementation of any protective measure to Hillsborough County PGMD and the Florida Fish and Wildlife Conservation Commission by 1 February of every year. Monitoring of these areas shall continue until all success criteria (outlined in Section 5.0) have been met without any maintenance activities for a period of one year.

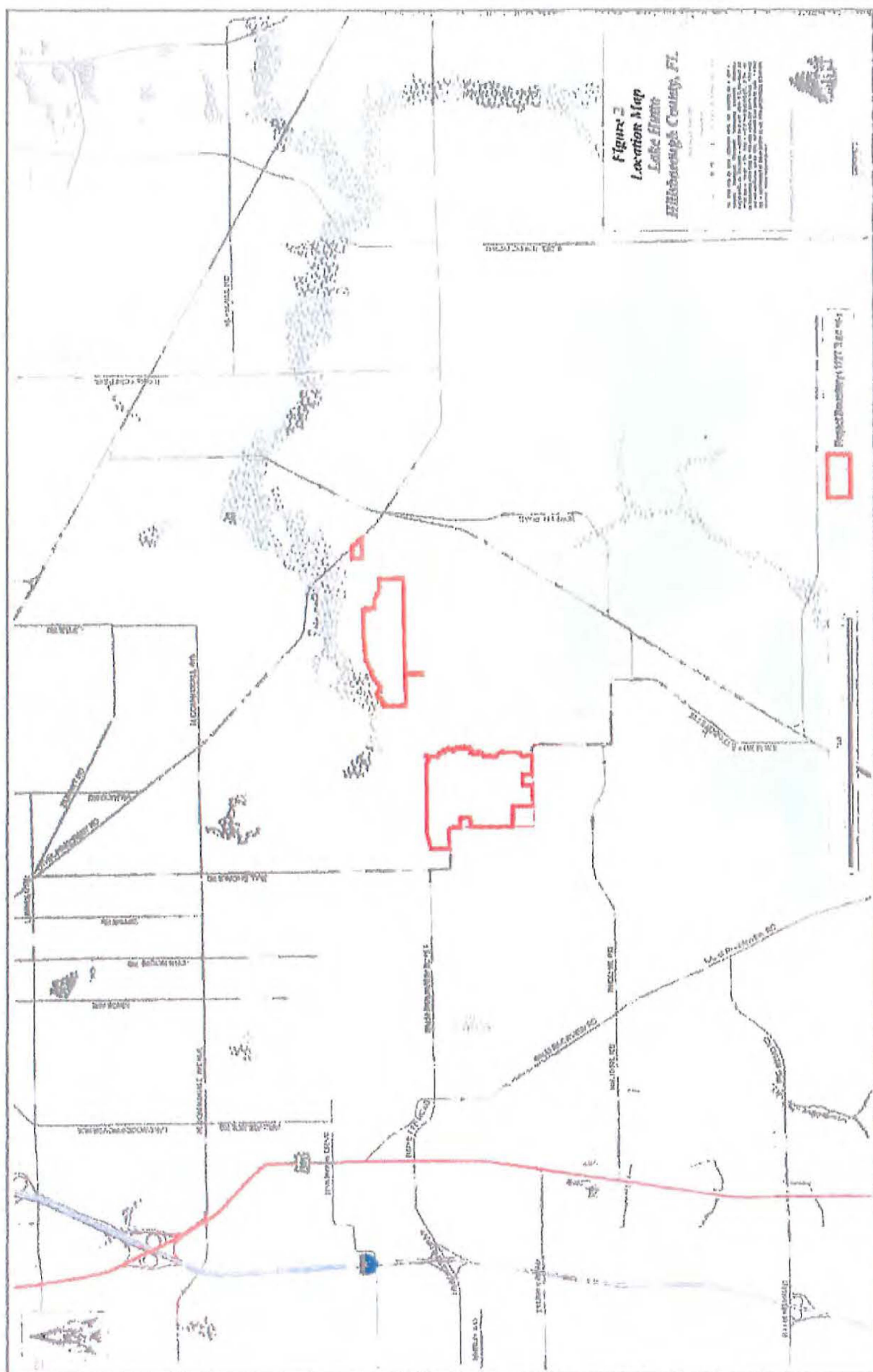
## **8.0 ADDITIONAL REQUIREMENTS**

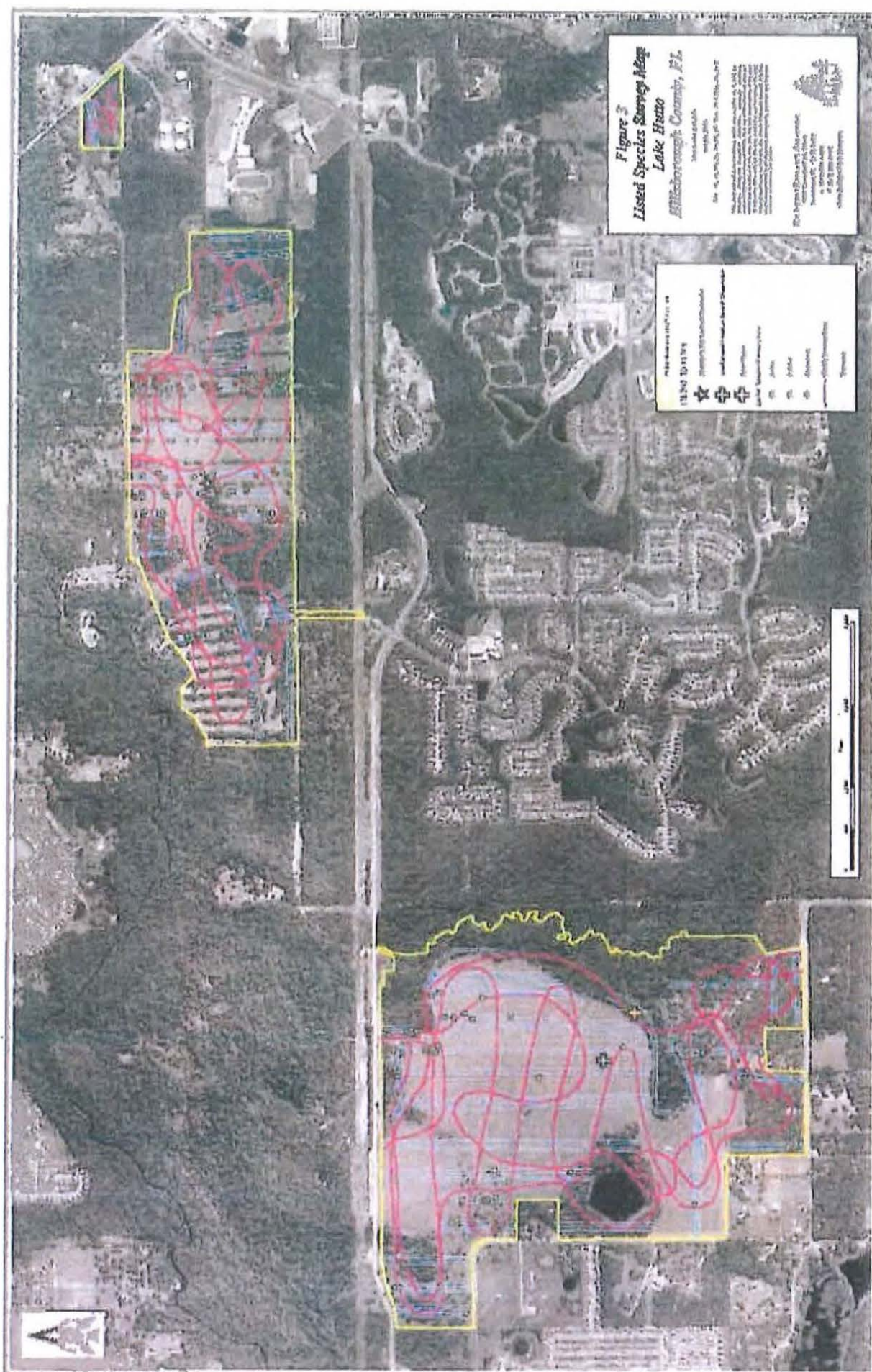
This management plan will be referenced and included within the deed restrictions of all Phases of the Lake Hutto Development. Newland Communities is responsible for referencing the Wildlife Habitat Management Plan within the Homeowner's Deed Restrictions and the plan must be included as an exhibit within the Restrictions. The developer is also responsible for recording the Deed Restrictions with the Clerk of the Circuit Court and transmitting a copy of the recorded Deed Restrictions to the Natural Resource Team of the Planning and Growth Management Department within sixty (60) days from the Board of County Commissioner's acceptance of the Final Plat for Recording. Initiation of enhancement activities will start no later than (60) days following the issuance of the Natural Resource permit for Phase I of Lake Hutto.

## **9.0 MANAGEMENT RESPONSIBILITY**

The legal entity responsible for the management of the Upland Habitat Preservation Areas will be Lake Hutto CDD or its assignee. Funding for the protective measures, the first three years of management, and first three years of monitoring are being secured. Funding for subsequent years will be provided from the Lake Hutto CDD.







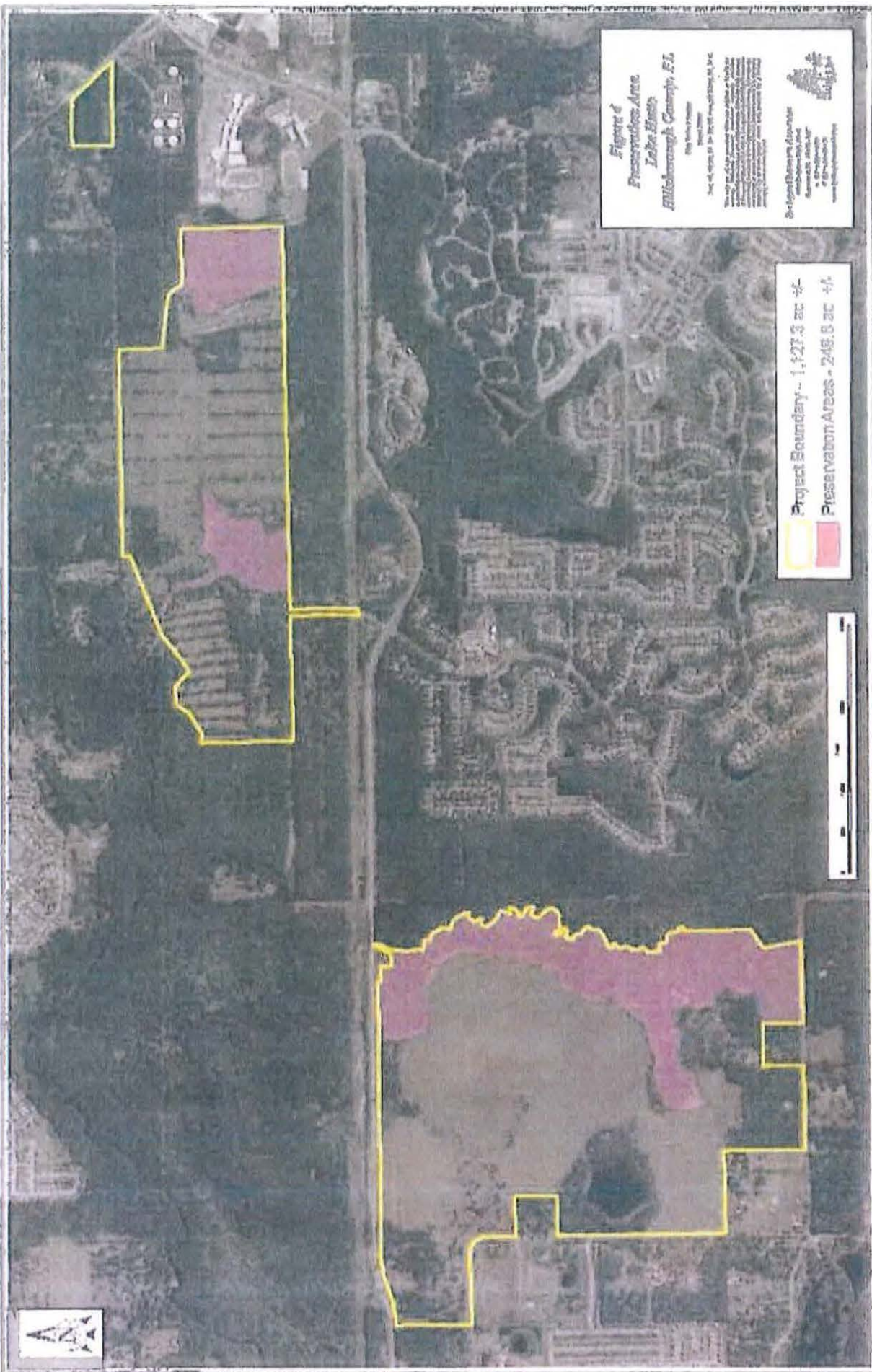


**Figure 6**  
**Preservation Area**  
**Lake Wales**  
**Hillsborough County, FL**

City of Lake Wales  
2008

This map is a map of the Lake Wales area, showing the project boundary and the preservation areas. The map is based on aerial photography and is not to scale. The map is intended to provide a general overview of the project area and is not intended to be used for any other purpose.

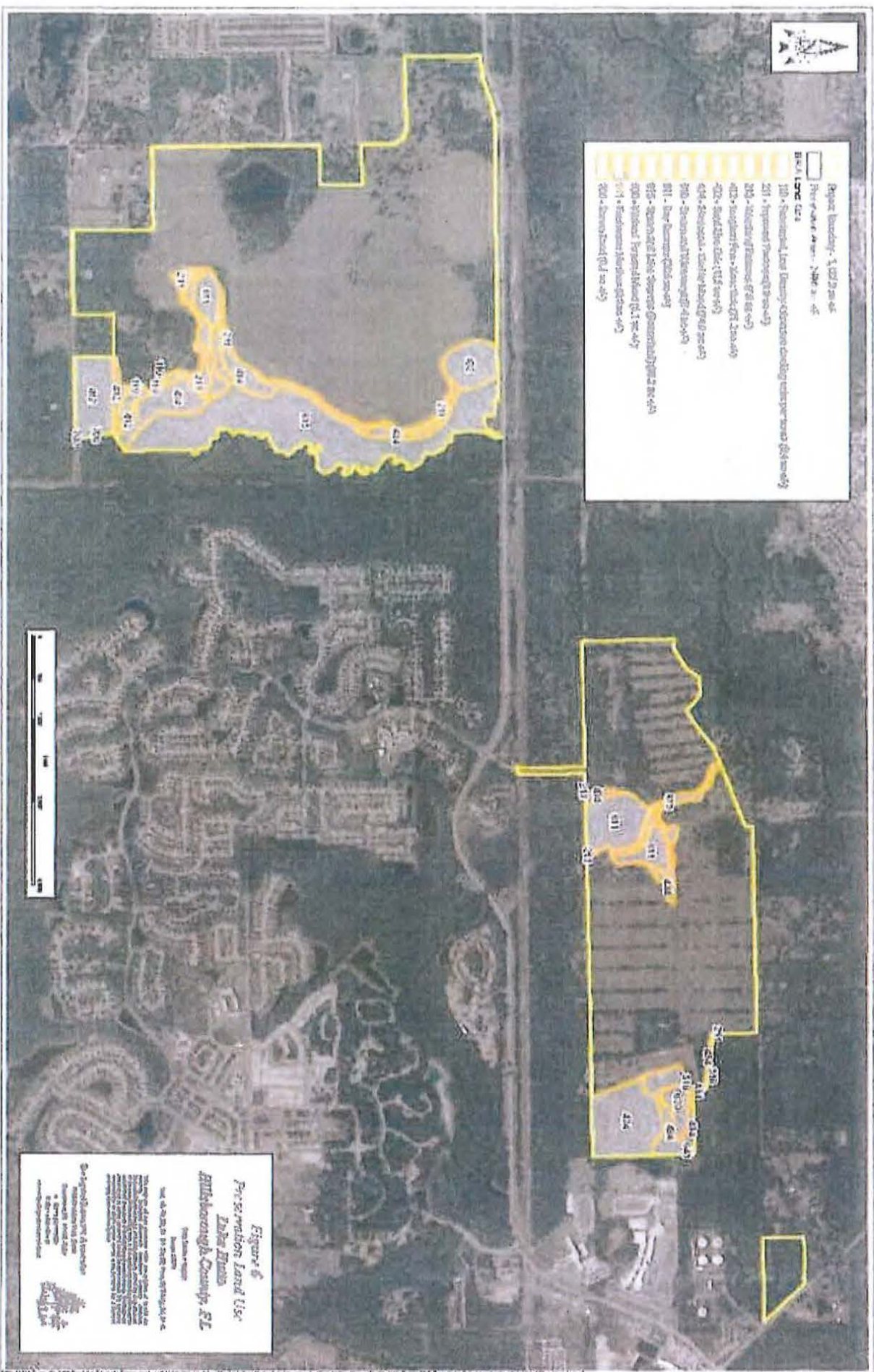
City of Lake Wales  
2008

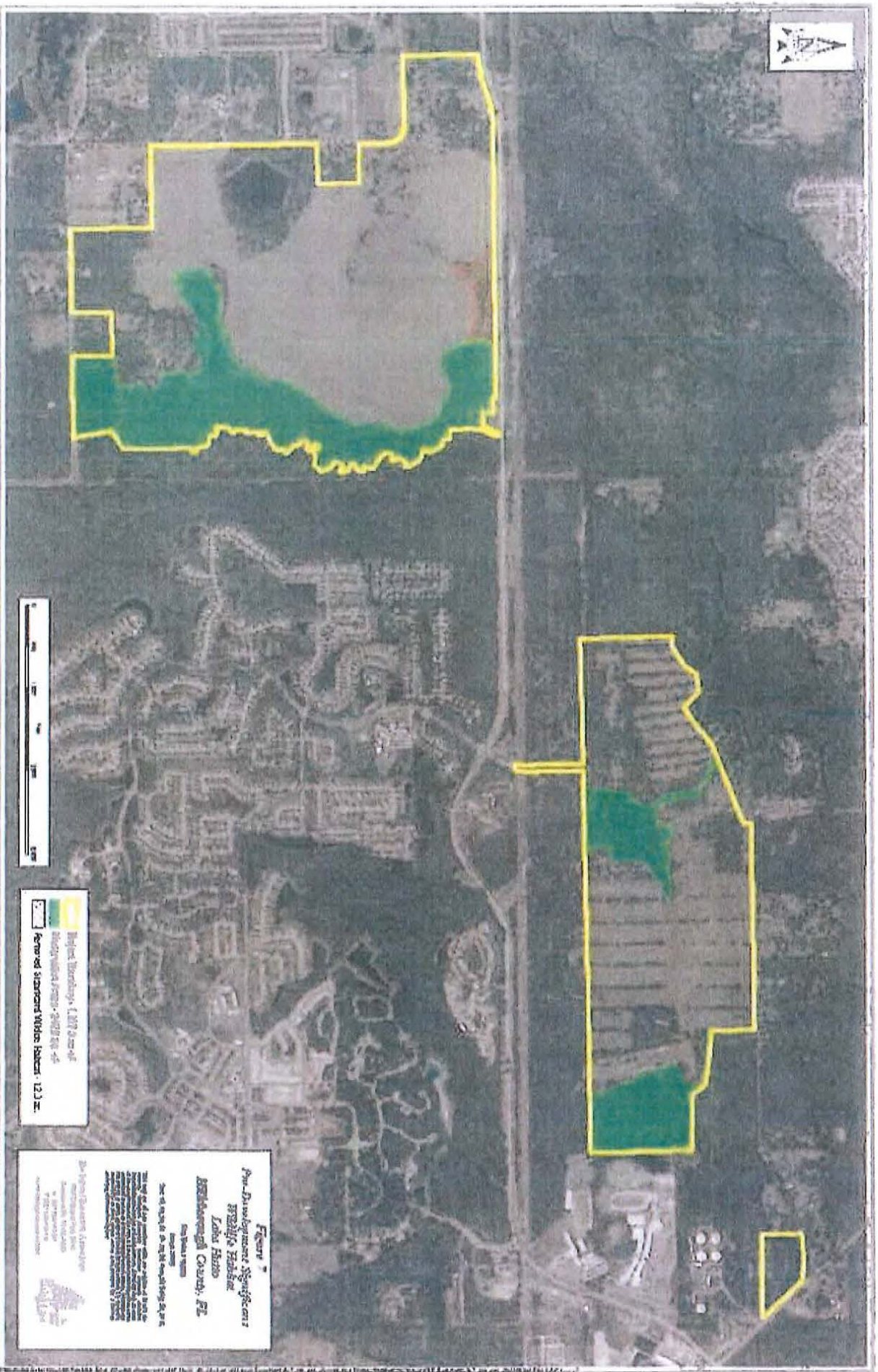
**Project Boundary - 1,127.3 ac +/-**

**Preservation Areas - 248.8 ac +/-**









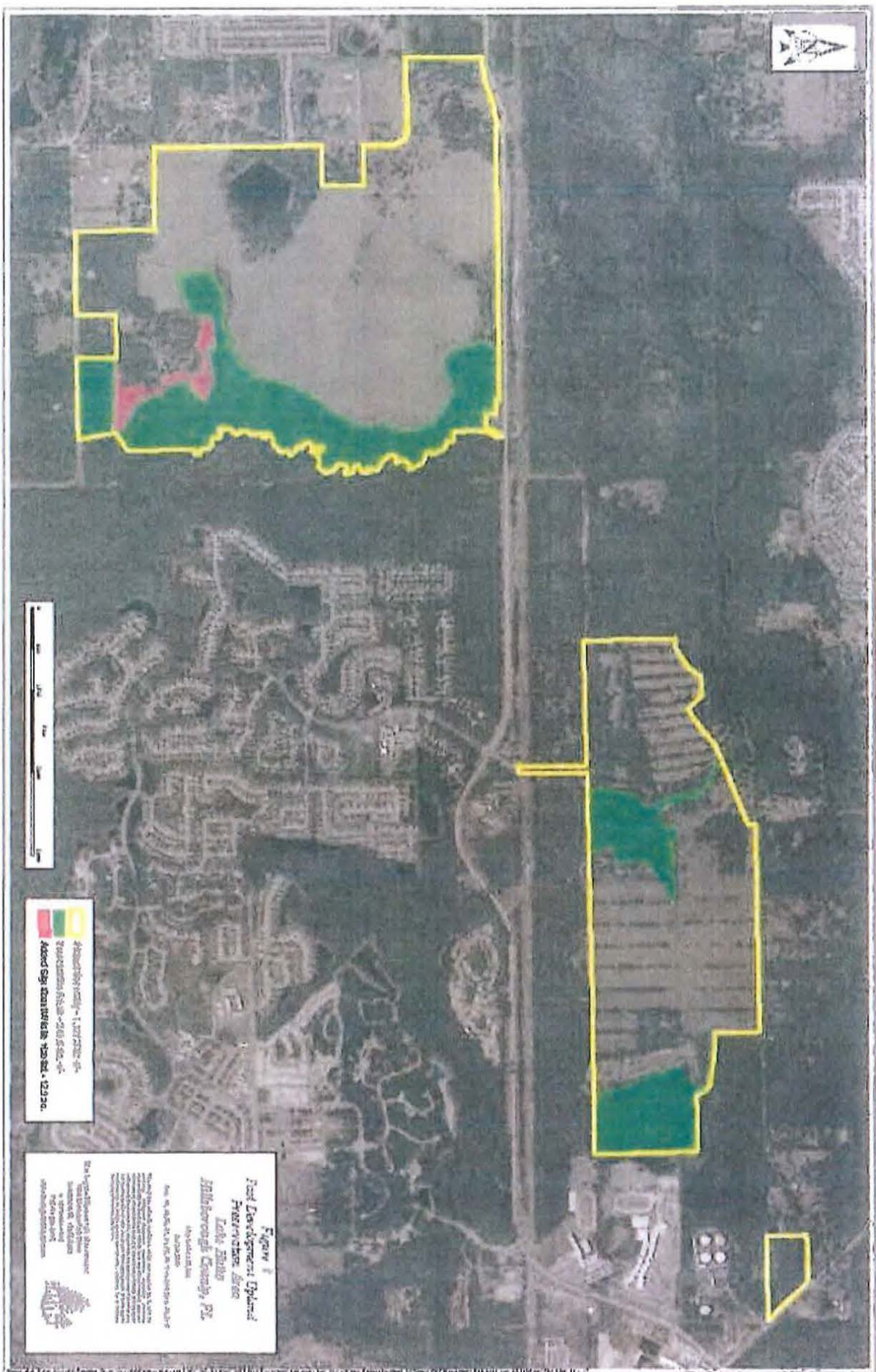
**Legend**

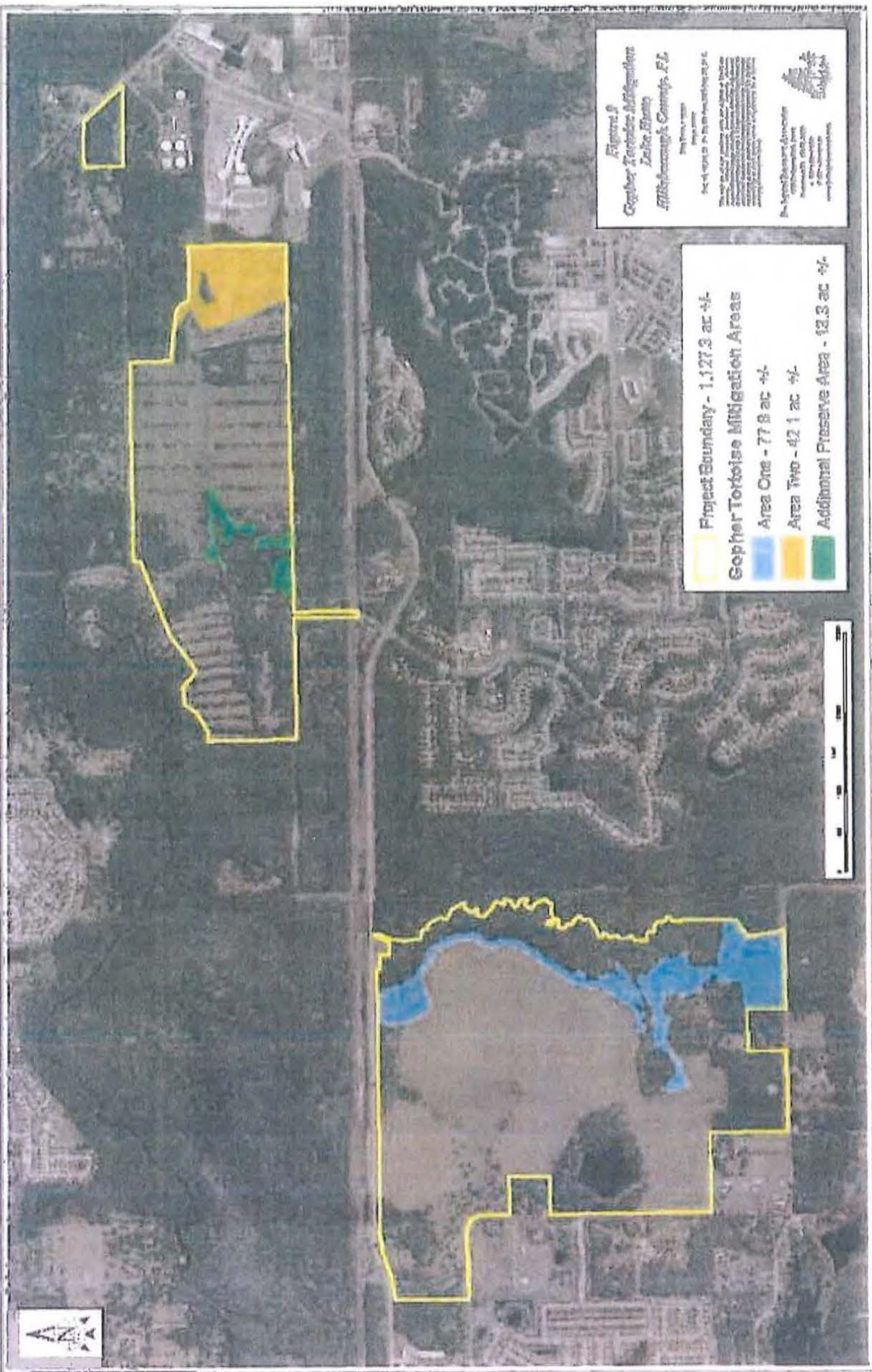
- Wetland Boundary, 1,000 ft. or less
- Wetland Boundary, 1,000 ft. or more
- Area of Significant Wetland Values, 12.3 ac.

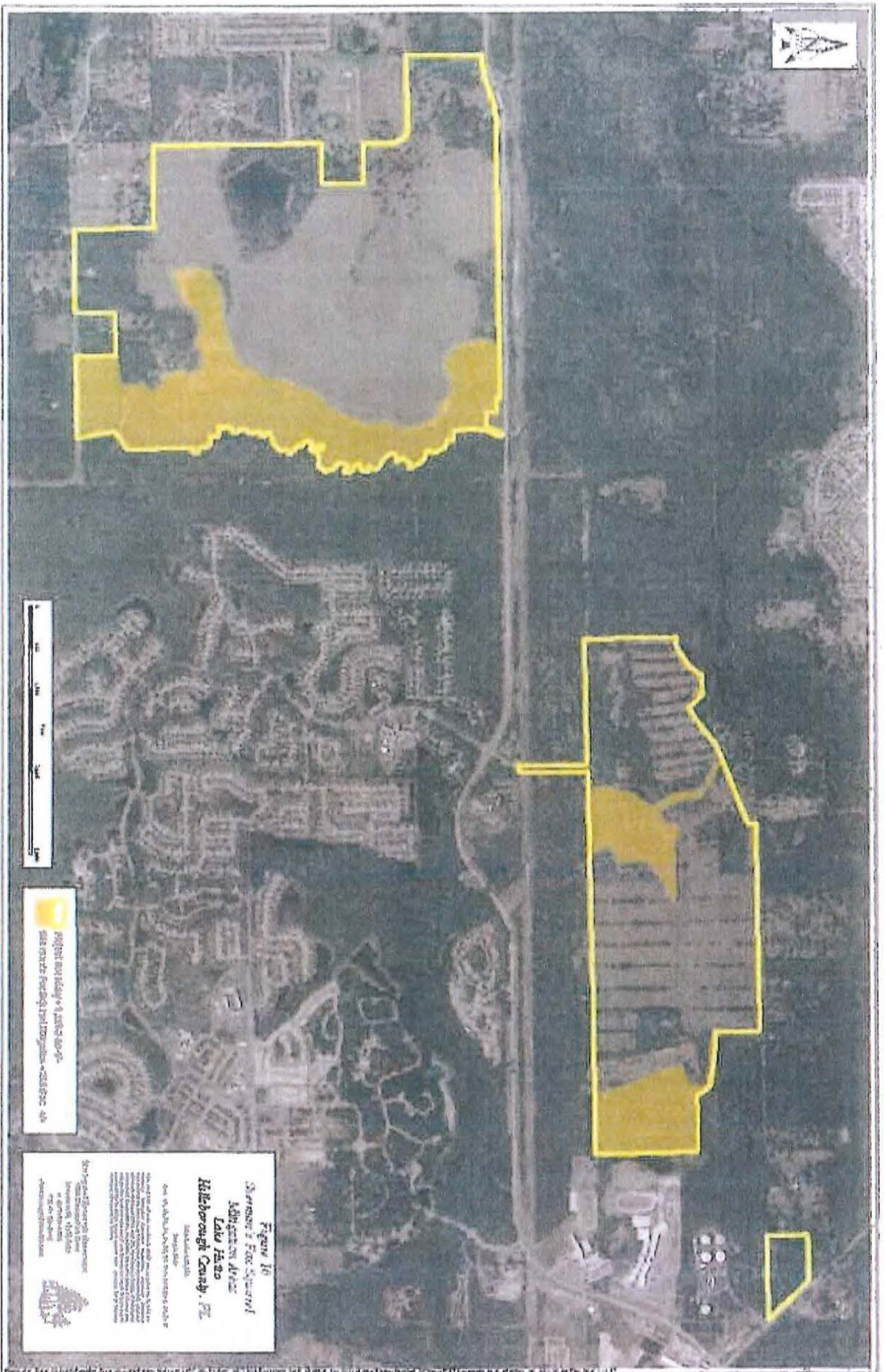
**Figure 7**  
**Wetland Boundary, 1,000 ft. or less**  
**Wetland Boundary, 1,000 ft. or more**  
**Area of Significant Wetland Values, 12.3 ac.**

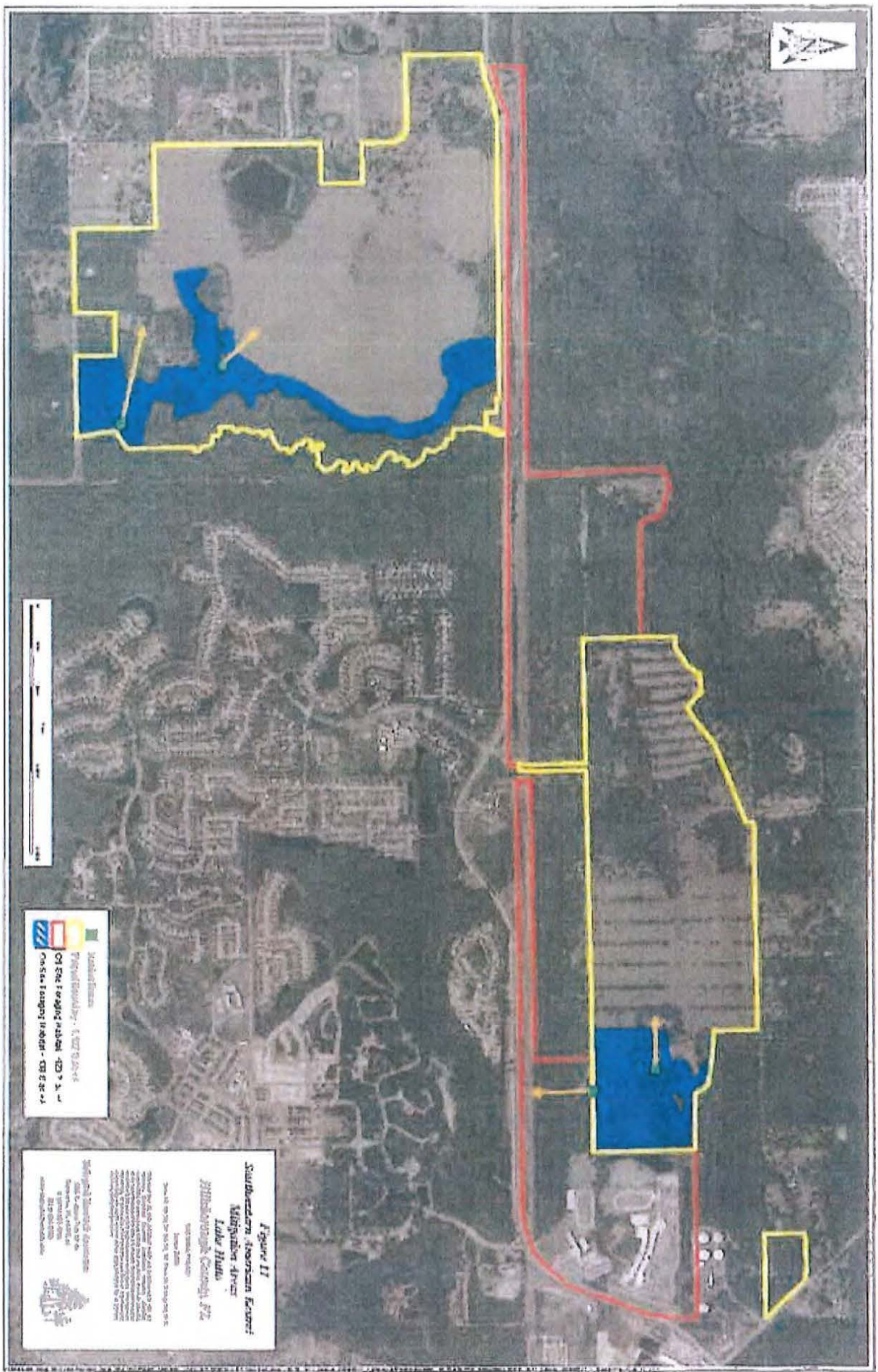
**For Development Purposes**  
**Wetland Boundary, 1,000 ft. or less**  
**Wetland Boundary, 1,000 ft. or more**  
**Area of Significant Wetland Values, 12.3 ac.**

**For Development Purposes**  
**Wetland Boundary, 1,000 ft. or less**  
**Wetland Boundary, 1,000 ft. or more**  
**Area of Significant Wetland Values, 12.3 ac.**









**Map of Hula**  
 Project Boundary - 1,000 ft Buffer  
 City of Hula - 1,000 ft Buffer  
 City of Hula - 1,000 ft Buffer

**Figure 11**  
**Southern Jordanian Forest**  
**Mitigation Area**  
**Lake Hula**  
**Wetland/Forest Corridor**

This map shows the location of the Lake Hula Wetland/Forest Corridor, which is a critical habitat for the Southern Jordanian Forest. The corridor is located in the northern part of the Lake Hula area and is outlined in yellow. The corridor is a narrow strip of land that connects the Lake Hula area to the surrounding forested areas. The corridor is a critical habitat for the Southern Jordanian Forest, which is a threatened species. The corridor is a critical habitat for the Southern Jordanian Forest, which is a threatened species. The corridor is a critical habitat for the Southern Jordanian Forest, which is a threatened species.



Project Boundary - 1,807.3 sq. ft.  
No Dist. Significant Wildlife Habitat - 1,219 sq. ft.  
Riparian Significant Wildlife Habitat - 1,219 sq. ft.  
Preservation Areas - 2,430 sq. ft.

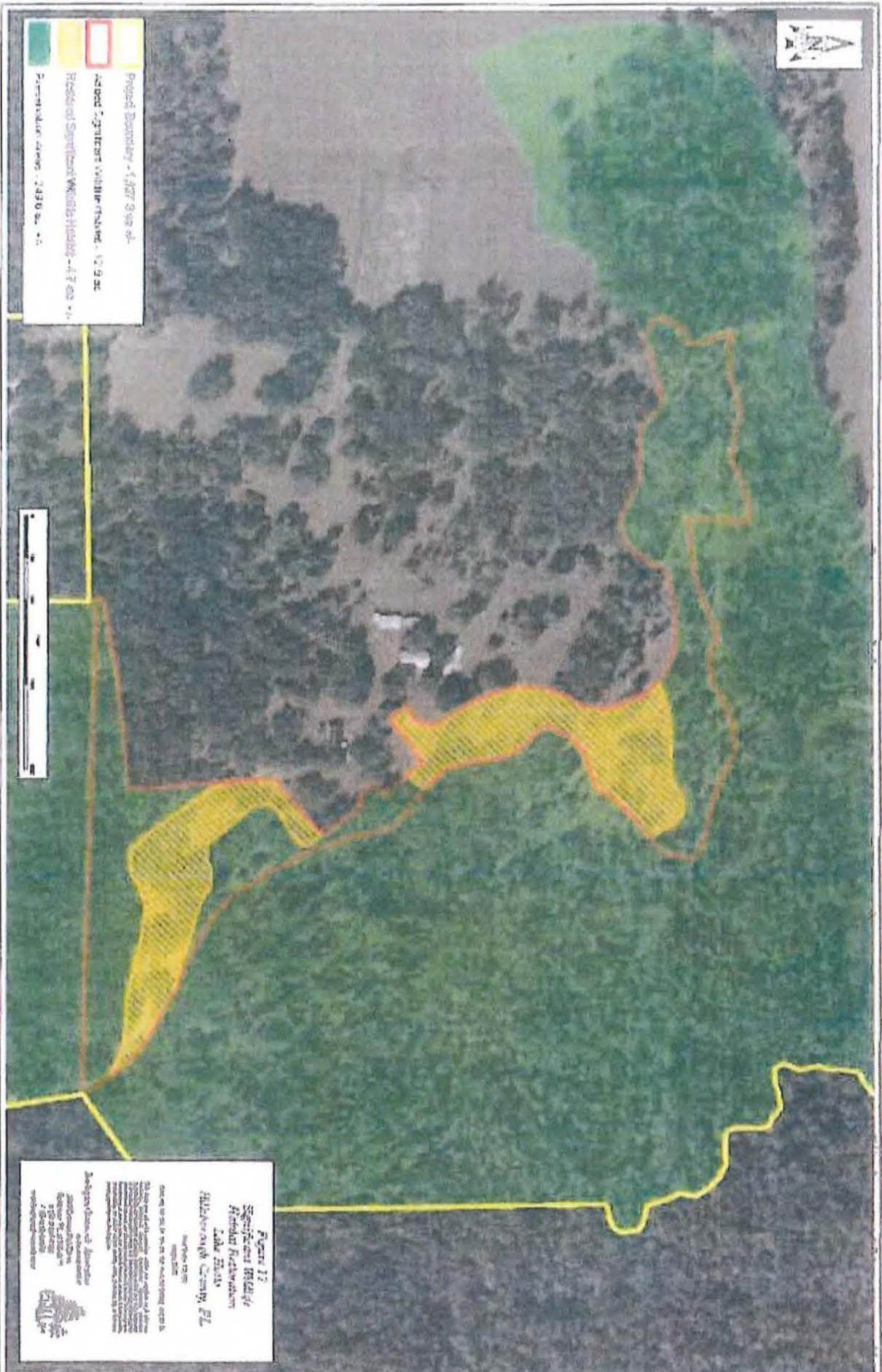


**Figure 11**  
**Significant Wildlife**  
**Riparian Habitat**  
**Table 11.1**  
**Habitat Data Summary, P.L.**

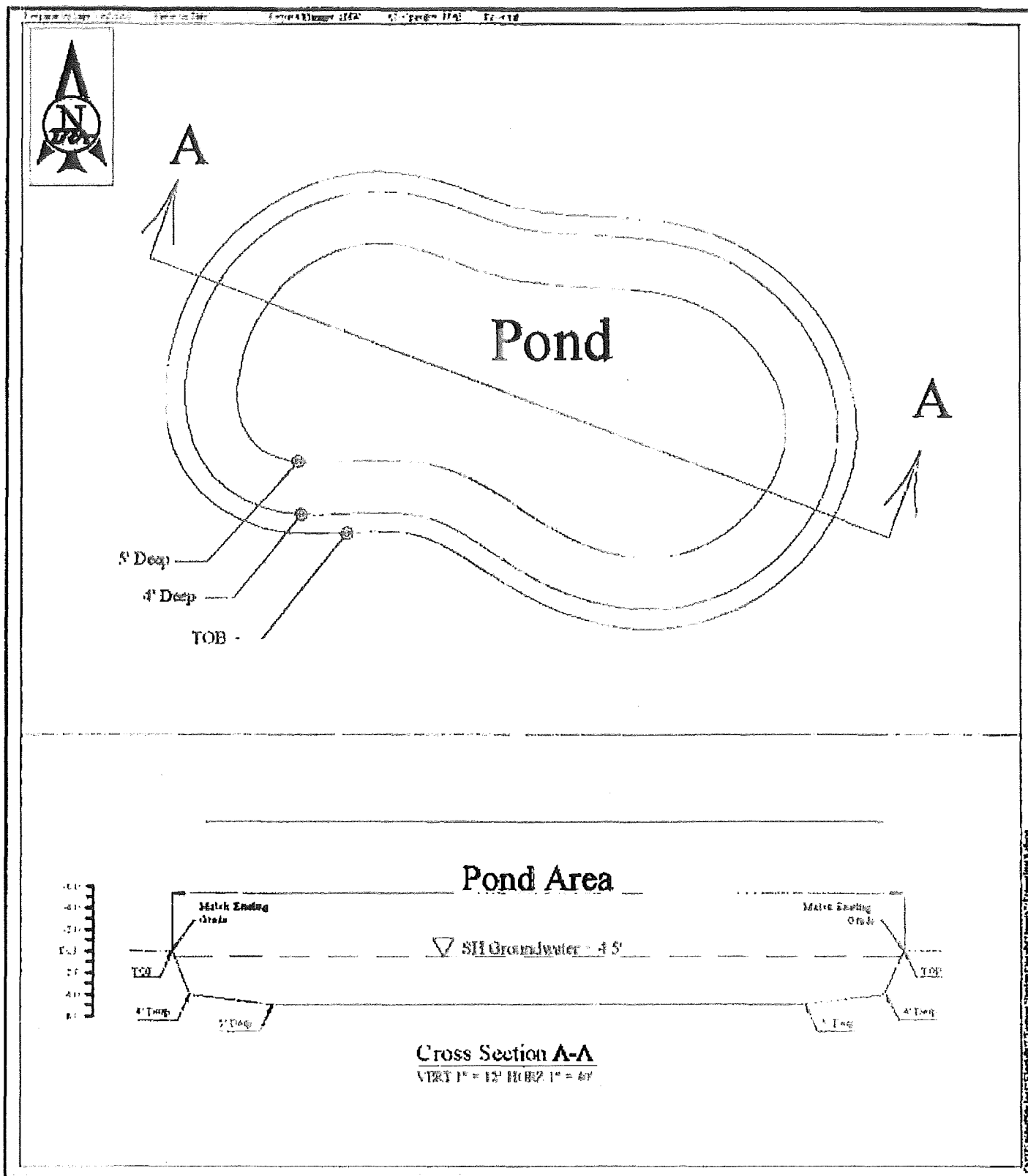
Source: Data from the project area, as provided by the project owner, and the project owner's data.

Notes: The project area is located in the project area, and the project owner is responsible for the project area. The project owner is responsible for the project area, and the project owner is responsible for the project area.

Legend:

- Project Boundary
- No Dist. Significant Wildlife Habitat
- Riparian Significant Wildlife Habitat
- Preservation Areas

Scale: 1 inch = 100 feet



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## Gopher Frog Pond Plan View

Figure 15

### Biological Research Associates

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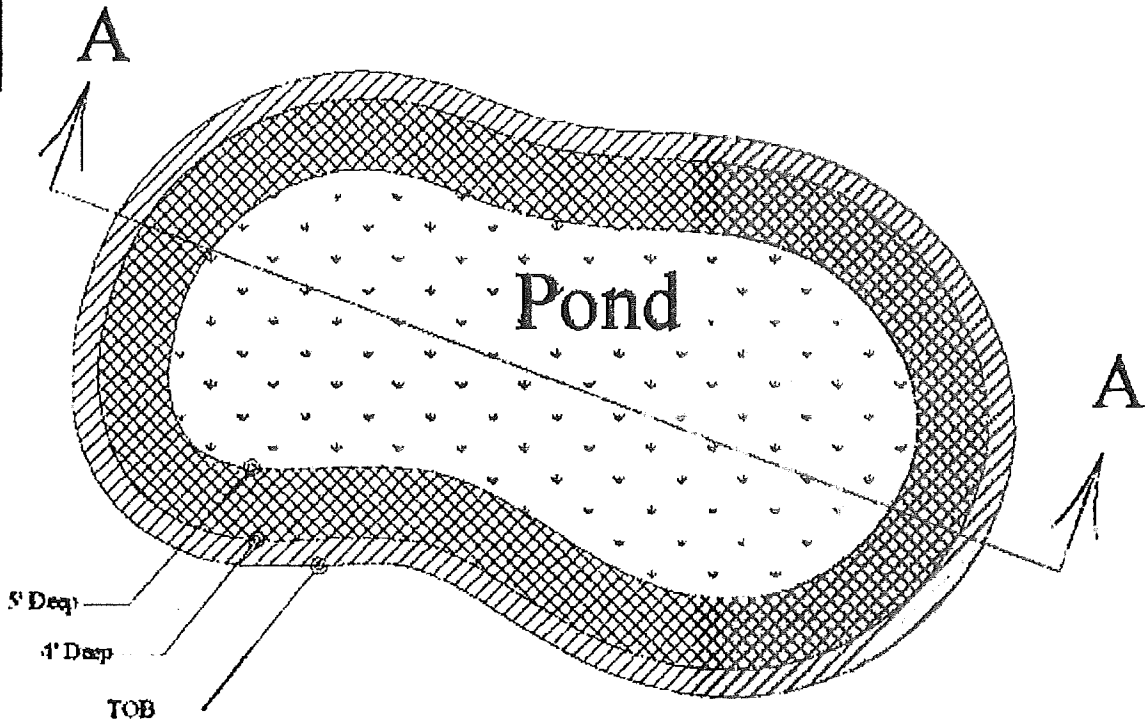
1005 Central Park Drive

Brevard, FL 32709

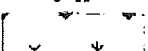
ph 813-664-1900 fax 813-664-0440

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Gopher Frog Pond Planting Plan

| Zone                                                                                              | Species Name                  | Common Name      | Acreage | Spacing  | Size  | Quantity |
|---------------------------------------------------------------------------------------------------|-------------------------------|------------------|---------|----------|-------|----------|
| TOB - 4 ft<br> | <i>Spartina bakeri</i>        | cordgrass        | 0.08    | 4' o.c.  | 4"    | 218      |
|                                                                                                   | <i>Hypericum fasciculatum</i> | sandweed         |         | 10' o.c. | 1 gal | 35       |
| 4 - 5 ft<br>   | <i>Panicum hemitomon</i>      | maidencane       | 0.18    | 3' o.c.  | 4"    | 871      |
| 5 ft<br>       | <i>Ludwigia repens</i>        | creeping seedbox | 0.25    | 3' o.c.  | 4"    | 1210     |



1 inch = 40 ft

Figure 13

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## Gopher Frog Pond Planting Plan

Figure 13

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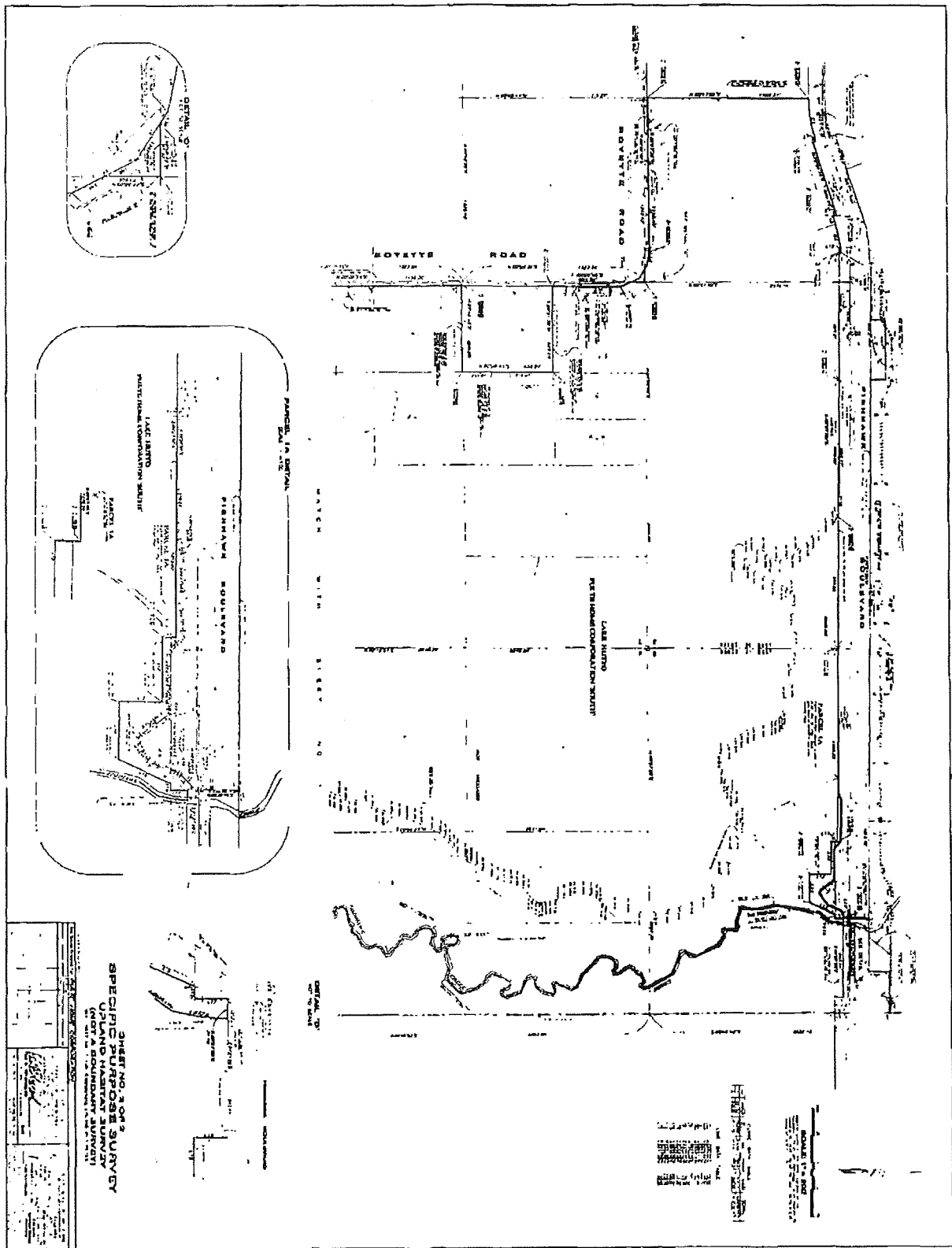
1905 Crescent Park Drive  
Beverly Hills, FL 33569  
ph 813-664-4300 fx 813-664-0440  
[www.biologicalresearch.com](http://www.biologicalresearch.com)



## Appendix A

### Survey of the Significant Wildlife Habitat on Lake Hutto





## Appendix B

### Table of Typical Plant Species Found In Sandhill Communities

**Typical sandhill vegetation**

**Canopy:**

Longleaf pine (*Pinus palustris*)  
Florida slash pine (*Pinus elliotii*)  
Sand pine (*Pinus clausa*)

**Mid-story:**

Turkey oak (*Quercus laevis*)  
Post oak (*Quercus margaretta*)  
Bluejack oak (*Quercus incana*)  
Sand live oak (*Quercus geminata*)  
Myrtle oak (*Quercus myrtifolia*)  
Chapman's oak (*Quercus chapmanii*)

**Herbaceous:**

Gopher apple (*Licania michauxii*)  
Wild buckwheat (*Eriogonum tomentosum*)  
Green eyes (*Berlandiera pumila*)  
American beautyberry (*Callicarpa americana*)  
Saw palmetto (*Serenoa repens*)  
Fetterbush (*Lyonia lucida*)  
Low-bush blueberry (*Vaccinium myrsinites*)  
Pawpaw (*Asimina incarna*)  
Persimmon (*Diospyros virginiana*)  
Sparkleberry (*Vaccinium arboreum*)  
Winged sumac (*Rhus copallinum*)  
Queen's delight (*Stillingia sylvatica*)  
Yellow foxglove (*Digitalia grandiflora*)  
Bracken fern (*Pteridium aquilinum*)  
Partridge pea (*Cassia fasciculata*)  
Milk pea (*Galactia* spp.)  
Runner oak (*Quercus pumila*)  
Dwarf live oak (*Quercus minima*)  
Golden aster (*Pityopsis graminifolia*)  
Blackberry (*Rubus cuneifolius*)  
Pricklypear (*Opuntia humifusa*)  
Wiregrass (pinelands threeawn) (*Aristida stricta*)  
Pineywoods dropseed (*Sporobolus junceus*)  
Low panicums (*Dicanthelium* spp.)  
Blue-stem grasses (*Andropogon* spp.)  
Indian grass (*Sorghastrum secundum*)  
Silver leafed aster (*Aster laevis*)  
Elephants foot (*Elephantopus elatus*)  
Rayless sunflower (*Helianthus radula*)  
Purple lovegrass (*Eragrostis spectabilis*)

Elliott's lovegrass (*Eragrostis elliottii*)  
Tickseed (*Coreopsis* spp.)

**Literature cited:**

Myers, R.L. & Ewel, J.J. (1990). Ecosystems of Florida. University of Central Florida Press. Orlando.

Exhibit "B"  
Nuisance / Exotic Plant List

|                                          |                                      |
|------------------------------------------|--------------------------------------|
| <i>Abrus precatorius</i>                 | rosary pea                           |
| <i>Antigonon leptopus</i>                | coral vine                           |
| <i>Ardisia crenata</i>                   | scratchthroat, coral ardisia         |
| <i>Aristolochia littoralis</i>           | calico flower                        |
| <i>Asparagus densiflorus (sprengeri)</i> | asparagus fern, sprengeri fern       |
| <i>Callisia fragrans</i>                 | inch plant                           |
| <i>Broussonetia papyrifera</i>           | paper-mulberry                       |
| <i>Casuarina cunninghamiana</i>          | basswood Australian-pine             |
| <i>Casuarina equisetifolia</i>           | Australian-pine                      |
| <i>Casuarina glauca</i>                  | suckering Australian-pine            |
| <i>Cestrum diurnum</i>                   | day jasmine                          |
| <i>Cinnamomum camphora</i>               | camphor tree                         |
| <i>Colocasia esculenta</i>               | wild taro                            |
| <i>Cupaniopsis anacardioides</i>         | carrotwood                           |
| <i>Cyperus involucratus</i>              | umbrella plant                       |
| <i>Cyperus prolifer</i>                  | dwarf papyrus                        |
| <i>Dalbergia sisso</i>                   | Indian rosewood                      |
| <i>Dioscorea alata</i>                   | white yam, winged air potato         |
| <i>Dioscorea bulbifera</i>               | air potato                           |
| <i>Eichhornia crassipes</i>              | water-hyacinth                       |
| <i>Eugenia uniflora</i>                  | surinam-cherry                       |
| <i>Hydrilla verticillata</i>             | hydrilla                             |
| <i>Imperata cylindrica</i>               | cogon grass                          |
| <i>Ipomoea aquatica</i>                  | water-spinach                        |
| <i>Koelreuteria elegans</i>              | golden shower tree, golden rain tree |
| <i>Leucaena leucocephala</i>             | lead-tree                            |
| <i>Lantana camara</i>                    | lantana                              |
| <i>Ligustrum sinense</i>                 | Chinese privet, sinenses             |
| <i>Limnophila sessiliflora</i>           | Asian marshweed                      |
| <i>Lonicera japonica</i>                 | Japanese honeysuckle                 |
| <i>Lygodium japonicum</i>                | Japanese climbing fern               |
| <i>Lygodium microphyllum</i>             | old world climbing fern              |
| <i>Macfadyena unguis-cati</i>            | cat's claw vine                      |
| <i>Melaleuca quinquenervia</i>           | melaleuca, punk tree                 |
| <i>Melia azedarach</i>                   | Chinaberry                           |
| <i>Nephrolepis cordifolia</i>            | sword fern, Boston fern              |
| <i>Nephrolepis multiflora</i>            | Asian sword fern                     |
| <i>Paederia foetida</i>                  | skunk vine                           |
| <i>Panicum repens</i>                    | torpedo grass                        |
| <i>Pennisetum purpureum</i>              | Napier grass                         |
| <i>Phyllostachys aurea</i>               | golden bamboo                        |
| <i>Pistia stratiotes</i>                 | water-lettuce                        |
| <i>Podocarpus macrophylla</i>            | yew podocarpus                       |
| <i>Psidium cattleianum</i>               | strawberry guava                     |
| <i>Psidium guajava</i>                   | guava                                |
| <i>Pueraria montana</i>                  | kudzu                                |
| <i>Rhodomirtus tomentosa</i>             | downy rose myrtle                    |

|                                        |                        |
|----------------------------------------|------------------------|
| <i>Ricinus cmomunis</i>                | castor bean            |
| <i>Ruellia brittoniana (tweediana)</i> | mexican petunia        |
| <i>Sansevieria hyacinthoides</i>       | mother-in-law's tongue |
| <i>Sapium sebiferum</i>                | Chinese tallow tree    |
| <i>Schinus terebinthifolius</i>        | Brazilian pepper       |
| <i>Sesbania punicea</i>                | purple sesban          |
| <i>Solanum diphyllum</i>               | twinleaf nightshade    |
| <i>Solanum torvum</i>                  | turkey berry           |
| <i>Solanum viarum</i>                  | tropical soda-apple    |
| <i>Syngonium podophyllum</i>           | arrowhead vine         |
| <i>Wedelia trilobata</i>               | wedelia                |
| <i>Wisteria sinensis</i>               | Chinese wisteria       |
| <i>Xanthosoma sagittifolium</i>        | elephant ear           |

## Appendix D

### USFWS Standard Protection Measures for the Eastern Indigo Snake

**U.S. Fish & Wildlife Service****North Florida Field Office**

## **Standard Protection Measures for the Eastern Indigo Snake** *(rev July 12, 1999)*

1. An eastern indigo snake protection/education plan shall be developed by the applicant or requestor for all construction personnel to follow. The plan shall be provided to the Service for review and approval at least 30 days prior to any clearing activities. The educational materials for the plan may consist of a combination of posters, videos, pamphlets, and lectures (e.g., an observer trained to identify eastern indigo snakes could use the protection/education plan to instruct construction personnel before any clearing activities occur). Informational signs should be posted throughout the construction site and contain the following information:

- a. description of the eastern indigo snake, its habits, and protection under Federal Law;
- b. instructions not to injure, harm, harass or kill this species;
- c. directions to cease clearing activities and allow the eastern indigo snake sufficient time to move away from the site on its own before resuming clearing; and
- d. telephone numbers of pertinent agencies to be contacted if a dead eastern indigo snake is encountered. The dead specimen should be thoroughly soaked in water, then frozen.

2. Only an individual who has been either authorized by a section 10(a)(1)(A) permit issued by the Service, or designated as an agent of the State of Florida by the Florida Fish and Wildlife Conservation Commission for such activities, is permitted to come in contact with or relocate an eastern indigo snake.

3. If necessary, eastern indigo snakes shall be held in captivity only long enough to transport them to a release site; at no time shall two snakes be kept in the same container during transportation.

4. An eastern indigo snake monitoring report must be submitted to the appropriate Florida Field Office within 60 days of the conclusion of clearing phases. The report should be submitted whether or not eastern indigo snakes are observed. The report should contain the following information:

- a. any sightings of eastern indigo snakes;
- b. summaries of any relocated snakes if relocation was approved for the project (e.g., locations of where and when they were found and relocated); and
- c. other obligations required by the Florida Fish and Wildlife Conservation Commission, as stipulated in the permit.

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Note: PDF file accessibility tools available at Access Adobe - <http://access.adobe.com>

Send comments on our web site or general questions to [northflorida@fws.gov](mailto:northflorida@fws.gov)

<http://www.fws.gov/northflorida/IndigoSnakes/east-indigo-snake-measures-071299.htm>

8/7/2006

## EXHIBIT "F-1 "

### Prohibited Plant List

| Nuisance / Exotic Plant List             |                                      |                                  |                        |
|------------------------------------------|--------------------------------------|----------------------------------|------------------------|
| <i>Abrus precatorius</i>                 | rosary pea                           | <i>Sansevieria hyacinthoides</i> | mother-in-law's tongue |
| <i>Antigonon leptopus</i>                | coral vine                           | <i>Sapium sebiferum</i>          | Chinese tallow tree    |
| <i>Ardisia crenata</i>                   | scratchthroat, coral ardisia         | <i>Schinus terebinthifolius</i>  | Brazilian pepper       |
| <i>Aristolochia littoralis</i>           | calico flower                        | <i>Sesbania punicea</i>          | purple sesban          |
| <i>Asparagus densiflorus (sprengeri)</i> | asparagus fern, sprengeri fern       | <i>Solanum diphyllum</i>         | twingleaf nightshade   |
| <i>Broussonetia papyrifera</i>           | paper-mulberry                       | <i>Solanum torvum</i>            | turkey berry           |
| <i>Callisia fragrans</i>                 | inch plant                           | <i>Solanum viarum</i>            | tropical soda-apple    |
| <i>Casuarina cunninghamiana</i>          | basswood Australian-pine             | <i>Syngonium podophyllum</i>     | arrowhead vine         |
| <i>Casuarina equisetifolia</i>           | Australian-pine                      | <i>Wedelia trilobata</i>         | wedelia                |
| <i>Casuarina glauca</i>                  | suckering Australian-pine            | <i>Wisteria sinensis</i>         | Chinese wisteria       |
| <i>Cestrum diurnum</i>                   | day jasmine                          | <i>Xanthosoma sagittifolium</i>  | elephant ear           |
| <i>Cinnamomum camphora</i>               | camphor tree                         |                                  |                        |
| <i>Colocasia esculenta</i>               | wild taro                            |                                  |                        |
| <i>Cupaniopsis anacardioides</i>         | carrotwood                           |                                  |                        |
| <i>Cyperus involueratus</i>              | umbrella plant                       |                                  |                        |
| <i>Cyperus prolifer</i>                  | dwarf papirus                        |                                  |                        |
| <i>Dalbergia sisso</i>                   | Indian rosewood                      |                                  |                        |
| <i>Dioscorea alata</i>                   | white yam, winged air potato         |                                  |                        |
| <i>Dioscorea bulbifera</i>               | air potato                           |                                  |                        |
| <i>Eichhornia crassipes</i>              | water-hyacinth                       |                                  |                        |
| <i>Eugenia uniflora</i>                  | surinam-cherry                       |                                  |                        |
| <i>Hydrilla verticillata</i>             | hydrilla                             |                                  |                        |
| <i>Imperata cylindrica</i>               | cogon grass                          |                                  |                        |
| <i>Ipomoea aquatica</i>                  | water-spinach                        |                                  |                        |
| <i>Koeleruteria elegans</i>              | golden shower tree, golden rain tree |                                  |                        |
| <i>Leucaena leucocephala</i>             | lead-tree                            |                                  |                        |
| <i>Lantana camara</i>                    | lantana                              |                                  |                        |
| <i>Ligustrum sinense</i>                 | Chinese privet, sinenses             |                                  |                        |
| <i>Limnophila sessiliflora</i>           | Asian marshweed                      |                                  |                        |
| <i>Lonicera japonica</i>                 | Japanese honeysuckle                 |                                  |                        |
| <i>Lygodium japonicum</i>                | Japanese climbing fern               |                                  |                        |
| <i>Lygodium microphyllum</i>             | old world climbing fern              |                                  |                        |
| <i>Macfadyena unguis-cati</i>            | cat's claw vine                      |                                  |                        |
| <i>Melaleuca quinquenervia</i>           | melaleuca, punk tree                 |                                  |                        |
| <i>Melia azedarach</i>                   | Chinaberry                           |                                  |                        |
| <i>Nephrolepis cordifolia</i>            | sword fern, Boston fern              |                                  |                        |
| <i>Nephrolepis multiflora</i>            | Asian sword fern                     |                                  |                        |
| <i>Paederia foetida</i>                  | skunk vine                           |                                  |                        |
| <i>Panicum repens</i>                    | torpedo grass                        |                                  |                        |
| <i>Pennisetum purpureum</i>              | Napier grass                         |                                  |                        |
| <i>Phyllostachys aurea</i>               | golden bamboo                        |                                  |                        |
| <i>Pistia stratiotes</i>                 | water-lettuce                        |                                  |                        |
| <i>Podocarpus macrophylla</i>            | yew podocarpus                       |                                  |                        |
| <i>Psidium cattleianum</i>               | strawberry guava                     |                                  |                        |
| <i>Psidium guajava</i>                   | guava                                |                                  |                        |
| <i>Pueraria montana</i>                  | kudzu                                |                                  |                        |
| <i>Rhodomyrtus tomentosa</i>             | downy rose myrtle                    |                                  |                        |
| <i>Ricinus communis</i>                  | castor bean                          |                                  |                        |
| <i>Ruellia brittoniana (tweediana)</i>   | mexican petunia                      |                                  |                        |

**EXHIBIT "G"**  
**Notice of Proximity to FishHawk Nature Preserve**

WHEREAS, it is the intent of this Notice to make known to the public-at-large that the property now and hereafter submitted to this Charter ("**Subject Property**") is located in close proximity to the property known as the FishHawk Nature Preserve; and

WHEREAS, it is further the intent of this Notice to advise potential tenants and purchasers of subdivided property located within the boundaries of the Subject Property that said property is in close proximity to the FishHawk Nature Preserve.

NOW, THEREFORE, the general public and those parties specifically purchasing or leasing property within the Subject Property are hereby notified that:

1. The Subject Property is located in close proximity to the FishHawk Nature Preserve.
2. This Notice is to further advise potential purchasers or tenants of Subject Property that the proximity to the FishHawk Nature Preserve may result in said purchasers or tenants being affected by: continuing current resource management practices to include but not be limited to, ecological burning, pesticide usage, exotic plant and animal removal, usage of heavy equipment and machinery and other practices as may be deemed necessary for the proper management of the FishHawk Nature Preserve.
3. The nature and the effects of the operations of the FishHawk Nature Preserve shall include all management practices as contained within the managing agencies' resource management plan, which may be amended from time to time.
4. The FishHawk Nature Preserve is protected by Ordinance 08-17 or its successor. This protection includes the prohibition against the disposal of yard waste and animals and plants. In addition, there may be restrictions upon certain types of animals/pets that the public may bring into the FishHawk Nature Preserve.
5. The general public is authorized to use approved access points to the FishHawk Nature Preserve. Creation of personal access points is prohibited unless approved by the managing entity.
6. Compatible uses in the FishHawk Nature Preserve include hiking. Usages in the FishHawk Nature Preserve which may be prohibited could include ATV use, horseback riding, paintball, digging, hunting, building of unauthorized structures, etc.
7. Prohibited Plant List (Exhibit "F-1"). Adjacent landowners are advised that the plants identified on Exhibit F-1 are prohibited on lots adjacent to the FishHawk Nature Preserve.
8. The FishHawk Nature Preserve is protected from drainage from new development (either the development infrastructure or individual parcels). Individual owners cannot alter drainage or drain water into the FishHawk Nature Preserve without written authorization from the managing entity.