

## **AGREEMENT REGARDING BOUNDARY AMENDMENTS**

This Agreement is made and entered into by and among the following entities (individually, "Party" or together, "Parties"):

**CFM Community Development District**, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes (hereinafter "CDD");

**Hérons Glen Homeowners' Association, Inc.**, a Florida not-for-profit corporation (hereinafter "Hérons Glen HOA");

**Hérons Glen Recreation District**, a recreation district established pursuant to Chapter 418, Florida Statutes (hereinafter "Rec. District");

**Magnolia Landing Master Association, Inc.**, a Florida not-for-profit corporation (hereinafter "Magnolia Landing MA"); and

**Taylor Woodrow Communities at Herons Glen, L.L.C.**, a Florida limited liability company (hereinafter "Developer").

### **RECITALS**

**WHEREAS**, pursuant to Chapter 190 of the Florida Statutes, the CDD provides public infrastructure improvements and services to a community in northern Lee County known as Magnolia Landing; and

**WHEREAS**, the Magnolia Landing MA provides additional services to the residents of Magnolia Landing; and

**WHEREAS**, pursuant to Chapter 418 of the Florida Statutes, the Rec. District provides public recreational improvements and services to a community in northern Lee County known as Herons Glen, which community shares its southern boundary with Magnolia Landing; and

**WHEREAS**, the Herons Glen HOA provides additional services to the residents of Herons Glen; and

**WHEREAS**, the Developer presently owns certain lands within Magnolia Landing and intends to continue to develop that community; and

**WHEREAS**, due to the historic development of the lands within Magnolia Landing and Herons Glen, the northern boundaries of the CDD overlap in places with the southern boundaries of the Rec. District and Herons Glen HOA; and

**WHEREAS**, to correct the discrepancies in the shared boundaries, among other reasons, the CDD, Magnolia Landing MA, Rec. District, and Herons Glen HOA (together, "Boundary Amendment Parties") desire to amend their respective boundaries; and

**WHEREAS**, the Parties therefore desire to set forth the terms of an agreement whereby the Parties agree to cooperate to achieve the boundary amendments and whereby the jurisdiction, ownership, and associated rights and uses of certain properties are clarified; and

**WHEREAS**, the Herons Glen HOA, Rec. District, and Developer entered into an earlier Agreement dated October 11, 2007 which agreement was modified by that First Amendment to Agreement dated October 11, 2007 (collectively, "Prior Agreement"); and

**WHEREAS**, pursuant to the Prior Agreement, the Herons Glen HOA, Rec. District, and Developer had certain rights and duties with respect to, among other things, conveyances between such parties and Developer's construction of a Barrier Gate as more particularly described in the Prior Agreement, and such parties wish to modify those rights and duties, in part, as more particularly set forth in this Agreement.

**NOW, THEREFORE**, based upon good and valuable consideration and the mutual covenants of the Parties, the receipt of which and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The recitals stated above are true and correct and by this reference are incorporated as a material part of this Agreement.

2. **Boundary Amendments.** The Boundary Amendment Parties agree to act expeditiously and to take the necessary steps required by law to effect the amendment of their respective boundaries ("Boundary Amendments") consistent with the boundary amendment comparison map, attached hereto as **Exhibit A**; the proposed boundary amendment legal description for both the CDD and Magnolia Landing MA, attached hereto as **Exhibit B**; and the proposed boundary amendment legal descriptions for the Rec. District and Herons Glen HOA, attached hereto as **Exhibits C and D**, respectively. Among other things, the CDD and the Rec. District shall petition Lee County to request the amendment of their respective boundaries, the Magnolia Landing MA shall insure that the geographic scope of its declarations and covenants is the same as the CDD's boundaries, as amended, and the Herons Glen HOA shall insure that the geographic scope of its declarations and covenants is the same as the Rec. District's boundaries, as amended. It is the intent of the Parties that once the Boundary Amendments are effective, all lands within the boundaries of each Boundary Amendment Party shall be free from all restrictive covenants, restrictions, assessment obligations, and any and all obligations of any nature whatsoever of the other Boundary Amendment Parties, except as expressly provided herein and except that any Party that owns land within the amended boundaries of a Boundary Amendment Party shall be subject to that Boundary Amendment Party's jurisdictional authority, and any obligations that may be lawfully imposed thereunder. The Parties further agree to cooperate in good faith to assist with the Boundary Amendments where necessary, such as by, among other things, providing any lien releases, permissions for permit changes, or other authorizations or actions necessary to effect the Boundary Amendments.

3. **Conveyances Other Than Those Relating to the Barrier Gate.** The following conveyances shall occur within 30 days of the effective date of this Agreement:

- a. **Stormwater Pond.** Herons Glen HOA shall convey to the CDD by quitclaim deed its property interests in Tract "C" of Herons Glen Unit 5 (Plat Book 74, Page 82) and enter into a drainage easement agreement providing Herons Glen HOA with a perpetual drainage easement to and over said Tract "C," as well as certain related stormwater pipes and appurtenances, and providing that the CDD shall have the right and obligation to maintain the easement property consistent with applicable permits and legal requirements. The drainage easement agreement described in this subparagraph shall be in the form attached hereto as **Exhibit E**.
- b. **Common Areas Near Stormwater Pond.** Herons Glen HOA shall convey to the CDD by quit claim deed its property interests in Tracts "R" and "S" of Herons Glen Unit 5 (Plat Book 74, Page 82).
- c. **Dennisport Cul-de-sac Roadway.** Herons Glen HOA shall convey to the CDD by quit claim deed its property interests in the Dennisport Lane cul-de-sac roadway, the sketch and legal description of which are set forth in **Exhibit F**.
- d. **Avenida del Vera Roadway Tract A-1.** The CDD shall convey to the Herons Glen HOA by quit claim deed its property interests in Tract "A-1" of Herons Glen Units 11 & 12 (Plat Book 78, Page 57).
- e. **Portion of Tract Z North of Construction Gate.** The CDD shall convey to the Herons Glen HOA by quit claim deed its property interests in those portions of Tract "Z" of Magnolia Landing Unit 1 (recorded in the Lee County Official Records as Instrument Number 2007000052500) that are described in **Exhibit G**.
- f. **Developer Revocable Landscape Easements (For Areas Not Including the Dennisport Gate Area).** The Developer shall convey to the Herons Glen HOA a revocable landscape easement allowing the Herons Glen HOA to landscape and maintain at the Herons Glen HOA's sole expense those portions of Tract "S" and Tract "GC-1" of Magnolia Landing Unit 1 (recorded in the Lee County Official Records as Instrument Number 2007000052500) that are described in **Exhibit I**. The revocable landscape easement described in this subparagraph shall be in the form attached hereto as **Exhibit J**, and shall provide for the assignment of the Developer's rights thereunder to the CDD or the Magnolia Landing MA.
- g. **Developer Revocable Landscape Easement for the Dennisport Gate Area.** The Developer shall convey, or cause to be conveyed, to the Herons Glen HOA a revocable landscape easement allowing the Herons Glen HOA to landscape and maintain at the Herons Glen HOA's sole expense those portions of Tracts "D"

and "F" of Herons Glen Unit 5 (Plat Book 74, Page 82) that are described in **Exhibit K**. The revocable landscape easement described in this subparagraph shall be substantially in the form attached hereto as **Exhibit L**, and shall provide for the assignment of the Developer's rights thereunder to the CDD or the Magnolia Landing MA. It shall not be a default under this Agreement for the Developer to fail to convey the easements described in this subparagraph within 30 days of the effective date of this Agreement, provided however that the Developer uses deliberate and good-faith efforts to acquire Tracts "D" and "F" from the current owner.

4. **Conveyances Relating to Dennisport Gate.** Notwithstanding the terms of the Prior Agreement, the Developer shall convey by an appropriate bill of sale to the Herons Glen HOA the ownership, operation, control and maintenance of the proposed Barrier Gate upon the Developer's completion of such gate and final inspection by Lee County. Upon such conveyance, the Herons Glen HOA shall be responsible for maintaining the Barrier Gate at its own expense. At the time of such conveyance, the Developer further agrees to provide to the Herons Glen HOA the plans and specifications for the gate, any manufacturer's warranty, any installer's warranty, and the life expectancy and replacement cost of the Barrier Gate. The Developer shall convey, or cause to be conveyed, to the Heron's Glen HOA those portions of Tracts "D" and "F" of Herons Glen Unit 5 (Plat Book 74, Page 82) which are described in **Exhibit M**. The Developer shall further convey, or cause to be conveyed, by quit claim deed to the Herons Glen HOA that portion of the Intersection Parcel (as defined in the Prior Agreement) as described in **Exhibit N** so that the Barrier Gate will ultimately be located, after the conveyance, on property owned by the Herons Glen HOA. The Developer shall provide a copy of the proposed Barrier Gate design to the Herons Glen HOA for its review prior to Developer's submission of same to Lee County for a building permit. The construction permit and gate design will be consistent with the conceptual sketch of such gate previously provided and approved by the Herons Glen HOA. The Developer will use deliberate and good-faith efforts to have in hand the building permit for the gate in advance of the Developer's acquisition of the cul-de-sac lots (as described in the Prior Agreement) and will initiate construction of the gate within thirty (30) days after such time as: (i) the Barrier Gate building permit is issued, (ii) the Developer has acquired all the cul-de-sac lots, and (iii) all applicable cul-de-sac residents have been relocated within Herons Glen. Further, Developer will make reasonable efforts to complete such gate construction and provide a functioning gate within sixty days of its commencement of the gate construction work. Upon completion of the Barrier Gate, Developer will provide to the Herons Glen HOA copies of any final inspection report issued by Lee County with respect to the installation of the Barrier Gate. The Herons Glen HOA acknowledges and agrees that, pursuant to specific agreements entered into between the Developer and certain cul-de-sac residents, the Barrier Gate will not be constructed prior to the relocation of such residents to new homes constructed by Developer within Herons Glen. The Herons Glen HOA, Rec. District and Developer hereby agree that the provisions of this Agreement modify the terms and conditions of the Prior Agreement in the manner set forth herein. Except as modified hereby, the terms and conditions of the Prior Agreement shall remain in full force and effect.

5. **Assessments on the Dennisport Lots.**

- a. **Rec. District Operations and Maintenance Assessments.** It is anticipated that the Developer will acquire all of the lots identified in **Exhibit O** ("Dennisport Lots") by January of 2009. The Developer agrees to pay any operations and maintenance assessments lawfully levied by the Rec. District on the Dennisport Lots that the Developer owns for any given fiscal year, just like any other landowner within the Rec. District. For Fiscal Year 2008/2009, such operations and maintenance assessments are as set forth in **Exhibit P**. It is understood that these assessments will be collected by a direct bill and not on the tax roll. At the effective date of the Boundary Amendments, the Developer shall pay any outstanding operations and maintenance assessments on the Dennisport Lots levied by the Rec. District for the fiscal year in which the Boundary Amendments occur.
- b. **Rec. District Debt Assessments.** In addition to the operations and maintenance assessments described in paragraph 5(a) above, the Developer agrees to pay any debt assessments lawfully levied by the Rec. District on the Dennisport Lots that the Developer owns for any given fiscal year, just like any other landowner within the Rec. District. For Fiscal Year 2008/2009, such debt assessments are as set forth in **Exhibit P**. It is understood that the debt assessments will be collected on the tax roll. At the effective date of the Boundary Amendments, the Developer shall pay the outstanding bond balance relating to the "Herons Glen Recreation District Special Assessment and Special Assessment Refunding Bonds, Series 2006," which bond balance – at the time of the execution of this Agreement, and for each of the Dennisport Lots – is as set forth in **Exhibit P**.
- c. **Rec. District Release.** At the effective date of the Boundary Amendments, and upon payment of all outstanding assessments, the Rec. District shall release all assessment or other liens imposed on the Dennisport Lots, and further shall waive its right to impose or collect any future assessments or other liens on the Dennisport Lots. In the event this Agreement is terminated pursuant to paragraph 22 before the Boundary Amendments are effective, then the Developer shall continue to pay any assessments lawfully levied by the Rec. District for any of the Dennisport Lots that the Developer owns, just like any other landowner within the Rec. District.
- d. **Herons Glen HOA Operations and Maintenance Assessments.** The Developer agrees to pay any operations and maintenance assessments lawfully levied by the Herons Glen HOA on the Dennisport Lots that the Developer owns for any given fiscal year, just like any other landowner within the Herons Glen HOA. For Fiscal Year 2008/2009, such operations and maintenance assessments are as set forth in **Exhibit P**. It is understood that these assessments will be collected by a direct bill and not on the tax roll. At the effective date of the Boundary Amendments, the Developer shall pay any outstanding operations and

maintenance assessments on the Dennisport Lots levied by the Herons Glen HOA for the fiscal year in which the Boundary Amendments occur.

- e. **Herons Glen HOA Release.** At the effective date of the Boundary Amendments, and upon payment of all outstanding assessments, the Herons Glen HOA shall release all assessment or other liens imposed on the Dennisport Lots, and further shall waive its right to impose or collect any future assessments or other liens on the Dennisport Lots. In the event this Agreement is terminated pursuant to paragraph 22 before the Boundary Amendments are effective, then the Developer shall continue to pay any operations and maintenance assessments lawfully levied by the Herons Glen HOA for any of the Dennisport Lots that the Developer owns, just like any other landowner within the Herons Glen HOA.
- f. **No Assessments on CDD Property.** All Parties agree that the Rec. District and Herons Glen HOA have not and shall not impose any assessment or other liens on CDD property.

6. **Terms of Real Property Conveyances.** Each Party responsible for making a conveyance under paragraphs 3 or 4 ("Transferor") shall make such conveyance at no cost to the Party receiving the conveyance ("Transferee"). In each case, Transferor shall be responsible for the payment of any recording fees and documentary stamps required, if any. Developer and Herons Glen HOA, as Transferors, shall be responsible for all taxes and assessments levied on the lands owned by Developer and Herons Glen HOA, respectively, until the time of conveyance.

7. **Consents.** Each Party agrees to provide within 30 days after a Party's written request any landowner consents necessary to effect the Boundary Amendments for any land owned by that Party that is at issue in the Boundary Amendments.

8. **Developer Authorization Regarding Coolidge Ft. Myers Realty Parcels.** The Developer shall provide authorization to Coolidge Ft. Myers Realty Limited Partnership ("Coolidge") to convey to the Herons Glen HOA and Rec. District the property identified in **Exhibit Q**.

9. **Boundary Amendment Costs and Expenses.** The Parties agree that each Boundary Amendment Party shall bear its own costs and expenses relating to its respective Boundary Amendment. Each Boundary Amendment Party shall bear its own costs and expenses in obtaining its respective sketch and legal descriptions that shall be attached as **Exhibits B through D**. The CDD shall pay the expense associated with obtaining the sketch and legal description attached as **Exhibit F**. The Developer shall pay the expense associated with obtaining the sketches and legal descriptions attached as **Exhibits M and N**. The Heron's Glen HOA shall pay the expense associated with obtaining the sketches and legal descriptions attached as **Exhibits G, I, and K**.

10. **Sharing of Engineer.** The Parties acknowledge that each Party may individually retain at its own expense, or may have already individually retained at its own expense, Johnson

Engineering to provide any necessary surveying or engineering work related to the boundary amendments.

11. **Amendments.** Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing that is executed by all Parties hereto. The Parties agree that any change to a Boundary Amendment Party's proposed boundaries, as described in paragraph 2, must be agreed upon by the Parties pursuant to this paragraph, unless the change would not affect either (a) the proposed shared boundaries of the Boundary Amendment Parties or (b) the proposed boundary changes relating to the Dennisport cul-de-sac.

12. **Default.** A default by any Party under this Agreement shall entitle the other to all remedies available at law or in equity. It is further agreed that injunctive relief shall be available to any Party to enforce the obligations of this Agreement.

13. **Enforcement of Agreement.** In the event that any Party is required to enforce this Agreement by court proceedings or otherwise, then the Parties agree that the prevailing Party shall be entitled to recover from the other all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution, or appellate proceedings.

14. **Agreement.** This instrument, together with the exhibits named herein, shall constitute the final and complete expression of this Agreement among the Parties relating to the subject matter of this Agreement.

15. **Authorization.** The execution of this Agreement has been duly authorized by the appropriate body or official of the Parties. The Parties have complied with all the requirements of law. The Parties have full power and authority to comply with the terms and provisions of this instrument.

16. **Notices.** All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the Parties, as follows:

A. **If to CDD:** CFM Community Development District  
3434 Colwell Avenue, Suite 200  
Tampa, Florida 33614  
Attn: District Manager

**With a copy to:** Hopping Green & Sams, P.A.  
123 South Calhoun Street  
Post Office Box 6526  
Tallahassee, Florida 32314  
Attn: Jere Earlywine, Esq.

**B. If to Herons Glen HOA:** Herons Glen Homeowners' Association, Inc.  
2250 Avenida Del Vera Blvd.  
North Fort Myers, FL 33917  
Attn: Joyce Gillespie, Manager

**C. If to Rec. District:** Herons Glen Recreation District  
2250 Avenida Del Vera Blvd.  
North Fort Myers, FL 33917  
Attn: Mark Bainbridge, General Manager

**With a copy to:** Knott Consoer, Ebelini, Hart & Swett, P.A.  
1625 Hendry Street, Ste 301  
Fort Myers, FL 33901  
Attn: Thomas B. Hart

**D. If to Magnolia Landing MA:**  
Melrose Sovereign Companies  
1600 West Colonial Drive  
Orlando, Florida 32804  
Attn: Beverly-Ann Malouin

**E. If to Developer:** Taylor Woodrow Communities at Herons Glen,  
LLC, a Florida limited liability company  
4905 West Laurel Street, Suite 100  
Tampa, Florida 33607  
Attn: General Counsel

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for each Party may deliver Notice on behalf of that Party. Any Party or other person to whom Notices are to be sent or copied may notify the other Parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the Parties and addressees set forth in this Agreement.

17. **Arm's Length Transaction.** This Agreement has been negotiated fully among the Parties as an arm's length transaction. All Parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, all Parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against any Party hereto.



18. **Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Parties any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Parties and their respective representatives, successors, and assigns.

19. **Assignment.** This Agreement may be assigned, in whole or in part, by any Party only upon the written consent of all Parties, which consent shall not be unreasonably withheld, and provided however that the Developer may assign its rights and obligations in full to another developer/landowner entity without such prior written consent. Any purported assignment without such written consent shall be void.

20. **Controlling Law.** This Agreement and the provisions contained in this Agreement shall be construed, interpreted, and controlled according to the laws of the State of Florida.

21. **Effective Date.** This Agreement shall be effective upon its execution by all of the Parties.

22. **Termination.** This Agreement shall remain in full force and effect until the Boundary Amendments are completed; provided however that if final approval for the CDD and Rec. District Boundary Amendments is not granted by Lee County within three (3) years from the effective date of this Agreement, each Party shall have the right to terminate this Agreement upon 30 days written notice.

23. **Public Records.** The Parties agree that all documents of any kind provided to the CDD or Rec. District in connection with this Agreement may be public records and will be treated as such in accordance with Florida law.

24. **Severability.** The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

25. **Sovereign Immunity.** All Parties agree that nothing in this Agreement shall constitute or be construed as a waiver of the CDD's limitations on liability contained in Section 768.28, Florida Statutes, or other statutes or law.

26. **Headings for Convenience Only.** The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

27. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts

together shall constitute, but one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

[CONTINUED ON NEXT PAGE]

In witness thereof, the Parties execute this Agreement.

Attest:

**CFM COMMUNITY DEVELOPMENT DISTRICT**

Molly A. Sykes  
Assistant Secretary

John F. Grueter  
By: JOHN F. GRUETER  
Its: CHAIRMAN  
Date: 12/23/08

Attest:

**HERONS GLEN RECREATION DISTRICT**

\_\_\_\_\_  
Assistant Secretary

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**HERONS GLEN HOMEOWNERS' ASSOCIATION, INC.**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**MAGNOLIA LANDING MASTER ASSOCIATION, INC.**

Rayna Chitea  
Witness

John F. Grueter  
By: John F. Grueter  
Its: Director  
Date: Effective December 12, 2008

**TAYLOR WOODROW COMMUNITIES AT HERONS GLEN, L.L.C.**

Jennifer Kraus  
Witness

Thomas R. Spence  
By: Thomas R. Spence  
Its: Vice President  
Date: Effective December 11, 2008

In witness thereof, the Parties execute this Agreement.

Attest:

**CFM COMMUNITY DEVELOPMENT DISTRICT**

\_\_\_\_\_  
Assistant Secretary

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Attest:

**HERONS GLEN RECREATION DISTRICT**

*Jayne Schwarz*  
\_\_\_\_\_  
Assistant Secretary

*Lynn A. Nelson*  
\_\_\_\_\_  
By: **LYNN A. NELSON**  
Its: **CHAIR**  
Date: **2/26/09**

**HERONS GLEN HOMEOWNERS' ASSOCIATION, INC.**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**MAGNOLIA LANDING MASTER ASSOCIATION, INC.**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**TAYLOR WOODROW COMMUNITIES AT HERONS GLEN, L.L.C.**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

In witness thereof, the Parties execute this Agreement.

Attest:

**CFM COMMUNITY DEVELOPMENT DISTRICT**

\_\_\_\_\_  
Assistant Secretary

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Attest:

**HERONS GLEN RECREATION DISTRICT**

\_\_\_\_\_  
Assistant Secretary

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**HERONS GLEN HOMEOWNERS' ASSOCIATION, INC.**

*Kim Rambo*  
\_\_\_\_\_  
Witness

*[Signature]*  
\_\_\_\_\_  
By: \_\_\_\_\_ *HERONS GLEN*  
Its: \_\_\_\_\_ *PRESIDENT*  
Date: *02/24/2009*

**MAGNOLIA LANDING MASTER ASSOCIATION, INC.**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**TAYLOR WOODROW COMMUNITIES AT HERONS GLEN, L.L.C.**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

## SCHEDULE OF EXHIBITS

- Exhibit A:** Boundary Amendment Comparison Map with Detail of Dennisport Cul-de-sac
- Exhibit B:** Sketch and Legal Description of Proposed Boundaries – CDD and Magnolia Landing MA
- Exhibit C:** Sketch and Legal Description of Proposed Boundaries – Rec. District
- Exhibit D:** Sketch and Legal Description of Proposed Boundaries – Herons Glen HOA
- Exhibit E:** Form of Drainage Easement Agreement
- Exhibit F:** Legal Description of Dennisport Cul-de-sac Roadway
- Exhibit G:** Sketch and Legal Description of Portion of Tract “Z”
- Exhibit H:** [EXHIBIT DESIGNATION NOT IN USE]
- Exhibit I:** Sketches and Legal Descriptions for Landscape Easements from Developer
- Exhibit J:** Form of Landscape Easement from Developer
- Exhibit K:** Sketches and Legal Descriptions of Landscape Easements for the Dennisport Gate Area
- Exhibit L:** Form of Landscape Easement for the Dennisport Gate Area
- Exhibit M:** Sketches and Legal Descriptions of Portions of Tracts “D” and “F” for Barrier Gate
- Exhibit N:** Sketch and Legal Description of Roadway Necessary for Barrier Gate
- Exhibit O:** Legal Description of Dennisport Lots
- Exhibit P:** Schedule of Assessments and Bond Balances for Dennisport Lots
- Exhibit Q:** Legal Description for Coolidge Ft. Myers Realty Parcels

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement") is dated this \_\_\_ day of December, 2008 and is by and between Taylor Woodrow Communities at Herons Glen, LLC, a Florida limited liability company ("Assignor") and Windham/Magnolia Landing, LLC, a Michigan limited liability company ("Assignee").

WHEREAS, Assignee has purchased from Assignor certain real property located within a residential community named Magnolia Landing in Lee County, Florida, the legal description of which is set forth in Exhibit "A" attached hereto and incorporated herein by reference ("Property");

WHEREAS, Assignee is aware that Assignor has entered into, or will enter into, an Agreement Regarding Boundary Amendments ("Boundary Contract") wherein Assignor, and other entities, have agreed, among other things to revise the boundaries of the CFM Community Development District ("CDD"), Herons Glen Recreation District ("Rec. District"), Herons Glen Homeowners' Association, Inc. ("Herons Glen HOA") and Magnolia Landing Master Association, Inc. ("Magnolia Landing MA") all as more particularly set forth within the Boundary Contract;

WHEREAS, Assignee acknowledges that on or about October 11, 2007, Assignor and the HG HOA and the Rec. District entered into an Agreement and First Amendment (collectively "October 2007 Agreement") whereby the parties thereto agreed to the exchange of certain conveyances, certain obligations with respect to the construction and maintenance of a barrier gate across Deftnisport Lane ("Barrier Gate"), and other matters as more particularly set forth in the October 2007 Agreement;

WHEREAS, Assignor has entered into Real Estate Exchange Agreements ("Exchange Agreements") with three residents of Herons Glen wherein Assignor has agreed to acquire such residents' properties in exchange for constructing homes for such residents at other locations within Herons Glen as more particularly set forth in the Exchange Agreements; and

WHEREAS, Assignor wishes to assign to Assignee all of Assignor's rights, title, interest and obligations under the Boundary Contract and October 2007 Agreement, and Assignee agrees to accept such assignment and assume Assignor's obligations thereunder as more particularly set forth in this Agreement.

NOW THEREFORE, in consideration of the sum TEN DOLLARS (\$10.00), the exchange of mutual promises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein by reference.
2. Assignment, Acceptance and Assumption of Obligations. Assignor hereby assigns to Assignee all of Assignor's rights, title and interest under the Boundary Contract and October 2007 Agreement. In turn, Assignee hereby assumes all of Assignor's

obligations and duties under the Boundary Contract and October 2007 Agreement other than the Retained Obligations of Assignor as defined in Section 3 below. Assignee shall indemnify and hold Assignor harmless from any claims brought by the HG HOA, Rec. District, CDD or any other persons that allege that Assignor has failed to perform its obligations under the Boundary Contract or October 2007 Agreement subsequent to the date hereof other than the Retained Obligations of Assignor as discussed below.

3. Retained Obligations of Assignor. Pursuant to Paragraph 5 of the Boundary Contract, Assignor agreed to pay certain assessments for operations and maintenance and debt with respect to Lots 743-751, Herons Glen Unit Five, recorded in Plat Book 74, Pages 82-84 of the Public Records of Lee County, Florida ("Dennisport Lots"). Notwithstanding anything contained within Section 2 of this Agreement to the contrary, Assignor shall remain obligated to pay such assessments on Lots 743, 744, 749, 750 and 751. Assignee shall be responsible for such assessments on Lots 745, 746, 747 and 748. In addition, Assignor shall remain liable to perform those obligations of Assignor under the Exchange Agreements with respect to the construction of three residences for certain Dennisport lot owners as more particularly set forth in the Exchange Agreements. Assignor shall remain liable for any additional costs to modify the Avenida Del Vera emergency gate as more particularly described in Section 10. b. of the October 2007 Agreement based on any Notice of Proposed Change (NOPC) DRI approvals. The Assignor's retained obligations as set forth in this Section 3 shall constitute "Retained Obligations of Assignor" for purposes of this Agreement. Except as set forth in this Section 3, all other obligations of Assignor as set forth in the Boundary Contract and the October 2007 Agreement shall be assumed in full by Assignee.

4. Execution of Boundary Contract. Assignee acknowledges that at a duly called and held meeting of the members of Assignee (or by other duly authorized company action in lieu of a meeting), at which a quorum was present and voting, a resolution was adopted by the governing body of Assignee which approved in full the terms of the Boundary Contract and authorized Assignee's acceptance of the assignment from Assignor of the Boundary Contract and the October 2007 Agreement subject to the Retained Obligations of Assignor. Assignee further authorizes and directs Assignor to act for and on behalf of Assignee, as its act and deed, to enter into and sign the Boundary Contract fully intending that such action by Assignor will bind Assignee as developer/land owner entity of the Property. Assignee acknowledges that it must execute certain documents and agreements concerning the Boundary Contract, including but not limited to certain conveyances relating to the Dennisport Gate; two revocable easements between the owner of the Property and the HG HOA; and a bill of sale with respect to the barrier gate. To the extent representatives from Assignor have already executed the Boundary Contract and any document in furtherance thereof, Assignee hereby ratifies and approves such actions and shall execute appropriate resolutions in recordable form to the extent required to document Assignor's authority to execute such documents on behalf of Assignee.

5. Default. A default by any Party under this Agreement shall entitle the other to all remedies available at law or in equity. It is further agreed that injunctive relief shall be available to any Party to enforce the obligations of this Agreement.

6. Enforcement of Agreement. In the event that any Party is required to enforce this Agreement by court proceedings or otherwise, then the Parties agree that the prevailing Party



shall be entitled to recover from the other all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution, or appellate proceedings.

7. Controlling Law. This Agreement and the provisions contained in this Agreement shall be construed, interpreted, and controlled according to the laws of the State of Florida.

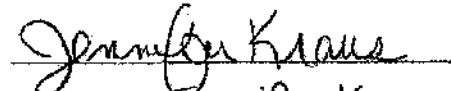
8. Severability. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

9. Headings for Convenience Only. The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Witnesses:



Print Name: Jennifer Kraus



Print Name: ERIN MONTASTALLE

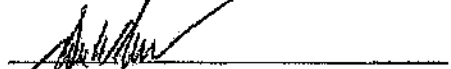
Assignor:

Taylor Woodrow Communities at Herons Glen,  
LLC, a Florida limited liability company

By: 

Thomas Spence, Vice President

Witnesses:



Print Name: JAMES WHITMORE



Print Name: Jennifer Rosenkranz

Assignee:

Windham/Magnolia Landing, LLC,  
a Michigan limited liability company

By: 

Herbert Lawson, sole managing member