

# Bahia Oaks

Grantee, and its respective successors or assigns. A Grantee may assign the Granted Easement granted to it, in whole or in part to an entity that succeeds in title to the various Facilities for which the Granted Easement is granted. No assignment by a Grantor shall be effective unless recorded in the public records of Marion County, Florida.

- 5.2. The burdens of this Declaration, and the Easements arising hereunder, shall be deemed covenants running with the Abandoned Roads, and thus shall be binding upon each Grantor and its respective legal representatives, heirs, successors or assigns.
6. **Acceptance by Use of Easement.** By accepting or utilizing the Easement(s) granted to it, each Grantee shall be deemed to have agreed to the provisions of this paragraph 6.
- 6.1. Each entity designated as Grantor in this Agreement grants each Easement solely to the extent of the portion of the Abandoned Roads owned by it. Thus, for example, Bahia Oaks grants the Public Access Easement over the ~~real property~~ portion of the Abandoned Roads owned by Bahia Oaks as described and depicted in the attached **Exhibit B**, and Ocala Properties grants the Public Access Easement over the ~~real property~~ portion of the Abandoned Roads owned by Ocala Properties as described and depicted in the attached **Exhibit C**.
- 6.2. Each Grantee agrees to the provisions of this Declaration concerning the Easement granted to it, including the provisions of paragraphs 7 through 12, as if each Grantee had executed this Declaration.
- 6.3. Grantor retains the right to utilize each Easement Area in any manner, including, without limitation, the construction, maintenance, repair and replacement of additional utilities, so long as such use does not materially interfere with the exercise of the Grantee's rights as to the Easement for such Easement Area.
- 6.4. All Water Facilities and Wastewater Facilities (collectively the "Facilities") shall be located within the portions of the respective Easement Areas for such Easements as follows:
- 6.4.1. County may install the Facilities associated with the "Centers Utility Extension Project" within the Abandoned Roads:
- a. At the locations set forth in the plans and specifications for such Facilities set forth in the \_\_\_\_\_ prepared by Davis Dinkins Engineering, P.A., and dated \_\_\_\_\_ ; or
- b. If acceptable to County and the Grantor that owns real property contiguous to the Easement Area, at other locations for which such Grantor has granted to County additional easements substantially similar to those arising under paragraphs 3 and 4 of this Grant (depending upon whether they are Water Facilities or Wastewater Facilities).
- 6.4.2. Thereafter, the Facilities shall be located as determined by Bahia Oaks and, as to the portion of the Easement Area described and depicted in the attached **Exhibit C**, by mutual agreement of Bahia Oaks and Ocala Properties (subject to any other agreements between Bahia Oaks and Ocala Properties concerning approvals of plans and improvements, and other matters).

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- 6.5. Each Grantee shall: (a) coordinate with its respective Grantor in connection with the use of the Easement granted to it including the coordination in advance with such Grantor regarding the timing of the Grantee's construction, maintenance, repair or replacement of its Facilities; provided, however, as to the work by County described in paragraph 6.4.1, County may commence such work at any time within the next six (6) months without additional coordination, provided that, if in connection with such work, Ocala Properties is also constructing Facilities within the Easement Area utilizing the same contractor as is performing the work for County, County consents to such contractor coordinating its work with that the contractor is performing on behalf of Ocala Properties; and (b) once construction work is actually commenced, ~~diligently~~ pursue completion of such work with reasonable diligence and in good faith. (??)
- 6.6. In the event that any Grantee, in exercising its rights, damages any improvements located within an Easement Area, it shall promptly repair or restore such improvements to substantially the same condition they existed before the damage.
- 6.7. The provisions of this paragraph 6 are an essential and material part of this Declaration and, if not effective as to a Grantee, the grant of an Easement to such Grantee shall be deemed ineffective. Such consequence shall not adversely impact the grant of an easement to a Grantee that acknowledges the effectiveness of this paragraph 6.
7. **Not a Public Dedication.** Except concerning the Public Access Easement, nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of Grantor or Grantee hereto shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained in this Declaration.
8. **Exclusive Venue.** The exclusive venue for any litigation, suit, action, counterclaim, or proceeding, whether at law or in equity, which arises out of concerns, or relates to this Declaration, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, shall be in Marion County, Florida.
9. **JURY WAIVER.** IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF CONCERNS, OR RELATES TO THIS DECLARATION, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH LOT OWNER SHALL BE DEEMED TO HAVE IRREVOCABLY WAIVED ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY.
10. **Attorney's Fees.** If any legal action or other proceeding (including, without limitation, appeals) whether at law or in equity, which: arises out of, concerns, or relates to this Declaration, any and all matters contemplated hereunder, the performance hereof, or the relationship created hereby; or is brought for the enforcement of this Declaration, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Declaration, the successful or prevailing party, shall be entitled to recover reasonable attorney's fees, court costs and all expenses taxable as court costs, incurred in that action or proceeding, in addition to any other relief to which such party may be entitled.