

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

WHEREAS, Pelican Landing Communities, Inc. has filed an application for an Amendment to the Pelican Landing Development of Regional Impact #1-9293-121; and

WHEREAS, the subject property is generally located on the west side of US 41, north of Spring Creek and south of Coconut Road, Bonita Springs, and is described more particularly as:

LEGAL DESCRIPTION: In Sections 05, 07, 08, 09, 16, 17, 18, 20, and 21, Township 47 South, Range 25 East, and Sections 13 and 24, Township 47 South, Range 24 East, Lee County, Florida:

PARCEL 1

A tract or parcel of land lying in Sections 08, 09, 16, 17, 20 and 21, Township 47 South, Range 25 East, Lee County, Florida, which tract or parcel is described as follows:

Beginning at a concrete monument marking the Northeast corner of said Section 20 run S00°35'25"E along the East line of said section for 2,659.47 feet to the Southeast corner of the Northeast Quarter (NE¼) of said section; THENCE run N88°52'49"E along the North line of the Southwest Quarter (SW¼) of said Section 21 for 2,040.41 feet;

THENCE run S00°51'35"E for 801.04 feet to the waters of Spring Creek;

THENCE run along Spring Creek for 3,630 feet, more or less to an intersection of the East line of said Section 20 and the approximate centerline of Spring Creek;

THENCE run along said centerline the following courses:

S78°50'00"W for 181.31 feet,  
N34°24'12"W for 230.22 feet,  
N30°59'12"W for 174.93 feet,  
N24°25'16"E for 120.83 feet,  
S65°47'43"E for 219.32 feet,  
N18°24'43"E for 158.11 feet,  
N75°11'47"W for 351.71 feet,  
N65°09'33"W for 451.88 feet,  
N84°18'44"W for 351.75 feet,  
N66°54'31"W for 445.79 feet,  
S63°24'43"W for 134.16 feet,  
S03°23'22"E for 170.29 feet,  
S50°30'17"W for 220.23 feet,  
N84°49'43"W for 331.36 feet,  
S62°13'07"W for 214.71 feet,  
S22°08'36"W for 291.55 feet,

continued...

S72°15'11"W for 131.22 feet to an intersection with the East line of the Southwest Quarter (SW¼) of said Section 20;  
THENCE run N00°50'19"W along said East line for 520.00 feet to the Northeast corner of said fraction;  
THENCE run S89°58'37"W along the North line of said fraction for 290.00 feet to an intersection with the approximate centerline of the most Easterly branch of said Spring Creek;  
THENCE run along said centerline the following courses:  
N09°13'28"W for 137.34 feet,  
N29°08'22"W for 590.59 feet,  
N38°31'58"W for 278.03 feet,  
N65°16'43"W for 254.95 feet,  
N37°18'28"W for 286.01 feet,  
N32°51'05"E for 252.39 feet,  
N20°11'00"E for 236.69 feet,  
N27°23'47"W for 369.25 feet,  
N89°15'43"E for 50 feet, more or less to the Easterly shore of said Spring Creek;  
THENCE run along said Easterly shore for 1,220 feet, more or less to an intersection with the North line of said Section 20;  
THENCE run N89°15'13"E along said North line of said Section for 970 feet, more or less to a concrete monument marking the Northwest corner of the Northeast Quarter (NE¼) of said Section 20;  
THENCE run N00°31'30"E along the West line of the Southeast Quarter (SE¼) of said Section 17 for 2,644.38 feet to an intersection with the South line of Spring Creek Road as described in Deed Book 305 at Page 276, Lee County Records;  
THENCE run S89°58'35"E along said South line for 739.45 feet;  
THENCE run N00°07'58"E for 30.00 feet to an intersection with the North line of the Southeast Quarter (SE¼) of said Section 17;  
THENCE run S89°58'35"E along the North line of said fraction for 375.91 feet to the Southeast corner of lands described in Official Record Book 1713 at Page 1188 of said Public Records;  
THENCE run N00°41'04"W for 668.20 feet to the Northeast corner of said lands;  
THENCE run N89°50'32"W along the North line of said lands for 366.38 feet to the Easterly line of said Spring Creek Road (50 feet wide);  
THENCE run N00°07'58"E for 2,007.04 feet to an intersection with the South line of the Southeast Quarter (SE¼) of said Section 08;  
THENCE continue N00°07'17"E along said East line for 343.54 feet;

continued

THENCE run S89°38'58"E for 10.00 feet;  
THENCE run N00°07'17"E along said East line for 849.27 feet  
to the Southwest corner of lands described in Official  
Record Book 2039 at Page 3364 said Public Records;  
THENCE run S89°21'02"E along the South line of said lands  
for 189.98 feet;  
THENCE run N00°07'17"E along the East line of said lands  
for 125.01 feet;  
THENCE run N89°21'02"W along the North line of said lands  
for 199.98 feet to an intersection with the Easterly line  
of said Spring Creek Road;  
THENCE run N00°07'17"E along said East line for 1,292.76  
feet to an intersection with the South line of Coconut Road  
(50 feet wide);  
THENCE run S89°16'14"E along said South line for 1,802.38  
feet to an intersection with the West line of said Section  
09;  
THENCE run N00°39'58"W along said West line for 25.00 feet  
to a concrete monument marking the Northwest corner of the  
Southwest Quarter (SW¼) of said Section;  
THENCE continue along said West line N00°39'58"W for 5.00  
feet to an intersection with the South line of said Coconut  
Road as described in Official Record Book 1738 at Page  
2538, said Public Records;  
THENCE run S89°35'50"E along said South line for 3,164.37  
feet to an intersection with the West line of Tamiami Trail  
(SR 45);  
THENCE run S00°10'56"W along said West line for 621.81 feet  
to a POINT OF CURVATURE;  
THENCE run Southerly and Southeasterly along said West  
line, along the arc of a curve to the left of radius  
5,797.58 feet (chord bearing S04°57'34"E) (chord 1,039.14  
feet) (delta 10°17'00") for 1,040.54 feet to a POINT OF  
TANGENCY;  
THENCE run S10°06'04"E along said Westerly line for 938.08  
feet to an intersection with the North line of the  
Northeast Quarter (NE¼) of said Section 16;  
THENCE run S89°23'00"W along said North line for 708.94  
feet to the Northwest corner of said Northeast Quarter  
(NE¼) of Section 16;  
THENCE run S00°02'54"W along said West line of the  
Northeast Quarter (NE¼) for 2,643.98 feet to the Southwest  
corner of the Northeast Quarter (NE¼) of said Section;  
THENCE run N89°10'38"E along the South line of said  
fraction for 538.06 feet;  
THENCE run S00°06'43"E for 1,085.91 feet;  
THENCE run N89°06'43"E for 744.41 feet to an intersection  
with the West line of said Tamiami Trail;  
THENCE run Southerly along said West line, along the arc of  
a non-tangent curve to the right of radius 5,619.58 feet

continued...

(chord bearing S00°22'05"E) (chord 50.21 feet) (delta 00°30'42") for 50.21 feet to a POINT OF TANGENCY;  
THENCE run S00°06'43"E along said West line for 49.81 feet;  
THENCE run S89°06'43"W for 300.00 feet;  
THENCE run S00°06'43"E for 1,445.82 feet to an intersection with the South line of the Southeast Quarter (SE¼) of said Section 16;  
THENCE run S89°16'54"W along said South line of said fraction for 989.41 feet to the Southeast corner of the Southwest Quarter (SW¼) of said Section 16;  
THENCE run S88°38'34"W along said South line of said Southwest Quarter (SW¼) for 2,627.98 feet to the POINT OF BEGINNING.

ALSO

PARCEL 2

A tract or parcel of land lying in Sections 07, 08, 17 and 18 which tract or parcel is described as follows:

From a railroad spike marking the Northwest corner of the Southwest Quarter (SW¼) of said Section 08 run S00°23'24"E along the West line of said fraction for 25.00 feet to an intersection with the South line of Coconut Road (50 feet wide) and the POINT OF BEGINNING.

From said POINT OF BEGINNING run S89°16'14"E along said South line for 3,253.00 feet to an intersection with the West line of Spring Creek Road;

THENCE run S00°07'17"W along said West line for 2,610.71 feet to an intersection with the South line of said Section 08;

THENCE run S00°07'58"W along said West line for 2,646.47 feet;

THENCE run N89°58'35"W along the North line of Coconut Road for 689.04 feet to an intersection with the East line of the Northwest Quarter (NW¼) of said Section 17;

THENCE run N89°59'08"W along said North line for 404.79 feet to the Southeast corner of lands described in Official Record Book 411 at Page 759 of said Public Records;

THENCE run N01°31'36"E along the East line of said lands for 960.34 feet;

THENCE run N89°59'08"W along the North line of said lands for 2,200.77 feet to an intersection with the East line of the Northeast Quarter (NE¼) of said Section 18;

THENCE continue N89°59'08"W for 1,840 feet more or less to the waters of Estero Bay;

THENCE run Northerly along the waters of Estero Bay for 8,300 feet more or less to an intersection with the North line of the South Half (S½) of Government Lot 2 of said Section 07;

continued...

THENCE run N89°32'15"E along the North line of said Government Lot 2 for 545 feet more or less to the Northwest corner of lands described in Official Record Book 1895 at Page 3817 of said Public Records;  
THENCE run S08°50'45"E along the West line of said lands for 199.50 feet;  
THENCE run N89°32'15"E along the South line of said lands for 247.50 feet;  
THENCE run N89°35'27"E for 666.22 feet;  
THENCE run N89°32'15"E for 239.00 feet to an intersection with the West line of Coconut Road;  
THENCE run S01°07'45"E along said West line for 488.63 feet;  
THENCE run N89°40'05"E along the South line of said Coconut Road for 24.69 feet to the POINT OF BEGINNING.  
LESS and EXCEPT lands described in Official Record Book 1677 at Page 3516 of the Public Records of Lee County, Florida.

ALSO

PARCEL 3

A tract or parcel of land lying in Sections 05 and 08, Township 47 South, Range 25 East, Lee County, Florida, consisting of:  
Lots 8B, 9B, 10B, 11B, 12B, 21B, 22B, 23B, 24B and 25B of FLORIDA GULF LANDCOMPANY SUBDIVISION as recorded in Plat Book 1 at Page 59 of the Public Records of Lee County, also Lot 8, Block 14 of ELDORADO ACRES (an Unrecorded Subdivision), as shown in Deed Book 310 at Page 183 of the Public Records of Lee County, also the East Three-quarters (E-3/4) of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of said Section 05, also the East Two-thirds (E-2/3) of the Southwest Quarter (SW¼) of the Southwest Quarter (SW¼) of said Section 05, also the East Two-thirds (E-2/3) of the Western Half (W½) of the Northwest Quarter (NW¼) of said Section 08; being more particularly described by metes and bounds as follows:

From the Northwest corner of the Southwest Quarter (SW¼) of said Section 08 run S89°16'14"E along the North line of said Southwest Quarter (SW¼) for 422.61 feet;  
THENCE run N01°05'22"W for 40.02 feet to the POINT OF BEGINNING.

From said POINT OF BEGINNING continue N01°05'22"W for 2,610.06 feet;

THENCE run N01°22'23"W for 1,304.41 feet;  
THENCE run N89°56'22"W for 107.12 feet;  
THENCE run N01°22'55"W for 1,303.87 feet;  
THENCE run N89°34'15"E for 2,593.81 feet;  
THENCE run S00°26'45"E for 2,655.42 feet;

continued...

THENCE run N88°48'50"W along the North line of said Section 08 for 322.66 feet;  
THENCE run N89°25'01"W for 587.55 feet;  
THENCE run S00°50'16"E for 132.58 feet;  
THENCE run N89°11'54"W for 75.00 feet;  
THENCE run N00°50'16"W for 132.30 feet;  
THENCE run N89°25'01"W for 610.69 feet;  
THENCE run S01°00'35"E for 2,612.12 feet to an intersection with the North right-of-way line of Coconut Road;  
THENCE run N89°16'14"W along said North right-of-way line for 845.23 feet to the POINT OF BEGINNING.

ALSO

PARCEL 4

All of Government Lot 1, Section 07, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

Beginning at a concrete monument marking the Northeast corner of Government Lot 1 of said Section 07, run S01°07'45"E along the East line of said Section 07 for 1,324.52 feet to the Southeast corner of said Government Lot 1;  
THENCE run S89°33'42"W along the South line of said Government Lot for 1,747.82 feet to a concrete post at the waters of Estero Bay;  
THENCE run Northerly and Westerly along the waters of Estero Bay to an intersection with the North line of said Section 07;  
THENCE run N89°48'31"E along said North line for 2,575 feet more or less to the POINT OF BEGINNING.

Containing 2,409 acres, more or less.  
Bearings hereinabove mentioned are based on the East boundary line of Pelican's Nest Unit No. 1 as recorded in Plat Book 41 at Pages 58 through 60 of the Public Records of Lee County, Florida.

ALSO

BEACH PARCEL

A tract or parcel of land lying in Government Lot 3, Section 13, and Government Lot 2, Section 24, Township 47 South, Range 24 East, Big Hickory Island, Lee County, Florida, which tract or parcel is described as follows:  
From the center of a turnaround on SR 865 (Bonita Beach Road) being S.R.D. Station 19184.75 and N24°28'41"W along the northern prolongation of said centerline of SR 865 for 266.00 feet;  
THENCE run S62°26'49"W for 98.40 feet;

continued...

THENCE run N27°33'11"W for 1,863.42 feet;  
THENCE run N20°00'41"W for 1,403.30 feet;  
THENCE run N65°00'00"E for 313.91 feet to the POINT OF BEGINNING.

From said POINT OF BEGINNING run N18°55'11"W for 97.51 feet, N22°26'23"W for 100.53 feet, N23°09'50"W for 100.14 feet, N14°51'19"W for 73.01 feet, N27°40'10"W for 88.01 feet, N29°33'57"W for 46.01 feet, N22°14'53"W for 47.27 feet, N20°39'23"W for 46.98 feet, N11°15'38"W for 29.80 feet, N26°10'46"W for 46.87 feet, N09°09'45"W for 48.26 feet, N17°35'56"W for 46.04 feet, N12°49'07"W for 50.04 feet, N29°20'48"W for 69.12 feet, N20°48'58"W for 63.82 feet;

THENCE run N79°23'51"W for 247 feet more or less to an intersection with the Approximate Mean High Water Line of the Gulf of Mexico;

THENCE run Northerly and Northeasterly along said waters for 1,140 feet more or less to an intersection with the South line of lands described in Official Record Book 198 at Page 188 of the Public Records of Lee County, Florida; THENCE run along said South line, along the arc of a curve to the right of radius 12,000.00 feet for 783 feet to an intersection with the Waters of New Pass;

THENCE run Southerly, Easterly, Southwesterly and Southerly along said waters for 4,080 feet more or less to an intersection with a line bearing N65°00'00"E and passing through the POINT OF BEGINNING;

THENCE run S65°00'00"W for 181 feet more or less to the POINT OF BEGINNING.

AND

From said POINT OF BEGINNING run S13°03'59"E for 94.16 feet;

THENCE run S19°13'48"E for 50.64 feet;

THENCE run S04°34'15"E for 54.63 feet;

THENCE run S24°53'12"E for 50.09 feet;

THENCE run S27°10'29"E for 50.01 feet;

THENCE run S31°01'44"E for 42.51 feet to an intersection with the South line of lands described in Official Record Book 2246 at Page 4413 of the Lee County Records;

THENCE run N65°00'00"E along said South line for 134 feet, more or less to the waters of Estero Bay;

THENCE Northerly along said waters for 358 feet, more or less to an intersection with a line bearing N65°00'00"E and passing through the POINT OF BEGINNING;

THENCE run S65°00'00"W for 181 feet, more or less to the POINT OF BEGINNING.

Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone.

continued...

ALSO

SPRING CREEK WEST DRI PARCEL

All of the Northwest Quarter (NW¼) of Section 21, Township 47 South, Range 25 East, Lee County, Florida:

ALSO INCLUDED THERETO:

All of the Northeast Quarter (NE¼) lying West of Tamiami Trail (US 41) of Section 21, Township 47 South, Range 25 East, Lee County, Florida;

ALSO INCLUDED THERETO:

All of the East Half (E½) of the Southwest Quarter (SW¼), lying North of Spring Creek less the East 600 feet thereof, Section 21, Township 47 South, Range 25 East, Lee County, Florida.

ALSO INCLUDED THERETO:

All of the Southeast Quarter (SE¼) of Section 21, lying West of Tamiami Trail (US 41) and North of Spring Creek, Township 47 South, Range 25 East, Lee County, Florida;

Subject to easements and restrictions of record.  
Containing 273.1 acres more or less.

AND

The East 600 feet of the East Half (E½) of the Southwest Quarter (SW¼) of Section 21, Township 47 South, Range 25 East, Lee County, Florida.  
Parcel contains 9.7 acres more or less.

Together with the right for ingress and egress over the following described parcel:

A strip of land 60 feet in width lying 30 feet on each side of the East and West Quarter Section line of Section 21, Township 47 South, Range 25 East, extending from the Northwest corner of the East Half (E½) of the Southwest Quarter (SW¼) of said Section to Tamiami Trail (US 41).

Subject to any easements, restrictions, reservations and rights-of-way of record.

WHEREAS, Pelican Landing Communities, Inc. the owner of the subject parcel, authorized Pavese, Garner, Haverfield, Dalton, Harrison & Jensen to act as agent to pursue this application; and

WHEREAS, a public hearing was properly advertised and held on August 16, 1995 before the Lee County Board of County Commissioners who gave full and complete consideration to the recommendations of the staff, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that the Board APPROVES the Applicant's request for an Amendment to the Pelican Landing Development of Regional Impact; makes a finding of NO SUBSTANTIAL DEVIATION under the provisions of Section 380.06(19), Florida Statutes; and ADOPTS the Second DRI Development Order Amendment.

The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner Manning, and seconded by Commissioner Judah and, upon being put to a vote, the result was as follows:

John E. Manning	AYE
Douglas R. St. Cerny	ABSENT
Ray Judah	AYE
Andrew W. Coy	AYE
John E. Albion	AYE

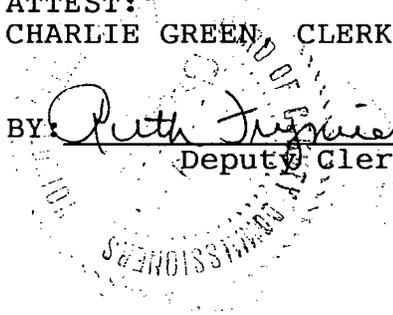
DULY PASSED AND ADOPTED this 16th day of August, A.D., 1995.

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: Ruth Feynman  
Deputy Clerk

BY: John E. Albion  
Chairman



Approved as to form by:  
Connors Maw Collins  
County Attorney's Office

FILED

AUG 24 1995

CLERK CIRCUIT COURT  
BY: Ruth Feynman D.C.

EIGHTH DEVELOPMENT ORDER  
AMENDMENT  
FOR

SPRING CREEK

A DEVELOPMENT OF REGIONAL IMPACT

STATE DRI #10-7677-9  
COUNTY CASE #95-01-280.04Z 13.01 (85-12-01-DRI)

WHEREAS, ON JUNE 6, 1995, PELICAN LANDING COMMUNITIES, THE OWNER OF THAT PORTION OF SPRING CREEK DEVELOPMENT OF REGIONAL IMPACT (DRI) LOCATED WEST OF US 41, KNOWN AS SPRING CREEK WEST, REQUESTED AN AMENDMENT TO THE ORIGINAL DEVELOPMENT ORDER ADOPTED ON APRIL 20, 1977, AS AMENDED; and

WHEREAS, Section III, condition 16 of the Pelican Landing DRI #1-9293-121 requires Pelican Landing Communities, Inc. to incorporate Spring Creek West DRI into the Pelican Landing DRI; and

WHEREAS, this amendment does not affect that portion of Spring Creek owned by Bonita Bay limited Partnership, known as Spring Creek East; and

WHEREAS, the amendments proposed to the Development Order are in the purview of Subsection 380.06(19)(e)2, Florida Statutes, thereby eliminating the need for further DRI review; and

WHEREAS, the proposed changes to the Spring Creek DRI Development Order described in this document are consistent with the Comprehensive Land Use Plan of Lee County and applicable local land development regulations; and

WHEREAS, the proposed changes to the Spring Creek DRI Development Order will not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area; and

WHEREAS, the proposed changes are consistent with the State Comprehensive Plan.

NOW, THEREFORE, LET IT BE ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, that conditions of the Development Order for Spring Creek DRI is further amended with new language underlined. All other portions of the original Development Order and subsequent amendments remain in full force and effect.

Eighth Development Order Amendment for Spring Creek

All lands legally described herein as Spring Creek West and all conditions which are applicable to Spring Creek West are incorporated into the Pelican Landing DRI #1-9293-121. The impacts of the Spring Creek West development will not be considered in any future change to the Pelican Landing Development Order. Any change to the Spring Creek West development will require analysis of the Spring Creek West development and will not include the Pelican Landing development. This amendment is solely for the purpose of consolidating Spring Creek West and Pelican Landing under the same Development Order and none of Spring Creek West's vested rights will be lost due to this amendment.

SECTION ONE (Legal Description)

The ownership of the project is hereby changed as follows: The Estate of David B. Shakarian, is the owner of that portion of the Spring Creek DRI east of US 41 (Spring Creek East) and Westinghouse Bayside Communities, Inc., is the owner of the Spring Creek DRI west of US 41 (Spring Creek West). A legal description of the respective sides is set forth below:

Spring Creek DRI - East of US 41 ("Spring Creek East")

All of Section 21, Township 47 South, Range 25 East, Lee County, Florida, lying East of Tamiami Trail (US 41);

ALSO INCLUDED THERETO:

All of Section 22, Township 47 South, Range 25 East, Lee County, Florida, lying west of Atlantic Coast Line Railroad right-of-way;

Subject to easements and restrictions of record;

Containing 278.4 acres more or less.

Spring Creek DRI - West of US 41 ("Spring Creek West")

All of the Northwest Quarter (NW $\frac{1}{4}$ ) of Section 21, Township 47 South, Range 25 East, Lee County, Florida;

ALSO INCLUDED THERETO:

All of the Northeast Quarter (NE $\frac{1}{4}$ ) lying West of Tamiami Trail (US 41) of Section 21, Township 47 South, Range 25 East, Lee County, Florida;

ALSO INCLUDED THERETO:

All of the Southeast Quarter (SE $\frac{1}{4}$ ) of Section 21, lying west of Tamiami Trail (US 41) and north of Spring Creek, Township 47 South, Range 25 East, Lee County, Florida;

continued ...

Eighth Development Order Amendment for Spring Creek

Subject to easements and restrictions of record.

Containing 273.1 acres more or less.

AND:

The East 600 feet of the East Half ( $E\frac{1}{2}$ ) of the Southwest Quarter ( $SW\frac{1}{4}$ ) of Section 21, Township 47 South, Range 25 East, Lee County, Florida.

Parcel contains 9.7 acres, more or less.

TOGETHER WITH the right for ingress and egress over the following described parcel: A strip of land 60 feet in width lying 30 feet on each side of the East and West Quarter Section line of Section 21, Township 47 South, Range 25 East, extending from the Northwest corner of the East Half ( $E\frac{1}{2}$ ) of the Southwest Quarter ( $SW\frac{1}{4}$ ) of said Section to Tamiami Trail (US 41).

Subject to any easements restriction, reservations and rights-of-way of record.

SECTION TWO (Conditions applicable to the East and West sides)

1. The Developer shall obtain any required complex air source permits for the proposed development's four-lane primary collector prior to obtaining local Development Order approval for any portion of the proposed project.

2. Prior to the issuance of any building permits for the proposed development, all required complex and/or stationary air source permits shall be obtained from the Florida Department of Environmental Regulation.

3. The Developer shall comply with all commitments made in the original application for Development Approval, except as amended by the DRI Development Order, and any amendments thereto, and the developer of the west side shall comply with the Spring Creek West Land Use Summary (see Attachment A) Exhibit G-W-1 (the Master Land Use Plan for the west side)(see Attachment B). The Developer of the east side shall comply with the Spring Creek East Land Use Summary (see Attachment C) and Exhibit G-E (see Attachment E), and any information provided with the appropriate Notice of Change, or in response to sufficiency questions regarding the appropriate Notice of Change. The Developer shall comply with the Lee County Comprehensive Plan and its implementing ordinances concerning wetlands, to the extent said regulations are consistent with the Notice of Change, and any duly adopted Exhibits.

4. The drainage design features and water quality maintenance program outlined in the Application for Development Approval are incorporated into this development order, except as revised or

## Eighth Development Order Amendment for Spring Creek

superseded by the information and analysis contained within the applicable Notice of Change. A routine maintenance program for the system must be initiated, in accordance with the applicable regulations of the SFWMD, to assure that surface water quality within the development is properly maintained.

5. The Developer shall comply with the SFWMD wetland buffer requirements and applicable Lee County regulations regarding plantings along the slopes of man made water bodies.

6. All lakes created within the project are to be constructed with slopes which comply with applicable Lee County and SFWMD regulations.

7. Prior to obtaining local Development Order approval for any portion of the proposed project, the Developer shall consult with the U.S. Geological Survey and/or the South Florida Water Management District to determine the condition of all irrigation wells found within the site. Should any irrigation wells be found to be a potential threat to the water quality of the area, the Developer shall undertake any action recommended by USGS and/or SFWMD to remedy the situation.

8. Prior to local Development Order approval of any portion of the proposed project, the Developer will obtain a surface water management permit from the South Florida Water Management District pursuant to Chapter 373, Part IV, Florida Statutes.

9. The Developer of Spring Creek East shall provide for the continuation of the existing east-west flow-ways crossing the southern portion of the industrial property. The Developer shall not preclude the restoration of flows into the natural wetland areas in the design of the development's stormwater management system. Drainage easement(s) for the east-west flow-ways shall be granted to Lee County, by the Developer of Spring Creek East, prior to obtaining the local final Development Order in the area of the flow-ways.

10. No irrigation wells tapping the water table aquifer in the proposed project shall be permitted within 1,000 feet of Spring Creek and its tributaries without the prior written approval of the SFWMD. The restriction shall be stipulated as a condition of Development Order approval for those portions of the proposed project which abut or which are within 1,000 feet of Spring Creek and its tributaries, unless the approval for said wells has been obtained from the SFWMD.

11. The Developer is required to meet with the USGS and SFWMD to determine the placement of observation wells monitoring the water levels and the quality of the water table aquifer within the proposed project. These observation wells shall be identified on all final plans and installed prior to the issuance of any building permits.

Eighth Development Order Amendment for Spring Creek

12. The Developer commits to reserve 6.5 acres for the development of publicly assisted housing within Spring Creek East until 70 percent of the total approved multi-family units have been constructed within this development. The Developer for the east side of the DRI shall meet with the Lee County Planning Department and/or other appropriate agencies designated by Lee County to determine the procedure and means whereby the provisions of low and moderate income housing within the proposed project can be realized. The commitment to reserve 6.5 acres located in Spring Creek East mitigates the affordable housing impacts resulting from the development of the east and west sides of the Spring Creek DRI.

13. (Paragraph 13 was deleted by the July 28, 1986 amendment)

14. The Developer may construct up to a 6.3 million gallons per day (6.3 MGD) wastewater treatment facility. Such facility shall include a tertiary treatment plant consisting of secondary treatment plus filtration which provides for re-use, through spray irrigation of the purified wastewater, of 100% of the effluent generated by operation of the plant. Backup storage or disposal of the purified wastewater during non-irrigation periods shall be provided by using the lined pump station reservoir to be located in the existing borrow pit. In addition to the existing borrow pit, the Developer shall consider alternate methods of backup storage or disposal (for use during non-irrigation periods) as may be required by regulatory authorities, considering the capacity of the facility to be built. The Developer's intent is to re-use purified wastewater and have a backup system which promotes storage rather than disposal of such wastewater, in an economical manner so as to justify an area wide facility. Alternate methods which promote re-use of purified wastewater shall be the preferred method of backup storage. Methods to be considered, shall be:

A. Installation of a dual water system wherein wastewater producers will buy back treated wastewater for non-potable uses.

B. Off-site storage in holding/percolation ponds located in projects owned or controlled by the wastewater producers referenced in item (A).

C. Additional spray irrigation as may be permitted by the appropriate regulatory authorities. The Lee County Department of Economic and Community Development will assist the Developer in its attempts to obtain approval for spray irrigation capacity in addition to what is permitted under current regulations.

D. A combination of A, B and/or C.

E. Underground storage and re-use.

## Eighth Development Order Amendment for Spring Creek

F. Use of additional land east of the existing site, for use as additional holding/percolation ponds or spray irrigation, giving due consideration to:

(1) The amount of land required considering existing regulatory requirements.

(2) The availability of such land for purchase and/or use and the cost thereof.

(3) The distance between the site and such land and the cost of obtaining the necessary easements to access such land and pumping wastewater to and from such land.

(4) The cost of constructing holding/percolation ponds or spray irrigation facilities and the water lines from the site to such ponds and back.

## G. Deep Well Injection

(1) The Developer may consider the above alternatives at such time as is necessary to properly plan for the permitting, construction and operation of an expanded facility, giving due consideration to the present and future needs of the Developer's existing and potential customers. Before the Developer proceeds to alternative G, he shall demonstrate why alternatives A through F are not feasible, not sufficient considering regulatory requirements, not economically viable or cannot be used, by supplying written documentation to the Southwest Florida Regional Planning Council, the Lee County Department of Economic and Community Development and the Department of Community Affairs.

(2) There shall be no discharge of effluent into Spring Creek. The plant and necessary injection sites for underground storage and recovery or deep well disposal shall be located within the Industrial Tract (IL), northerly of the proposed east-west collector road which will pass through the IL tract and no closer than 1,000 feet from the southern property line of the tract. A lined pump station reservoir shall be located in the existing borrow pit adjacent to and immediately west of the Industrial Tract.

(3) The Developer shall construct groundwater monitoring wells prior to operating the backup underground or disposal system in accordance with applicable permit requirements imposed by the Department of Environmental Regulation and the South Florida Water Management District.

(4) The Developer's plans for the wastewater treatment facility must be approved and a construction permit issued by the Florida Department of Environmental Regulation prior to final construction approval by Lee County. The Developer will obtain a Lee County Resource Protection Area determination prior to initial applications for development approval.

## Eighth Development Order Amendment for Spring Creek

H. The above provisions permit the construction of a regional wastewater treatment facility. The wastewater treatment facility was initially constructed by Bonita Bay Properties (owned by the Estate of David B. Shakarian). The wastewater treatment plant has been transferred to the Bonita Springs Utility Company. The Developers of Spring Creek East and Spring Creek West shall connect all residential, commercial, and industrial development within the Spring Creek DRI to the regional wastewater treatment facility. The provision of the existing facility adequately mitigates the wastewater impacts of the Spring Creek DRI.

15. Prior to local Development Order approval for that portion of the proposed development under consideration, a plan for the proposed project's water distribution system must be presented to and approved by Lee County Development Review Section for compliance with the Lee County land development regulations, as may be amended and a performance bond or equivalent surety must be provided to assure the proper and timely installation of the distribution system.

16. The Developer is encouraged to incorporate energy efficient architectural design and utilize energy-conserving materials for all dwelling units and commercial buildings within the proposed project.

17. The access points to and from US 41 are tentatively shown on the Master Land Use Plan. Access points, when constructed, shall be consistent with access management requirements and/or plans approved by the Florida Department of Transportation. The Developer shall provide a vegetation buffer along the respective side of US 41. The vegetative buffer shall be provided in accordance with the requirements for the buffering of arterial roadways set forth in the Lee County land use regulations as may be amended.

18. A. The Developer shall provide all site related improvements including the respective Developer's access points onto US 41, in accordance with the requirements of any applicable Lee County development regulations, as may be amended.

B. The Developer shall pay road impact fees in accordance with any duly adopted road impact fee ordinance of Lee County, as may be amended. Should those provisions of the Lee County road impact fees be repealed, made unenforceable or otherwise be no longer in effect, the Developer(s) shall nevertheless be required to make payment equal to the Lee County road impact fees that are applicable for Spring Creek West and/or Spring Creek East, whichever is appropriate.

C. The Developer shall not be entitled to impact fee credits for any road or intersection improvements the Developer provides, except as credits are provided for in accordance with any duly adopted road impact fee ordinance of Lee County, as may be amended.

## Eighth Development Order Amendment for Spring Creek

D. The Developer shall monitor, on an annual basis, all US 41 access points to the project that are not otherwise monitored by the Bonita Bay DRI and the Pelican Landing DRI. The annual monitoring of access points shall be done in accordance with the methodology agreed to by Lee County Department of Transportation and the Division of Zoning and Development Review.

The Developer shall provide turn lanes on the project's internal road system where turning volumes make such improvements necessary to protect the health, safety and welfare of the public or the residents of the project or to reduce adverse traffic impacts on the internal project street system. The Developer shall provide the County, at the time of local development order submittal, with the data which indicates the number of turning movements and the direction of the turning movements, on a peak hour (AM & PM) basis at the access points from the area, which is the subject of the local final development order application, onto the internal project road system, to enable the County to verify the determination as to whether or not the turning volumes warrant the construction of the turn lanes in accordance with Lee County Turn Lane Policy.

E. The continuation of the proposed project's primary collector road through adjoining properties to the east connecting with County Road 887 (Old 41) is desirable. The Developer shall comply with the Lee County Comprehensive Plan and its implementing ordinances in relation to this east-west collector roadway.

19. (Paragraph 19 was deleted during Sixth Development Order Amendment process.)

20. Prior to local Development Order approval of any portion of the Spring Creek project, determination shall be made by the Developer of what improvements will be constructed in the planned recreation areas and what will be left for improvement by the Home Owner's Association. The recreational area improvements planned for accomplishment by the Developer shall be submitted to Lee County for approval.

21. The commitment to provide a fire station site has been fulfilled.

22. The Developer is aware that portions of the Spring Creek project are subject to intermittent flooding. All structures within the Spring Creek project shall comply with the minimum floor elevation standards in force at the time building permit applications are submitted to the County.

23. The Application for Development Approval as filed by the Applicant includes all the applicable commitments, maps and exhibits and is made a part of this Development Order, and all conditions, restrictions and limitations included in the application, except as

## Eighth Development Order Amendment for Spring Creek

superseded by the information submitted subsequent to the ADA and adopted through subsequent Development Order amendments and local Zoning Resolutions are to run with the land.

24. The 21 acre school and park site indicated on the plans east of new US 41 has been dedicated to the Lee County School Board and is the site of the Spring Creek Elementary School and a 5.4 acre park.

25. The area set aside in the Application for Development Approval and planned as an industrial district is approved for Light Industrial uses only, with Light Industrial uses to be defined to include the following: beverage bottling and manufacturing, building maintenance service, cabinet shops, carpet cleaning, clothing manufacturing, contractor storage yard excluding asphalt, clay and concrete mixing and products manufacturing, dry cleaning and dyeing establishments, equipment rental including lawn mowers, power saws, etc., furniture manufacturing, government services and accessory buildings and structures, laundry plant, mattress manufacturing and renovations, mini-warehouses, novelties manufacturing, printing and publishing, upholstery shops, utility services including wastewater treatment, warehouses and wholesale establishments or similar uses.

26. The plans, residential-commercial-industrial mixed development as proposed in the Application for Development Approval, was originally approved with the total dwelling units not to exceed 1,800 for the 595 acres which represents a gross density of three (3) dwelling units per acre and a net density of 7.96 dwelling units per acre. Exhibit G-W-1, attached hereto, reflects the addition of the ±9.7 acres of land to Spring Creek West (see Attachment B). Exhibit G-W-1 (for the west side of Spring Creek DRI), reflects the previous reduction from the 1305 units originally approved for the west side of the DRI, to 800 units, for a gross density of 2.8 units per acre. Exhibit G-E reflects the total 495 dwelling units approved for the east side, for a gross density of 1.78 units per acre.

Conditions 3 and 5 of Section Four of the July 28, 1986 and September 26, 1988 Development Order Amendments are revised as follows:

3. Developer has received Certificate of Completion on said sewage treatment plant.

5. Deleted

### SECTION THREE: (Conditions applicable to the West Side)

1. Should an Incidental Take Permit be obtained by Spring Creek West from the Florida Game and Fresh Water Fish Commission to take any gopher tortoise burrows within the Spring Creek West property, then Spring Creek West agrees to relocate the displaced gopher tortoises within the preserve areas, open space areas, or

## Eighth Development Order Amendment for Spring Creek

golf course. Should an Incidental Take Permit not be obtained, Spring Creek West shall provide a gopher tortoise management plan and obtain County approval, prior to the granting of a local Development Order.

2. There are upland plant communities on the site which are valuable from a biological standpoint. Some of the upland plant communities are being preserved in the preservation areas shown on Exhibit G-W. The Developer shall require individual homeowners' to preserve as much native vegetation as possible through the adoption and enforcement of restrictive covenants that require partial retention of native vegetation within individual building sites. The Developer shall incorporate as much native upland plant areas into the golf course design as is reasonably possible. Particular attention shall be placed on preservation of the scrub oak/rosemary vegetative community within individual building sites and the golf course.

3. Upland Preserve areas shall remain in their natural condition except for protective management. This shall not exclude limited encroachment necessitated by utility installation or golf cart paths. The encroachment necessitated by utility installation or golf cart paths shall not encroach on more than 5% of the upland preserve areas. In all cases, these facilities shall be designed to minimize impacts on vegetation and gopher tortoise burrows. In order to create habitat conducive to the gopher tortoise population in the preservation area on the western side of the creek which consists of an old spoil mound, the Developer shall establish appropriate vegetative conditions.

4. The Developers of Spring Creek East and West shall be responsible for compliance with the Spring Creek master land use plans for the development of their respective side only. The Developers of the respective side will be responsible for the provision of an annual monitoring report for their respective side only. The Developers of the respective sides shall not be found to be in violation of the DRI Development Order, and any other pertinent development regulation of the State of Florida, the SWFRPC, SFWMD, Lee County, or any other regulatory agency with jurisdiction over the subject property based on the action of the Developer of the other side, and each Developer shall only be responsible for compliance on the side over which the Developer has authority and control.

5. The Developer of Spring Creek West shall comply with the requirements of the Florida Game and Fresh Water Fish Commission (FGFWFC) relative to the gopher tortoise population present on the Spring Creek West property, to include, but not be limited to:

a. The preparation of a management plan which meets with the approval of the FGFWFC, and

## Eighth Development Order Amendment for Spring Creek

b. The creation of conservation easements which are consistent with the approved management plan.

The management plan, upon its acceptance by the FGFWFC and the Developer, shall be forwarded to DCA, the SWFRPC and Lee County. The Developer shall forward a copy of the recorded conservation easement to the DCA, the SWFRPC and Lee County.

The management plan shall be enforceable by the DCA and Lee County in the same manner as any other conditions of the DRI Development Order. There may be minor adjustments to the Management Plan, as the Plan is implemented in the field. The Developer must obtain the approval of the FGFWFC for these changes. If the minor adjustments meet with the approval of the FGFWFC, there shall be no need to amend this Development Order. A copy of the Management Plan, as it may be revised, shall be forwarded to Lee County, DCA, and the SWFRPC.

6. Exhibit G-W is hereby amended by Exhibit G-W-1, stamped received February 23, 1995 which reflects the addition of 9.7± acres of land to Spring Creek West (see Attachment B).

### SECTION FOUR (Conditions applicable to the East Side)

1. The open space commitments for the east side described in the Application for Development Approval and revised in the Notification of Proposed Change are depicted in the Open Space Table (see Attachment D) and on the Master Land Use Plan, Exhibit G-E (see Attachment E). The open space depicted on Exhibit G-E shall remain undeveloped except for recreational or water management uses. Only passive recreational uses (i.e. nature paths, boardwalks) shall be permitted in preserve areas. Prior to issuance of any local Development Orders with respect to the Spring Creek DRI East property, the developer shall provide satisfactory assurance to the Lee County Attorney's Office that notice of the Open Space commitments depicted on Exhibit G-E will be recorded in the public records of Lee County. Such notice shall be established by recordation of appropriate restrictive covenants or other documents acceptable to the County Attorney, which shall be applicable to the areas designated as open space on Exhibit G-E.

2. Should an Incidental Take Permit or a Generic Relocation Permit be obtained by Spring Creek East from the Florida Game and Fresh Water Fish Commission to take any gopher tortoise burrows within the Spring Creek East property, then Spring Creek East agrees to relocate the displaced gopher tortoises within the preserve areas, or open space areas.

3. All lakes shown on Exhibit G-E are approved in concept only and specific locations shall be subject to all applicable regulations except where specific deviations from local regulations have been approved.

Eighth Development Order Amendment for Spring Creek

4. Section Three No. 4 above also applies to the East Side.
5. Exhibit G is further amended by Exhibit G-E (See Attachment E).
6. The 4.0 acre parcel designated as Office/Retail directly adjacent to the Spring Creek Elementary School (as shown on Exhibit G-E) is approved for the following uses only:

Administrative offices (df); auto parts store, no installation service; automatic teller machines (ATM's); banks and financial institutions - Group I (Section 1001.03); boat parts stores, no installation service; business services - Group I (Section 1001.05); day care center - child and/or adult (Section 506); drugstore; emergency medical services (ambulance); essential services (df) (Section 202.12); excavation - water retention (Section 202.13); food store (Groups I and II (Section 1001.16); hardware store (df); health care facility - Group III (Section 1001.20); hobby, toy and game shops (Section 1001.21); music store (df); offices - medical; personal services - Group I (Section 1001.33); pet shop (df); pharmacy (df); place of worship (df) (Section 521); recreation center (Section 526); recreation facilities, public or private, indoor only; religious facilities (Section 521); repair shops - Group I (Section 1001.40); restaurants - Group I (Section 1001.44); signs, provided such signs comply with the Lee County Sign Ordinance; specialty retail shop - Groups I and II (Section 1001.47); and storage, indoor (df) only.

Prior to the issuance of the final local development order on the 4.0 acre Office/Retail parcel, the developer shall provide satisfactory assurance to the Lee County Attorney's Office that the uses on the parcel are restricted to those listed above by appropriate restrictive covenants or other documents acceptable to the Lee county Attorney's Office. Additionally, a Type "C" buffer pursuant to the local land development code which includes a fence or wall not less than eight (8) feet in height shall be provided between the school site and the 4.0 acre Office/Retail parcel.

SECTION FIVE

Certified copies of this Development Order will be transmitted to the Southwest Florida Regional Planning Council, the developer, and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but shall not be effective until the expiration of the statutory appeals period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Upon this Development Order Amendment becoming effective, notice of its adoption shall be recorded by the applicant as provided in Chapter 380, Florida Statutes.

Eighth Development Order Amendment for Spring Creek

THE MOTION TO ADOPT the above amendments to the development order was offered by Commissioner Manning, seconded by Commissioner Judah and, upon poll of the members present, the vote was as follows:

John E. Manning	AYE
Douglas R. St. Cerny	ABSENT
Ray Judah	AYE
Andrew W. Coy	AYE
John E. Albion	AYE

DULY PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, THIS 16TH DAY OF AUGUST, A.D. 1995.

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA

BY: *John E. Albion*  
(CHAIRMAN)

ATTEST:

Charlie Green, Ex - Officio Clerk  
Board of County Commissioners, CLERK

BY: *Ruth Tymnia*  
DEPUTY CLERK

APPROVED AS TO FORM

BY: *Ann Marie Collins*  
COUNTY ATTORNEY'S OFFICE

FILED

AUG 24 1995

CLERK CIRCUIT COURT  
BY *Ruth Tymnia* D.C.

State of Florida  
County of Lee

I Charlie Green, Clerk of the Circuit Court for Lee County, Florida, do hereby certify this document to be a true and correct copy of the original document filed in the Minutes Department.

Given under my hand and official seal at Fort Myers, Florida, this 24th day of August, A.D. 1995

CHARLIE GREEN, CLERK  
By *Ruth Tymnia*  
Deputy Clerk

Eighth Development Order Amendment for Spring Creek

REVISED  
SPRING CREEK WEST  
LAND USE SUMMARY

<b>Residential 800 Units</b>		<b>128.9 Ac</b>	
R-SF	150 units	62.7 Ac	
R-MF	650 units	66.2 Ac	
<b>Commercial</b>			<b>1.9 Ac</b>
Retail	15,000 SF	1.9 Ac	
<b>Rec/Open Space</b>			<b>130.5 Ac</b>
P/O Park/Open Space		10.2 Ac	
CO Wetland Preserve/Creek Lake		16.8 Ac	
GC Golf Course		43.8 Ac	
UP/O Upland Preserve/OP Sp		44.3 Ac	
320 Scrub Oak/Rosemary	5.6 Ac	15.4 Ac	
411 Pine Flatwood	8.1 Ac		
421 Xeric Oak	.3 Ac		
743 Spoil	1.0 Ac		
<b>Miscellaneous</b>			<b>* 21.5 Ac</b>
Right-of-way		21.5 Ac	
<b>TOTAL AREA</b>			<b>282.8 Ac</b>
<b>TOTAL RESIDENTIAL UNITS</b>			<b>800</b>
<b>TOTAL RETAIL SF</b>			<b>15,000</b>

\* Right-of-way estimated to be within Residential areas  
is included in this acreage.

Buildout date: December 30, 1999

ATTACHMENT A



SPRING CREEK EAST

LAND USE SUMMARY

Residential 495 units		60.6 Ac
R-SF 300 units	52.8 Ac	
R-MF 195 units	7.8 Ac	
Commercial 368,000 sq. ft.		51.3 Ac
Retail 250,000 sq. ft.	36.0 Ac	
Office 70,000 sq. ft.	6.0 Ac	
Motel / Restaurant / Retail	9.3 Ac	
150 rooms 200 seats 48,000 sq. ft.		
Public Facilities		33.0 Ac
WWTP	16.1 Ac	
School	15.56 Ac	
Fire Station	1.34 Ac	
Rec/Open Space		52.8 Ac
P/O Park/Open Space	11.5 Ac	
PR Preservation /Creek	28.0 Ac	
Lake	13.3 Ac	
Industrial 180,000 sq. ft.		43.4 Ac
Miscellaneous		* 37.3 Ac
FP&L Easement	13.8 Ac	
Right-of-way	* 23.5 Ac	
TOTAL AREA		278.4 Ac
TOTAL UNITS		495
TOTAL SQUARE FOOTAGE		548,000

\* Right-of-way estimated to be within Residential areas is included in this acreage.

Buildout date: December 30, 1999

ZON3441/19-Jul-1993

ATTACHMENT C 9:

RECEIVED  
ZONING  
95MAY 16 AM 9:

SPRING CREEK EAST

OPEN SPACE COMMITMENTS

(DRI Master Plan/Plus Other Planned Open Space Areas)

<u>Area</u>	<u>Approximate Acres</u>
Recreation/Open Space (Parks, Preservation Areas, Creeks and Lakes)	52.8
Industrial Area <sup>1</sup> (Dry detention north of preservation area, includes area surrounding and north of lake)	4.0
Buffers (Adjacent to rights-of-way and between land uses)	<u>5.9</u>
	62.7 <sup>2</sup>

1. This area will not be developed except as water management/open space.

Does not include any acreage for landscaped areas in off-street parking lots which are allowed as open space in the local development regulations and will be provided when the retail and office areas are developed.

95 MAY 16 AM 9:16  
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SECOND DEVELOPMENT ORDER  
AMENDMENT  
FOR

PELICAN LANDING

A DEVELOPMENT OF REGIONAL IMPACT

STATE DRI #1-9293-121  
COUNTY CASE #95-01-050.04Z 04.01

WHEREAS, on June 6, 1995, Pelican Landing Communities, Inc., the owner of Pelican Landing Development of Regional Impact (DRI) requested an amendment to the original Development Order adopted August 29, 1994, as amended; and

WHEREAS, Section III Condition 16 of the Development Order requires the Developer to incorporate Spring Creek West DRI into the Pelican Landing DRI by adding the land described as Spring Creek West in Section I.B. and adding a new Findings of Fact/Conclusion of Law Section I.J.; and

WHEREAS, this document incorporates the first Development Order Amendment for Pelican Landing DRI adopted March 22, 1995 and the the Development Order conditions of the Spring Creek West DRI as set forth in the Eighth Amendment to Spring Creek DRI #10-7677-9; and

WHEREAS, the amendments proposed to the development order are in the purview of subsection 380.06(19)(e)2, Florida Statutes, thereby eliminating the need for further DRI review; and

WHEREAS, the proposed changes to the Pelican Landing DRI Development Order described in this document are consistent with the adopted Comprehensive Land Use Plan of Lee County and applicable local Land Development regulations; and

WHEREAS, the proposed changes to the Pelican Landing DRI Development Order will not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area; and

WHEREAS, the proposed changes are consistent with the State Comprehensive Plan.

NOW, THEREFORE, LET IT BE ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, that conditions of the development order for the Pelican Landing DRI adopted on August 29, 1994, and amended on March 22, 1995, are further amended as follows, with new language underlined and deletions struck through. All other portions of the original development order will remain in full force and effect.

Second Development Order Amendment

I. FINDINGS OF FACT/CONCLUSIONS OF LAW

A. The "Pelican Landing DRI" is a partially built master planned community on 2,100± acres located approximately three miles north of the Lee/Collier County line. The property is bounded on the west by Estero Bay, on the east by US 41, and on the south by Spring Creek. Coconut Road provides the general northern boundary of Pelican Landing; however, a part of the project is located north of Coconut Road.

The proposal is to construct 4,050 residential units, of which 665 are single-family and 3,385 multi-family, 600,000 square feet of gross floor area of retail commercial, and 210,000 square feet of gross floor area of office commercial. The retail uses will provide up to 2,400 parking spaces and the office uses will provide up to 700 parking spaces. The project will also include 450 hotel rooms, 50,000 square foot conference center, 65 wet boat slips and 150 dry boat slips, various recreational amenities including, but not limited to: golf, tennis, canoe parks, and a beach park for the benefit of the owners in Pelican Landing. There are 87 acres of upland habitat preserve, 507 acres of salt and freshwater wetlands, 208 acres of water management lakes, 140 acres of public and private rights-of-way, 6 acres of utilities and a .11 acre cemetery site.

Water supply and wastewater treatment, and reclaimed water, when available, will be provided by Bonita Springs Utilities, Inc. The project buildout is the year 2002.

B. LEGAL DESCRIPTION: In Sections 05, 07, 08, 09, 16, 17, 18, 20, and 21, Township 47 South, Range 25 East, and Sections 13 and 24, Township 47 South, Range 24 East, Lee County, Florida:

PARCEL 1

A tract or parcel of land lying in Sections 08, 09, 16, 17, 20 and 21, Township 47 South, Range 25 East, Lee County, Florida, which tract or parcel is described as follows:

BEGINNING at a concrete monument marking the Northeast corner of said Section 20 run S00°35'25"E along the East line of said section for 2,659.47 feet to the Southeast corner of the Northeast Quarter (NE¼) of said section;  
THENCE run N88°52'49"E along the North line of the Southwest Quarter (SW¼) of said Section 21 for 2,040.41 feet;  
THENCE run S00°51'35"E for 801.04 feet to the waters of Spring Creek;  
THENCE run along Spring Creek for 3,630 feet, more or less to an intersection of the East line of said Section 20 and the approximate centerline of Spring Creek;

continued...

Second Development Order Amendment

THENCE run along said centerline the following courses:

S78°50'00"W for 181.31 feet,  
N34°24'12"W for 230.22 feet,  
N30°59'12"W for 174.93 feet,  
N24°25'16"E for 120.83 feet,  
S65°47'43"E for 219.32 feet,  
N18°24'43"E for 158.11 feet,  
N75°11'47"W for 351.71 feet,  
N65°09'33"W for 451.88 feet,  
N84°18'44"W for 351.75 feet,  
N66°54'31"W for 445.79 feet,  
S63°24'43"W for 134.16 feet,  
S03°23'22"E for 170.29 feet,  
S50°30'17"W for 220.23 feet,  
N84°49'43"W for 331.36 feet,  
S62°13'07"W for 214.71 feet,  
S22°08'36"W for 291.55 feet,  
S72°15'11"W for 131.22 feet to an intersection with the East

line of the Southwest Quarter (SW $\frac{1}{4}$ ) of said Section 20;

THENCE run N00°50'19"W along said East line for 520.00 feet to the Northeast corner of said fraction;

THENCE run S89°58'37"W along the North line of said fraction for 290.00 feet to an intersection with the approximate centerline of the most Easterly branch of said Spring Creek;

THENCE run along said centerline the following courses:

N09°13'28"W for 137.34 feet,  
N29°08'22"W for 590.59 feet,  
N38°31'58"W for 278.03 feet,  
N65°16'43"W for 254.95 feet,  
N37°18'28"W for 286.01 feet,  
N32°51'05"E for 252.39 feet,  
N20°11'00"E for 236.69 feet,  
N27°23'47"W for 369.25 feet,  
N89°15'43"E for 50 feet, more or less to the Easterly shore of said Spring Creek;

THENCE run along said Easterly shore for 1,220 feet, more or less to an intersection with the North line of said Section 20;

THENCE run N89°15'13"E along said North line of said Section for 970 feet, more or less to a concrete monument marking the Northwest corner of the Northeast Quarter (NE $\frac{1}{4}$ ) of said Section 20;

THENCE run N00°31'30"E along the West line of the Southeast Quarter (SE $\frac{1}{4}$ ) of said Section 17 for 2,644.38 feet to an intersection with the South line of Spring Creek Road as described in Deed Book 305 at Page 276, Lee County Records;

THENCE run S89°58'35"E along said South line for 739.45 feet;

THENCE run N00°07'58"E for 30.00 feet to an intersection with the North line of the Southeast Quarter (SE $\frac{1}{4}$ ) of said Section 17;

continued...

Second Development Order Amendment

THENCE run S89°58'35"E along the North line of said fraction for 375.91 feet to the Southeast corner of lands described in Official Record Book 1713 at Page 1188 of said Public Records; THENCE run N00°41'04"W for 668.20 feet to the Northeast corner of said lands;  
THENCE run N89°50'32"W along the North line of said lands for 366.38 feet to the Easterly line of said Spring Creek Road (50 feet wide);  
THENCE run N00°07'58"E for 2,007.04 feet to an intersection with the South line of the Southeast Quarter (SE¼) of said Section 08;  
THENCE continue N00°07'17"E along said East line for 343.54 feet;  
THENCE run S89°38'58"E for 10.00 feet;  
THENCE run N00°07'17"E along said East line for 849.27 feet to the Southwest corner of lands described in Official Record Book 2039 at Page 3364 said Public Records;  
THENCE run S89°21'02"E along the South line of said lands for 189.98 feet;  
THENCE run N00°07'17"E along the East line of said lands for 125.01 feet;  
THENCE run N89°21'02"W along the North line of said lands for 199.98 feet to an intersection with the Easterly line of said Spring Creek Road;  
THENCE run N00°07'17"E along said East line for 1,292.76 feet to an intersection with the South line of Coconut Road (50 feet wide);  
THENCE run S89°16'14"E along said South line for 1,802.38 feet to an intersection with the West line of said Section 09;  
THENCE run N00°39'58"W along said West line for 25.00 feet to a concrete monument marking the Northwest corner of the Southwest Quarter (SW¼) of said Section;  
THENCE continue along said West line N00°39'58"W for 5.00 feet to an intersection with the South line of said Coconut Road as described in Official Record Book 1738 at Page 2538, said Public Records;  
THENCE run S89°35'50"E along said South line for 3,164.37 feet to an intersection with the West line of Tamiami Trail (SR 45);  
THENCE run S00°10'56"W along said West line for 621.81 feet to a POINT OF CURVATURE;  
THENCE run Southerly and Southeasterly along said West line, along the arc of a curve to the left of radius 5,797.58 feet (chord bearing S04°57'34"E) (chord 1,039.14 feet) (delta 10°17'00") for 1,040.54 feet to a POINT OF TANGENCY;  
THENCE run S10°06'04"E along said Westerly line for 938.08 feet to an intersection with the North line of the Northeast Quarter (NE¼) of said Section 16;  
THENCE run S89°23'00"W along said North line for 708.94 feet to the Northwest corner of said Northeast Quarter (NE¼) of Section 16;

continued...

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THENCE run S00°02'54"W along said West line of the Northeast Quarter (NE¼) for 2,643.98 feet to the Southwest corner of the Northeast Quarter (NE¼) of said Section;  
THENCE run N89°10'38"E along the South line of said fraction for 538.06 feet;  
THENCE run S00°06'43"E for 1,085.91 feet;  
THENCE run N89°06'43"E for 744.41 feet to an intersection with the West line of said Tamiami Trail;  
THENCE run Southerly along said West line, along the arc of a non-tangent curve to the right of radius 5,619.58 feet (chord bearing S00°22'05"E) (chord 50.21 feet) (delta 00°30'42") for 50.21 feet to a POINT OF TANGENCY;  
THENCE run S00°06'43"E along said West line for 49.81 feet;  
THENCE run S89°06'43"W for 300.00 feet;  
THENCE run S00°06'43"E for 1,445.82 feet to an intersection with the South line of the Southeast Quarter (SE¼) of said Section 16;  
THENCE run S89°16'54"W along said South line of said fraction for 989.41 feet to the Southeast corner of the Southwest Quarter (SW¼) of said Section 16;  
THENCE run S88°38'34"W along said South line of said Southwest Quarter (SW¼) for 2,627.98 feet to the POINT OF BEGINNING.

ALSO

PARCEL 2

A tract or parcel of land lying in Sections 07, 08, 17 and 18 which tract or parcel is described as follows:

From a railroad spike marking the Northwest corner of the Southwest Quarter (SW¼) of said Section 08 run S00°23'24"E along the West line of said fraction for 25.00 feet to an intersection with the South line of Coconut Road (50 feet wide) and the POINT OF BEGINNING.

From said POINT OF BEGINNING run S89°16'14"E along said South line for 3,253.00 feet to an intersection with the West line of Spring Creek Road;

THENCE run S00°07'17"W along said West line for 2,610.71 feet to an intersection with the South line of said Section 08;  
THENCE run S00°07'58"W along said West line for 2,646.47 feet;  
THENCE run N89°58'35"W along the North line of Coconut Road for 689.04 feet to an intersection with the East line of the Northwest Quarter (NW¼) of said Section 17;  
THENCE run N89°59'08"W along said North line for 404.79 feet to the Southeast corner of lands described in Official Record Book 411 at Page 759 of said Public Records;  
THENCE run N01°31'36"E along the East line of said lands for 960.34 feet;

continued...

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THENCE run N89°59'08"W along the North line of said lands for 2,200.77 feet to an intersection with the East line of the Northeast Quarter (NE¼) of said Section 18;  
THENCE continue N89°59'08"W for 1,840 feet more or less to the waters of Estero Bay;  
THENCE run Northerly along the waters of Estero Bay for 8,300 feet more or less to an intersection with the North line of the South Half (S½) of Government Lot 2 of said Section 07;  
THENCE run N89°32'15"E along the North line of said Government Lot 2 for 545 feet more or less to the Northwest corner of lands described in Official Record Book 1895 at Page 3817 of said Public Records;  
THENCE run S08°50'45"E along the West line of said lands for 199.50 feet;  
THENCE run N89°32'15"E along the South line of said lands for 247.50 feet;  
THENCE run N89°35'27"E for 666.22 feet;  
THENCE run N89°32'15"E for 239.00 feet to an intersection with the West line of Coconut Road;  
THENCE run S01°07'45"E along said West line for 488.63 feet;  
THENCE run N89°40'05"E along the South line of said Coconut Road for 24.69 feet to the POINT OF BEGINNING.  
LESS and EXCEPT lands described in Official Record Book 1677 at Page 3516 of the Public Records of Lee County, Florida.

ALSO

PARCEL 3

A tract or parcel of land lying in Sections 05 and 08, Township 47 South, Range 25 East, Lee County, Florida, consisting of

Lots 8B, 9B, 10B, 11B, 12B, 21B, 22B, 23B, 24B and 25B of FLORIDA GULF LANDCOMPANY SUBDIVISION as recorded in Plat Book 1 at Page 59 of the Public Records of Lee County, also Lot 8, Block 14 of ELDORADO ACRES (an Unrecorded Subdivision), as shown in Deed Book 310 at Page 183 of the Public Records of Lee County, also the East Three-quarters (E-3/4) of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of said Section 05, also the East Two-thirds (E-2/3) of the Southwest Quarter (SW¼) of the Southwest Quarter (SW¼) of said Section 05, also the East Two-thirds (E-2/3) of the Western Half (W½) of the Northwest Quarter (NW¼) of said Section 08; being more particularly described by metes and bounds as follows:  
From the Northwest corner of the Southwest Quarter (SW¼) of said Section 08 run S89°16'14"E along the North line of said Southwest Quarter (SW¼) for 422.61 feet;  
THENCE run N01°05'22"W for 40.02 feet to the POINT OF BEGINNING.  
From said POINT OF BEGINNING continue N01°05'22"W for 2,610.06 feet;  
THENCE run N01°22'23"W for 1,304.41 feet;

continued...

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THENCE run N89°56'22"W for 107.12 feet;  
THENCE run N01°22'55"W for 1,303.87 feet;  
THENCE run N89°34'15"E for 2,593.81 feet;  
THENCE run S00°26'45"E for 2,655.42 feet;  
THENCE run N88°48'50"W along the North line of said Section 08  
for 322.66 feet;  
THENCE run N89°25'01"W for 587.55 feet;  
THENCE run S00°50'16"E for 132.58 feet;  
THENCE run N89°11'54"W for 75.00 feet;  
THENCE run N00°50'16"W for 132.30 feet;  
THENCE run N89°25'01"W for 610.69 feet;  
THENCE run S01°00'35"E for 2,612.12 feet to an intersection  
with the North right-of-way line of Coconut Road;  
THENCE run N89°16'14"W along said North right-of-way line for  
845.23 feet to the POINT OF BEGINNING.

ALSO

PARCEL 4

All of Government Lot 1, Section 07, Township 47 South, Range  
25 East, Lee County, Florida, being more particularly described  
as follows:

BEGINNING at a concrete monument marking the Northeast corner  
of Government Lot 1 of said Section 07, run S01°07'45"E along  
the East line of said Section 07 for 1,324.52 feet to the  
Southeast corner of said Government Lot 1;

THENCE run S89°33'42"W along the South line of said Government  
Lot for 1,747.82 feet to a concrete post at the waters of  
Estero Bay;

THENCE run Northerly and Westerly along the waters of Estero  
Bay to an intersection with the North line of said Section 07;  
THENCE run N89°48'31"E along said North line for 2,575 feet  
more or less to the POINT OF BEGINNING.

CONTAINING 2,409 acres, more or less.

Bearings hereinabove mentioned are based on the East boundary  
line of Pelican's Nest Unit No. 1 as recorded in Plat Book 41  
at Pages 58 through 60 of the Public Records of Lee County,  
Florida.

ALSO

BEACH PARCEL

A tract or parcel of land lying in Government Lot 3, Section  
13, and Government Lot 2, Section 24, Township 47 South, Range  
24 East, Big Hickory Island, Lee County, Florida, which tract  
or parcel is described as follows:

continued...

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From the center of a turnaround on SR 865 (Bonita Beach Road) being S.R.D. Station 19184.75 and N24°28'41"W along the northern prolongation of said centerline of SR 865 for 266.00 feet;

THENCE run S62°26'49"W for 98.40 feet;  
THENCE run N27°33'11"W for 1,863.42 feet;  
THENCE run N20°00'41"W for 1,403.30 feet;  
THENCE run N65°00'00"E for 313.91 feet to the POINT OF BEGINNING.

From said POINT OF BEGINNING run N18°55'11"W for 97.51 feet, N22°26'23"W for 100.53 feet, N23°09'50"W for 100.14 feet, N14°51'19"W for 73.01 feet, N27°40'10"W for 88.01 feet, N29°33'57"W for 46.01 feet, N22°14'53"W for 47.27 feet, N20°39'23"W for 46.98 feet, N11°15'38"W for 29.80 feet, N26°10'46"W for 46.87 feet, N09°09'45"W for 48.26 feet, N17°35'56"W for 46.04 feet, N12°49'07"W for 50.04 feet, N29°20'48"W for 69.12 feet, N20°48'58"W for 63.82 feet;

THENCE run N79°23'51"W for 247 feet more or less to an intersection with the Approximate Mean High Water Line of the Gulf of Mexico;

THENCE run Northerly and Northeasterly along said waters for 1,140 feet more or less to an intersection with the South line of lands described in Official Record Book 198 at Page 188 of the Public Records of Lee County, Florida;

THENCE run along said South line, along the arc of a curve to the right of radius 12,000.00 feet for 783 feet to an intersection with the Waters of New Pass;

THENCE run Southerly, Easterly, Southwesterly and Southerly along said waters for 4,080 feet more or less to an intersection with a line bearing N65°00'00"E and passing through the POINT OF BEGINNING;

THENCE run S65°00'00"W for 181 feet more or less to the POINT OF BEGINNING.

AND

From said POINT OF BEGINNING run S13°03'59"E for 94.16 feet;  
THENCE run S19°13'48"E for 50.64 feet;  
THENCE run S04°34'15"E for 54.63 feet;  
THENCE run S24°53'12"E for 50.09 feet;  
THENCE run S27°10'29"E for 50.01 feet;  
THENCE run S31°01'44"E for 42.51 feet to an intersection with the South line of lands described in Official Record Book 2246 at Page 4413 of the Lee County Records;  
THENCE run N65°00'00"E along said South line for 134 feet, more or less to the waters of Estero Bay;  
THENCE Northerly along said waters for 358 feet, more or less to an intersection with a line bearing N65°00'00"E and passing through the POINT OF BEGINNING;

continued...

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THENCE run S65°00'00"W for 181 feet, more or less to the POINT OF BEGINNING.

Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone.

ALSO

Spring Creek West DRI Parcel

All of the Northwest Quarter (NW¼) of Section 21, Township 47 South, Range 25 East, Lee County, Florida:

ALSO INCLUDED THERETO:

All of the Northeast Quarter (NE¼) lying west of Tamiami Trail (US 41) of Section 21, Township 47 South, Range 25 East, Lee County, Florida;

ALSO INCLUDED THERETO:

All of the East Half (E½) of the Southwest Quarter (SW¼), lying North of Spring Creek LESS THE EAST 600 FEET THEREOF, Section 21, Township 47 South, Range 25 East, Lee County, Florida.

ALSO INCLUDED THERETO:

All of the Southeast Quarter (SE¼) of Section 21, lying West of Tamiami Trail (US 41) and North of Spring Creek, Township 47 South, Range 25 East, Lee County, Florida;

SUBJECT TO easements and restrictions of record.

CONTAINING 273.1 acres more or less.

AND

The East 600 feet of the East Half (E½) of the Southwest Quarter (SW¼) of Section 21, Township 47 South, Range 25 East, Lee County, Florida.

PARCEL CONTAINS 9.7 ACRES MORE OR LESS.

TOGETHER WITH the right for ingress and egress over the following described parcel:

A strip of land 60 feet in width lying 30 feet on each side of the East and West Quarter Section line of Section 21, Township 47 South, Range 25 East, extending from the Northwest corner of the East Half (E½) of the Southwest Quarter (SW¼) of said Section to Tamiami Trail (US 41).

continued...

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SUBJECT TO any easements, restrictions, reservations and rights-of-way of record.

C. The subject parcel is currently zoned AG-2, RS-1, RM-6, TFC-2, PUD, RPD, CPD, and IM; the property is partially developed.

D. This Application for Development Approval is consistent with the requirements of Section 380.06, Florida Statutes.

E. The development is not located in an area designated as an Area of Critical State Concern under the provisions of Section 380.05, Florida Statutes.

F. The development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development plan applicable to the area. The development is consistent with the State Comprehensive Plan if developed with the conditions set forth herein.

G. The development has been reviewed by the Southwest Florida Regional Planning Council (SWFRPC) and is the subject of the report and recommendations adopted by that body on January 20, 1994, and subsequently forwarded to Lee County pursuant to the provisions of Section 380.06, Florida Statutes; the development, as proposed in the Application for Development Approval (ADA) and modified by this Development Order, is generally consistent with the report and the recommendations of the SWFRPC pursuant to Section 380.06(11).

H. The development is located in the Urban Community, Outlying Suburban and Resource Protection Areas classifications of the Lee Plan with the Privately Funded Infrastructure Overlay and is consistent with the Lee County Comprehensive Plan and Lee County's Land Development Regulations if subject to the conditions contained in this Development Order.

I. The proposed conditions below meet the criteria found in Section 380.06(15)(d), Florida Statutes.

J. In accordance with the Development Order condition Section III. Condition 16. herein, the lands within the Spring Creek West DRI are incorporated into this Development Order. Those lands described as the Spring Creek West DRI will only be subject to those terms and conditions set forth in Attachment D which is the Eighth Development Order Amendment for Spring Creek. The terms and conditions of that Development Order will remain applicable to the property known as the Spring Creek West DRI in the same manner as they are presently applicable, except that one annual monitoring report that includes both Pelican Landing and Spring Creek West DRI's must be submitted. Additionally the Spring Creek West DRI legal description has been included within the Pelican Landing DRI. Since the Spring Creek West land is part of an almost completely developed vested DRI, there is no reason to alter the conditions

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within the Spring Creek West DRI Development Order. The Spring Creek West property is vested under the terms and conditions of the Spring Creek West DRI Development Order, and this property will not be considered in any cumulative analysis of Pelican Landing in accordance with Section III Condition 16.

### II. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Lee County, Florida, in a public meeting which was duly advertised, constituted and assembled the 16th day of August, 1995, that the Development of Regional Impact Application for Development Approval submitted by Westinghouse Bayside Communities, Inc., now known as Pelican Landing Communities, Inc., hereinafter referred to as "Developer" or "Applicant", is hereby ordered Approved subject to the conditions, restrictions, and limitations which follow. For the purposes of this Development Order, the term "developer" shall include his/her successors or assigns, and all references to County Ordinances and codes include future amendments.

#### A. Historical/Archaeological Sites

1. The Zenith Mound Archaeological Site (State Master File #8LL1436) and the Johnson Cemetery (State Master File #8111440) will be preserved in perpetuity and will be recorded as "preserve" on all appropriate plats, site plans, and the Master Development Plan for the Pelican Landing DRI.

2. If any additional archaeological/historical sites are uncovered during development activities, all work in the immediate vicinity of such sites will cease. The developer shall immediately contact the Florida Department of State, Division of Historical Resources, the SWFRPC, and Lee County and advise them of the discovery. The developer will have a State-certified archaeologist determine the significance of the findings and recommend appropriate preservation and mitigation actions, if necessary.

#### B. Housing

1. There are no regionally significant housing impacts for the first planning horizon of the DRI DO, which ends on December 31, 1997. Utilizing supply data not adjusted to account for the fact that housing sells for less than the listed price, Planning Horizon II (January, 1998, through December, 2002) would have an unmet need of 99 affordable units for very low income and no unmet need for low income households. Utilizing supply data adjusted to account for the fact that housing sells for less than the listed price, Planning Horizon II would have an unmet need of only 38 affordable housing units for very low income households and still no unmet need for low income households. The aforementioned data is based on the existing studies.

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The supply adjustment figures mentioned above are based on actual sales prices relative to listed prices. Affordability thresholds for owner occupied affordable housing are determined using PITI (Principal, Interest, Taxes, and Insurance) calculations methodology as outlined in the DCA 1991 Draft methodology.

2. Prior to the commencement of any development in Planning Horizon II, the developer will conduct a reanalysis of adequate housing demand, supply and need, consistent with the requirements of Rule 9J-2.048, F.A.C. The findings of the reanalysis is subject to DCA approval. If the reanalysis indicates that the development proposed for Planning Horizon II, considered cumulatively with Planning Horizon I, will create a regionally significant housing need (ie., 100 or more very low income dwelling units), then the Developer will prepare and implement a mitigation plan consistent with Rule 9J-2.048, F.A.C. The mitigation plan must be approved by DCA. This commitment does not preclude the Developer from adjusting the timing and amount of commercial development. In addition, it does not preclude the developer from developing only as much commercial for which there is adequate housing, and then conducting a subsequent reanalysis.

3. Prior to May 1, 1995, the developer and/or the employers within the project must prepare an affordable housing access plan. The housing plan will be incorporated into an informational packet and distributed to employees in need of housing. The information package will direct the employees to the appropriate federal, county, state or private housing program.

### C. Hurricane Preparedness

1. Within six months, after the effective date of this DRI Development Order, the developer shall provide and connect a portable diesel powered generator for the Gateway Elementary School. The generator must be equipped with a fuel tank, capable of generating enough power to handle the demands of ventilation fans, lighting, life safety equipment (alarms and intercom), and refrigeration and cooking equipment. The developer will be responsible for the initial electrical hook-up costs. The selection of the generator will be in coordination with Lee County Emergency Management Staff.

2. The Lee County Emergency Management staff will act as a liaison between the developer and the Lee County School District staff, and will make all of the necessary arrangements for the location of the generator on Lee County School Board property.

3. The provision of the generator serves to mitigate the shelter and evacuation impacts of the project at buildout. Should Lee County ever adopt an impact fee, or other type of levy or assessment to provide funding for shelter space and improvements thereto, the developer will be entitled to a credit against the fee or levy in the amount of the cost of the generator, if eligible

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under the terms of that impact fee or levy.

4. The developer must notify all purchasers of real property within the residential portions of development, through the restrictive covenants, of the potential for storm surge flooding in feet above the Base Flood Elevation, according to the National Weather Services' storm surge model "SLOSH", and the National Flood Insurance Program.

5. The developer must prepare, in conjunction with Lee County Emergency Management and Division of Natural Resources staff, a brochure which advises all marina owners of the measures that can be taken to minimize damage in the event of a hurricane. This brochure must address how boat owners can minimize damage to their vessels, the marina site, neighboring properties and the environment. The brochure must be provided to all boat owners and users at the marina.

6. Prior to the issuance of a Certificate of Occupancy for the Hotel, the developer or the hotel owner/manager must prepare a written hurricane preparation and evacuation/sheltering plan. This plan will be prepared in conjunction with Lee County Emergency Management Staff and must be coordinated with the hurricane evacuation plan for the overall DRI.

7. The Property Owner's Association must host an educational seminar, and will be responsible for obtaining the place for the seminar and for providing the invitations to the homeowners. The time will be coordinated with the Lee County Emergency Management staff, who will provide the education and information at the seminar and will advise the owners of the risks of natural hazards and the action they should take to mitigate the inherent dangers.

8. The developer must develop a hurricane evacuation plan for the DRI. The hurricane evacuation plan shall address and include: a) operational procedures for the warning and notification of all residents and visitors prior to and during a hurricane watch and warning period; b) the educational program set forth in condition 7 above; c) hurricane evacuation; d) the method of advising residents and visitors of hurricane shelter alternatives including hotels and public hurricane shelter locations; e) identification of the person(s) responsible for implementing the plan; and f) how the private security force will be integrated with the local Sheriff's personnel and the Division of Public Safety. The plan shall be developed in coordination with the Lee County Emergency Management officials and must be found sufficient by those officials within six months after the effective date of the DRI DO.

9. The developer, and any successor landowner, will pay any All Hazards Tax properly levied by Lee County to provide for

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shelter space, upgrades to shelters, and to address other natural disasters.

### D. Marina Facilities

1. The developer must create a conservation easement precluding the construction of additional docking facilities beyond those specifically authorized in this Development Order. This conservation easement will be in addition to the 4,000 foot conservation easement already required in Spring Creek. The location and extent of the conservation easement will be contingent upon navigability of the waterway, and will be established in association with the Florida Department of Environmental Protection (FDEP) permits.

2. All docking and dry storage facilities must be constructed in accordance with the terms and conditions of any FDEP permit or lease, and in accordance with any Lee County dock permit.

3. The developer has constructed dock and channel markers within Estero Bay. The Lee County Division of Natural Resources Management will be permitted to mount regulatory signs on the docks and channel markers owned by the developer. Lee County will be responsible for insuring that the addition of the regulatory signs does not cause the developer to be in violation of any permit condition or FDEP, Coast Guard, or other agency regulation. The regulatory signs will remain the property and maintenance responsibility of the Lee County Division of Natural Resources Management.

4. The marina operator must dispense manatee awareness brochures to all users of the marina facilities. The brochures must also include information regarding channel locations, proper boating routes, and shallow water habitats to be avoided.

5. The developer and marina operator must insure that the marina lighting is directed away from adjacent mangroves and estuarine systems to reduce any negative impacts to the wildlife using these areas.

6. The marina operator will remove or cause to be removed from the marina any boat operator observed violating the guidelines set forth in the manatee awareness brochures or Lee County regulations regarding the protection of manatees.

7. The developer must designate and reserve one wet slip for the Florida Marine Patrol or the Lee County Sheriff's Special Response Unit, if needed by these agencies.

8. The shuttle boat captain and marina operator must keep a log of all manatee sightings. The log must reflect the locations, time and date of the sighting, the number of manatees, and the

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nature of their activity if it can be determined. The log should also note the name of the person recording the sighting. This information must be forwarded to Lee County and FDEP on a periodic basis.

9. The developer must construct an educational board on a Kiosk at the Beach Park. The educational board will be created in conjunction with the Lee County Division of Natural Resources Management, Marine Sciences Program and Turtle Time.

10. The developer will comply with all water quality monitoring requirements imposed by the FDEP and the SFWMD.

11. Any boat wash areas must have a closed loop system that captures and recirculates the water through a filtration or other acceptable system. Any boat repair and maintenance facilities must be in an enclosed, roofed, impervious surfaced area to limit the run-off of contaminated water during a storm event.

12. Once a year the marina operator shall host an Educational and Hurricane Preparedness Workshop for all tenants in the wet slip area. The marina operator shall provide the facility for the seminar and must insure that all tenants are invited. The marina operator will establish the date and time for the workshop in conjunction with Lee County Emergency Management and the Lee County Division of Natural Resources Management, Division of Marine Sciences. Lee County will provide a trained representative who will educate the tenants on natural resources awareness, manatees, safe boating practices, and on proper procedures, prior to and during a hurricane.

13. The dry storage facilities must be located in a building or structure which is designed and constructed to meet all requirements of the Standard Building Code, as adopted by Lee County.

### E. Vegetation and Wildlife/Wetlands

The developer has conducted Protected Species surveys in accordance with the Florida Game and Fresh Water Fish Commission (FGFWFC) guidelines and the Lee County Land Development Code. These surveys identified the presence of the following protected species: bald eagle, wood stork, little blue heron, tricolored heron, reddish egret, snowy egret, white ibis, piping plover, Southeastern snowy plover, least tern, American oystercatcher, black skimmer, brown pelican, Atlantic loggerhead sea turtle, and gopher tortoise.

1. There were three bald eagle's nests of concern prior to development order adoption. One nest is on the Pelican Landing property. The other nests are within 1500 to 1600 feet of Pelican Landing. The buffers that will affect Pelican Landing property will be established in an on-site eagle habitat management plan addressing the Pelican Landing property only.

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Prior to development within 2500 feet of any eagle nest, the Developer shall prepare an on-site eagle management plan addressing the Pelican Landing DRI property only which shall be reviewed by DCA, SWFRPC, FGFWFC Lee County, and USFWS. Said groups shall have a fifteen working day review period and must provide all comments to Lee County and the Developer in writing. The agencies must provide specific written objections or concerns if any, regarding the management plan and indicate how those concerns can be addressed by the developer.

The Developer will revise the management plans to respond to the lawful and timely objections. The agencies will review and respond to the management plan resubmittal, and any successive resubmittals, within fifteen working days of submittal. The agencies will provide a written response to Lee County and the Developer, which reflects that there is no objection to the management plan or which outlines specific objections and concerns. The agency response will indicate how any concerns or objections can be addressed by the developer. Lee County and DCA will have the final approval authority. The management plan will be deemed approved by the County and DCA if the respective agency fails to provide a written response within fifteen working days. The approval of the management plan will not be unreasonably withheld. If a proposed management plan includes development within 750 feet of an eagle's nest, the plan must also be submitted to the Lee County Eagle Technical Advisory Committee (ETAC). ETAC will review the plan and forward recommendations to the FGFWFC and USFWS.

The 2500 foot limitation is intended to be a temporary restriction to insure the submission and approval for a management plan on a timely basis. The final primary and secondary buffer zones may be less than 2500 feet. An eagle management plan will be included as part of an upland habitat protection area management plan.

2. A local development order for the Hickory Island Beach Park has been issued which permits construction of beach park infrastructure. This local development order included a protected species survey and phased Preliminary Management Plan (PMP). The PMP incorporated Lee County Division of Natural Resources Management (DNRM) and Florida Game and Fresh Water Fish Commission (FGFWFC) recommendations.

The PMP requires the developer to provide the county with a conservation easement over the entire parcel, except for the active building areas approved through the local development order. The PMP permits a refinement of the conservation easement boundaries after completion of a one year utilization study, the final conservation easement shall be consistent with the provisions of Section 704.06, Florida Statutes. For the purpose of this DRI D.O., Section 704.06, F.S. will not preclude educational signage, and signage and land management activities required by the management plan, including but not limited to the removal of exotic vegetation.

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The objectives of this one year study were: 1) determine shorebird utilization of land under Developer's ownership based on detailed surveys and prepare a shorebird management plan, 2) analyze beach vegetation and prepare a maintenance plan, and 3) monitor beach use by Pelican Landing visitors. Additionally, the PMP requires surveys for identification and protection of sea turtle nests, the construction of three osprey platforms, and a review of the elements of the overall plan to be conditioned on the DRI DO.

The Developer must submit a Final Management Plan to Lee County, FGFWFC, and DCA within 18 months of the effective date of the DRI DO, which was November 14, 1994. Lee County, FGFWFC, and DCA will review the management plan within fifteen working days of submittal. The DCA, and Lee County must provide a written response to the proposed final management plan which reflects that there is no objection or outlines the specific objections and concerns. The agencies response will specify how those concerns or objections can be addressed by the developer. The FGFWFC must provide all lawful objections within the same fifteen working day time frame.

If there are valid legal objections to the management plan, the Developer will revise and resubmit the plan to DCA, FGFWFC, and Lee County. DCA, Lee County, and FGFWFC will review the resubmittal, and any successive resubmittals, within fifteen working days. The agencies will provide a written response which reflects either the approval of the management plan or which outlines the specific objections and concerns. The agencies response will specify how those concerns or objections can be addressed by the developer. DCA and Lee County may not unreasonably withhold approval of the management plan. If the agencies do not provide a written response within the prescribed time frames, the management plan will be deemed approved. The Final Management Plan Approval from Lee County must be obtained prior to the issuance of the Certificate of Compliance for local development order #90-10-003.0D.

3. The projected gopher tortoise burrow count is 439, based on an estimate of FGFWFC habitat guidelines, 75 acres to gopher tortoise habitat must be protected.

The Developer will set aside a 78± acre area of xeric scrub and pine flatwoods to mitigate the impacts to the upland gopher tortoise habitat. This area will be known as the Pelican Landing Eco-Park. The Eco-Park area contains significant portions of the xeric oak habitat existing on the Pelican Landing DRI site.

A Gopher Tortoise Population Study and Management Plan was submitted to the Florida Game and Fresh Water Fish Commission on or about December 22, 1993. The Developer shall submit a copy for the management plan to the DCA, SWFRPC, and Lee County for review prior to the commencement of development in any area containing gopher tortoise habitat, beyond that approved in the Preliminary Development Agreement. The agencies shall have a fifteen working day review period. The agencies shall provide all lawful objections

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and concerns regarding the management plan to Lee County and the Developer in writing. The Developer will submit a revised management plan to DCA and Lee County that responds to the lawful objections. DCA and Lee County will review the management plan resubmittal, and any successive resubmittals, within fifteen working days of submittal. The agencies will provide a written response which approves the management plan or which outlines specific objections or concerns. The agencies response will specify how those concerns or objections can be addressed by the developer. DCA and Lee County may not unreasonably withhold the approval of the management plan. Should DCA and Lee County not provide a written response within the prescribed time frames, the management plan will be deemed approved by the agency that failed to provide timely written comments. The Developer has submitted for an Incidental Take Permit for the gopher tortoises located outside of the Eco-Park in the undeveloped portion of Pelican Landing. The Developer shall obtain an Incidental Take Permit prior to proceeding with development within gopher tortoise habitat areas.

The gopher tortoises addressed by the Incidental Take Permit shall be relocated to the Eco-park, or other appropriate open space areas within Pelican landing. The Eco-Park mitigates for regional impacts to the gopher tortoise population and xeric scrub within the Pelican Landing DRI.

4. All areas designated as Preserve on the adopted Map H must remain undeveloped and be owned, maintained, and managed by an Improvement District or a similar legal entity. No lot lines shall be allowed within any preserve areas. The following uses are permitted within Preserves: habitat management activities, hiking and nature study, outdoor education, recreational fishing, gates and fencing, and boardwalks limited to pedestrian use. Trimming of mangroves for residential visual access to Estero Bay or Spring Creek shall be prohibited in wetland areas #14 and #21 (as identified in DRI ADA) and Bay Cedar Phase II (along Spring Creek).

The Developer will grant a conservation easement consistent with Section 704.06., Florida Statutes for the Eco-Park to an entity approved by DCA. The Developer must submit a draft of the proposed conservation easement to DCA for review and comment. DCA must provide comments on the draft easement within 15 days so as not to unduly delay development. Once approved by DCA, the Developer will record the conservation easement in the Lee County Public Records prior to the issuance of a local Development Order or "Early Work" approval for any area containing gopher tortoise habitat other than areas approved in the PDA. The conservation easement may be drafted so as to allow use of the Eco-Park for resource-based recreational activities, enjoyment of nature and education enrichment, including, but not limited to: Picnic areas, trails, benches, boardwalks, biking/ jogging trails, vita courses, bird viewing blinds/towers and interpretative facilities, signs, on-going maintenance and removal of exotic vegetation and compliance with the management plan required per the FGFWFC. Educational and direction-

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al signage will be permitted within the Eco-Park. For the purposes of this DRI D.O. the prohibition of signage included within Section 704.06, F.S. applies to off-site signs and billboards. The removal of exotics, controlled burns and the maintenance of the vegetation in accordance with the Eco-Park management plan will be permissible in the conservation easement notwithstanding the provisions of Section 704.06, F.S. which prohibit the destruction of trees.

5. Should any orchids, wild pine air plants, Florida Coonties, Catesby's lilies, leather ferns, royal ferns, or cabbage palms with golden polypody and shoestring ferns be located within development areas, best efforts must be used to relocate these plants to open space and landscaped areas.

6. As part of local development order approval for any phase of the development, an invasive exotic vegetation removal and maintenance plan must be submitted to the Division of Natural Resources Management for approval. At a minimum, this plan must be structured to provide for the phased removal of invasive exotic vegetation and maintenance to control exotic re-invasion within the wetland and upland preserve areas. Removal within preserve areas may be done on a pro rata basis as phased local development orders are obtained.

7. The existing Pelican's Nest golf course includes native vegetation along the rough and between golf holes. The applicant must continue to incorporate the native vegetation into the design of future golf holes, where feasible. Native vegetation has been retained on individual lots and between tracts in the existing developed area of Pelican Landing. Where feasible, the applicant will continue to incorporate native vegetation into the open space and landscaped areas.

8. The applicant must design the golf course and conduct maintenance, which includes fertilization and irrigation, in a manner which is sensitive to the water and nutrient needs of the native xeric vegetation in and around the golf course. However, this condition will not be interpreted in a manner which forces the applicant to jeopardize the health and viability of the golf course.

9. Upon approval of the management plans referenced in the above, the approved management practices shall then be considered a part of this development order for enforcement purposes, and shall be enforceable in the same manner as a condition of this development order.

10. This project may result in the filling of not more than 8 acres of wetlands. The mitigation for the impact to wetlands will be determined at the time of final permitting, but the mitigation should include the removal of exotic invasives, the restoration of historic hydroperiods, and a total of not more than ten acres of littoral zone plantings.

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F. Solid/Hazardous/Medical Waste

1. All storage, siting, and disposal of hazardous wastes and/or hazardous materials must be accomplished in accordance with federal, state, and local regulations. The business owner/operator is responsible for compliance with all permitting, reporting, emergency notification provisions and other regulations relating to hazardous materials and hazardous wastes.

2. All business owners and operators must insure that regulated substances are loaded, off-loaded and stored in an area that is curbed and provided with an impervious base. The impervious base must be maintained free of cracks and gaps so as to contain any spills or leaks.

3. Outdoor storage of hazardous waste is prohibited.

4. Restaurants must be outfitted with grease traps or approved equivalent systems. The owner/operators of any restaurant must follow all applicable codes and regulations for cleaning and maintaining grease traps.

5. If any hotel pool utilizes gaseous chlorine, the pool must be equipped with chemical sensors, alarm devices, or other comparable equipment. The hotel owner/operator shall be responsible for compliance with this requirement and notice of this responsibility/obligation must be included on all deed transfers or lease agreements.

6. Any business that generates hazardous waste defined by the Code of Federal Regulations 40 CFR Part 261, shall notify the Division of Natural Resources Management for an assessment as required by Section 403.7225, Florida Statutes. This assessment will address any deficiencies in the management practices of hazardous waste generated at the facility.

7. The developer, or any subsequent owner of the golf course, must insure that the golf course maintenance equipment is handled in accordance with all federal, state and local regulations. Specifically, the developer will insure that all wash down facilities comply with FDEP rules regarding chemical residue, and insure the continued recycling of motor oil from maintenance equipment, and insure recycling of used motor oil, used oil filters, anti-freeze, lead acid batteries, cleaning solvents, shop rags, and aerosol cans.

8. The developer must investigate the feasibility of mulching trees and brush for on-site needs.

9. The developer/property owner of each commercial parcel which will be used to store, manufacture or use hazardous materials, shall contact the Lee County Office of Emergency Management, Hazardous Material Representative, prior to obtaining a development order, to discuss the proposed development in relation to potential type,

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use, and storage of hazardous materials which will be located on the premises.

10. If required by federal, state and/or local regulations:

a. The developer/property owner shall prepare or have available material safety data sheets (MSDS) and submit either copies of MSDS or a list of MSDS chemicals to the appropriate fire department or district and to the Lee County Division of Public Safety.

b. The developer/property owner shall establish an emergency notification system to be used in the event of a hazardous material release.

G. Stormwater Management

1. The surface water management system must be designed, constructed and operated in accordance with the pertinent provisions of Chapters 373 and 403, Florida Statutes; Chapter 40E, Florida Administrative Code; and the South Florida Water Management District "Basis of Review", and any pertinent local regulations regarding the design, construction and maintenance of the surface water management system. This condition applies to anyone obtaining a local Development Order within Pelican Landing. The Bayside Improvement District (a district formed pursuant to Chapter 190, Florida Statutes), must insure that the portion of the system under the ownership and control of the district is operated in accordance with the pertinent portion of the regulatory provisions cited above, and any permit (construction or operation) issued by the SFWMD. Individual lot owners with on-site wetlands or stormwater retention or detention areas under their control must comply with the pertinent portion of the regulatory provisions cited above and any permit issued by the SFWMD.

2. Water Control Structures must be installed as early in the construction process as practicable to prevent over-drainage or flooding of preserved wetland areas. If the SFWMD establishes a construction schedule or scenario that is contrary to this condition, the permit requirement of SFWMD will control.

3. Any shoreline banks created along on-site stormwater wet detention lakes must include littoral zones constructed consistent with SFWMD requirements. The shoreline banks must be planted in native emergent and submergent vegetation. The developer must establish and maintain, by supplemental planting if necessary, 80 percent cover by native aquatic vegetation within the littoral zone for the duration of the project. The littoral zone will include, at a minimum, the area between high water and ordinary low water.

4. The Bayside Improvement District, and/or all property owners, must undertake a regularly scheduled vacuum sweeping of common streets, sidewalks and parking facilities within the

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development.

5. The developer must implement the best management practices for monitoring and maintenance of the surface water management systems in accordance with Lee County and South Florida Water Management District guidelines.

6. The SFWMD shall establish all internal surface water management and wetland systems. The developer must set aside all internal surface water management and wetland systems as private drainage easements, common areas, or preserves. These areas must also be identified as specific tracts on the recorded final plat or some other legally binding document acceptable to the County Attorney's office.

H. Transportation

1. Significant Impact

a. The traffic impact assessment for this project assumes the development parameters and land uses shown in Attachment B, "Pelican Landing DRI Development Parameters". The assessment indicates that the significantly impacted roadways and intersections described below will be operating below acceptable levels of service at the end of Planning Horizon I (1997) and buildout (2002). Each annual monitoring report, described in Paragraph H.4, must reflect whether the roadways and intersections described below are significantly impacted or are projected to be significantly impacted by this project in the following year.

b. The Pelican Landing DRI is projected to significantly and adversely impact (as defined by Lee County Administrative Code AC-13-16, dated August 8, 1991, see Attachment C) the following roadways and intersections:

<u>Planning Horizon I (1997)</u>	<u>Needed Improvement</u>
US 41/Corkscrew Road	- Signal retiming
US 41/Williams Road	- Signalization, if warranted
US 41/Coconut Road	- Signalization, if warranted
US 41/Pelican Commercial Entrance	- Northbound left turn lane
	- Southbound right turn lane
	- Eastbound right turn lane
US 41/North Pelican Entrance	- Northbound left turn lane
	- Southbound right turn lane
	- Eastbound left and right turn lanes
	- Signalization, if warranted
US 41/Pelican Landing Parkway/ Old 41	- Southbound dual left turns
	- Signal retiming
US 41/Pelican's Nest Drive	- Northbound left and right turn lanes

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- US 41/Terry Street
  - US 41/Bonita Beach Road
  - Coconut Road/Spring Creek Road
- Southbound left and right turn lanes
  - Eastbound left and thru/right lanes
  - Westbound left and thru/right lanes
  - Signalization, if warranted
  - Signal retiming
  - Signal retiming
  - Separate NB left & right turn lanes
  - Separate EB thru and right turn lanes
  - Separate WB thru and left turn lanes

Buildout (2002)

- Corkscrew Road
    - Three Oaks Parkway to I-75
  - Old 41
    - Bonita Beach Road to Terry St.
  - US 41
    - Immokalee Road to Old 41 (Collier County)
    - Bonita Beach Road to West Terry Street
    - West Terry Street to Pelican's Nest Drive
    - Coconut Road to Williams Rd.
    - Constitution Boulevard to Alico Road
  - US 41/Corkscrew Road
  - US 41/Williams Road
  - US 41/Coconut Road
  - US 41/Pelican Commercial Entrance
  - US 41/North Pelican Entrance
  - US 41/Pelican Landing Parkway/  
Old 41
- Widen to 4 lanes
  - Constrained (no widening possible; maximum v/c ratio of 1.85 per 1993 Lee Plan Policy 22.1.9)
  - Widen to 6 lanes
  - Separate EB left and thru/right lanes
  - Westbound dual left turn lanes
  - Signal retiming
  - Signalization, if warranted
  - Separate EB left and right turn lanes
  - Signalization, if warranted
  - Northbound left turn lanes
  - Southbound right turn lane
  - Eastbound right turn lane
  - Northbound left turn lane
  - Southbound right turn lane
  - Eastbound left and right turn lanes
  - Signalization, if warranted
  - Southbound dual left turn

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- lanes
- Northbound dual left turn lanes
- Eastbound thru/right turn lane
- Westbound two thru lanes
- Signal retiming
- US 41/Pelican's Nest Drive
  - Northbound left and right turn lanes
  - Southbound left and right turn lanes
  - Eastbound left and thru/right lanes
  - Westbound left and thru/right lanes
- US 41/Terry Street
  - Signalization, if warranted
  - Northbound dual left turn lanes
  - Separate WB thru and right turn lanes
- US 41/Bonita Beach Road
  - Signal retiming
- Coconut Road/Spring Creek Road
  - Separate NB left and right turn lanes
  - Separate EB thru and right turn lanes
  - Separate WB thru and left turn lanes

2. Mitigation

a. The developer will pay impact fees as defined in the Lee County Land Development Code to mitigate Pelican Landing's transportation impacts on the non-site related roads and intersections set forth in Section H.1.b. above. Road Impact Fees are estimated to be \$8,783,000 for the land uses identified in Attachment B. Road Impact Fee payments represent the DRI's proportionate share payment for all road and intersection improvements identified in Condition H.1.b as significantly impacted by this project and operating below the adopted level of service standard by 2002. Estimated Road Impact Fees from this project exceed the community's estimated proportionate share dollar amount of all significantly impacted roadway improvements.

If the Land Development Code Chapter governing Impact Fees is repealed, reduced, or made unenforceable by court petition, the Pelican Landing DRI will continue to pay, per individual permit, an amount equivalent to Road Impact Fees prior to such repeal, reduction or court petition. If payment is not made consistent with that schedule, then a substantial deviation will be deemed to occur, and the traffic impacts of Pelican Landing DRI must be reanalyzed to determine appropriate alternative mitigation prior to the issuance of further building permits for the Pelican Landing DRI.

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All road impact fee monies paid by the Pelican Landing DRI after adoption of this DRI Development Order will be applied by Lee County toward the non-site related improvements included in Transportation Condition H.1.b., provided those improvements are deemed necessary to maintain the adopted level of service standards and are included in the County's Capital Improvement Program. Should the identified improvements be funded through other sources, in whole or in part, or deemed unnecessary to maintain the adopted level of service standards, Lee County may apply any Pelican Landing impact fees not required for those specific improvements to other improvements consistent with the requirements of the Lee County Land Development Code.

b. If through the local development approval process, the developer constructs, with the approval of the Lee County DOT, an intersection or roadway improvement identified in Paragraph H.1.b, those improvements may be eligible for Road Impact Fee credits. The determination of whether such credits will be granted will be made consistent with the procedures outlined in the Land Development Code.

c. The developer must dedicate 60 feet of right-of-way for Burnt Pine Drive North, from Pelican Landing Parkway to Coconut Road, a distance of 6,926 feet; and for Burnt Pine Drive South from Pelican Landing Parkway to Pelican's Nest Drive, a distance of 2,326 feet. The developer must construct, as a two-lane access road, Burnt Pine Drive North from Pelican Landing Parkway to Coconut Road, and Burnt Pine Drive South from Pelican Landing Parkway to Pelican's Nest Drive. Credits, if any, for the right-of-way dedication and construction identified above will be issued consistent with the procedures outlined in the Land Development Code. Dedication of the roadway right-of-way and construction of Burnt Pine Drive will occur as follows:

1) Burnt Pine Drive South from Pelican Landing Parkway to Pelican's Nest Drive: coincident with the Certificate of Compliance for the commercial parcel located in the northeast quadrant of the intersection of Burnt Pine Drive South and Pelican's Nest Drive.

2) Burnt Pine Drive North from Pelican Landing Parkway to Pelican Landing North Entrance: under construction no later than December 31, 1998.

3) Burnt Pine Drive North from Pelican Landing North Entrance to Coconut Road: should be under construction no later than December 31, 1999.

d. The developer agrees to reserve 25 feet of additional right-of-way along the south side of Coconut Road from US 41 west to Spring Creek Road to ensure that improvements to Coconut Road are not precluded. Such right-of-way will be dedicated to Lee County if and when requested. Credits, if any, for the right-of-way

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dedication will be granted at the time of dedication, and must be consistent with the Land Development Code in effect at that time.

e. As a mitigation option, the developer may, with the concurrence of Lee County, make an advance payment of a portion of Pelican Landing's total Impact Fees up to 2 million dollars. Lee County would then utilize the advance payment to accelerate the Project Design & Environmental (PD&E) Study for US 41 from the Collier County line to San Carlos Boulevard. The PD&E Study is currently scheduled in FDOT's Tentative Five Year Work Program for fiscal year 1998/99 (WPI #1114700).

### 3. Access and Site-Related Improvements

a. The developer will be fully responsible for site-related roadway and intersection improvements required within the Pelican Landing DRI. The developer must pay the full cost for any site-related intersection improvements (including but not limited to signalization, turn lanes and additional driveway through lanes) found necessary by Lee County or the Florida Department of Transportation (FDOT) permitting requirements for the Community's access intersections on US 41, Coconut Road and Spring Creek Road.

b. The Pelican Landing DRI site access points will be located and developed consistent with the Florida DOT's access management classification for US 41, unless otherwise approved by the Florida DOT. Improvements to those access points will be consistent with the Department's permitting requirements.

c. Site-related improvements will be as defined in the Land Development Code.

d. Except for Spring Creek Road and Coconut Road, all roads located within Pelican Landing will be maintained by the Bayside Improvement District (BID), unless subsequently dedicated to and accepted by Lee County.

### 4. Annual Monitoring Report

a. The developer will submit an annual traffic monitoring report to the following entities for review and approval: Lee County, the Florida Department of Transportation (FDOT), the Florida Department of Community Affairs (FDCA), and the Southwest Florida Regional Planning Council (SWFRPC).

The first monitoring report will be submitted one year after the date of the issuance of this DRI Development Order. Reports must be submitted annually thereafter until buildout of the project.

b. The monitoring report will be designed in cooperation with the Lee County Department of Transportation, FDOT, the SWFRPC and the FDCA prior to the submittal of the first report. The

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methodology of the annual traffic monitoring report may be revised if agreed upon by all parties.

c. The annual traffic monitoring report must contain the following information:

(1) P.M. peak hour existing volumes and turning movement counts at all site access onto US 41 and Coconut Road, and a comparison to the project trip generation assumed in the DRI analysis.

(2) For existing conditions and a one-year projection, P.M. peak hour peak season turning movement counts, Pelican Landing's estimated share of traffic, and an estimated level of service for the intersections identified in Paragraph H.1.b as impacted by this project.

(3) For existing conditions and a one-year projection, P.M. peak hour peak season traffic counts, Pelican Landing's estimated share of traffic, and an estimated level of service for the roadway links identified in Paragraph H.1.b as impacted by this project through buildout.

(4) An estimate of when the monitored roadways and intersections will exceed adopted levels of service.

(5) A summary of the status of road improvements assumed to be committed in the ADA, including the following:

<u>Roadway</u>	<u>Segment</u>	<u>Improvement</u>	<u>Schedule</u>
Pelican's Nest Dr.	Pelican's Nest to US 41	0 to 2	Planning Horizon I (1997/98)
Corkscrew Road	I-75 to Treeline Ave.	2 to 4	Planning Horizon I (1997/98)
US 41	Alico Rd. to Island Park Rd.	4 to 6	Planning Horizon I (1997/98)
US 41	Island Park Rd. to south of Daniels Parkway	4 to 6	Planning Horizon I (1997/98)
Bonita Beach Road	Hickory Blvd. to Vanderbilt	2 to 4	Planning Horizon I (1997/98)

(6) A summary of the roadway and intersection improvements listed in Paragraph H.1.b that have been constructed, and the program status of the remainder.

d. If the annual monitoring report confirms that the peak season P.M. peak hour traffic on the significantly impacted roadways exceeds the level of service standards adopted by Lee

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County, or is projected to exceed the adopted level of service standards adopted by Lee County within the forthcoming 12 months, and if the project is utilizing more than 5% of LOS "D" service volume during peak hour peak season traffic conditions, then further local development orders, building permits and certificates of occupancy may not be granted until the standards of the County's concurrency management system have been met. This means that adequate district-wide level of service capacity must be available through 1999. After 1999, significantly impacted individual links must be operating at the adopted level of service, or an improvement to achieve the adopted level of service is scheduled for construction in the first three years of an adopted local government capital improvement program or state work program.

e. If the annual traffic monitoring report confirms that the peak season P.M. peak hour traffic on the segment of US 41 in Collier County from Immokalee Road to Old US 41 exceeds the level of service standard adopted by Collier County and if the project is utilizing more than 5% of level of service D service volume during peak hour, peak season traffic conditions, then further building permits may not be granted until the subject roadway segment is committed for construction by the Florida Department of Transportation and/or Collier County.

f. In the event the developer confirms that no additional development occurred on any portion of the site for the year, even after the approval of a local development order, they may submit a Letter of "No Further Transportation Impact" in lieu of fulfilling the transportation monitoring portion of the Annual Monitoring Report.

### I. Wastewater Management/Water Supply

1. The developer or the Bayside Improvement District must obtain a South Florida Water Management District Water Use Permit, or a Modification to an existing Consumptive Use Permit for any water withdrawals, and for dewatering activities proposed in connection with on-site construction that does not qualify for a No Notice General Permit, under Rule 40E-20.302(4), F.A.C.

2. Builders within Pelican Landing must utilize ultra-low volume plumbing fixtures, self-closing or metered water faucets, and other water conserving devices/methods consistent with the criteria outlined in the water conservation element of the Bonita Springs Utilities, Incorporated, SFWMD Water Use Permit or the water conservation element of any other approved utility provider utilized by the Development.

3. Developers must utilize xeriscape principles in the landscape design of the project to further the conservation of non-potable water.

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4. If reclaimed water is available for use within the project to address a portion of the project's irrigation demands, the developer or Bayside Improvement District, as appropriate, must ensure that on-site lakes, wetlands, and the surface water management system are protected in accordance with the requirements of the SFWMD and FDEP.

5. The developer must provide written assurance that any hazardous commercial effluent, generated by the project, will be treated separately from domestic wastewater, and handled in accordance with FDEP regulations.

6. Except for temporary septic tanks for construction trailers or for sales offices/models, septic tanks are prohibited.

7. All potable water facilities, including any on-site potable water treatment system, must be properly sized to supply average and peak day domestic demand, as well as fire flow demand. The facilities shall be constructed and sized in accordance with all pertinent regulations of the FDEP, Lee County, and any Fire Control District with jurisdiction.

8. All irrigation systems constructed for the golf course, landscaped areas and commercial/office portions of the project must be designed to accommodate effluent for irrigation use. Reclaimed water, to the extent it is available, must be used to address irrigation needs. The remaining demand will be satisfied through approved groundwater or surface water withdrawals. Reclaimed water must be used in accordance with all applicable regulations.

### J. Police and Fire Protection

1. Construction must comply with the fire protection requirements of all building, development, and life safety codes adopted by Lee County.

2. Facilities qualifying under the Superfund Amendments Reauthorization Act (SARA) Title III and the Florida Hazardous Materials Emergency Response and Community Right to Know Act of 1988, must file hazardous materials reporting applications in accordance with Sections 302 and 312. Each reporting facility must update these applications annually.

3. The developer must provide for the emergency medical service impacts and fire protection impacts generated by the proposed development as defined by Lee County regulations.

4. If access to development is through a security gate or similar device that is not manned 24 hours per day, the developer must install an override switch in a glass-covered box for use by emergency vehicles, or a comparable system that permits emergency vehicles to access the project.

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5. The project's impact on fire protection and rescue service delivery will be met by the ad valorem taxes, EMS impact fees and fire impact fees.

### K. Interface Zone

1. The Developer will design, develop, and maintain any golf course constructed adjacent to the mangrove fringe area of Estero Bay in accordance with condition 14 a. through i. of Resolution Number Z-94-014. Adjacent to the mangrove fringe means any golf course constructed within 500 feet of the mangrove fringe.

2. The Developer will employ management strategies to address the potential for pesticide/chemical pollution of groundwater and surface water receiving areas, including but not limited to, Estero Bay, the mangrove fringe and any transition zone wetlands of Estero Bay which may result from the development of a golf course and water management areas within five hundred feet of the mangrove fringe of Estero Bay.

3. The management practices which the Developer will follow are as follows:

a. The use of slow release fertilizers and/or carefully managed fertilizer applications which are timed to ensure maximum root uptake and minimal surface water runoff or leaching to the groundwater.

b. The practice of integrated pest management (IPM) when seeking to control various pests, such as weeds, insects, and nematodes. The application of pesticides will involve only the purposeful and minimal application of pesticides, aimed only at identified targeted species. The regular widespread application of broad spectrum pesticides is not acceptable. The IPM program will minimize, to the extent possible, the use of pesticides, and will include the use of the USDA-SCS Soil Pesticide Interaction Guide to select pesticides for uses that have a minimum potential for leaching or loss due to runoff depending on the site specific soil conditions. Application of pesticides within 100 feet of the jurisdictional mangrove system is prohibited.

c. The coordination of the application of pesticides with the irrigation practices (the timing and application rates of irrigation water) to reduce runoff and the leaching of any applied pesticides and nutrients.

d. The utilization of a golf course manager licensed by the state to use restricted pesticides and experienced in the principles of IPM. The golf course manager will be responsible for ensuring that the golf course fertilizers are selected and applied to minimize fertilizer runoff into the surface water and the leaching of those same fertilizers into the groundwater.

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e. The storage, mixing, and loading of fertilizer and pesticides will be designed to prevent/minimize the pollution of the natural environment.

4. The Developer will prepare a management plan for the application of herbicides, pesticides, and fertilizers on the proposed golf course adjacent to the mangrove fringe of Estero Bay. The plan will be prepared prior to the application of any herbicides, pesticides and fertilizers to the proposed golf course. The management plan will include a groundwater and surface water monitoring plan. The plan will provide for testing to assess whether there are any herbicide, pesticide, or fertilizer pollution of the water within the area of the golf course located within 500 feet of the mangrove fringe. The plan will identify the locations for the groundwater monitoring and testing on a map(s). The plan will set forth the testing and reporting requirements. The developer will submit the test reports with the annual monitoring report. The monitoring program will be established and operated at the expense of the Developer, the Bayside Improvement District, or other comparable legal entity charged with the legal responsibility of managing the golf course. This plan will be evaluated in accordance with the directives of Chapter 17-302, F.A.C., Water Quality Standards.

5. The Developer will submit a written surface and groundwater quality management plan to Lee County and DCA. The plan must be approved by DCA prior to the application of chemicals to the proposed golf course. The DCA will have 30 working days to review the management plan and approve or object to the plan in writing. The objections must be based on valid rules and regulations, and must identify how the concerns or issues can be addressed by the developer. The Developer must resubmit a revised water quality management plan to address the valid objections. DCA will have 30 days in which to review any revised management plan and must provide written comments or approval in the same manner as for the original management plan. Should DCA fail to provide a written response within the prescribed time frames, the plan will be deemed approved.

6. If groundwater or surface water pollution occurs, as that term is defined by the rules or regulations in effect at the time, and should the pollution be caused by the application of fertilizers, herbicides or pesticides to the golf course adjacent to the mangrove wetlands, the application of the pollutant must cease until there is a revised management plan for the application of the pollutant. A determination that the application of fertilizers, herbicides or pesticides to the golf course are the cause and source of the pollution must be based on competent and substantial evidence. If mitigation is necessary to address the pollution, a mitigation plan approved by DCA will be implemented by the developer. The mitigation plan will be based on rules and regulations in

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effect at the time the plan is reviewed and approved. The approved mitigation plan will be enforceable as a condition of the Development Order.

7. The mangrove wetland jurisdiction line of Estero Bay will be buffered from the proposed golf course by a 100' undisturbed naturally vegetated corridor, except for water management facilities permitted by the South Florida Water Management District and except for the removal of exotic plants as required by Lee County. The 100' buffer area will run along the portion of the golf course that abuts the mangrove wetlands of Estero Bay.

8. All of the Interface Zone conditions will be interpreted and applied with the understanding that water quality is regulated by the DEP and the SFWMD. None of the Interface Zone conditions will be interpreted in a manner which is contrary to Section 403.021, F.S., the Florida Air and Water Pollution Control Act, and the rules adopted thereunder.

9. The Interface Zone conditions will not be interpreted in a manner contrary to public policy directives to utilize domestic reclaimed water. Pelican Landing will not be responsible for any harmful pollutants applied to the golf course via the reclaimed water, unless Pelican Landing has actual knowledge that the reclaimed water provided by the utility contains harmful pollutants.

10. The conditions set forth in this DRI DO do not preempt the authority of the South Florida Water Management District and the Department of Environmental Protection. Section 373.016, F.S. provides that the legislature has vested the authority in the DEP/SFWMD to accomplish the conservation, protection, management, and control of the waters of the state. To the extent that any requirements of DCA, SWFRPC, or Lee County pursuant to this DRI DO are contrary to those of the SFWMD/DEP, in areas where the SFWMD and DEP have been given pre-emptive authority, the requirements of the SFWMD and the DEP will control.

### III. LEGAL EFFECT AND LIMITATIONS OF THIS DEVELOPMENT ORDER, AND ADMINISTRATIVE REQUIREMENTS

1. This Development Order constitutes a resolution of Lee County, adopted by the Board of County Commissioners in response to the Development of Regional Impact Application for Development Approval filed for the Pelican Landing DRI.

2. All commitments and impact mitigating actions volunteered by the developer in the Application for Development Approval and supplementary documents which are not in conflict with conditions or stipulations specifically enumerated above are incorporated by reference into this Development Order. These documents include, but are not limited to the following:

Second Development Order Amendment

- (a) Pelican Landing Application for Development Approval, stamped Received October 26, 1992;
- (b) Pelican Landing DRI sufficiency response, stamped Received February 5, 1993;
- (c) Pelican Landing DRI sufficiency response, stamped Received July 6, 1993;
- (d) Pelican Landing DRI sufficiency response, dated September 16, 1993; and
- (e) Pelican Landing DRI sufficiency response, stamped Received November 22, 1993.

3. Map H, last revised September 16, 1994 and stamped received March 3, 1995, is attached hereto as Attachment A and is incorporated by reference. It is understood that because it is a concept plan it is very general. The boundaries of development areas and location of internal roadways may be modified to accommodate topography, vegetation, market conditions, traffic circulation or other site related conditions as long as they meet local development regulations. This provision may not be used to reduce the acreage of the Eco-Park or other open space or preserve acreages. It is understood that the precise wetland boundaries are determined by the U.S. Army Corps of Engineers, SFWMD, FDEP and Lee County.

4. The Development Order is binding upon the developer(s) and its assignees or successors in interest. Where the Development Order refers to the Bayside Improvement District, lot owners, business owners, or other specific reference, those provisions are binding on the entities or individuals referenced. Those portions of this Development Order which clearly apply only to the project developer are binding upon any builder/developer who acquires any tract of land within Pelican Landing DRI.

5. The terms and conditions set out in this document constitute a basis upon which the developer and the County may rely in future actions necessary to implement fully the final development contemplated by this Resolution and Development Order.

6. All conditions, restrictions, stipulations and safeguards contained in this Development Order may be enforced by either party by action at law or equity. All costs of such proceedings, including reasonable attorney's fees, will be paid by the defaulting party.

7. Any reference to a governmental agency will be construed to mean any future instrumentality which may be created and designated as successors in interest to, or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Development Order.

Second Development Order Amendment

8. If any portion or section of this Development Order is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision will in no manner affect the remaining portions or sections of the Development Order which will remain in full force and effect.

9. This Development Order grants limited approval and does not negate the developer's responsibility to comply with all applicable federal, state, regional and local regulations.

10. Subsequent requests for local development permits will not require further review pursuant to Section 380.06, Florida Statutes, unless the Board of County Commissioners, after due notice and hearing, finds that one or more of the following is present:

(a) A substantial deviation from the terms or conditions of this Development Order, or other changes to the approved development plans which create a reasonable likelihood of adverse regional impacts or other regional impacts which were not evaluated in the review by the Southwest Florida Regional Planning Council; or

(b) An expiration of the period of effectiveness of this Development Order.

Upon a finding that any of the above is present, the Board must order a termination of all development activity in the development affected by a substantial deviation or expiration of time until such time as a new DRI Application for Development Approval has been submitted, reviewed and approved in accordance with Section 380.06, Florida Statutes, and all local approvals have been obtained.

11. The project has a buildout date of 2002, and a termination date of 2005. This term is based on a ten year buildout and the recognition that a local Development Order, which is valid for three years, may be obtained in the tenth year.

12. The developer and the Bayside Improvement District may not exercise any rights of condemnation to acquire land within the development commonly known as Spring Creek Village, El Dorado Acres, Estero Bay Shores, Mound Key Estates and Spring Creek Estates.

13. The Administrative Director of the Lee County Department of Community Development, or his/her designee, will be the local official responsible for assuring compliance with this Development Order.

14. The project will not be subject to down-zoning, unit density reduction, intensity reduction or prohibition of development until 2005 as long as the Lee Plan amendment proposed in association with this DRI to upwardly adjust the 2010 Overlay allocations for Subdistricts 801 and 806 is adopted and effective. If the County

## Second Development Order Amendment

clearly demonstrates that substantial changes have occurred in the conditions underlying the approval of the Development Order through public hearings on an amendment to the zoning and/or this DRI Development Order then a down-zoning, unit density reduction, or prohibition of development may occur. These changes would include, but would not be limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the developer, or that the change is clearly established by local government to be essential to the public health, safety and welfare.

If the companion plan amendment is adopted, Lee County will reserve to this DRI, the appropriate uses from the allocations established for subdistricts (subdistricts 806/801) of the Lee Plan 2010 Overlay until 2005. This reservation has the effect of reserving all of the acreage transferred from Gateway to Pelican Landing for the duration of the Development Order.

15. The developer, or its successor(s) in title to the undeveloped portion of the subject property, will submit a report annually to Lee County, SWFRPC, FDCA and all affected permit agencies. This report must describe the state of development and compliance as of the date of submission. In addition, the report must be consistent with the rules of the FDCA. The first monitoring report must be submitted to the Administrative Director of the DCA not later than one year after the effective date of this Development Order. Further reporting must be submitted not later than one year of subsequent calendar years thereafter, until buildout. Failure to comply with this reporting procedure is governed by Section 380.06 (18), Florida Statutes. The developer must inform successors in title to the undeveloped portion of the real property covered by this Development Order of this reporting requirement. This requirement may not be construed to require reporting from tenants or owners of individual lots or units.

16. Within six months of the effective date of this Development Order, the Developer will apply for an amendment to this Development Order which incorporates the portion of the Spring Creek DRI located west of US Highway 41 into the Pelican Landing DRI. The amendment will contain a description of that portion of the Spring Creek DRI and the conditions of the Spring Creek Development Order which are applicable to the Spring Creek West property. The amendment will not be deemed a substantial deviation under Chapter 380, Florida Statutes. The impacts of the Spring Creek development will not be considered separately or cumulatively in any future change to the Pelican Landing Development Order. A change in the development plan for the Spring Creek property could be a substantial deviation which would require further analysis of Spring Creek West. This amendment is to be adopted solely for the purpose of consolidating Spring Creek West and Pelican Landing under the same Development Order and none of Spring Creek West's vested rights will be lost because of this amendment.

Second Development Order Amendment

17. The County will forward certified copies of this Development Order to the SWFRPC, the developer, and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but will not be effective until the expiration of the statutory appeal period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Upon this Development Order becoming effective, the developer must record notice of its adoption in the office of the Clerk of the Circuit Court, as provided in Section 380.06(15), Florida Statutes.

THE MOTION TO ADOPT this Amendment was offered by Commissioner Manning and seconded by Commissioner Judah and upon poll of the members present, the vote was as follows:

John E. Manning	AYE
Douglas R. St. Cerny	ABSENT
Ray Judah	AYE
Andrew W. Coy	AYE
John E. Albion	AYE

DULY PASSED AND ADOPTED this 16th day of August, 1995.

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA

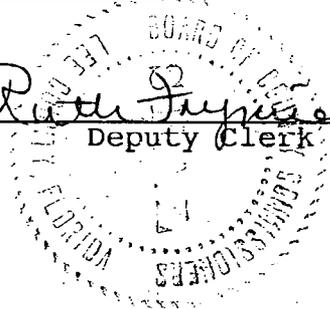
By: *John E. Albion*  
(Chairman)

ATTEST:

Charlie Green, Ex - Officio Clerk  
Board of County Commissioners

\_\_\_\_\_, Clerk

By: *Ruth Trujillo*  
Deputy Clerk



APPROVED AS TO FORM

By: *Ann M. Gault*  
County Attorney's Office

FILED

AUG 24 1995

CLERK CIRCUIT COURT  
BY *Ruth Trujillo D.C.*

State of Florida  
County of Lee

I, Charlie Green, Clerk of the Circuit Court for Lee County, Florida, do hereby certify this document to be a true and correct copy of the original document filed in the Minutes Department.

Given under my hand and official seal at Fort Myers, Florida, this 24<sup>th</sup> day of August, A.D. 1995

CHARLIE GREEN, CLERK  
By: *Ruth Trujillo*  
Deputy Clerk



Second Development Order Amendment

ATTACHMENT "B"

PELICAN LANDING DRI  
DEVELOPMENT PARAMETERS

Land Use	Units <sup>1</sup>	Existing (1992)	Planning Horizon I (1997)	Buildout Total (2002)
Residential	DU	969	2,433	4,050
Single Family	DU	373	625	665
Multi Family	DU	596	1,808	3,385
Retail <sup>2</sup>	GFA	11,000	291,000	600,000
Office <sup>3</sup>	GFA	40,000	150,000	210,000
Hotel	Rooms	0	450	450
Recreation Uses				
Pelican Nest Golf Course/Clubhouse/ Practice Range	Holes	29	38	38
Range Club Golf Course	Holes	0	9	9
Tennis Center	Courts	0	6	12
Coconut Marina	Boat Slips			
	Wet	24	48	48
	Dry	0	150	150
Redfish Point	GFA	5,000	5,000	5,000
	Boat Slips			
	Wet	15	15	15
Other <sup>4</sup>	Boat Slips			
	Wet	2	2	2

Footnotes:

- 1 Units  
DU - Dwelling Units  
GFA - Square Feet of Gross Floor Area
- 2 Includes conference center, community center and clubhouse/marina
- 3 Includes "Foundations"
- 4 Ancillary Use

ADMINISTRATIVE CODE  
BOARD OF COUNTY COMMISSIONERS

<u>CATEGORY:</u> DEVELOPMENT/PLANNING/ZONING	<u>CODE NUMBER:</u> AC-13-16
<u>TITLE:</u> PROPORTIONATE SHARE CALCULATIONS FOR TRANSPORTATION FACILITY NEEDS RESULTING FROM NEW DEVELOPMENT	<u>ADOPTED:</u> AUGUST 21, 1991  <u>ORIGINATOR:</u> BILL SPIKOWSKI DEPT. OF GROWTH MANAGEMENT
<u>COUNTY ADMIN:</u> ROBERT GRAY, ACTING COUNTY ADMINISTRATOR	<u>BOARD CHAIRPERSON:</u> DOUGLAS ST. CERNY

I. PURPOSE:

This document describes procedures to calculate proportionate share costs for proposed developments. All new development is required to pay road impact fees under the terms of Lee County's Roads Impact Fee Ordinance (No. 85-23, as amended). Some developers/applicants may be required to pay a proportionate share of roadway improvement costs under certain conditions as outlined below. These conditions result from the larger size, use, character, or location of the proposed development. Mitigation of impacts on the county's road system is mandated by the Lee County Comprehensive Plan.

II. SCOPE:

The policies and procedures contained in this code have been prepared to aid the development community and Lee County Commissioners and staff in assessing the impacts of larger new developments on the surrounding road network. This code is supplemental in nature:

- A. As to Developments of Regional Impact (DRIs), this code supplements the provisions of Chapter 380, Florida Statutes, and Rule 9J-2.0255, Florida Administrative Code.
- B. As to Development Agreements, this code supplements Ordinance No. 90-29.

Traffic analysis methodologies deviating from these procedures must be approved by the Lee County Department of Transportation & Engineering.

III. POLICY/PROCEDURE:

- A. Pre-application Meeting  
A pre-application meeting between the county and the applicant is encouraged. The purpose of this meeting is to review the methodology and procedures and to determine the study period. This will usually be a PM peak hour analysis; however, other time periods may require analysis. This discussion can be held at the same time as the pre-application meeting for the project's Traffic Impact Statement.
- B. Projecting Future Year Total and Development Trips  
Two separate methodologies are outlined under this section. The first methodology applies to large projects or developments with build-out periods of longer than five years. For purposes of this analysis, projects generating more than 750 peak hour external trip ends and having build-out periods of 5 years or more are generally considered large, all others are small. This first methodology requires use of the latest Lee County FSUTMS computer model for projecting total and development trips. The second methodology applies to smaller projects and projects with build-out periods of five years or less. For these smaller short-range developments, manual traffic analysis methods should be used in place of the FSUTMS computer model.

1. Larger or Long-Term Developments

- a. The FSUTMS computer model should be used to develop traffic volumes for build-out and interim phase years.
  - (1) The latest zonal data should be gathered from the Lee County Department of Transportation & Engineering.
  - (2) The model's base and future year zonal data can be used for data interpolation or extrapolation to the appropriate project years (in the absence of existing zonal data).
- b. Future year traffic assignments should be developed for development trips and total trips using the FSUTMS model. The following methods are the recommended DRI traffic impact analysis methodologies as listed in Florida Department of Transportation FSUTMS training course materials:
  - (1) Development trips can be determined by using a two-purpose trip table with the second purpose representing all trips with at least one end in the development zone or zones.
  - (2) Development trips can also be isolated with the selected links analysis method.
- c. The "net impact methodology" is an unacceptable method for determining development trips. Under this method, volumes from a traffic assignment with the development land use in place are subtracted from assignment volumes with zero land use assumed on the development site. The net impact methodology significantly underestimates development trips on each link. On links further from the site, this methodology often results in illogical negative number of development trips; thus the methodology is not appropriate as the basis for proportionate share calculations.

2. Smaller or Short-Term Developments

- a. For these developments, it is acceptable to use historic growth rates for traffic projection and manual distribution techniques to determine project trip loadings.
  - (1) Appropriate traffic growth rates should be determined based on an examination of historical counts available for the impact area.
  - (2) Current traffic counts must be collected for all arterial segments in the impact area.
  - (3) Current traffic volumes should be projected to the build-out year and the end of each development phase.
- b. Trip generation for the project under study should be estimated using the latest edition of the ITE Trip Generation manual or other figures acceptable to the Department of Transportation & Engineering. It may be appropriate to apply internal capture assumptions for mixed-use developments and pass-by capture factors for commercial uses on arterial roadways. These factors may be based on the ITE Trip Generation manual or other sources acceptable to the Department of Transportation and Engineering.
- c. Development trips should be assigned to surrounding roadways based on the relative trip activity and location of surrounding land uses.
  - (1) The potential origins and destinations for development trips and turning patterns at key intersections should form the basis for these manual distributions.
  - (2) Trip attenuation along assigned roadways can be accomplished through an analysis of average trip length and consideration of intervening opportunities for "intercepting" trips along designated paths.
  - (3) Thorough documentation of distribution procedures and justifications of all assumptions must be presented.
- d. The total traffic projection on each roadway segment in the study area is calculated generally by adding the assigned development traffic to the projected future year volume.

Mitigation Due to "Significance" and "Adversity"

1. If a roadway link is projected to carry a significant number of development trips and total traffic adversely affects the roadway by exceeding the service volume (Capacity), a proportionate share of the improvement cost for that link shall be calculated.
2. For roadway links in the impact area, service volumes must be determined.
  - a. Each roadway has a specific service volume based on its unique characteristics.
  - b. These service volumes must be determined using procedures based on 1985 Highway Capacity Manual.
  - c. The FDOT statewide Generalized Level of Service Tables are applicable only to the broadest planning applications; a more detailed LOS analysis must be used for mitigation purposes. Generalized service volumes have been developed for Lee County, and may be used. They are contained in Chapter IX of the 1990 Amendments to the Lee Plan (see Volume 1 of the supporting documentation).
  - d. The ARTPLAN program developed by FDOT is another acceptable method of replicating the 1985 HCM arterial analysis.
3. Each roadway link must be analyzed to determine if development traffic has a significant impact on the roadway.
  - a. A significant impact is said to occur when development traffic exceeds 5% of the LOS D service volume for that link.
  - b. This significance analysis will determine which roadways fall within the impact area and must then be tested for adversity.
4. A roadway link is determined to be adversely affected if total traffic exceeds the LOS D service volume for that link.

D. Roadway Improvement Costs

1. A proportionate share shall be calculated for design, right-of-way, and construction costs for all links where traffic levels are both significant and adverse.
  - a. Roadway improvement cost calculations should be based on cost figures developed specifically for the roadway being analyzed. These cost figures are often available for roadway projects under design by state or local agencies.
  - b. If specific costs are unavailable, average cost per mile figures for the required type of roadway improvement should be used. Statewide average cost per mile values have been developed by FDOT for each type of roadway improvement; often local average cost per mile figures are also available.

E. Proportionate Share Calculations for DRIs

1. Proportionate shares shall be calculated using the formula developed by the Southwest Florida Regional Planning Council. This formula is similar to the DRI proportionate share formula adopted by the Department of Community Affairs as contained in Rule 9J-2.0255, F.A.C. The formula is as follows:

$$\text{Proportionate Share Percentage} = \frac{\text{Development Trips} - \text{Reserve Capacity on Link}}{\text{Added Capacity With Improvement}}$$

- a. "Reserve Capacity" is determined by subtracting future year non-development traffic from the road's service volume. A reserve capacity of zero is used if this calculation results in a negative number.

- b. "Added Capacity With Improvement" is the difference between the service volume after the improvement and the service volume before the improvement.
2. The proportionate share percentage is multiplied by the total cost of the roadway improvement for each road link to determine the developer's proportionate share of that improvement.
3. This proportionate share formula is applied to each link on which the development traffic is significant and levels of service are adverse. The sum of these computations is the development's "proportionate share." If this sum is less than the development would pay in road impact fees, it shall not form the basis for an assessment against the development in the DRI or DCI process. If the sum is greater than the development would pay in road impact fees, it will be used in a DRI development order as the figure required to mitigate the development's long-run impact on transportation facilities.

F. Voluntary Proportionate Share Payments in Development Agreements

1. In order to induce Lee County into entering a Development Agreement pursuant to Ordinance No. 90-29, a prospective developer should use this section as the basis for his/her offer to voluntarily construct road improvements or to pay the cost of such improvements.
2. Sections B, C, and D above shall be used to project future travel patterns, to determine "significance" and "adversity," and to estimate roadway improvement costs.
3. Proportionate share payments in Development Agreements shall be calculated by summing the costs of improving each road segment that meets the previously stated tests for "significance" and "adversity," up to a cap of double the road impact fees at current rates for the entire development. The Development Agreement shall be based on the greater of the total costs of needed improvements (as just described) up to the cap of double impact fees, or proportionate share as calculated under Section E above, whichever greater.

State of Florida  
County of Lee

I, Charlie Green, Clerk of the Circuit Court for Lee County, Florida, do hereby certify this document to be a true and correct copy of the original document filed in the Minutes Department.

Given under my hand and official seal at Fort Myers, Florida, this 28th day of March, A.D. 1995

CHARLIE GREEN, CLERK

By Patricia J. J. J.  
Deputy Clerk

ATTACHMENT C