

**PREPARED BY AND RETURN TO:**

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**AMENDMENT TO DECLARATION OF ACCESS  
AND USE AND GRANT OF EASEMENT**

**THIS AMENDMENT TO DECLARATION OF ACCESS AND USE AND GRANT OF EASEMENT** (the "Amendment") is made and entered into as of the 1st day of September, 2004, by, between, and among, **THOMAS M. LITTLE, as Trustee** (the "Trustee"), **THE ESTUARIES CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit** ("Estuaries Association #1"), and **THE ESTUARIES II CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit** ("Estuaries Association #2").

**WITNESSETH:**

**WHEREAS**, Estuaries Association #1 is the entity responsible for the operation of The Estuaries, a condominium ("Estuaries #1"), according to Declaration of Condominium for The Estuaries, a condominium, recorded in O. R. Book 1470, Page 5511, Public Records of Manatee County, Florida, as amended ("Declaration #1"); and

**WHEREAS**, Estuaries Association #2 is the entity responsible for the operation of The Estuaries II, a condominium ("Estuaries #2"), according to Declaration of Condominium for The Estuaries II, a condominium, recorded in O. R. Book 1517, Page 6849, Public Records of Manatee County, Florida, as amended ("Declaration #2"); and

**WHEREAS**, Estuaries #1 and Estuaries #2, as well as the Bay Pointe Parcel and Undeveloped Parcel (each hereinafter defined) are each benefited and burdened by that certain Declaration of Access and Use and Grant of Easement, dated September 21, 1995, and recorded in O. R. Book 1469, Page 5857, Public Records of Manatee County, Florida (the "Facilities Easement"); and

**WHEREAS**, Estuaries #1 and Estuaries #2, as well as the Bay Pointe Parcel and Undeveloped Parcel are also each benefited by those certain easements of record in Official Record Book 1457, Page 1996, Official Records Book 1458, Page 2305, and Official Records Book 1469, Page 2305, Public Records of Manatee County, Florida (collectively, the "Boardwalk Easement"); and

**WHEREAS**, the property within Estuaries #1, and subject to Declaration #1 (the "Estuaries #1 Parcel"), is the "Condominium Property," as defined and described in the Facilities Easement; and

**WHEREAS**, the Declarant, as defined in the Facilities Easement, has elected not to add any part of the Remaining Property to Estuaries #1, but has developed a portion of the Remaining Property and submitted same to condominium ownership as Estuaries #2; and

**WHEREAS**, the property within Estuaries #2, and subject to Declaration #2 (the "Estuaries #2 Parcel"), is a portion of the "Remaining Property," as defined and described in the Facilities Easement; and

**WHEREAS**, the Trustee is the owner of the Remaining Property, except the Estuaries #2 Parcel (the "Trustee Property"); and

**WHEREAS**, the Trustee Property may be further divided and described as that part thereof lying between the Estuaries #1 Parcel and the Estuaries #2 Parcel (the Bay Pointe Parcel"), and the remaining part of the Trustee Property, lying to the east of the Estuaries #1 Parcel (the "Undeveloped Parcel"); and

**WHEREAS**, the Facilities Easement currently provides broad easement rights over the Condominium Facilities and Remaining Property Facilities for the owners and occupants of the several Parcels, which the parties have determined are not needed or desired; and

**WHEREAS**, the actual and proposed development of the Property no longer is consistent with the intent and original assumptions of the Facilities Easement, and the facilities therein described are not inseparable, but in fact are separate and the parties wish them to remain so; and

**WHEREAS**, the parties have determined that it is in their mutual best interests, and the best interests of the Members of Estuaries Association #1 and Estuaries Association #2, to amend and modify the Facilities Easement, so that the Condominium Facilities and Remaining Property Facilities, as defined therein, are limited to pedestrian access to the Boardwalk Easement (to assure practical enjoyment thereof) only, as more fully hereinafter provided; and

**WHEREAS**, the Facilities Easement is part of the common elements of Estuaries #1 and Estuaries #2; and

**WHEREAS**, Estuaries Association #1 has the authority to modify easements pursuant to Section 11.1(g) of Declaration #1 and Section 718.111(10), Florida Statutes; and

**WHEREAS**, Estuaries Association #2 has the authority to modify easements pursuant to Section 11.1(g) of Declaration #2 and Section 718.111(10), Florida Statutes; and

**WHEREAS**, the parties wish to set forth their agreement and to amend and modify the Facilities Easement as herein provided;

**NOW, THEREFORE**, in consideration of the premises, and of the benefits inuring to each party, receipt and sufficiency of which are hereby severally acknowledged, the parties agree as follows:

**1. Recitals and Definitions.** The recitals contained hereinabove are true and correct and are incorporated herein by reference. Capitalized terms used in this Amendment shall, unless otherwise expressly defined herein, have the meanings given them in the Facilities Easement.

**2. Condominium Facilities.** Anything contained in the Facilities Easement to the contrary, notwithstanding, the term "Condominium Facilities" shall mean and refer only to those paths, drives, roadways, sidewalks, walkways, and other paved areas, now and hereafter lying within the Estuaries #1 Parcel, excluding however any such area beneath a building.

**3. Remaining Property Facilities.** Anything contained in the Facilities Easement to the contrary, notwithstanding, the term "Remaining Property Facilities" shall mean and refer only to those paths, drives, roadways, sidewalks, walkways, and other paved areas, now or hereafter lying within Estuaries #2 Parcel, the Bay Pointe Parcel, and the Undeveloped Parcel, excluding however any such area beneath a building.

**4. Limited Use of Facilities.** Anything contained in the Facilities Easement to the contrary notwithstanding, the non-exclusive easements established over the Condominium Facilities and Remaining Property Facilities (together the "Facilities") may be used only for pedestrian access, ingress to and egress from, the Boardwalk Easement where it extends into the Bay Point Parcel at its southwesterly corner. All vehicular or other use of the Facilities is prohibited.

**5. Additional Pedestrian Access if Required.** If the Facilities do not connect at a boundary line between any two of the Estuaries #1 Parcel, the Bay Pointe Parcel, Estuaries #2 Parcel or the Undeveloped Parcel (individually a "Parcel" and collectively the "Parcels"), so that there would be no practical access for pedestrians from one Parcel to another, then, notwithstanding the definitions of Paragraphs 2 and 3 above, the Facilities shall be deemed to include such open lawn areas as lie between the Facilities. It is the intent hereof to assure practical pedestrian access to the Boardwalk, even if the Facilities may be separated by such open lawn areas. The specific location of such lawn areas subject to such easement may be specified by rules and regulations pursuant to the Facilities Easement.

**6. Authorization.** Execution of this Amendment by Estuaries #1 Association and Estuaries #2 Association has been authorized pursuant to Section 11.1(g) of Declaration #1 and Declaration #2, respectively, and each such Association covenants and agrees that execution of this Amendment has been authorized by the approval of a majority of its Board of Directors, and finding by the Board that such action is for the benefit of Members of such Association.

**7. Termination of Other Easements.** Any other easements and rights granted, reserved, or implied by the Facilities Easement, other than as specifically described in this Amendment, are hereby terminated and shall be deemed of no further force or effect. The Facilities Easement, as amended hereby, shall be interpreted to achieve the sole and limited purpose of pedestrian access to the Boardwalk Easement, as provided herein, only.

**8. Miscellaneous.** This Amendment constitutes the entire agreement of the parties with respect to the subject matter hereof. This Amendment shall be construed under the laws of Florida, and shall not be construed more strongly against any party, regardless to the extent to which such party may have participated in the preparation hereof. The singular shall include the plural and the plural the singular, and any one gender shall include all genders, as the context may require. This Amendment may be executed in multiple counterparts, which may be

combined to constitute a single instrument. The Facilities Easement, as amended hereby, shall be construed to give effect to the intent of this Amendment.

**IN WITNESS WHEREOF**, the parties have caused this Amendment to be executed as of the day and year first above written.

Olin D. Shivers  
(Witness)  
Olin G. Shivers  
Print Name

Ann C. Weber  
Witness  
Ann C. Weber  
Print Name

Thomas M. Little  
Thomas M. Little, as Trustee

The Estuaries Condominium Association, Inc., a Florida corporation not for profit

By: \_\_\_\_\_, its \_\_\_\_\_ President

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Print Name

The Estuaries II Condominium Association, Inc., a Florida corporation not for profit

By: \_\_\_\_\_, its \_\_\_\_\_ President

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Print Name

combined to constitute a single instrument. The Facilities Easement, as amended hereby, shall be construed to give effect to the intent of this Amendment.

**IN WITNESS WHEREOF**, the parties have caused this Amendment to be executed as of the day and year first above written.

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name

*Ruth Schofield*  
Witness

*Ruth Schofield*  
Print Name

*Toni C. Boone*  
Witness

*Toni C. Boone*  
Print Name

*MS ETS*  
Witness

*CARLOS ESCALANTE*  
Print Name

*Ruth Schofield*  
Witness

*Ruth Schofield*  
Print Name

\_\_\_\_\_  
**Thomas M. Little, as Trustee**

The Estuaries Condominium Association, Inc., a Florida corporation not for profit

By: *Beverly Dielman*  
*Beverly Dielman*, its  President

The Estuaries II Condominium Association, Inc., a Florida corporation not for profit

By: *Letha S. Fadely*  
*Letha S. Fadely*, its  President

STATE OF FLORIDA  
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of September, 2004, by Thomas M. Little, as trustee () who is personally known to me or () who produced as identification.



Deborah A. Lodge  
MY COMMISSION # DD083653 EXPIRES  
March 1, 2006  
BONDED THRU TROY FAIN INSURANCE, INC

Deborah A. Lodge  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this \_\_\_ day of August, 2004, by \_\_\_\_\_, as \_\_\_\_\_ President of The Estuaries Condominium Association, Inc., a Florida corporation not-for-profit, on behalf of the corporation () who is personally known to me or () who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this \_\_\_ day of August, 2004, by \_\_\_\_\_, as \_\_\_\_\_ President of The Estuaries II Condominium Association, Inc., a Florida corporation not-for-profit, on behalf of the corporation () who is personally known to me or () who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this \_\_\_ day of August, 2004, by Thomas M. Little, as trustee ( ) who is personally known to me or ( ) who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of August, 2004, by Beverly Dieiman, as ✓ President of The Estuaries Condominium Association, Inc., a Florida corporation not-for-profit, on behalf of the corporation (✓) who is personally known to me or ( ) who produced \_\_\_\_\_ as identification.

Ruth Schofield  
\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



Ruth Schofield  
MY COMMISSION # DD089629 EXPIRES  
April 28, 2006  
BONDED THRU TROY FAIN INSURANCE, INC.

STATE OF FLORIDA  
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of ~~August~~ SEPT, 2004, by LETHA S. FADLEY, as ✓ President of The Estuaries II Condominium Association, Inc., a Florida corporation not-for-profit, on behalf of the corporation ( ) who is personally known to me or ( ) who produced \_\_\_\_\_ as identification.

Ruth Schofield  
\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



Ruth Schofield  
MY COMMISSION # DD089629 EXPIRES  
April 28, 2006  
BONDED THRU TROY FAIN INSURANCE, INC.

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