

RESOLUTION 16-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA AUTHORIZING THE SETTLEMENT OF ALL CLAIMS AGAINST THE CITY BY THE ESPLANADE I CONDOMINIUM ASSOCIATION, INC., AND ESPLANADE MARINA ASSOCIATION, INC. IN THE AMOUNT OF \$83,915.43; AUTHORIZING THE COUNCIL CHAIRMAN TO EXECUTE THE SETTLEMENT AGREEMENT AND GRANT OF TEMPORARY AND PERPETUAL EASEMENT; AUTHORIZING THE CITY MANAGER TO EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Esplanade I Condominium Association, Inc. and Esplanade Marina Association, Inc., ("Esplanade") have made certain Claims against the City of Marco Island ("City"), alleging that the City has "taken" through its actions certain property and riparian rights, which the City disputes; and

WHEREAS, the City and the Esplanade desire to amicably resolve their differences and avoid the expense and uncertainty of legal proceedings; and

WHEREAS, the City and the Esplanade have agreed to resolve all present Claims and future potential Claims which may be asserted against the City arising out the City's alleged use or taking of the Esplanade's property; and

WHEREAS, City Council does hereby find that accepting and approving the Settlement Agreement and Specific Release and the Grant of Temporary and Perpetual Easement, attached hereto as Exhibit "A", is in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marco Island, Florida that:

Section 1. The above recitals are true and correct and incorporated herein.

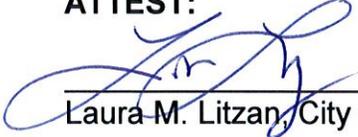
Section 2. The City Council accepts and approves the Settlement Agreement and Specific Release and the Grant of Temporary and Perpetual Easement and the City Council Chairman is authorized to execute the Settlement Agreement and Specific Release and the Grant of Temporary and Perpetual Easement.

Section 3. The City Manager is authorized to expend budgeted funds on behalf of the City in the amount of \$83,915.43.

Section 4. This Resolution shall take effect on March 7, 2016.

Passed in open and regular session of the City Council of the City of Marco Island, Florida, this 7th day of March 2016.

ATTEST:



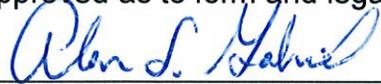
Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 

Robert C. Brown, Chairman

Approved as to form and legal sufficiency:



Alan L. Gabriel, City Attorney

EXHIBIT "A"

Record and Return to:

Alan L. Gabriel, Esq.
Weiss Serota Helfman Cole & Bierman P.L.
200 East Broward Boulevard, Suite 1900
Fort Lauderdale, Florida 33301
Telephone: 954-763-4242

SETTLEMENT AGREEMENT AND SPECIFIC RELEASE

THIS SETTLEMENT AGREEMENT AND SPECIFIC RELEASE ("Agreement") is made and entered into as of the ____ day of _____, 2016, ("Effective Date") between and among CITY OF MARCO ISLAND, FLORIDA, a Florida municipal corporation, (hereinafter referred to as "City"), ESPLANADE I CONDOMINIUM ASSOCIATION, INC., a Florida corporation, (hereinafter referred to as "Condominium Assn.") and ESPLANADE MARINA ASSOCIATION, INC., a Florida corporation (hereinafter referred to as "Marina Assn.") (collectively, the Condominium Assn. and the Marina Assn. are hereinafter referred to as "Esplanade"), including Esplanades' related entities, as defined herein, as well as their subdivisions, respective former and current councilmembers, board members, directors, administrators, agents, department heads, supervisors, employees, attorneys, representatives, and officials (all in their official and individual capacities).

RECITALS:

WHEREAS, Esplanade has made certain Claims against the City, alleging that the City has "taken", through its actions, certain property rights of Esplanade, including the taking of riparian rights and rights relating to the property described in the easements being conveyed by Esplanade to the City, as more fully set forth herein; and

WHEREAS, the City and the Esplanade have agreed to resolve all present Claims and future potential Claims which may be asserted against the City arising out of the City's alleged use or taking of Esplanade's property adjacent to the Smokehouse Bay Bridge ("Bridge") and the impact of such alleged takings to the adjacent property that is owned by the Esplanade (the "Claims") provided, however, nothing herein (including all specific releases in this Agreement) shall be construed so as to prevent future claims by the Esplanade against the City for any and all damages to the Esplanade property that may be attributable to the design, construction or material associated with the construction of the Bridge by the City or its contractor or as a result of work done within the easements conveyed to the City pursuant to this Agreement; and

City _____
Condominium Assn. _____
Marina Assn. _____

WHEREAS, City and Esplanade have agreed to provide the City with easement rights to its property, as shown in Exhibit 1, for the purpose of completing the bridge project and for future maintenance of facilities installed by the City as part of the Bridge project; and

WHEREAS, the City and the Esplanade (collectively the "Parties") acknowledge that it is not the intent of the parties to resolve herein any unasserted claims that may apply to individual unit owners or others who are not a party to this Agreement; and

WHEREAS, the Parties, each of whom is represented by counsel, recognize their respective rights and obligations and are desirous of settling, fully and finally, the Claims, and the City, the Condominium Assn. and the Marina Assn. are desirous of settling all present and potential future Claims which were or could have been brought against the other related to these Claims; and

WHEREAS, the Parties recognize that resolution of these differences in a manner favorable to their respective interests cannot be reasonably predicted and that litigation to resolve these differences will require the expenditure of significant funds and resources by the Parties; and

WHEREAS, the Parties desire to amicably resolve their differences and avoid the expense and uncertainty of legal proceedings; and

WHEREAS, prior to signing this Agreement, each party, through its authorized representative, has had an opportunity to have, and in fact has had, counsel review this Agreement and explain that party's rights and obligations hereunder, and the legal effect of, this Agreement; and

WHEREAS, the Parties, through their authorized representatives, have signed this Agreement of their own free will and volition, with the full recognition and understanding of their rights and obligations and the legal effect of this Agreement

NOW, THEREFORE, in consideration of the mutual promises, covenants, and other good and valuable consideration set forth herein, as well as those set forth in the Easements (unexecuted versions are attached as Exhibits to this Agreement; hereinafter the "Easements") executed concurrently with this Agreement, the receipt and sufficiency of which are hereby acknowledged and conclusively established, the City, the Condominium Assn., and the Marina Assn., intending to be legally bound, agree to the following:

1. Recitals. The aforementioned Recitals are true and correct and shall be incorporated into this Agreement.

2. Joint Stipulation of Fees and Costs. Pursuant to this Agreement and notwithstanding anything to the contrary in this Agreement, each party shall bear its own attorneys' fees and costs, except as otherwise provided herein.

3. Settlement of Action.

(a) The Condominium Assn. and the Marina Assn., shall, concurrently with the execution of this Agreement, execute the Easements. It is acknowledged and understood that the City is a governmental entity created under the laws of the State of Florida. The failure or denial of approval of the Agreement by the City Council shall revoke and cancel this Agreement.

(b) The Parties (as may be legally appropriate) shall, concurrently with the execution of this Agreement, execute the Easements. All easements to be executed pursuant to this Agreement shall be prepared by the City. The easements and the herein Settlement Agreement shall be recorded by the City in the public records of Collier County, Florida.

(c) Esplanade shall be the first to execute the settlement documents (this Agreement and the Easements).

(d) After execution, Esplanade shall forward the original settlement documents (this Agreement and the Easements) to the City, for City Council approval and for execution.

(e) On the date of the City Council's approval, the City shall enter the Effective Date of this Agreement on the Agreement and the Easements.

(f) After execution, the City will perform and will pay Esplanade as follows:

(i) Easement Rights (temporary and permanent) - \$24,000.

a. Temporary Construction Easement.

b. Permanent Maintenance Easement.

The Temporary Easement will transition after the completion of the Bridge construction to a Permanent Easement Area which will include:

i. A five (5) foot strip located adjacent to the Bridge retaining wall / ramp and approximately one hundred seventy (170') feet along the Esplanade property line;

ii. Together with the area extending the existing Esplanade sidewalk to the Bridge walkway. The City agrees to install such extension with the same width as shown in the Rendition Drawing, attached hereto as Exhibit "2".

c. Public Rights of Way for the Benefit of the Public (as shown in Exhibit2):

- i. At the new triangle area, a six (6') foot sidewalk along the new seawall connecting to the Bridge walkway.
 - ii. The area extending the existing Esplanade sidewalk to the Bridge walkway.
 - d. Esplanade represents that it owns good and marketable title to the Esplanade Property, and that the Condominium Assn. or the Marina Assn., as the case may be, have full right and authority to grant and convey the Easements without the joinder or consent of any other party.
 - e. The Grant of Easements in the form attached hereto and made a part hereof as Exhibit "1", properly executed on behalf of the Esplanade so as to convey the Easements to the City free and clear of all liens, encumbrances and other conditions of title other than those accepted by City.
- (ii) As to the Esplanade's riparian rights claim for purposes of settlement only - \$23,000.
- (iii) In addition to the above, the City, at its sole cost and expense, will perform and complete the following (as shown in the Rendition Drawing, attached hereto as Exhibit "2"):
 - a. Restoration of the Esplanade property affected by the Bridge construction, including but not limited to the irrigation system. This work will be performed by the company Affordable Landscaping, Service and Design or such other contractor as the Parties may otherwise agree upon.
 - b. Install additional landscaping in the vicinity of the Bridge wall, adjacent to the Esplanade and located as may be reasonably spaced and situated within this area, (in accordance with the landscape plan ("landscape plan") attached hereto as Exhibit "3").
 - c. Remove the existing loop sidewalk and the disturbed area will be restored consistent with the landscape plan.
 - d. Complete the City's new triangle area with:
 - i. A six (6') foot public access sidewalk along the City's seawall.
 - ii. Install an irrigation pipe to the center of the triangle connected to the Esplanade's irrigation system.
 - iii. Installation of ground vegetation within the triangle area in accordance with the landscape plan.
 - iv. Installation of signage stating "no fishing, no biking, no skateboarding".

v. Installation of stanchions and chains consistent with the Esplanade's existing promenade.

(g) After the completion of the above improvements by the City, the Esplanade shall be responsible for the continued maintenance of the landscaping and irrigation located on the Esplanade's Property and the new triangle area.

(h) Upon full execution of this Agreement, the City shall file and record the Easements with the Collier County, Florida, Recorder's Office.

(i) The City shall provide copies of all final and executed documents to all the Parties to this Agreement.

(j) In addition to those items specified in paragraph 3(f) above (including the payment of \$47,000), the City will reimburse the Esplanade the funds that the Esplanade incurred in pursuing this settlement and Agreement, including its fees and costs, in the amount of \$36,915.43 (for both attorney's fees and out-of-pocket expenses, for a total amount of \$83,915.43 ("Payment")) to be paid to the Esplanade in the manner specified in this paragraph 3.

(k) Payment shall be made by the City within forty-five (45) days of the Effective Date of this Agreement.

(l) Payment shall be made payable to the Roetzel & Andress Trust Account and shall be delivered to the Esplanade's law firm, attention Kenneth Jones, Esq., at Roetzel & Andress, 2320 First Street, Suite 1000, Ft. Myers, Florida 33901.

4. **Adequacy of Consideration.** The Parties agree and acknowledge that the consideration set forth herein constitutes good, valuable and sufficient consideration for the Esplanade's settlement of its Claims, waiver and specific release of all Claims (as specified herein) from the Esplanade against the City, and fulfilling all other promises as set forth in this Agreement. The Parties further agree and acknowledge that execution of the Easements constitute good, valuable and sufficient consideration for their actions taken under the terms of this Agreement.

5. **Specific Waiver and Release of All Rights and Claims.**

(a) **Release from Esplanade to the City:** The Condominium Assn. and the Marina Assn. knowingly and voluntarily release, waive, and forever discharge any and all claims, rights, demands, actions, or causes of actions, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which it may have against the City related to the Claims asserted herein, from the beginning of the world until the Effective Date of this Agreement and

the completion of the work as specified herein. The Parties acknowledge that the releases set forth above are not intended to apply to unasserted claims by individual unit owners or others who are not a party to this Agreement nor does such release apply to claims by the Esplanade against the City for damages that may be attributable to or arising from the design, construction, or materials used in the construction or use of the Bridge or within the easement areas conveyed pursuant to this Agreement.

(b) **Release from the City to Esplanade:** The City knowingly and voluntarily releases, waives, and forever discharges any and all claims, rights, demands, actions, or causes of actions, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which it may have against Esplanade related to the Claims asserted herein, from the beginning of the world until the Effective Date of this Agreement and the completion of the work as specified herein.

The Esplanade and the City acknowledge and agree that this release and waiver bars any claim or demand by them for damages, costs, fees, or other expenses incurred by them related to these Claims, including attorneys' fees, except as otherwise provided herein.

6. Parties and Related Entities. This Agreement, as well as the obligations created and the benefits conferred hereunder, shall be binding on and inure to the benefit of the Parties as well as their personal representatives, heirs, past and present representative officers, directors, agents, attorneys, accountants, insurers, subdivisions, employees, successors, purchasers, assigns, and any subsidiary, affiliated and parent corporations, collateral corporations, or other business entities controlled directly or indirectly by the parties. The Condominium Assn., the Marina Assn. and the City each hereby represents and warrants, with respect to any and all Claims which were or could have been asserted by these two associations related to these Claims against the other party, that: (a) no other person or entity is entitled to assert any such Claims, or to recover any monetary, declarative, injunctive, equitable, or any other form of relief from, the opposing party; and (b) no party has assigned, transferred, hypothecated, or in any other way disposed of all or any portion of any of the Claims which were or could have been asserted in the Claims against the opposing party. The parties acknowledge that the representation and warrants set forth above are not intended to apply to individual unit owners or others who are not a party to this Agreement nor do such representations and warrants apply to claims against the City for damages arising from the design, construction or use of the Bridge or as a result of work done within the easements conveyed to the City pursuant to this Agreement.

7. Indemnification/Hold Harmless. City of Marco Island hereby agrees to indemnify, defend and hold harmless Esplanade, its Board of Directors and its members, agents, officers, employees and successors from any and all loss, costs, damages, liability, actions, claims, attorneys' fees and expenses arising from the City's negligent action or conduct that Esplanade or its members may suffer, expend or incur by reason of, or in consequence of the use

of the easements conveyed to the City of Marco Island pursuant to this Agreement and/or the use of the said easement by the City of Marco Island, its employees, agents, invitees, or contractors and resulting from the negligence thereof. The above stated covenant to indemnify and hold harmless shall be subject to the specific limits of Section 768.28(5), Florida Statutes.

8. Non-Admission of Wrongdoing. The Parties agree that neither this Agreement nor the furnishing of the Easements or any consideration under this Agreement shall be construed as an admission by any party of any wrongdoing, liability or unlawful conduct.

9. Governing Law and Severability. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. If any provision of this Agreement is declared illegal or unenforceable by any court of competent jurisdiction and if it cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. The language of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly construed for or against either party.

10. Entire Agreement. This Agreement sets forth the entire agreement between the parties and shall supersede any and all prior agreements and understandings, whether written or oral, between the parties relating to the Claims or the subject matter set forth herein.

11. Amendment. This Agreement may not be amended except by written agreement signed by all Parties.

12. Headings. Section headings are used herein for convenience of reference only and shall not affect the meaning of any provision of this Agreement.

13. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. An originally executed version of this Agreement that is scanned as an image file (e.g., Adobe PDF, TIF, etc.) and then delivered by one party to the other party via electronic mail as evidence of signature, shall, for all purposes hereof, be deemed an original signature. In addition, an originally executed version of this Agreement that is delivered via facsimile by one party to the other party as evidence of signature shall, for all purposes hereof, be deemed an original.

14. Notices. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

City:

Esplanade:

City of Marco Island
50 Bald Eagle Dr.
Marco Island, Florida 34146
Attn.: Roger Hernstadt, City Manager

Kenneth Jones, Esq.
Roetzel & Andress
2320 First Street, Suite 1000
Ft. Myers, Florida 33901

With a copy to:
Alan L. Gabriel, City Attorney
Weiss Serota Helfman Cole & Bierman PL
200 E. Broward Blvd., Suite 1900
Ft. Lauderdale, Florida 33301

With a copy to: Not Applicable

15. **Authority.** Each person signing this Agreement on behalf of a party represents and warrants that he or she has full power and authority to enter into this Agreement and to bind the party that it represents, and to fully, completely, and finally settle the Action.

16. **Terms Defined.** As used herein, the term "Claims" (capitalized) shall mean claims arising out of the City's alleged use or taking of Esplanade's property adjacent to the Smokehouse Bay Bridge ("Bridge") and the impact of such alleged takings to the adjacent property that is owned by the Esplanade. The term "claim" (not capitalized) shall mean any additional claims that Esplanade may have against the City that relate to the for any and all damages to the Esplanade property that may be attributable to the design, construction, or material associated with the construction of the Bridge by the City or its contractor or as a result of work done within the easements conveyed to the City pursuant to this Agreement.

17. THE PARTIES, THROUGH THEIR AUTHORIZED REPRESENTATIVES, HAVE READ UNDERSTOOD, AND FULLY CONSIDERED THIS AGREEMENT AND ARE MUTUALLY DESIROUS OF ENTERING INTO IT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE BETWEEN THE CONDOMINIUM ASSN., THE MARINA ASSN., AND THE CITY.

[This Space Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement and Complete Release Agreement as of the date set forth below.

CONDOMINIUM ASSN.

ESPLANADE I CONDOMINIUM ASSOCIATION, INC.,
a Florida corporation

WITNESSES:

By: [Signature]
Print: Barbara Nolan

By: [Signature]
Print: Robert Stoico

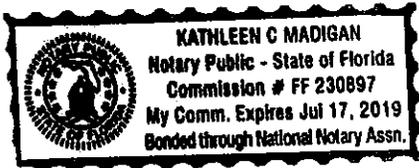
By: Dr. W.D. Trotter
Print: Dr. William D. Trotter
Title: President, Esplanade I Condo Assoc
Address: 720 W. Collier Blvd
Marco Island, FL 34145

Date: 22 day of February 2016

STATE OF FLORIDA)
) SS:
COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me this 22 day of February 2016 by Dr. W.D. Trotter as President (office-held/title) and on behalf of ESPLANADE I CONDOMINIUM ASSOCIATION, INC. He/she personally appeared before me, is personally known to me or produced as identification.

By: [Signature]
Name: Kathleen C. Madigan
Notary Public State of Florida
My commission expires:



City [Signature]
Condominium Assn. [Signature]
Marina Assn. [Signature]

MARINA ASSN.

ESPLANADE MARINA ASSOCIATION, INC.,
a Florida corporation

WITNESSES:

By: [Signature]
Print: Barbara Nolan

By: [Signature]
Print: LAWRENCE D. GORDON

Title: Pres
Address: 760 N. Collier Blvd
Marco Is. FL 34145

By: [Signature]
Print: Robert F. Stocco

Date: 22 day of February 2016

STATE OF FLORIDA)
) SS:
COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me this 22 day of February 2016 by Lawrence Gordon as President (office-held/title) and on behalf of **ESPLANADE MARINA ASSOCIATION, INC.** He/she personally appeared before me, is personally known to me or produced _____ as identification.

By: [Signature]
Name: Kathleen C Madigan
Notary Public State of Florida
My commission expires:



City [Signature]
Condominium Assn. [Signature]
Marina Assn. [Signature]

CITY

WITNESSES:

CITY OF MARCO ISLAND, FLORIDA
a Florida municipal corporation

By: _____
Print Name: _____

By: _____
Name: Robert C. Brown
Title: City Council Chairman

By: _____
Print Name: _____

_____ day of _____, 2016

ATTEST:

By: _____
Laura M. Litzan, City Clerk

APPROVED AS TO FORM:

By: _____
Name: Alan L. Gabriel, Esq.
Weiss Serota Helfman Cole & Bierman PL
Title: City Attorney

Esplanade Settlement Agreement (Council Appr.-2.16.16)

City _____
Condominium Assn. _____
Marina Assn. _____

Record and return to:
Alan L. Gabriel, Esq.
Weiss Serota Helfman Cole & Bierman P.L.
200 East Broward Boulevard, Suite 1900
Fort Lauderdale, Florida 33301
Telephone: 954-763-4242

Folio Number: _____

GRANT OF TEMPORARY AND PERPETUAL EASEMENT

THIS GRANT OF TEMPORARY AND PERPETUAL EASEMENT ("Grant of Easement") dated _____, 2016 is made by and between ESPLANADE I CONDOMINIUM ASSOCIATION, INC., a Florida corporation ("Esplanade I Condominium"), and ESPLANADE MARINA ASSOCIATION, INC., a Florida corporation ("Esplanade Marina") (collectively referred to herein as "Grantor"), whose mailing address is c/o Volhr Corporation, 981 Collier Boulevard, Marco Island, Florida 34145, and CITY OF MARCO ISLAND, FLORIDA, a Florida municipal corporation ("City"), whose mailing address is 50 Bald Eagle Drive, Marco Island, Florida 34145.

RECITALS

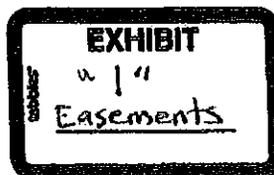
WHEREAS, Esplanade I Condominium is the entity responsible for the operation of, and Esplanade Marina is the owner of, respectively, certain real property located in the City of Marco Island, Collier County, Florida, and more particularly described in attached Exhibit "1" ("Parent Tract"); and

WHEREAS, the City wishes to acquire a non-exclusive temporary easement upon the property as shown in the Rendition Drawing attached hereto as Exhibit "2" for the following purposes: staging and storage of construction equipment; construction of a new bridge, seawall, and related improvements; and tying in and harmonizing said property and the embankments, walkways, etc. thereon with the construction to be undertaken by the City over Smokehouse Bay on Collier Boulevard and adjacent thereto (the "Temporary Easement"); and

WHEREAS, a perpetual easement shall thereafter be placed upon the property as shown in the Rendition Drawing for the following purposes: To enable the City to access, inspect, maintain and repair the permanent improvements depicted in the Smokehouse Bay Bridge construction plans, containing approximately 170 feet, more or less, along the Esplanade property line, as shown in the Rendition Drawing.

NOW THEREFORE, Grantor has agreed to grant and convey to City an easement on the terms and conditions set forth in the Grant of Easement.

Page 1 of 7



City
Esplanade I Condominium
Esplanade Marina

[Handwritten signatures]

1. Grant of Temporary Easement. In consideration of the mutual promises and agreements hereinafter described, and for Ten Dollars and other good and valuable consideration set forth herein, Grantor hereby grants to City the Temporary Easement on, over, across and under the real property as shown in Exhibit "2" ("Temporary Easement Area"). All work will be performed in such manner that any existing structural improvements that are damaged or destroyed will be replaced with substantially like improvements, so that the area will be restored to similar condition as existed before the project. This Temporary Easement shall expire upon the completion of this bridge project but not later than the last day of May 31, 2016.

2. Grant of Permanent Easement. In consideration of the mutual promises and agreements hereinafter described, and for Ten Dollars and other good and valuable consideration set forth herein, Grantor hereby grants to City a perpetual, non-exclusive easement to enable the City to access, inspect, maintain and repair the permanent improvements (the "Permanent Easement") adjacent to the real property as shown in Exhibit "2" ("Permanent Easement Area").

The grant of Permanent Easement is together with the rights to access, inspect, maintain and repair permanent improvements including the rights to reconstruct, inspect, alter, improve, as well as remove or relocate such permanent improvements adjacent to the Easement Area and located upon City property, with all rights necessary and convenient for the full enjoyment and use thereof for the above-mentioned purposes, including, without limitation, (i) the right of access within the Easement Area for the maintenance and repair of the adjacent improvements and for vegetation management purposes. All maintenance and repair will be performed by City in such manner that any portion of Grantors' property or improvements that is damaged or destroyed will be replaced with substantially like improvements, so that the area will be restored to similar condition as existed before the damage. No storage other than on a temporary basis and only while the maintenance or repair is taking place shall be permitted within the Easement Area.

3. The Temporary Easement and the Permanent Easement are collectively referred to herein as the "Easement", and the Temporary Easement Area and the Permanent Easement Area are collectively referred to herein as the "Easement Area". To the extent permitted by law, City agrees to indemnify, defend and hold Grantor harmless, including its directors, officers and employees, from and against any liability (including, without limitation, reasonable costs and attorney's fees) incurred by Grantor to the extent resulting from City's use of the Easement Area or caused by City's negligent acts, errors or omissions, including judgments in favor of any third party which is related to the City's use of the Easement Area.

4. The foregoing Easement grants are subject to and reserve to Grantor, however, the right and privilege to use the Easement Area for all other purposes permitted, except as herein stated, or as might interfere with the City's use of the Easement, including (i) the right to maintain and rebuild existing sidewalks, pavement or landscape and irrigation materials within the Easement Area, provided that no new or additional materials as may be legally permitted, do

not interfere with the City's Easement, may be located or constructed by Grantor in the Easement Area.

5. Grantor represents that it is the sole owner of or entity responsible for the operation of the Parent Tract, as applicable, and has full right and authority to grant the Easement set forth in this Grant of Easement without the joinder or consent of any other party.

6. This Grant of Temporary and Perpetual Easement and all conditions and covenants set forth herein are intended and shall be construed as covenants running with the land and will be binding on Grantor and City, and their respective successors and assigns and all persons claiming by, through and under them.

This Grant of Temporary and Perpetual Easement has been executed by the Grantor on the date set forth on the first page of this Agreement.

GRANTOR

Esplanade I Condominium Association, Inc.
a Florida corporation

WITNESSES:

By: [Signature]
Print: Barbara Wolcott

By: [Signature]
Print: Robert F. Storico

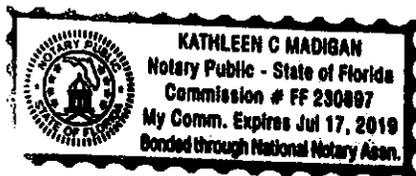
By: [Signature]
Print: Dr. William D. Trotter
Name: Dr. William D. Trotter
Title: President - Esplanade Assoc
Address: 120 N Collier Blvd
Marco Island, FL 34145

Date: 22 day of February 2016

STATE OF FLORIDA)
) SS:
COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me this 22 day of February, 2016, by Dr. W.D. Trotter as President (office-held/title) and on behalf of **ESPLANADE I CONDOMINIUM ASSOCIATION, INC.** He/she personally appeared before me, is personally known to me or produced _____ as identification.

By: [Signature]
Name: Kathleen C. Madigan
Notary Public State of Florida
My commission expires:



City [Signature]
Esplanade I Condominium
Esplanade Marina

GRANTEE

City of Marco Island, Florida,
a Florida municipal corporation

WITNESSES:

By: _____
Print: _____

By: _____
Print: _____

By: _____
Print: _____

Title: _____
Address: _____

Date: _____ day of _____, 2016

STATE OF FLORIDA)
) SS:
COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by _____ as _____ (office-held/title) and on behalf of **CITY OF MARCO ISLAND, FLORIDA**, a municipal corporation. He/she personally appeared before me, is personally known to me or produced _____ as identification.

By: _____
Name: _____

Notary Public State of Florida
My commission expires:

City _____
Esplanade I Condominium _____
Esplanade Marina _____

Exhibit "1"

Grant of Temporary and Perpetual Easement

Legal Description of Parent Tract

Page 6 of 7

City _____
Esplanade I Condominium _____
Esplanade Marina _____

Exhibit "2"

Grant of Temporary and Perpetual Easement

Rendition Drawing of Temporary and Permanent Easement Area

Attachment/Exhibit

SETTLEMENT AGREEMENT

January 23, 2016

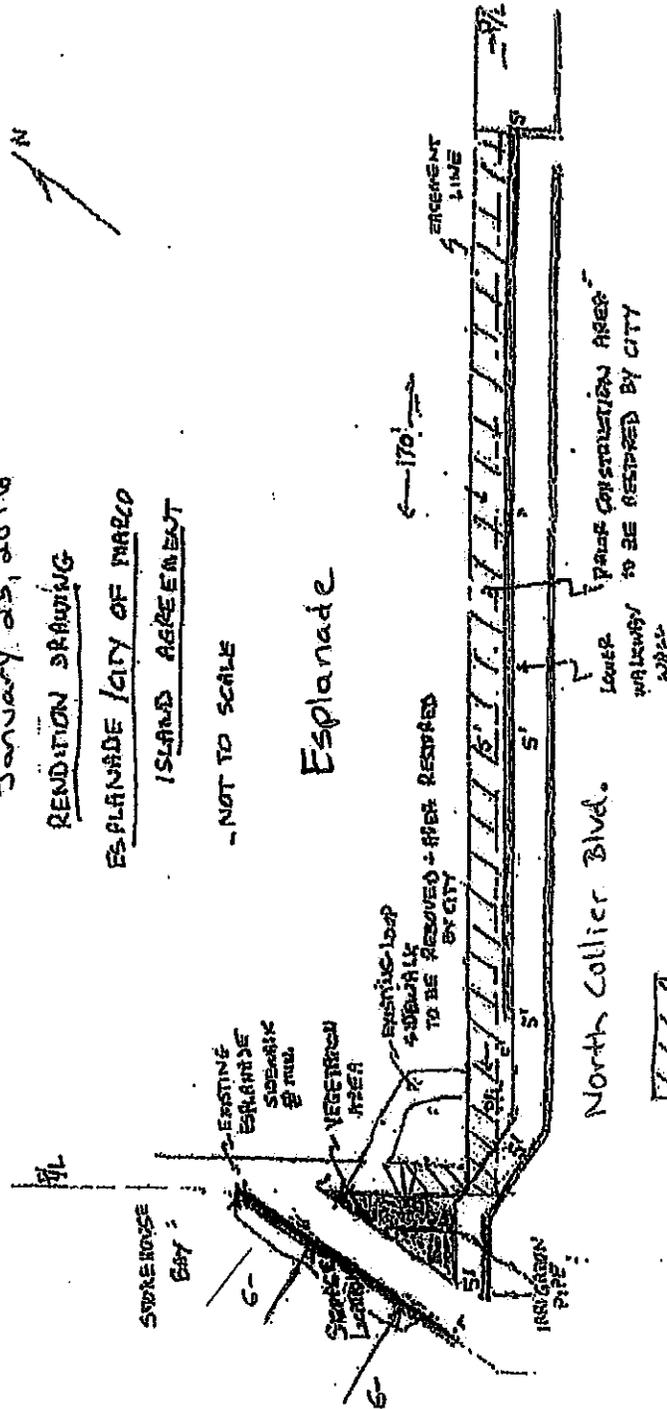
RENDITION DRAWING

ESPLANADE / CITY OF MARCO

ISLAND AGREEMENT

- NOT TO SCALE

Esplanade



TEMPORARY PERPETUAL EREMENT AREA

Rendition Drawing
EXHIBIT
#2

WOT
KLS

Estimate

**Affordable Landscaping
Service and Design. LLC**
Pest Control and Tree Service
658 Bald Eagle Dr. Marco Island, FL 34145
Phone: 239.389.1468 Fax: 239.389.1434

Date: 11/12/2015
Estimate #: 2018255

Email: Landscaping@alsmarco.com

SERVICE ADDRESS

ESPLANADE 1
MARCO ISLAND, FL 34145

ESPLANAD 1
C/O VOLHR CORPORATION
981 N. COLLIER BLVD
MARCO ISLAND, FL 34145
finance@volhrcorporation.com

Quality services at an Affordable Price

Qty	P.O. No.	Terms	Job Location	REP	Builder
		Due on receipt		011	
		Description	Rate	Total	
		BRIDGE WALL			
24		SABAL PALM	245.00	5,880.00	
15		CHINESE FAN PALM #25	110.00	1,650.00	
36		JATROPHA #10	82.00	2,952.00	
265		RED CYPRESS MULCH	3.75	993.75	
		ADD ON BUBBLERS FOR PALMS AND REPAIR EXISTING ZONES FITTINGS AND PIPESPRINKLER SYSTEM REPAIR & LABOR INCLUDING LABOR		1,500.00	1,500.00
				1,375.00	1,375.00
		SOD AND PLANT MATERIAL NEED TO BE WATERED EVERYDAY FOR A PERIOD OF 30 DAYS TO PROMOTE GROWTH AND ESTABLISHMENT.			

Total

\$14,350.75

Thank you. We appreciate your business

Signature



