



PREPARED BY AND TO BE RETURNED TO:
 Robert S. Freedman, Esquire
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INSTR # 6545896
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 CHARLIE GREEN, CLERK OF COURT
 LEE COUNTY, FLORIDA
 RECORDING FEE 44.00
 DEPUTY CLERK N Kortright

DECLARATION AND GRANT OF EASEMENTS

THIS DECLARATION AND GRANT OF EASEMENTS is made by BAY COLONY-GATEWAY, INC., a Delaware corporation ("Declarant").

WITNESSETH:

WHEREAS, Declarant owns certain real property situate in Lee County, Florida, and legally described on Exhibit A attached hereto and made a part hereof ("Property"), upon which Declarant is developing a residential community to be known as Aviano at Pelican Preserve, A Condominium; and

WHEREAS, Declarant desires to declare and grant certain easements over, across, under and through all and/or certain portions of the Property for the provision of certain services necessary for the development of the Property and to provide a means of emergency access over, across and through the Property as required by local governmental entities, as more specifically provided hereinafter;

NOW, THEREFORE, Declarant, for itself and its successors, assigns and designees, hereby states as follows:

1. **Recitals**. The foregoing recitals are true and correct and are hereby incorporated by reference.

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2. **Declaration and Grant of Easements**. The following easements are hereby declared and/or granted (as the case may be):

(a) A perpetual, non-exclusive easement is declared and reserved for the benefit of Declarant and its successors, assigns and designees and is granted and reserved to the appropriate governmental or quasi-governmental entities over, across and through the Property for the purpose of providing ingress and egress for emergency vehicles as may be necessary for the provision of proper emergency services to the Property and the owners, residents and occupants thereof;

(b) A perpetual, non-exclusive easement is declared and reserved for the benefit of Declarant and its successors, assigns and designees and is granted to the appropriate governmental or quasi-governmental entities and utility providers over, across, under and through the Property (1) for the purpose of providing utility services (including, but not limited to, water, sewer, sanitary sewer and drainage services) and communications, cable television and security systems to the Property and to permit ingress and egress over such portions of the Property as may be necessary for such purposes, and (2) to permit the installation, construction, maintenance, repair, replacement and reconstruction of all facilities related to such services which are or will be located on the Property and which provide services to the Property; and

(c) A perpetual, non-exclusive easement is declared and reserved for the benefit of Declarant and its successors, assigns and designees and is granted and reserved to the Aviano at Pelican Preserve Condominium Association, Inc. ("Condominium Association"), the Pelican Preserve Community Association, Inc., formerly known as the Sun City Center Ft. Myers Community Association, Inc. ("Community Association"), and the Gateway Services Community Development District ("CDD") and their respective successors, assigns, employees and designees, over, across, under and through that certain portion of the Property legally described in Exhibit B attached hereto and made a part hereof

TPA#1866865.1

("Drainage Easement Property") for the purposes of (1) permitting the proper flow of surface water drainage for and through the Property and neighboring properties, and (2) installing, maintaining, repairing, replacing and/or reconstructing any and all lines, pipes, facilities, conduits and the like as may be needed from time to time to permit proper drainage. In addition, a perpetual, non-exclusive easement is granted to the Condominium Association, the Community Association and the CDD over, across, under and through the Property for purposes of providing necessary legal access to perform any and all functions contemplated under this paragraph.

3. **Non-Interference; No Solicitation.** None of the aforementioned easements shall permanently interfere with the improvements constructed or to be constructed on or directly adjacent to the Property or the use of the Property for residential purposes or for the purposes intended, nor shall such easements encroach upon or hinder the residential use of any condominium units and/or common elements facilities to be constructed on the Property in accordance with any declaration(s) of condominium or other deed restrictions which may be placed upon all or a portion of the Property, as same shall be recorded in the public records of Lee County, Florida, and as may be amended from time to time. No solicitation of owners or tenants of the Property shall be permitted for any commercial or personal gain.

4. **Indemnification.** Any users of the easements declared and/or granted hereunder, by virtue of utilizing the easements declared and/or granted hereunder, hereby agree to indemnify, defend and save Declarant and its successors and assigns harmless of and from any and all claims, demands, lawsuits, expenses, attorneys' fees, causes of action, judgments and liabilities which now exist or may hereafter arise with respect to the use of the easements declared hereunder by such user, whether such matters relate to injury to personal property or otherwise, but excluding any claim, demand, loss, expense, attorney's fees, cause of action, judgment or liability arising out of or relating to the negligence or more culpable conduct of Declarant.

5. **Enforcement.** In the event any action or proceeding is taken to enforce the provisions of this instrument, the prevailing party shall be entitled to an award of court costs and attorney's fees (which shall include any and all attorney and paralegal fees incurred in the course of trial or appellate litigation or related services by an out-of-court attorney and paralegal associated with or regarding the dispute in question, and any and all such fees incurred in connection with any administrative proceeding associated with or regarding the dispute in question) necessitated by non-compliance with the terms of this instrument.

6. **Specific Statement of Non-Merger of Easements into Title.** It is the express intent of Declarant that the easements declared, established and reserved hereunder shall not be merged into the fee title to the Property held by Declarant as of the date hereof. All future owners of the Property shall take title to their respective portions of the Property subject to the provisions of this Declaration and the easements declared, established and reserved under this Declaration.

7. **Venue.** Any legal proceedings undertaken with regard to this Declaration shall be prosecuted in the court of competent jurisdiction in Lee County, Florida.

8. **Amendment.** This Declaration may be amended only upon the written consent of:

- a. Declarant for so long as Declarant owns any portion of the Property; and
- b. the Aviano at Pelican Preserve Condominium Association, Inc., the entity which has been or will be charged with overseeing the operation and maintenance of the residential units contained within the Property; provided, however, that no such consent shall be required for so long as Declarant is entitled to elect a majority of the members of the board of directors of Aviano at Pelican Preserve Condominium Association, Inc. Upon such time as the approval of Aviano at Pelican Preserve Condominium Association, Inc. is required for an amendment hereunder, approval of such amendment by

a majority of the members of the board of directors shall be the only requirement (meaning that there shall be no obligation for a unit owner vote to approve such an amendment to this Declaration).

Any such amendment shall be evidenced by a written instrument executed with the formalities of a deed and recorded in the public records of Lee County, Florida.

9. **Severability**. Invalidation in whole or in part, of any particular provision of this Declaration by judgment or court order will not affect any other provisions, all of which shall remain in full force and effect; provided, however, any court of competent jurisdiction is hereby empowered, to the extent practicable, to enforce any otherwise invalid provision contained in this Declaration when necessary to avoid a finding of invalidity while effecting Declarant's intent of providing particular covenants pertaining to the use, development, sale and beneficial enjoyment of the Property.

10. **Covenant Running with the Land**. The covenants and restrictions of, and easements and rights created by, this Declaration shall run with, benefit, and be binding upon, the fee title to each portion of the Property, as the case may be.

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IN WITNESS WHEREOF, Declarant has executed this instrument on this 17 day of November, 2004.

WITNESSES:

DECLARANT:
BAY COLONY-GATEWAY, INC., a Delaware corporation

Name: Sandra L. Carpenter
Print Name: SANDRA L. CARPENTER

By: [Signature]
Tim Oak, Vice President

Name: [Signature]
Print Name: DIANNA M. LUTZ

(SEAL)

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 17th day of November, 2004, by Tim Oak, as Vice President of BAY COLONY-GATEWAY, INC., a Delaware corporation, on behalf of the corporation. He either is personally known to me or has produced as identification.

My Commission Expires: 1/19/2006
(AFFIX NOTARY SEAL)

Sandra L. Carpenter
(Signature)
Name: SANDRA L. CARPENTER
(Legibly Printed)
Notary Public, State of Florida

DD0277639
(Commission Number, if any)

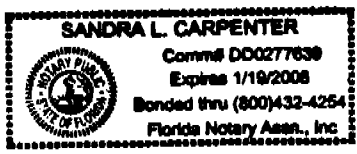


EXHIBIT A

TRACT "A", SUN CITY CENTER FT. MYERS, PARCEL A & B, ACCORDING TO MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 76, PAGES 35 THROUGH 40, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.