

Retn:
THOMAS H GUNDERSON
P O BOX 200
FT MYERS FL 33902 0200

2953098 OR: 3004 PG: 1857

RECORDED in the OFFICIAL RECORDS of COLLIER COUNTY, FL
03/22/2002 at 01:39PM DWIGHT H. BROCKE, CLERK

RRC FEE	42.00
COPIES	9.00
MISC	1.00

**FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR FALLING WATERS BEACH RESORT**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FALLING WATERS BEACH RESORT ("this Amendment") is made as of February , 2002, by Bayswater Falling Waters, LLC, a Delaware limited liability company, whose mailing address is 100 South Bedford Road, Mount Kisco, New York 10549 ("Bayswater").

WITNESSETH:

WHEREAS, Bayswater, as successor in interest to Falling Waters Beach Resort, Limited, a Florida limited partnership, and Falling Waters Beach Resort, Inc., a Florida corporation, is the "Declarant" and "Developer" pursuant to that certain Declaration of Covenants, Conditions and Restrictions for Falling Waters Beach Resort recorded May 9, 1997 in Official Record Book 2312, page 1187, Public Records of Collier County, Florida (the "Declaration"); and

WHEREAS, Bayswater, as the current Declarant and Developer under the Declaration, desires to amend the Declaration as provided herein:

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Bayswater, as Declarant and Developer pursuant to Section 6 of the Declaration, hereby amends the Declaration as follows (all capitalized terms in this Amendment having the same meanings as set forth in the Declaration, except as specifically set forth herein):

1. The following is added to the end of Section 1.1:
"Each Owner shall be a member of the Master Association".
2. The following is added following the word "Properties" in the first line of Section 1.2:
"Falling Waters Beach Resort Planned Unit Development" and
"Falling Waters Beach Resort Property".

Add at the end of this section:

"The foregoing terms, in addition to the Exhibit "A" to the Declaration, shall include the Commercial Property described in Exhibit "I" attached to this Amendment and by reference made a part hereof."

3. The following definition is added as Section 1.22:

"1.22 "Operating Expenses" shall mean and refer to those costs, fees and expenses (including, without limitation, reserves) which are incurred or assessed by the Master Association in fulfilling its responsibilities for the use, operation, maintenance, preservation, inspection, repair and/or replacement of all or any portion the Properties including, without limitation, the roads that are or may become subject to the jurisdiction of the Master Association, common areas, preserve areas, mitigation areas and surface water management systems located within the Properties. Operating Expenses include those amounts which are adopted in any budget by the Board of Directors and any deficit in such budget for the actual costs, fees and expenses incurred in the year to which such budget applies. Operating Expenses include annual and special assessments."

4. The following definition is added as Section 1.23:

"1.23 "Board of Directors" shall mean and refer to the board of directors of the Master Association."

5. The following is added to Section 3.2:

"The Commercial Property described on attached Exhibit "I" attached to this Amendment may also be used for a commercial self-storage facility with an office and manager apartment as provided in the Collier County Land Development Code. The Commercial Property may not be used for gas stations or convenience stores".

6. The following is added following Section 3.2:

"3.3 The Master Association shall be responsible to maintain in good condition and repair the Roads, the Drainage Property, the Mitigation Area, the Lake Areas, the Surface Water Management System, the Preservation Areas, the Conservation Areas and the

easements granted in paragraph 5 of this Amendment. Expenses incurred in such maintenance shall be Operating Expenses of the Master Association subject to annual and special assessments under Sections 4.1 and 4.2. of the Declaration”.

7. The following is added to Section 3:

“3.3 Declarant and Developer grant to each Owner, as well as their respective tenants, subtenants, customers, employees, agents, business invitees, successors and assigns, a non-exclusive, perpetual easement for pedestrian and vehicular ingress and egress to and from their respective portions over, across and upon the real estate described in Exhibit “II” attached to this Amendment and by reference made a part hereof”. Irrespective of the foregoing, the owners of the Commercial Property described on attached Exhibit “I”, as well as their respective tenants, subtenants, customers, employees, agents, business invitees, successors and assigns, shall not have any rights over any portion of the Property other than (i) the Commercial Property, (ii) that portion of the Property’s main access road commencing at Collier Boulevard and terminating at the entrances to and exits from the Commercial Property as shown in Exhibit IV attached to this Amendment and by reference made a part hereof, (iii) the Drainage Property, the Surface Water Management System and all other drainage facilities referenced in, and as limited by, the provisions of Section 3.4 of this Declaration, and (iv) those portions of the Property to which easements are granted to the Commercial Property Owner by Declarant pursuant to separate instruments.”

“3.4 Declarant and Developer grant to each Owner, as well as their respective tenants, subtenants, customers, employees, agents, business invitees, successors and assigns, a non-exclusive, perpetual easement to connect to, use and maintain the Drainage Property, the Surface Water Management System and all other drainage facilities now or hereafter located on or as hereinafter improved by the Declarant, the Developer or the Master Association over, across and upon the real estate described on Exhibit “III” attached to this Amendment and by reference made a part hereof.”

“The foregoing provisions of and easements granted under Sections 3.3 and 3.4 of this Declaration shall survive termination of this Declaration, subject to the limitations defined in the other instruments

creating easements over the Property in favor of the Commercial Property Owner as set forth in Section 3.3 of this Declaration.”

8. In all other respects, the terms and provisions of the Declaration shall remain the same.

WITNESSES:

BAYSWATER FALLING WATERS, LLC
“Declarant” and “Developer”

Witness as to Irma Sabareo

By: Gary Friedland
Printed: Gary Friedland
Title: Vice President

Witness as to Maria Robijo

STATE OF NEW YORK)

) SS:

COUNTY OF WESTCHESTER)

I hereby certify that on this day before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments, personally appeared GARY FRIEDLAND known to me to be the person described in and who executed the foregoing Amendment to Declaration of Covenants, Conditions and Restrictions for Bayswater Falling Waters, LLC and acknowledged before me that he executed same.

WITNESS my hand and official seal in the county and state last aforesaid this 12th day of February, 2002.
1980

ANTHONY J. KUNNY
Notary Public, State of New York
No. 01KU8035078
Qualified in Westchester County
Commission Expires Oct. 24, ~~2005~~
2002

Anthony Kunny

Notary Public - State of NEW YORK

Anthony J. Kunny
(Print Commission Name of Notary Public)

Did _____ Did Not _____ Take an Oath
Personally Known Produced ID _____
Type of Identification Produced _____

**LEGAL DESCRIPTION
PARCEL "A"**

A portion of land located in Section 3, Township 51 South, Range 26 East, Collier County, Florida being more particularly described as follows:

Commencing at the East $\frac{1}{4}$ corner of said Section 3; Thence run South $00^{\circ}41'31''$ West 629.67 feet along the east line of said Section 3; Thence run North $54^{\circ}20'16''$ West on a line 400 feet North of and parallel with the North right-of-way line of Florida State Road 90, (U.S. 41) for a distance of 608.25 feet to the East line of a Outfall Drainage Easement as recorded in Official Records Book 83, Page 125 of the Public Records of Collier County, Florida; Thence continue North $54^{\circ}20'16''$ West 3503.15 feet to the Point of Beginning of the parcel of land herein described; Thence continue North $54^{\circ}20'16''$ West 239.00 feet to the East Right-of-Way line of State Road 951 (100.00' Right-of-Way); Thence North $35^{\circ}40'08''$ East 220.00 feet along said East Right-of-way line; Thence South $54^{\circ}20'16''$ East 239.00 feet; Thence South $35^{\circ}40'08''$ West 220.00 feet to the Point of Beginning.

Less and Except the Westerly 50.00 feet thereof.

**LEGAL DESCRIPTION
PARCEL "B"**

A portion of land located in Section 3, Township 51 South, Range 26 East, Collier County, Florida being more particularly described as follows:

Commencing at the East $\frac{1}{4}$ corner of said Section 3; Thence run South $00^{\circ}41'31''$ West 629.67 feet along the east line of said Section 3; Thence run North $54^{\circ}20'16''$ West on a line 400 feet North of and parallel with the North right-of-way line of Florida State Road 90, (U.S. 41) for a distance of 608.25 feet to the East line of a Outfall Drainage Easement as recorded in Official Records Book 83, Page 125 of the Public Records of Collier County, Florida; Thence continue North $54^{\circ}20'16''$ West 3742.15 feet to the East Right-of-Way line of State Road 951 (100' Right-of-Way); Thence North $35^{\circ}40'08''$ East 320.00 feet along said East Right-of-Way line to the Point of Beginning of the parcel of land herein described; Thence continue North $35^{\circ}40'08''$ East 600.00 feet along said East Right-of-Way line; Thence South $54^{\circ}20'16''$ East 239.00 feet; Thence South $35^{\circ}40'08''$ West 600.00 feet; Thence North $54^{\circ}20'16''$ West 239.00 feet to the Point of Beginning.

Less and Except the Westerly 50.00 feet thereof.

Description of part of Section 3,
Township 51 South, Range 26 East, Collier County, Florida.
(Access Easement)

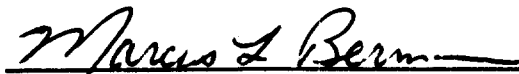
All that part of Section 3, Township 51 South, Range 26 East, Collier County, Florida being more particularly described as follows:

COMMENCING at the East 1/4 corner of said Section 3;
thence South 00°41'31" West 629.67 feet along the East line of said Section 3;
thence North 54°20'16" West on a line 400 feet North of and parallel with the north right-of-way line of Florida State Road 90; (U.S. 41) for a distance of 608.25 feet to the East line of a outfall drainage easement as recorded in Official Records Book 83, page 125 of the Public Records of Collier County, Florida;
thence continue North 54°20'16" West 3742.15 feet to the east right-of-way line of State Road 951 (Collier Boulevard, 100 foot right-of-way);
thence North 35°40'08" East 220.00 feet along said east right-of-way line to the **POINT OF BEGINNING** of the easement herein described;
thence continue along said line North 35°40'08" East 100.00 feet;
thence leaving said line South 54°20'16" East 239.00 feet;
thence South 35°40'08" West 100.00 feet;
thence North 54°20'16" West 239.00 feet to the east right-of-way line of said State Road 951 (Collier Boulevard, 100 foot right-of-way) and the **POINT OF BEGINNING** of the easement herein described;

Containing 23,900 Square Feet more or less.

Bearings are assumed and based on the east line of Section 3, being South 00°41'31" West.
Subject to easements and restrictions of record.

WilsonMiller, Inc.



Marcus L. Berman, P.S.M.

Professional Surveyor & Mapper, Florida Registration No. 5086
Certificate of Authorization # LB-43

Not valid unless embossed with the Professional's seal.

W.O.: 03455-000-001-CSS00

REF.: 2E-20

DATE: April 4, 2001

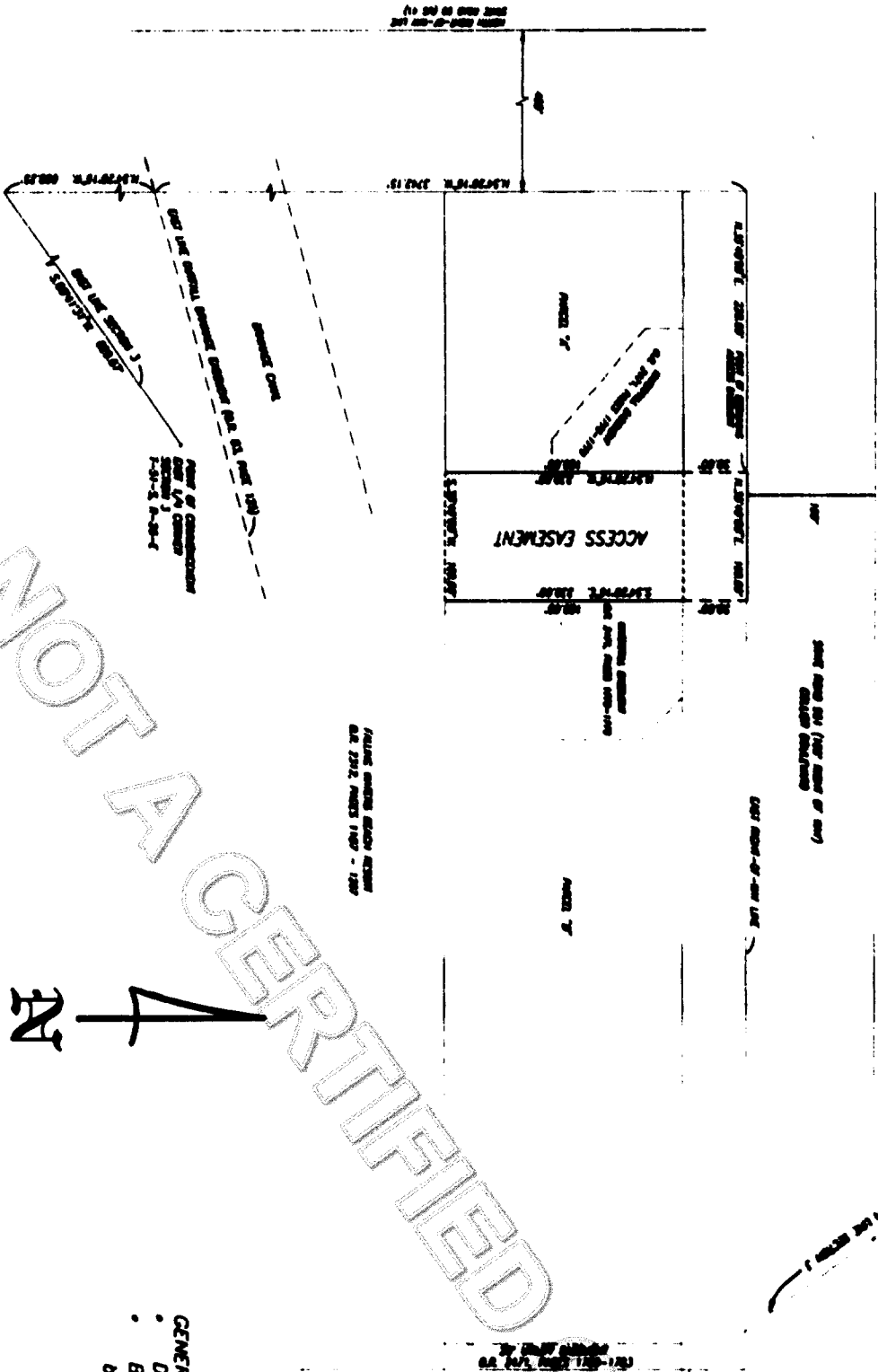
Naples Fort Myers Sarasota Bradenton Tampa

3200 Bailey Lane, Suite 200 Naples, Florida 34105-8507 941-649-4040 941-643-5716

www.wilsonmiller.com

WilsonMiller, Inc. — FL Lic # LC-C000170

Page 1 of 2



PREPARED BY:
Markus L. Bernau
 MARKUS L. BERNAU, PROFESSIONAL SURVEYOR & MAPPER
 FLORIDA REGISTRATION NO. 5086
 NOT VALID UNLESS SIGNED BY THE SURVEYOR AND
 SEALED WITH THE SURVEYOR'S EMBOSSED SEAL.

GENERAL NOTES:
 • Dimensions are in feet and decimals thereof.
 • Bearings are based on the easterly line of Section 3,
 being South 00°41'31" West

*** NOT A SURVEY ***

WSP

ACTIVITY	DATE	TIME	BY
RESEARCH			
FIELD WORK/CREW CHIEF			
DIRECTOR			
CHECKED BY			
FIELD BOOK/PAGE			

APPROVED
 [Signature]

WSP
 Planning, Engineering, & Construction
 Surveying, Landmark Acquisition & Transportation Consultants
 10000 W. 11th Avenue, Suite 200, Denver, CO 80202
 Phone: (303) 755-1100 Fax: (303) 755-1101

CLIENT: S & B CONSTRUCTION COMPANY
 DESCRIPTION: SKETCH OF EASEMENT
 PART OF SECTION 3, T-91-S-R-28-E
 COLLIER COUNTY, FLORIDA
 DATE: 04/03/01
 SCALE: 1" = 30'
 PROJECT NO: 23455-000-001-CSS00
 SHEET NO: 1 of 1
 FIELD NO: 2E-20



Bruns & Bruns, Inc.

OR: 3004 PG: 1864

FALLING WATERS BEACH RESORT

LEGAL DESCRIPTION

Commencing at the East 1/4 corner of Section 3, Township 51 South, Range 26 East, Collier County, Florida; thence run South 00° 41' 31" West for 629.67 feet; thence run North 54° 20' 16" West on a line 400 feet North of and parallel with the North right-of-way line of Florida State Road 90, (U.S. 41) for a distance of 608.25 feet to the East line of a Outfall Drainage Easement as recorded in Official Records Book 83, Page 125 of the Public Records of Collier County, Florida and the Point of Beginning; thence continue along said line North 54° 20' 16" West 1323.20 feet; thence South 35° 39' 44" West 400.00 feet to the Northerly right-of-way line of Florida State Road 90, (U.S. 41); thence North 54° 20' 16" West 220.00 feet along said right-of-way; thence North 35° 39' 44" East 400.00 feet; thence North 54° 20' 16" West 1959.86 feet; thence North 35° 40' 08" East 220.00 feet; thence North 54° 20' 16" West 189.00 feet to the Easterly right-of-way line of State Road S-951; thence run North 35° 40' 08" East 100.00 feet along said right-of-way line; thence South 54° 20' 16" East 189.00 feet; thence North 35° 40' 08" East 600.00 feet; thence South 54° 20' 16" East 3249.77 feet to the Easterly line of said Outfall Drainage Easement; thence South 20° 16' 12" West 954.23 feet along said easement line to the Point of beginning.

David B. Bruns, PLS
 Fl. Cert. No. 4520

Jobs\bf\boundary

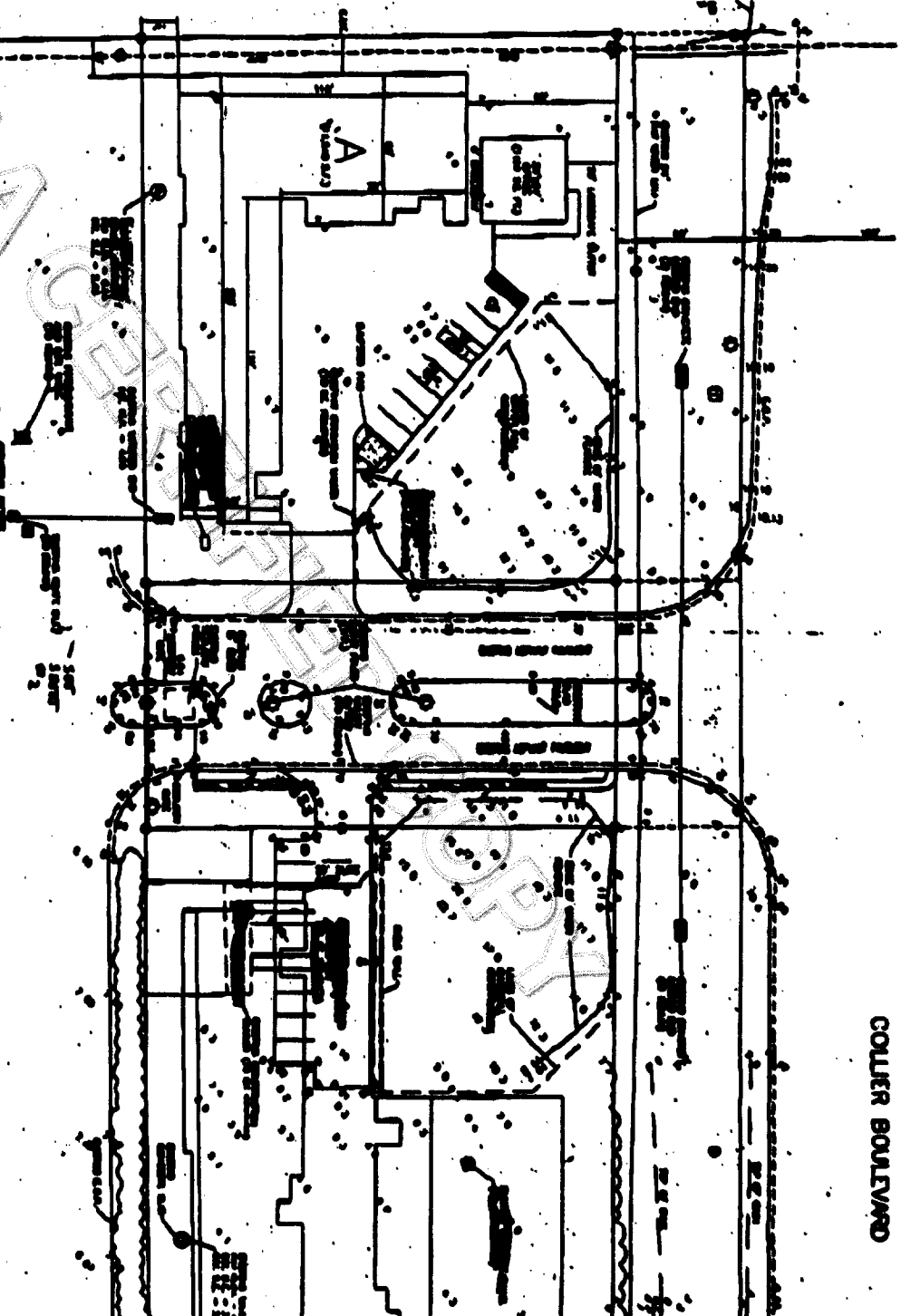


1-10-98

EXHIBIT IV

RECORDER'S MEMO:
Legibility of writing,
Typing or Printing unsatisfactory
in this document when received.

[Faint, illegible text columns on the left side of the page, likely bleed-through from the reverse side.]



COLLIER BOULEVARD

NOV 27 2001
10:06 FR
TO 19413344100
P.06/06
*** OR: 3004 PG: 1865 ***
EXHIBIT IV