

AGREEMENT

Agreement made this 5<sup>th</sup> day of Dec, 2005 by and between ESTERO PRESERVE, LLC, 8985 Star Tulip Court, Naples, Florida 34113 ("Preserve"), and ESTERO COMMONS, LLC, 9167 Brendon Lake Court, Bonita Springs, Florida 34135 ("Commons").

WHEREAS, Preserve is the fee simple owner of the real property located in Lee County, Florida, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, Commons is the fee simple owner of the real property located in Lee County, Florida, which is more particularly described in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the parcels described in Exhibits "A" and "B" were included in a single rezoning application to Residential Planned Development, which was approved by the Lee County Board of County Commissioners on November 21, 2005; and

WHEREAS, the resolution approving the rezoning contains conditions requiring Commons to take certain specified actions relating to its property prior to the approval of development orders for the Preserve parcel; and

WHEREAS, a dispute exists as to whether Preserve owes \$100,000 to Commons.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Preserve will pay \$100,000 to Commons no later than December 5, 2005 via wire transfer.
2. Commons agrees to comply with Condition 4(d) of Lee County Resolution Z-05-041. Commons agrees to provide the executed conservation easement required by Condition 4(d) within ten (10) days of receipt of written notice from PRESERVE that the first development order for the development of the property described in Exhibit "A" will be approved upon Lee County's receipt of a satisfactory conservation easement.
3. Commons agrees to permit the relocation of gopher tortoises from the Preserve

*MP* *MP*

*L was this paid? is there documentation?*

parcel to its parcel in accordance with Condition 5 of Resolution Z-05-041 within 15 days of receipt of a written request from Preserve.

4. Preserve and Commons shall have all of the remedies available in Florida law, including specific performance, to enforce this agreement. The prevailing party in any such litigation shall be entitled to reasonable attorney's fee.

5. This agreement shall run with the land and bind the successors and assigns of Preserve and Commons.

6. Commons agrees to execute any and all reasonable documents that are reasonably necessary to authorize Preserve to apply for and obtain development permits for the property identified in Exhibit "A," including, but not limited to, Lee County development orders and state and federal environmental permits, at no cost to Commons.

7. Commons and Preserve release each other from any further obligations pursuant to their December 2, 2005 agreement except as set out above.

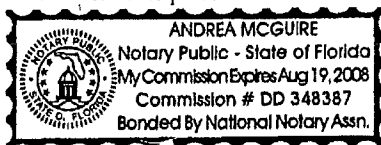
Witnesses:  
[Signature]  
Print Name: ANDREA MCGUIRE  
[Signature]  
Print Name: Melody A. King

ESTERO PRESERVE, LLC  
By: [Signature]  
Print Name: Michael R. Hoggatt  
Title: MANAGING MEMBER

STATE OF FLORIDA     )  
                                  )  
COUNTY OF LEE        )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of December, 2005, by Mike Hoggatt (name) as \_\_\_\_\_ (title) of ESTERO PRESERVE, LLC, on behalf of the corporation, who is  personally known to me or  who has produced \_\_\_\_\_ as identification.

My Commission Expires:



[Signature]  
Notary Public  
ANDREA MCGUIRE  
Printed Name

[Handwritten initials]

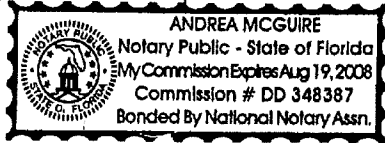
Witnesses:  
[Signature]  
Print Name: Andrea McGuire  
[Signature]  
Print Name: Nancy Prior

ESTERO COMMONS, LLC  
By: [Signature]  
Print Name: Michelle Pessin  
Title: Managing member

STATE OF FLORIDA     )  
  )  
COUNTY OF LEE        )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of December, 2005, by Michelle Pessin (name) as \_\_\_\_\_ (title) of ESTERO COMMONS, LLC, on behalf of the corporation, who is  personally known to me or  who has produced \_\_\_\_\_ as identification.

My Commission Expires:



[Signature]  
Notary Public  
ANDREA MCGUIRE  
Printed Name

Property Appraiser's  
Parcel Identification No.  
20462901000990000  
Grantor's Social Security Number  
Estero Preserve, LLC ( )  
This instrument was prepared  
without examination or opinion of title by  
Louis W. Cherry  
Cherry Trademore  
Wilson & Johnson, LLP  
821 Fifth Avenue South  
Naples, Florida 34102  
(239) 261-9700

INSTR # 6295727  
ON BK 84313 Pgs 4274 - 4278; (3)pgs  
RECORDED 05/27/2004 04:26:34 PM  
CHARLIE GREEN, CLERK OF COURT  
LEE COUNTY, FLORIDA  
RECORDING FEE \$5.00  
DEED DOC 23, 246.00  
DEPUTY CLERK J MILLER

(Source shown this line for recording file)

**WARRANTY DEED**

THIS WARRANTY DEED, made this 26 day of May, 2004, by Estero Commons, LLC, a Florida limited liability company, whose post office address is 9167 Brendan Lake Court, Bonita Springs, FL 34134 (singularly or collectively "Grantor"), to Estero Preserve, LLC, a Florida limited liability company, whose post office address is 8925 Star Tulip Court, Naples, FL 34113 (singularly or collectively "Grantee"):

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

WITNESSETH: That the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations, receipt of which is hereby acknowledged, hereby grants, bargains, sells, alien, remises, releases, conveys and confirms unto the Grantee, all that certain land situated in Lee County Florida, viz:

See Exhibit "A" attached hereto and incorporated herein

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

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

AND, the Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land; that the Grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whatsoever; and that said land is free of all encumbrances, except taxes for the current and subsequent years, zoning and use restrictions imposed by governmental authority, restrictions and easements common to the subdivision, those items shown in Exhibit "B", and outstanding oil, gas and mineral interests of record, if any.

IN WITNESS WHEREOF, Grantor has signed and sealed these presents the day and year first above written.

Signed, Sealed and Delivered as  
to Each Grantor in the Presence of:

Estero Commons, LLC,  
a Florida limited liability company

By: Michele Pessini  
Michele Pessini, Managing Member

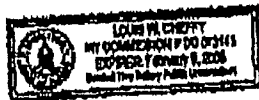
Courtney LeFevers  
Witness Name: Courtney LeFevers

Louis W. Cherry  
Witness Name: Louis W. Cherry

State of Florida  
County of Collier

The foregoing instrument was acknowledged before me this 26 day of May, 2004 by Michele Pessini, Managing Member of Estero Commons, LLC, a Florida limited liability company, on behalf of the company. She  is personally known to me or  has produced \_\_\_\_\_ as identification.

[Notary Seal]



Louis W. Cherry  
Notary Public

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

EXHIBIT "A"  
(3 pages)

DEC.02'2005 14:50 2393341446

KNOTT CONSOER EBELINI HART SWETT #6503 P.003/007

Exhibit "A"

**PROPERTY DESCRIPTION**

A PARCEL OF LAND LOCATED IN SAN CARLOS GROVE TRACT AS RECORDED IN PLAT BOOK 4 AT PAGE 75 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 46 SOUTH, RANGE 25 EAST; THENCE RUN SOUTH 00°27'05" WEST, ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 20, FOR A DISTANCE OF 331.22 FEET TO THE NORTHWEST CORNER OF LOT 6 OF SAN CARLOS GROVE TRACT AS RECORDED IN PLAT BOOK 4, PAGE 75 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, ALSO BEING THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE RUN SOUTH 89°53'59" EAST, ALONG THE NORTH LINE OF SAID LOT 6, FOR A DISTANCE OF 929.65 FEET; THENCE RUN SOUTH 00°06'01" WEST FOR A DISTANCE OF 3.86 FEET; THENCE RUN SOUTH 89°32'55" EAST FOR A DISTANCE OF 14.19 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE CONCAVE SOUTHWEST; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 242.50 FEET, THROUGH A CENTRAL ANGLE OF 111°06'55", SUBTENDED BY A CHORD OF 389.98 FEET AT A BEARING OF SOUTH 33°59'28" EAST, FOR AN ARC LENGTH OF 470.29 FEET TO THE END OF SAID CURVE; THENCE RUN SOUTH 00°36'11" WEST FOR A DISTANCE OF 59.03 FEET; THENCE RUN SOUTH 41°56'06" EAST FOR A DISTANCE OF 180.58 FEET; THENCE RUN SOUTH 00°28'43" WEST FOR A DISTANCE OF 365.86 FEET; THENCE RUN SOUTH 89°52'03" EAST FOR A DISTANCE OF 200.00 FEET; THENCE RUN SOUTH 00°07'57" WEST FOR A DISTANCE OF 100.00 FEET TO A POINT ON THE SOUTH LINE OF LOT 8 OF THE AFOREMENTIONED SAN CARLOS GROVE TRACT; THENCE RUN NORTH 89°52'03" WEST ALONG SAID SOUTH LINE OF LOT 8, FOR A DISTANCE OF 200.62 FEET; THENCE RUN SOUTH 00°29'08" WEST A DISTANCE OF 30.00 FEET TO THE NORTHEAST CORNER OF LOT 11 OF THE AFOREMENTIONED SAN CARLOS GROVE TRACT; THENCE RUN SOUTH 00°29'08" WEST, ALONG THE EAST LINE OF SAID LOT 11, FOR A DISTANCE OF 429.97 FEET; THENCE RUN NORTH 89°32'55" WEST FOR A DISTANCE OF 991.14 FEET TO AN INTERSECTION ON THE WEST LINE OF THE SOUTHWEST QUARTER OF THE AFOREMENTIONED SECTION 20; THENCE RUN NORTH 00°27'05" EAST, ALONG SAID WEST LINE, FOR A DISTANCE OF 1,448.11 FEET TO THE POINT OF BEGINNING, CONTAINING 32.000 ACRES, MORE OR LESS.

LESS & EXCEPT THE 30.00 FEET ROADWAY IN SAN CARLOS GROVE TRACT, RECORDED IN PLAT BOOK AT PAGE 75, OF THE PUBLIC RECORDS LEE COUNTY FLORIDA BEING MORE PARTICULARLY DESCRIBED FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 9 OF SAID SAN CARLOS GROVE TRACT; THENCE RUN NORTH 00°27'05" EAST, ALONG THE WEST LINE OF SAID SAN CARLOS GROVE TRACT, FOR A DISTANCE OF 30.00 FEET TO THE SOUTHWEST CORNER OF LOT 8 OF THE AFOREMENTIONED SAN CARLOS GROVE TRACT; THENCE RUN SOUTH 89°52'03" EAST, ALONG THE SOUTH LINE OF SAID LOT 8, FOR A DISTANCE OF 991.43 FEET; THENCE RUN SOUTH 00°29'08" WEST FOR A DISTANCE OF 30.00 FEET TO THE NORTHEAST CORNER OF LOT 11 OF THE AFOREMENTIONED SAN CARLOS GROVE TRACT; THENCE RUN NORTH 89°52'03" WEST, ALONG THE NORTH LINE OF LOTS 11, 10 AND 9 OF SAID SAN CARLOS GROVE TRACT, FOR A DISTANCE OF 991.41 FEET TO THE POINT OF BEGINNING, CONTAINING 0.683 ACRE MORE OR LESS.

TOGETHER WITH A VEHICULAR ROADWAY, INGRESS AND EGRESS, AND UTILITY EASEMENT AS RECORDED IN O.R. BOOK 3019, PAGE 687 AND O.R. BOOK 3019, PAGE 716.

DEC.02'2005 14:50 2393341446

KNOTT CONSOER EBELINI HART SWETT #6503 P.004/007

**EXHIBIT B**

**RESTRICTION**

Grantee, by acceptance of this Deed, acknowledges and agrees that the Property conveyed herein is subject to the restriction that no more than 90 residential lots are permitted to be built on the Property. This restriction runs with the land and is binding on Grantee, its successors and assigns.

*MP*

*[Handwritten signature]*

DEC.02'2005 14:51 2393341446

KNOTT CONSOER EBELINI HART SWETT #6503 P.005/007



Property Appraiser's  
Parcel Identification No.  
20-46-25-01-00009.0000  
Grantor's Social Security Number:

INSTR # 3873170  
Official Records BK 03976 PG 0316  
RECORDED 06/30/2003 11:11:58 AM  
CHARLIE GREEN, CLERK OF COURT  
LEE COUNTY  
RECORDING FEE 15.00  
DEED DOC 14,700.00  
DEPUTY CLERK L Parent

This instrument was prepared  
without examination or opinion of title by  
Louis W. Chetty  
Chetty Possidomo  
Wilson & Johnson, LLP  
821 Fifth Avenue South  
Naples, Florida 34102  
(239) 261- 0300

(Space above this line for recording data)

**WARRANTY DEED**

THIS WARRANTY DEED, made the 24th day of May, 2003, by A.P. DeSalvo, as Trustee, individually and as Trustee, whose post office address is 3960 Via Del Ray, Bonita Springs, FL 34134 (singularly or collectively "Grantor"), to Estero Commons, LLC, a Florida limited liability company, whose post office address is 9167 Brendan Lake Court, Bonita Springs, FL 34135 (singularly or collectively "Grantee");

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

WITNESSETH: That the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations, receipt of which is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, all that certain land situated in Lee County Florida, viz:

Lots 6-11, of that certain subdivision know as SAN CARLOS GROVE TRACT, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court in Plat book 4, page 73, of the public records of Lee County, Florida, together with a non-exclusive roadway, ingress and egress and utility easement as to the North 45 feet of Tract 13 of said SAN CARLOS GROVE TRACT and a non-exclusive roadway, ingress and egress and utility easement as to the North 45 feet of Tract 12 of said SAN CARLOS GROVE TRACT.

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

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

Grantor warrants that at the time of this conveyance, the subject property is vacant land and is not the Grantor's homestead within the meaning set forth in the constitution of the state of Florida, nor is it contiguous to or a part of homestead property. Grantor's residence and homestead address is: \_\_\_\_\_

AND, the Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land; that the Grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whatsoever, and that said land is free of all encumbrances, except taxes for the current and subsequent years, zoning and use restrictions imposed by governmental authority, restrictions and easements common to the subdivision, and outstanding oil, gas and mineral interests of record, if any.

IN WITNESS WHEREOF, Grantor has signed and sealed these presents the day and year first above written,

Signed, Sealed and Delivered as  
to Each Grantor in the Presence of:

EXHIBIT "B"  
(3 pages)

Official Records BK 03976 PG 0337

Witness Name: [Signature]  
Witness Name: [Signature]

A.P. DeSalvo (Son)  
A. P. DeSalvo, individually and as Trustee

State of Florida  
County of Lee

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of JUNE, 2003 by A. P. DeSalvo, individually and as Trustee, who  is personally known or  has produced \_\_\_\_\_ as identification.

[Notary Seal]



Carissa H. Peterson  
Notary Public

Printed Name: CARISSA H. PETERSON

My Commission Expires: 5/1/05



**EXHIBIT A**

**Lots 6-11 of that certain subdivision known as San Carlos Grove Tract, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court in Plat Book 4, page 75, of the Public Records of Lee County, Florida, together with a non-exclusive roadway, ingress and egress and utility easement as to the North 45 feet of Tract 13 of said San Carlos Grove Tract and a non-exclusive roadway, ingress and egress and utility easement as to the North 45 feet of Tract 12 of said San Carlos Grove Tract.**