

Prepared by and return to
Goede, Adamezyk, DeBoest & Cross, PLLC
6609 Willow Park Drive, Second Floor
Naples, FL 34109
239-331-5100

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement"), made this ____ day of _____ 2018, by and between **WIGGINS BAY FOUNDATION, INC.**, a Florida not for profit corporation (the "Foundation"), and **ESCALATE-TARPON COVE, LIMITED PARTNERSHIP**, a Florida limited partnership ("Escalante").

WHEREAS, the Foundation owns and is responsible for the maintenance of the Common Area, as such term is defined in the Declaration of Covenants, recorded at OR Book 1088, Page 1536 of the Public Records of Collier County, Florida, within the Wiggins Bay Residential Development as depicted in Plat Book 13, Page 89 of the Map Records of Collier County, Florida (the "Plat"); and

WHEREAS, Escalante is the fee simple owner of Tract 3 as depicted on the Plat (the "Property"); and

WHEREAS, the Foundation desires to construct and install a sidewalk/walkway ("Improvements") in accordance with the specifications attached hereto from the community access gate and across that portion of the Property crosshatched and depicted on Exhibit "A" ("Easement Area"); and

WHEREAS, the Foundation seeks from Escalante a non-exclusive right to construct the Improvements across and upon the Easement Area, to maintain, replace and remove such Improvements as required hereby and a right of way for Foundation Members across the Easement Area; and

WHEREAS, Escalante is willing to grant such easements subject to the terms and conditions herein stated.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Temporary Construction Easement**. Escalante hereby grants to the Foundation, its contractor and subcontractors a temporary easement for a period of ninety (90) days after the date of this Agreement to access the Property, to excavate the Easement Area and to construct the Improvements thereon. All such construction shall be at the sole cost and expense of the Foundation and in accordance with the plans approved by Escalante. The Foundation agrees that its construction of the Improvements will not interrupt, block or impede vehicular access to Escalante's commercial recreational facility located on Tract 3 and will not access or use any portion of Escalante's parking lot on Tract 3. The Foundation shall not permit the recording of a lien on the Property. The Foundation shall comply with, and the Improvements shall comply with, all federal, state and local rules and ordinances. Upon completion of construction the Foundation shall restore the Property to the same or

better condition than as existed prior to the commencement of construction.

2. **Access Easement.** Escalante hereby grants to the Foundation, its Members, family members, guests and invitees an easement of access to, and passage across, the Easement Area: provided, however, (i) that this easement is granted on the condition that it is reciprocal, meaning that Escalante, its members, guests, and/or invitees have access to and usage of the entire walkway or path comprising the Improvements, (ii) that this easement shall be automatically suspended for such period of time as Escalante, its , its successors and assigns, and their members, guests, and/or invitees are prohibited from passage across any portion of the Common Area, and (iii) that Escalante, its successors and assigns, retain the absolute right at any time and from time to time to move, to adjust or relocate the Easement Area on the Property. In the event that Escalante, its successors and assigns, shall exercise the right to move, adjust or relocate the Easement Area on the Property, Escalante, its successors and assigns, shall replace the Improvements located thereon.

3. **Maintenance Easement.** Escalante hereby grants to the Foundation, its contractor and subcontractors a maintenance easement to access the Easement Area and to repair or replace the Improvements thereon. All such maintenance, repair and/or replacement shall be at the sole cost and expense of the Foundation. The Foundation agrees that its maintenance, repair and/or replacement will not interrupt, block or impede vehicular access to Escalante's commercial recreational facility located on Tract 3 and will not access or use any portion of Escalante's parking lot on Tract 3. The Foundation shall not permit the recording of a lien on the Property. The Foundation shall comply with, and the Improvements shall comply with, all federal, state and local rules and ordinances. Upon completion of its maintenance, repair and/or replacement the Foundation shall restore the Property to the same or better condition than as existed prior to the commencement of its maintenance, repair and/or replacement. The Foundation shall not assume any other maintenance or landscape obligations or responsibilities for the Easement Area.

4. **Indemnity.** The Foundation hereby indemnifies and holds harmless Escalante for any and all claims, losses and damages that arise from construction or maintenance of the Improvements, including, but not limited to, claims related to quality of construction, erosion resulting from construction or maintenance and the effect of the Improvements upon third parties.

5. **Insurance.** Prior to commencement of construction, the Foundation will provide to Escalante certificates of insurance that evidence that the Foundation has obtained, and has named Escalante as an additional insured, with respect to all construction liability and workers compensation insurance. Such insurance shall be in amounts and in a form and substance reasonably satisfactory to Escalante. The Foundation will provide to Escalante certificates of insurance that evidence that the Foundation has obtained, and has named Escalante as an additional insured, with respect to all maintenance and access claims and shall continuously maintain such insurance as will protect the Foundation and Escalante from claims which may arise out of or result from the use of the Improvements. Escalante shall be named as an additional insured on any such policy.

6. **Encumbrances and No Claim of Title.** The Easement Area is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Easement Area, whether or not of record. Nothing herein shall be construed to convey or assign to the Foundation any right, title or interest in the

property subject to this easement except for those rights expressly set forth herein.

7. **Covenants Running With the Land.** The rights, agreements, duties, obligations and easements set forth in this Agreement shall run with the land and shall be binding upon and benefit Escalante and the Foundation as herein specified and their successors and assigns.

8. **Modification and Termination.** Notwithstanding any other provision to the contrary, this Agreement may not be changed, modified, or terminated except by a written instrument executed by all the parties hereto..

9. **Attorneys' Fees.** In the event of any litigation arising out of or related to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs, including any appellate or administrative proceeding.

10. **Governing Law and Severability.** The laws of the State of Florida shall govern this Agreement. Any provision of this Agreement which shall prove to be invalid, void or illegal, shall in no way affect, impair or invalidate any other provision hereof.

11. **Recording.** This Agreement shall be recorded in the Public Records of Collier County, Florida.

12. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

13. **Opportunity to Cure.** The parties acknowledge that the Foundation is expending considerable resources towards the construction and maintenance of the Improvements. In the event the Foundation fails to maintain the Improvements, Escalante shall provide the Foundation with written notice of any alleged deficiency and shall provide the Foundation with ninety (90) days to cure any material breach alleged by Escalante. If Escalante provides written notice to the Foundation, upon the conclusion of the ninety (90) days that the breach has not been cured, then Escalante may terminate this Easement with ten (10) days' written notice to the Foundation.

14. **Execution and Enforceability.** Escalante and the Foundation hereby represent and warrant to the other that: (i) the execution of this Agreement has been done in accordance with their respective governing documents and Florida law; and (ii) that the terms of this Agreement are valid and binding obligations enforceable by Escalante and the Foundation against each other; and (iii) the undersigned are duly authorized to enter into this Agreement. The parties to this Agreement agree to sign and deliver to the other any additional documents and/or instruments required to confirm the enforceability of the terms of this Agreement, and each party shall perform such other and further reasonable acts as may be necessary or desirable to perfect, record or complete the terms contemplated by this Agreement.

[SIGNATURES APPEAR ON THE NEXT PAGE]

WIGGINS BAY FOUNDATION, INC.

Joanne Babiarz
JOANNE BABIARZ

Printed Name:

Susan K. McGill

SUSAN K. MCGILL
Printed Name:

Edward M. Magowan
By: EDWARD MAGOWAN President of

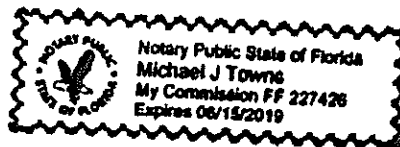
Wiggins Bay Foundation, Inc.
a Florida not-for-profit corporation

STATE OF FLORIDA
COUNTY OF COLLIER

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, Ed Magowan, as President of **Wiggins Bay Foundation, Inc.**, identified by a drivers' license and who executed the foregoing instrument and acknowledged before me that he is authorized to execute the foregoing instrument and freely executed the same and did take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 18 day of JANUARY, 2018.

Michael J. Towns
Notary Public
MICHAEL J. TOWNS
(Printed Name of Notary)
Commission Expiration:



IN WITNESS WHEREOF, Escalante and the Foundation have caused this Agreement to be executed under seal by their duly authorized representatives as of the day and year above first written.

Signed, sealed and delivered
in the presence of:

[Signature]
Ang Marie Winnie
Printed Name

[Signature]
SYLVIA ITURBURU
Printed Name

ESCALANTE-TARPON COVE, LIMITED
PARTNERSHIP

[Signature]
By: Mark Nicklas, as Asst VP of of operation
Escalante-Tarpon Cove, Limited Partnership,
a Florida Limited Partnership

STATE OF Florida
COUNTY OF Collier

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, Mark Nicklas, as Asst. VP of Operations of **Escalante-Tarpon Cove, Limited Partnership**, identified by a drivers' license and who executed the foregoing instrument and acknowledged before me that he is authorized to execute the foregoing instrument and freely executed the same and did take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 22 day
of January, ~~2018~~ 2019

[Signature]
Notary Public

Corrine Hayes
(Printed Name of Notary)
Commission Expiration:

