

Prepared by:
N. Gluck, Lee County
Zoning & Development Review Division
P.O. Box 398
Fort Myers, FL 33902

RESOLUTION NUMBER Z-89-013

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

WHEREAS, G. Phil Peagler and E. M. Griffiths, Trustees, represented by John E. States, Trustee, in reference to Cross Creek Estates, have properly filed an application for a rezoning from AG-2 to Residential Planned Development, to permit a residential development with a maximum of 684 dwelling units including single-family homes, cluster and zero lot line units and multi-family buildings not to exceed 35 feet in height (two stories over parking), on 249.70 total acres of land. The proposed development will also include administrative offices, consumption-on-premises of alcoholic beverages, and other related accessory uses.

NOTE: If approved, the Master Concept Plan will deviate from the following Lee County Standards:

- (1) Minimum setback between structures and a section line of 75 feet (Section 202.18.B.3.a.1.), to 25 feet for the North/South line between Sections 16 and 17; and East/West line between Sections 16 and 21.
- (2) Minimum setback between structures and a quarter section line of 60 feet (Section 202.18. B.3.a.2.), to 0.0 feet for the North/South line in Section 16.
- (3) Minimum water retention excavation setbacks from a quarter section line of 60 feet (Section 509.C.2.), to 0 feet for the North/South line in Section 16.
- (4) Minimum water retention excavation setbacks from a section line of 75 feet (Section 509.C.1.), to 25 feet for the North/South line between Sections 16 and 17; and the East/West line between Sections 16 and 21.
- (5) Minimum water retention excavation setbacks from a street right-of-way of 150 feet (Section 509.C.4.), to 25 feet.
- (6) Minimum water retention excavation setbacks to a private property line of 50 feet (Section 509.C.4.), to 25 feet.

*where to where
is 25'*

HEARING NUMBER 89-1-9 DCI

COPY FORWARDED BY (5969L/34)

DAVID M. JONES JR.
& ASSOCIATES, INC.
C.D. BOK
8/22/89

RECEIVED
DEVELOPMENT
REVIEW
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RESOLUTION NUMBER Z-89-013
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David M. Jones, Jr.
& Associates, Inc.

2-27-8

- (7) Maximum depth for a water retention excavation of 12 feet (Section 509.B.), to the confining layer.
- (8) Requirement that a four-foot fence be placed around excavations for water retentions when located less than 100 feet from any property under separate ownership (Section 509.F.), to require no fencing.
- (9) Requirement that properties which exhibit soils, hydrology and vegetation characteristic of saltwater inundation or freshwater ponding be subject to certain additional regulations and ordinances (Section 202.11.C.1.b., DSO Section C.1.b.(4), and Ordinance 86-31, Section 6.03.), to permit water management structures.
- (10) Requirement that streets in a proposed development be connected to streets in adjacent areas (DSO Section C.3.e. and f.), to not require interconnection to the north and south.
- (11) Minimum street setback from a trafficway shown on the Official Trafficways Map of 100 feet (DSO Section C.3.m.2.a. and Sections 202.18.B.2.a. and 800.02.F.), to 0 feet.
- (12) Requirement that residential developments are limited to a maximum number, type, size, and location of signs (Ordinance 85-26, Section IV.B.1.), to allow a sign to be placed off-site.
- (13) Requirement that no model home shall be used for sales (Section 520.C.2.), to allow sales.
- (14) Requirement that the length of a cul-de-sac (maintained and dedicated by the county) shall not exceed 1,000 feet for single-family residential development (DSO Section C.3.b.4.), to allow cul-de-sacs with a maximum length of 1,500 feet.
- (15) Requirement that properties which exhibit soils, hydrology and vegetation characteristics of saltwater inundation or freshwater ponding be subject to certain additional regulations and ordinances (Section 202.11.C.1.b., DSO Section C.1.b.(4), and Ordinance 86-31, Section 6.03), to allow conventional single-family residential use with a minimum lot size as provided for in Area A on the Master Concept Plan Property Development Standards.
- (16) Minimum required lot area and dimensions (Section 431.C.1.), to permit the following area and lot dimensions for various products which are specified in the density tabulation below:

LOCATION	PRODUCT TYPE	LOT AREA (MINIMUM S.F.)	LOT DIMENSIONS (MIN)	HEIGHT (MAX)
A	Conventional Single Family Residence	12,000	100' x 100'	35'
B	Conventional Single Family Residence	7,500	75' x 100'	35'
C	Cluster	5,500	55' x 100'	35'
C	Zero Lot Line	5,500	55' x 100'	35'
D	Multi-Family			35'

- (17) Deviation from front, rear, side and water setback requirements (Section 431.C.2.b. and c.), to allow development as identified on the Master Concept Plan Property Development Standards; and

WHEREAS, the subject property is located at 12998 Caisson Lane, described more particularly as:

LEGAL DESCRIPTION: In Section 16, Township 45 South, Range 25 East, Lee County, Florida:

The Southwest Quarter (SW 1/4) and the West Half (W 1/2) of the Southeast Quarter (SE 1/4) of Section 16, Township 45 South, Range 25 East, Lee County, Florida.

WHEREAS, the applicant has indicated the property's current STRAP number is 16-45-25-00-00002-0000; and

WHEREAS, proper authorization has been given to John E. States, by G. Phil Peagler and E. M. Griffiths, Jr., the Co-Trustees of the subject parcel, to act as agent to pursue this zoning application; and

WHEREAS, proper authorization has been given to David M. Jones Jr. and Associates, Inc., by John E. States, Trustee of Cross Creek Estates Land Trust, to act as agent to pursue this zoning application; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Hearing Examiner, with full consideration of all the evidence available; and

WHEREAS, the Lee County Hearing Examiner fully reviewed the matter in a public hearing held on January 24, 1989; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Board of County Commissioners; and

WHEREAS, in the legislative process the Lee County Board of County Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, 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 of County Commissioners does hereby APPROVE WITH CONDITIONS a rezoning from AG-2 to Residential Planned Development, to permit a residential development with a maximum of 684 dwelling units including single-family homes, cluster and zero lot line units and multi-family buildings not to exceed 35 feet in height (two stories over parking), on 249.70 total acres of land. The proposed development will also include administrative offices, consumption-on-premises of alcoholic beverages, and other related accessory uses; and

Approval is conditioned to the following:

CONDITION #1. The development and use of this property shall be in accordance with the one-page Master Concept Plan for Cross Creek Estates prepared by David M. Jones, Jr. & Associates Inc. (Map - H, last revised on 12-21-88 and received on December 22, 1988), except as may be modified by the conditions herein. This approval does not relieve this development from compliance with all other applicable state or local regulations, except for those specifically approved as part of this development.

CONDITION #2. Note #2 on the Master Concept Plan shall not be interpreted to mean that residential unit types may change. Unit types shall be as depicted on the Master Concept Plan. Exact location of lakes set out on the Master Concept Plan will not deviate significantly from that set out on the Master Concept Plan.

* CONDITION #3. In areas C and D on the Master Concept Plan the Applicant shall install and provide for the permanent and perpetual maintenance of a perimeter buffer as set out in Section C.5.d. of the Development Standards except that said buffers shall contain double the required plant material. In addition, in areas C and D the applicant shall increase the required setbacks from the perimeter to 50 feet for a one story building; 75 feet for a two story building and 100 feet for a three story building.

* CONDITION #4. Open Space requirements shall be met within each area of the Master Concept Plan, in accordance with Section 431.C.4 of the Lee County Zoning Ordinance, except that the Applicant may, prior to the preliminary development order have an open space plan approved by the Department of Community Services which plan demonstrates on its face that it complies with the open space and neighborhood park requirements of Section 431.C.4. and 804.02C.1. through 4. of the Lee County Zoning Ordinance, in which case, said approved plan shall control.

CONDITION #5. Deviations #9 and #15 are hereby APPROVED with the following conditions:

a. Prior to preliminary development order approval, the flagged wetland boundary and the area of proposed wetland encroachment shall be subject to approval by the Department of Community Development which approval shall not be unreasonably withheld. Only limited encroachment as allowed by the Department of Community Development of wetlands in marginal areas will be allowed.

b. To mitigate the encroachment of wetlands, the applicant shall create, at a minimum, the same acreage of the same vegetation community type elsewhere on site. A plan showing the extent of wetland encroachment and a mitigation plan shall be submitted prior to preliminary development order approval and shall be subject to approval by the Department of Community Development. The mitigation plan shall include the following:

- 1) A specific wetland creation plan including location, acreage, design specifications, plantings and timetable.
- 2) A specific lake littoral zone creation plan which will include the planting of a native plant species mix.
- 3) A specific plan for the removal of all recognized exotic vegetation located within the development, including the wetland preserve areas. The plan shall include a three (3) year maintenance program to control the re-invasion of exotic vegetation on the subject property.
- 4) Plant coverage for the created wetlands shall be a minimum of eighty (80) percent after a maximum of two (2) years upon establishment.

CONDITION #6. The developer shall participate in and the Applicant or future owners of this real estate shall participate in an area-wide drainage program under the same fiscal terms and conditions as all other benefited properties. The drainage program anticipated herein by this condition is a drainage program which is initiated by Lee County or by the South Florida Water Management District or the applicant, or by a group of benefited property owners. In addition, the obligation to participate in said program shall be made a condition of ownership of any portion of same in the way and in the manner specified by the Lee County Attorney's Office prior to the issuance of a Preliminary Development Order concerning this real estate.

CONDITION #7. Consumption-on-premises (COP) shall NOT be permitted on this real estate.

CONDITION #8.a. The developer shall initiate the establishment of a homeowners' or residents' association to provide an educational program for hurricane preparedness. The established homeowners' or residents' association shall maintain an education program for hurricane preparedness. The program shall consist of annually describing the risks of the hurricane hazards to the residents, as well as the actions to mitigate the dangers which these hazards present.

b. At the completion of development construction, or each phase thereof, a development representative shall:

- 1) provide to Lee County Emergency Medical Service a site plan depicting street names and building addresses; and
- 2) discuss with Lee County Emergency Medical Services the designation of emergency medical helicopter landing zones and the accessibility of the EMS unit.

CONDITION #9. When a central public sewage system with adequate capacity to serve this project is available within one-quarter of a mile of this development, this development shall connect into that public system within six (6) months of that availability.

CONDITION #10. (not used)

CONDITION #11. Total dwelling units within this development shall not exceed 684 units. Any request to exceed this amount shall require an amendment to the zoning and a determination of whether a binding letter of Development of Regional Impact status is necessary.

CONDITION #12. Specific drainage requirements have not been approved as part of this development. All drainage requirements by state and local agencies shall be met as part of the local development order process.

AND THE BOARD DOES FURTHER:

APPROVE DEVIATION #1, request to delete the required setback between structures and a section line for two section lines (the north/south line between Sections 16 and 17 and the east/west line between Sections 16 and 21).

APPROVE DEVIATION #2, request to delete the required setback between structures and a quarter section line for the north/south line in Section 16.

APPROVE DEVIATION #3, request for a deviation from the minimum water retention excavation setbacks to a quarter section line of 60 feet to 0 feet for the North/South line in Section 16.

APPROVE DEVIATION #4, request for a deviation from the minimum water retention excavation setbacks to a section line of 75 feet to 25 feet for the North/South line between Sections 16 and 17 and the East/West line between Sections 16 and 21.

APPROVE DEVIATION #5, request to reduce the required excavation setback from a street right-of-way from 150 feet to 25 feet. Specifically, the applicant desired this request to be from the internal collector road running east/west across the site.

B.S.
 APPROVE DEVIATION #6, request to reduce the required setback for an excavation from a private property line internal to the development. Sufficient room will remain for maintenance around the lake shoreline and protection of the public health, safety, and welfare.

APPROVE WITH CONDITION DEVIATION #7, request to allow the depth of the water retention excavation to exceed the allowable 12-foot depth and go as deep as the confining layer.

Approval is on the condition that the excavation for and the resulting lake or lakes does not penetrate any confining layer of rock and the Applicant furnishes Staff from time to time with borings or other reasonable evidence that the Applicant has complied with this condition.

APPROVE DEVIATION #8, request to eliminate the requirement for a fence around an excavation when the excavation is less than 100 feet from property under separate ownership. This request, as depicted on the Master Concept Plan, only involves the property within the development adjacent to the lakes. This deviation does not involve the setback of the lake from the perimeter property line.

APPROVE WITH CONDITION DEVIATION #9, request to allow water management structures to be constructed in a wetlands area.

Approval is subject to compliance by the Applicant with Condition #5 as set out herein.

APPROVE DEVIATION #10, request to eliminate the requirement for this development to connect to adjacent roads located to the north and south of this development.

*to eliminate
the trafficways*
 APPROVE DEVIATION #11, request to eliminate the requirement for a 100-foot setback from the trafficways on the Trafficways Map.

APPROVE DEVIATION #12, request to allow an off-site sign to be placed in the median of Cross Creek Boulevard at its intersection of Daniels Road. Currently, Ordinance 88-12, allows residential developments to have off-site directional signs.

APPROVE WITH CONDITION DEVIATION #13, request to allow the model units/homes to act as sales centers and allow land sales to occur within the models.

Approval is upon the condition that models in each area of the development being converted to residences at the time of the last sale of a lot or unit in each area.

APPROVE DEVIATION #14, request to allow the length of a cul-de-sac street to extend to 1,500 feet.

 APPROVE WITH CONDITION DEVIATION #15, request to develop lots in a wetlands area.

APPROVAL is conditioned with modification, specifically that the words "...as defined in the Lee County Development Standards Ordinance..." be added in order to specify which exotics are to be removed pursuant to paragraph b. 3) of Condition #5

APPROVE DEVIATION #16, request to establish within areas of the Master Concept Plan a specific unit or product type, and minimum lot area, dimensions and height.

APPROVE DEVIATION #17, request to establish specific allowable setbacks in this development.

Site Plan 89-013 is attached hereto and incorporated herein by reference, as a reduced copy of the Master Concept Plan; and

The following findings of fact were made in conjunction with this approval of Residential Planned Development zoning:

- a. The proposed uses are appropriate at the subject location; and
- b. Sufficient safeguards to the public interest are provided by the recommended conditions to the Master Concept Plan and by applicable regulations; and
- c. All recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the development; and
- d. Each deviation recommended for approval will enhance the achievement of the objective of the development and the general intent of the zoning regulations to preserve and promote the protection of the public health, safety, and welfare.

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

John E. Manning	AYE
Charles L. Bigelow, Jr.	AYE
Ray Judah	NAY
Bill Fussell	ABSENT
Donald D. Slisher	AYE

DULY PASSED AND ADOPTED this 27th day of February, A.D., 1989.

ATTEST
CHARLIE GREEN, CLERK

BY:

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY:

Chairman

Approved as to form by:

County Attorney's Office

FILED

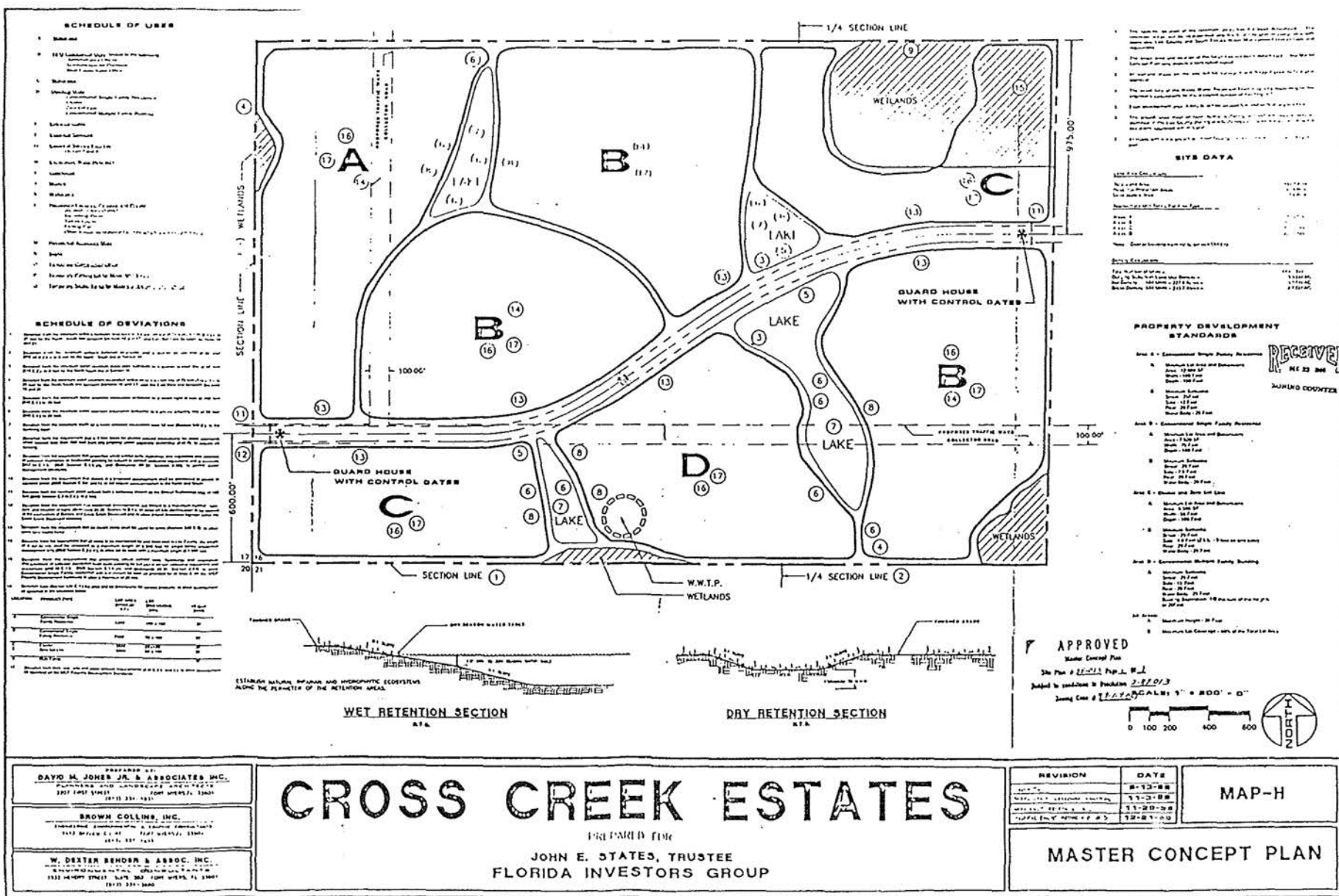
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CLERK CIRCUIT COURT
BY Charlie Green, D.C.

HEARING NUMBER 89-1-9 DCI

RESOLUTION NUMBER Z-89-013
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(5969L/40)



COVENANT OF UNIFIED CONTROL

WE DO HEREBY swear and affirm that we, **G. Phil Peagler and E.M. Griffiths, Jr.**, are the Co-Trustees of the property, and that we are fully capable of legally binding the property.

That **G. Phil Peagler and E.M. Griffiths, Jr.**, do hereby swear and affirm that we are the fee simple title holders and the Co-Trustees of record of the property known as **12998 Calsson Lane, Fort Myers, Florida**, identified by **STRAP# 16-45-25-00-00002-0000**.

That the property in question is subject to an application for **RPD** zoning.

That we, **G. Phil Peagler and E.M. Griffiths, Jr.**, do hereby swear and affirm:

1. That we, **G. Phil Peagler and E.M. Griffiths, Jr.**, as the owners, am and shall remain fully responsible for compliance with all conditions placed on the property described herein by Lee County during the planned development rezoning process.

2. That the property described herein shall be developed and used in conformity and compliance with the approved Master Concept Plan, with the conditions placed on the planned development, and with all commitments agreed to by the applicant for the planned development rezoning.

3. That we, **G. Phil Peagler and E.M. Griffiths, Jr.**, recognize that we, shall remain wholly responsible for compliance with all terms, conditions, safeguards and stipulations made at the time of approval of the Master Concept Plan, even if the property is sold in whole or in part, unless and until a new or amended Covenant of Unified Control is submitted by the subsequent owner, and received and recorded by Lee County.

4. That we, **G. Phil Peagler and E.M. Griffiths, Jr.**, do hereby recognize that a departure from the provisions of the approved plans, and/or a failure to comply with any and all requirements, conditions or safeguards provided for in the planned development process shall constitute a violation of the Zoning Ordinance, and that I or the entity I represent wholly accepts responsibility for such a violation of the Zoning Ordinance.

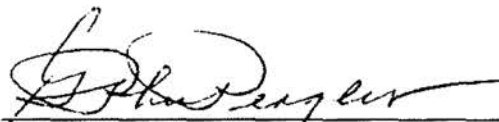
5. That we, **G. Phil Peagler and E.M. Griffiths, Jr.**, agree and do hereby accept responsibility for the inclusion and imposition through covenants and restrictions of all terms, conditions and safeguards of the planned development on any subsequent owner of all or any part of the subject property, including lots, development parcels and outparcels.

6. That we, **G. Phil Peagler and E.M. Griffiths, Jr.**, do hereby recognize and accept total responsibility for the obligation to enforce the terms, conditions and safeguards of the planned development

until such time as all of the subject property is developed and certified by Lee County for use or occupancy, or until a subsequent owner takes up that obligation for all or part of the subject property.

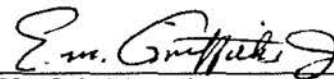
7. That we, **G. Phil Peagler and E.M. Griffiths, Jr.**, do hereby recognize and acknowledge that the completion and conveyance, or vacation of a phase of the development parcel or outparcel shall relieve me of any liability and responsibility for compliance with all of the terms, conditions and safeguards of the planned development only insofar as that phase, development parcel, or outparcel is concerned, and then only when the notice provided for in Section 804.03.A.3, Lee County Zoning Ordinance, is properly filed and recorded.

8. That we, **G. Phil Peagler and E.M. Griffiths, Jr.**, do hereby acknowledge and accept the fact that at any time while this Covenant of Unified Control is of force and effect, Lee County can, upon discovery of non-compliance with the terms, safeguards and conditions of the planned development, seek equitable relief as necessary to compel compliance. It is further recognized that no permit, certificate or license to occupy or use any part of the planned development shall be issued, and ongoing construction shall be stopped until the project is brought into compliance with the terms, conditions and safeguards of the planned development.

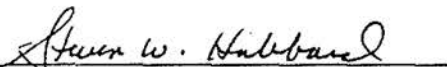


G. Phil Peagler
Co-Trustee

SWORN TO and subscribed before me this
30th day of August, 1988.



E.M. Griffiths, Jr.
Co-Trustee


Notary Public

My Commission Expires: NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXPIRES JAN. 7, 1990.
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Mr. John E. States
6360-1 Presidential Court
Fort Myers, FL 33907

Re: Letter of Authorization

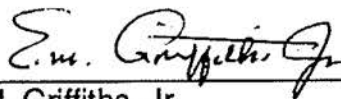
Dear Mr. States:

This letter is for the purpose of authorizing you to act as our Agent in processing applications for public hearing and development permits on a parcel of land lying in Section 16, Township 45 South, Range 25 East, County of Lee, State of Florida, known as tax book parcel 16-45-25-00-00002.0000, for the purpose of obtaining a rezoning.

Sincerely,

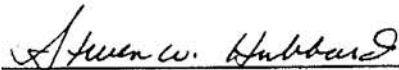


G. Phil Peagler
Co-Trustee



E.M. Griffiths, Jr.
Co-Trustee

Sworn to and subscribed before me this
30th day of August, 1988.



Notary Public
State of Florida at Large

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXPIRES JAN. 7, 1990.
BONDED THRU NOTARY PUBLIC UNDERWRITERS