

DISCLAIMER
(TO BE DELETED UPON ADOPTION)

THIS DRAFT MEDIATED SETTLEMENT AGREEMENT (“DRAFT”) BETWEEN THE CITY OF VENICE (“CITY”) AND NEAL COMMUNITIES OF SW FL, LLC (“NEAL”) HAS BEEN PREPARED FOR PURPOSES OF NEGOTIATING AND COMPLETING A GLOBAL SETTLEMENT AS PART OF A MEDIATION PROCESS BETWEEN THE CITY AND NEAL. THIS DRAFT IS SUBMITTED IN CONNECTION WITH DISPUTED MATTERS PURSUANT TO FLORIDA STATUTES § 90.408 AND IS INADMISSIBLE IN ANY PROCEEDING.

NO INDIVIDUAL PROVISION IS INTENDED TO REPRESENT A PROPOSED TERM, FINDING OR CONDITION OF AN AGREEMENT, EXCEPT IN THE CONTEXT OF EACH AND EVERY OTHER PROVISION IN THE DRAFT, AND ONLY IF INCLUDED IN A WRITTEN AGREEMENT EXECUTED BY THE PARTIES.

MOREOVER, THE DRAFT PROVISIONS HAVE BEEN JOINTLY PREPARED BY SHUBIN & BASS, P.A. AND MOORE BOWMAN & RIX, P.A. AND DO NOT REPRESENT OFFICIAL OR UNOFFICIAL POSITIONS OF THE CITY OR NEAL ON ANY PARTICULAR SUBJECT UNTIL A FINAL AGREEMENT IS APPROVED AND ADOPTED BY THE CITY DURING A PUBLICLY NOTICED MEETING. NO PART OF THIS DRAFT SHOULD BE CONSTRUED AS REFLECTING ANY OFFICIAL POSITION OF THE CITY.

SETTLEMENT AND RELEASE AGREEMENT

The Parties to this Settlement Agreement, the City of Venice, a municipal corporation of the State of Florida, whose address is 401 W Venice Ave, Venice, FL 34285 (hereinafter, the “City”) and Neal Communities of SW FL, LLC; Border and Jacaranda Holdings, LLC; Windwood Neighborhood Association, INC.; Pamlico Point Management, LLC; Border Road Investments, LLC; Myarra Property Joint Ventures, LLC; and Woolridge Investments-Florida, LLC, whose addresses are collectively 5800 Lakewood Ranch Blvd. N, Sarasota, Florida 34240 (hereinafter, “Neal”, and the City and Neal hereinafter collectively, the “Parties”), in consideration of the premises and the covenants, conditions and agreements set forth herein, each intending legally to be bound, enter into this Settlement Agreement and hereby agree as follows:

WHEREAS, between 2001 and 2008, Neal’s predecessors-in-interest and title sought voluntary annexation into the City and executed various agreements with the City called Pre-Annexation Agreements (the “Pre-Annexation Agreements”), which Pre-Annexation Agreements have been amended from time to time;

WHEREAS, the Pre-Annexation Agreements contain obligations to pay certain Extraordinary Mitigation Fees (“EMF”) and to provide certain land dedications for rights of way (the “Dedications”) to the City;

WHEREAS, the City and Neal, as successor-in-interest, have disagreed about the validity, *vel non*, of the EMF obligations and Dedication requirements;

WHEREAS, the City initiated certain litigation against Neal in Sarasota County Circuit Court under Case No. 17-3532 CA 09, seeking *inter alia* declaratory and injunctive relief pertaining to the obligations and rights of the Parties under the Pre-Annexation Agreements, and Neal responded by filing an Answer and Counterclaim for Declaratory Relief and Inverse Condemnation (the “Lawsuits”);

WHEREAS, during the pendency of the Lawsuits, the Parties convened both formal mediation and informal settlement discussions, leading to their mutual decision to stay proceedings, tolling time-periods and reserving all rights, while negotiating through mediation a detailed and comprehensive basis on which to settle the Lawsuits;

WHEREAS, the properties subject to the Settlement Agreement are identified in **Composite Exhibit A (1-11)** and known as Laurel Lakes, Villa Paradiso, Windwood, Bridges, Milano, and SJMR Hurt; and

WHEREAS, the property known as the Woods, as a part of the Pre-Annexation Agreements, dated April 22, 2008, and containing the “Caithness” and “Hurt” parcels described more particularly in the legal description incorporated in the Special Warranty Deed, Instrument #2018045046, dated April 2, 2018, from Border Road Investments to Meritage Homes of Florida, Inc. (the “Woods Property”) is not intended to be subject hereto;

WHEREAS, Meritage Homes of Florida, Inc., the current landowners of the Woods Property have agreed to execute and file in the Lawsuits a Disclaimer, Waiver and Relinquishment of Claims acknowledging the validity of the Pre-Annexation Agreements, apart from the Settlement herein;

WHEREAS, the named Parties hereto have negotiated the bases for settling the Lawsuits, in consideration of and in accordance with the terms and conditions set forth herein, and the Parties have entered into this Settlement Agreement to memorialize their agreements in connection with the foregoing;

NOW, THEREFORE, in mutual consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, each of the Parties, each intending to be legally bound, agree as follows:

1. Recitals; Incorporation. Each of the Parties acknowledges and agrees that the introductory background recitals set forth above are true and correct, are the basis for this Settlement Agreement, and are incorporated within and made a part of the substance of this Settlement Agreement.

2. General Terms.

The Parties agree that this Settlement Agreement is binding on the owners and/or developers of all properties as identified in **Composite Exhibit A (1-11)** to this Settlement Agreement. The Parties further agree that the covenants contained in this Settlement Agreement shall be recorded in the public records, run with the properties identified in **Composite Exhibit A (1-11)** and inure to the benefit of and be binding upon the respective successors, heirs, representatives and assigns of the Parties to this Settlement Agreement.

3. Condition Precedent.

This Settlement Agreement shall not be binding or enforceable by either party unless and until the City approves the Amended Pre-Annexation Agreements attached hereto as **Composite Exhibit B (1-53)** (the “Amended Pre-Annexation Agreements”).

4. Binding Nature of the Pre-Annexation Agreements.

The Parties agree that this Settlement Agreement is contingent on the Parties’ ratification and acknowledgment of the binding nature of the terms of the Pre-Annexation Agreements, as amended and attached hereto as **Composite Exhibit B (1-53)**.

5. Neal agrees that all EMF payments previously paid to the City, up to July 1, 2018, shall be validly retained by the City.

6. Subject to approval of the Amended Pre-Annexation Agreements by the City Council, the City shall process such amendments to existing Pre-Annexation Agreements as are necessary to effectuate the terms of this Settlement Agreement.

7. Waiver of Claims.

In consideration of this Settlement Agreement, and conditioned upon its performance, the Parties each hereby absolutely and irrevocably waive,

acquit, demise, satisfy, and discharge each other and their respective elected officials, officers, administrators, employees, agents, servants, consultants, committee, representatives, and members thereof, whether public employees or private citizens, and their respective agencies, instrumentalities, heirs, executors, administrators, personal representatives, successors, and assigns (“Released Parties”), of and from, any causes of action, actions, suits, obligations, liabilities, debts, dues, sums of money, costs, losses, penalties, fines, expenses (including attorney’s fees), damages, judgements, claims, and demands whatsoever arising from law or in equity, which the Parties, respectively, or any of their legal or equitable successors or signs, now has, whether asserted or un-asserted, arising from the beginning of time to the date of this Settlement Agreement, against the Released Parties or any of them by reason of any matters, claims or assertions pleaded in the Lawsuits; provided that such releases do not apply to the terms and conditions of this Settlement Agreement or the Parties’ rights to enforce this Settlement Agreement.

8. Subject to the approval of the terms of the Settlement Agreement, in addition to the general waiver set out in paragraph 7, hereinabove, Neal and its agents, servants, consultants, representatives, successors, and assigns, hereby expressly, in consideration of the terms set out hereinabove, knowingly and voluntarily waives any and all rights to challenge any existing impact fees of the City to which Neal’s properties are subject, as of the date of acceptance of this Settlement Agreement by the City. Such waiver includes, but is not limited to, claims against both the EMF, and the Fire and Police Impact Fee, per Ordinance 2017-23.

9. Within ten (10) days of the City’s final approval of the Parties completed execution of this Settlement Agreement and the Amended Pre-Annexation Agreements, the Parties shall jointly seek entry of a Stipulated Final Judgment of the lawsuits whereby the Court ratifies and approves this Settlement Agreement and its attached Amended Pre-Annexation Agreements, reserving the Court’s jurisdiction to enforce this Settlement Agreement. It is agreed that all parties to the Lawsuits will bear their own costs and attorneys’ fees.

10. Entire Agreement; Amendments. This Settlement Agreement constitutes the entire agreement among the Parties regarding the subject matter hereof and may not be amended or modified except in writing signed by each of the Parties or their respective duly authorized representatives after approval by the City Council and except for the necessary amendments to the Pre-Annexation Agreements made in conformance with this Settlement Agreement.

11. Interpretation. This Settlement Agreement is a joint product of the respective Parties and may not be more strictly construed against any Party. The Parties acknowledge, agree and stipulate that all of the above terms and conditions have been freely bargained for, and each Party is foregoing certain rights and assuming duties and obligations which but for this Settlement Agreement, would not have been released or assumed. Accordingly, the Parties agree that this Settlement Agreement is fully and adequately supported by reasonable and adequate consideration and that the Parties have had an opportunity to consult with and have in fact consulted with attorneys and experts of their respective choices and have had the opportunity to discuss this matter and the matters which are the subject hereof, with counsel of their respective choices.

12. Authorization. Each signatory hereto represents that he/she is authorized by the entity on behalf of which he/she is acting to enter into this Settlement Agreement and the covenants contained herein and to bind the entity which each represents.

13. Third Party Beneficiaries. There are no express or implied third-party beneficiaries under this Settlement Agreement.

14. No Partnership. This Settlement Agreement does not create a partnership or joint venture between Neal and the City, who remains an independent public agency. Each Party will bear its own costs incurred in negotiating and finalizing this Settlement Agreement.

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed and sealed this Settlement and Release Agreement entered into this ___ day of _____, 2018.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

CITY OF VENICE, FLORIDA

BY: _____
JOHN HOLIC, MAYOR

ATTEST:

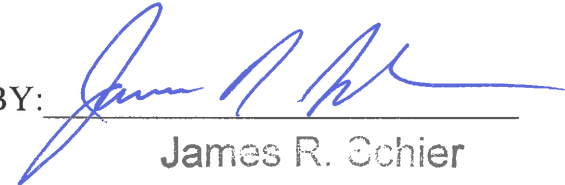
LORI STELZER, CITY CLERK


(SEAL)

DAVID PERSSON, CITY ATTORNEY

BORDER AND JACARANDA
HOLDINGS, LLC a Florida limited
liability company


Veronica McGuire

BY: 
James R. Schier


Amy R. Mallon

STATE OF FLORIDA

COUNTY OF SARASOTA

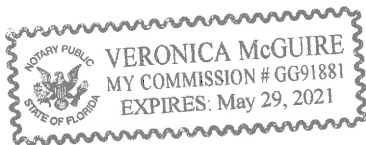
The foregoing instrument was acknowledged before me this 28
day of June, 2018, by James R. Schier who is
personally known to me or who has produced _____

(type of identification) as identification and who did take an oath.

My Commission Expires:

Notary Public





Printed name of notary:

Veronica McGuire

Commission Number:

NEAL COMMUNITIES OF SW FL,
LLC, a Florida limited liability
company



Veronica McGuire

BY: 

James R. Schier



Amy R. Mallon

STATE OF FLORIDA

COUNTY OF SARASOTA

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day of June, 2018, by James R. Schier who is
personally known to me or who has produced _____
(type of identification) as identification and who did take an oath.

My Commission Expires:

Notary Public





Printed name of notary:

Veronica McGuire

Commission Number:

BORDER ROAD INVESTMENTS,
LLC, a Florida limited liability
company

Veronica McGuire
Veronica McGuire

BY: [Signature]

Amy R. Mallon
Amy R. Mallon

STATE OF FLORIDA

COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 28
day of JUNE, 2018, by John Neal who is
personally known to me or who has produced _____
(type of identification) as identification and who did take an oath.

My Commission Expires:

Notary Public

Veronica McGuire



Printed name of notary: **Veronica McGuire**

Commission Number:

PAMLICO POINT MANAGEMENT,
LLC, a Florida limited liability
company

Veronica McGuire
Veronica McGuire

BY: James R. Schier
James R. Schier

Amy R. Mallon
Amy R. Mallon

STATE OF FLORIDA

COUNTY OF SARASOTA

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day of June, 2018, by James R. Schier who is
personally known to me or who has produced _____

(type of identification) as identification and who did take an oath.

My Commission Expires:


Notary Public Veronica McGuire



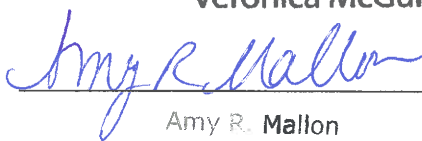
Printed name of notary: **Veronica McGuire**

Commission Number:

WOOLRIDGE
INVESTMENT-FLORIDA, LLC, a
Florida limited liability company

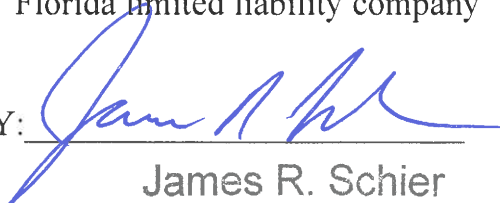


Veronica McGuire



Amy R. Mallon

BY:



James R. Schier

STATE OF FLORIDA

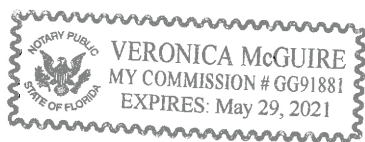
COUNTY OF SARASOTA

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My Commission Expires:

Notary Public





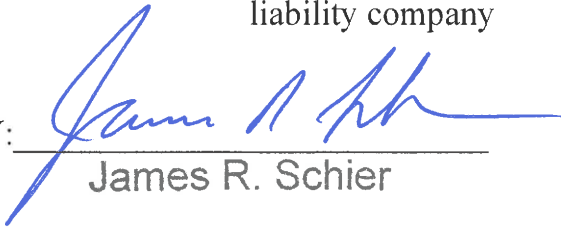
Printed name of notary:

Veronica McGuire

Commission Number:

MYARRA PROPERTY JOINT
VENTURES, LLC, a Florida limited
liability company


Veronica McGuire

BY: 
James R. Schier


Amy R. Mallon

STATE OF FLORIDA

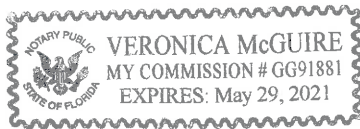
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 28
day of June, 2018, by James R. Schier who is
personally known to me or who has produced _____
(type of identification) as identification and who did take an oath.

My Commission Expires:

Notary Public





Printed name of notary: **Veronica McGuire**

Commission Number:

WINDWOOD NEIGHBORHOOD
ASSOCIATION, INC

_____ BY: _____

STATE OF FLORIDA

COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this _____
day of _____, 2018, by _____ who is
personally known to me or who has produced _____
(type of identification) as identification and who did take an oath.

My Commission Expires:

Notary Public

Printed name of notary:

Commission Number: