

Attachment 4

RESOLUTION NUMBER Z-12-017

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, an application was filed by the property owner, Coconut Point Developers, LLC, to amend 110± acres of the Mixed Use Planned Development (MPD) zoning, in reference to Coconut Point; and,

WHEREAS, a public hearing before the Lee County Zoning Hearing Examiner was advertised and held on June 21, 2012; and

WHEREAS, the Hearing Examiner gave full consideration to the evidence in the record for Case #DCI2012-00017 and recommended approval with conditions of the request; and

WHEREAS, a second public hearing was advertised and held on November 5, 2012 before the Lee County Board of Commissioners; and,

WHEREAS, the Lee County Board of Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS:

SECTION A. REQUEST

The applicant filed a request to amend 110± acres of the MPD to allow live outdoor entertainment in association with restaurants with consumption on premises and outdoor seating located in Development Areas 2A and 2B. The property is located in the Urban Community Future Land Use Category and is legally described in attached Exhibit A. The request is APPROVED, SUBJECT TO the conditions specified in Section B below.

SECTION B. CONDITIONS:

All references to uses are as defined or listed in the Lee County Land Development Code (LDC).

1. Development and use of the property within the Coconut Point development must be consistent with the original zoning approval adopted in Zoning Resolution Z-02-009, as amended.

2. The approved Schedule of Uses is hereby amended as follows for Restaurants with approved Consumption on Premises with outdoor seating:

**Permitted uses within Tracts 2A and Tract 2B:
(Regional Mall Parcel)**

COP - live outdoor entertainment, solely in conjunction with a Restaurant (not Restaurant, fast food) with approved Consumption on Premises and outdoor seating, subject to Condition 26.

3. Condition 26 is hereby added, as follows:

Live Outdoor Entertainment

Live Outdoor Entertainment is an accessory use to the approved Consumption on Premises (COP) use, and is subject to the following:

- a. This accessory use may only be located within the identified area of the COP in association with the outdoor seating for a restaurant located within Tract SC-1, Coconut Point Area 2, according to the plat thereof as recorded in Instrument No. 2006000409925 of the Public Records of Lee County, Florida.
- b. The following restaurants with existing COPs and outdoor seating are hereby allowed to have Live Outdoor Entertainment. Upon approval by the Board of County Commissioners, Development Review Staff will issue administrative amendments for each of these COPs, revising their conditions and limitations to conform to those being imposed herein.

COP2006-00035, amended by COP2006-00035A, Ted's Montana Grill
COP2006-00150, amended by COP2006-00150B, Blue Water Bistro
COP2006-00169, amended by COP2006-00169A, The Grape
COP2006-00176, amended by COP2006-00176A, California Pizza Kitchen
COP2007-00065, Grand Cafe
COP2007-00093, Moe's Southwest Grill
COP2007-00134, Hurricane's Grill and Wings
COP2007-00194, amended by COP2007-00194A, Pagelli's Cucina
COP2008-00007, Hemingway's Island Grill
COP2008-00103, Tony Sacco's Coal Oven Pizza
COP2008-00152, Stir Crazy
COP2012-00060, Chuey's Tacos

- c. Prior to establishing the use of any other new Live Outdoor Entertainment, each Restaurant seeking the use must obtain an Administrative Amendment of the approved planned development which can be combined with a COP with outdoor seating. As part of this application, the COP Applicant must include a copy of a Noise Abatement Plan, and a Site Plan showing the proposed location of the use.

- d. Within 30 days of the approval of this amendment of the planned development by the Board of County Commissioners, the property owner (currently identified as Coconut Point Developers LLC) must send a letter to every owner of record within 2,500 feet of the boundaries of the regional mall parcel. The letter must include a phone number for people to call to register a complaint in the event they are disturbed by outdoor entertainment at the mall. If the contact information is changed in the future, a new letter must be sent out in accordance with this condition. A copy of said letter will be provided to the Director of Lee County Department of Community Development for inclusion in the official zoning file for this case.
 - e. The Noise Abatement Plan must, at a minimum, address hours of operation and methods by which noise will be limited to a conversational level at all regional mall boundary lines.
 - f. All outdoor entertainment plans will require the activity to cease by 11:30 PM unless the Restaurant applies for and receives permission to operate later through the County public hearing process amending the COP approval, or unless the existing COP – with outdoor entertainment - has already received a later closing time in the approval of that COP.
4. Temporary Use Permits, as provided for in §34-210, are not prohibited by these conditions.
 5. Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocations Table, Map 16 and Table 1(b).

SECTION C. EXHIBITS:

The following exhibits are attached to this resolution and incorporated by reference:

Exhibit A: Legal description of the property

SECTION D. FINDINGS AND CONCLUSIONS:

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the LDC, and any other applicable code or regulation.
2. The rezoning, as approved:
 - a. meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request;
 - b. is consistent with the densities, intensities and general uses set forth in the Lee Plan;
 - c. is compatible with existing or planned uses in the surrounding area;

- d. will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and
 - e. will not adversely affect environmentally critical areas or natural resources.
3. The rezoning satisfies the following criteria:
- a. the proposed use or mix of uses is appropriate at the subject location;
 - b. the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest; and
 - c. the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.
4. Urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.

Commissioner Judah made a motion to adopt the foregoing resolution, seconded by Commissioner Hall. The vote was as follows:

John Manning	Aye
Brian Bigelow	Absent
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 5th day of November, 2012.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: *Charlie Green*
Clerk

BY: *John Manning*
John Manning, Chair



Approved as to form by:
John J. Fredyma
John J. Fredyma
Assistant County Attorney
County Attorney's Office

LEGAL DESCRIPTION

Tracts SC-1, SC-2, SC-3, OS-1, L-1, L-2, L-3, L-4, and L-5, and Lot 7, Coconut Point Area 2, according to the plat thereof as recorded in Instrument No. 2006000409925 of the Public Records of Lee County, Florida.

DC12012-00017

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APR 30 2012

COMMUNITY DEVELOPMENT

4.6.12
APPROVAL
LEGAL
MA

COCONUT POINT - AREA 2

A SUBDIVISION LOCATED IN A PORTION OF SECTIONS 3, 4, 9 & 10, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA

INSTR. # 2006-00049-PTA-5
SHEET 1 of 12

DEDICATION

THE LANDS DESCRIBED IN THIS PLAT ARE HEREBY DEDICATED TO THE PUBLIC AS A ROAD AND ARE TO BE MAINTAINED AS SUCH BY THE PUBLIC. THE DEDICATION IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. THE DEDICATED ROAD SHALL BE MAINTAINED AS A PAVED ROAD AT ALL TIMES.
2. THE DEDICATED ROAD SHALL BE MAINTAINED AS A PAVED ROAD AT ALL TIMES.
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NOTICE

LANDS DESCRIBED IN THIS PLAT MAY BE SUBDIVIDED BY THE DEVELOPER WITHOUT THE ROADS, DRAINAGE, WATER AND SEWER FACILITIES BEING ACCEPTED FOR MAINTENANCE BY LEE COUNTY. ANY PURCHASER OF A LOT IN THIS SUBDIVISION IS ADVISED TO DETERMINE WHETHER THE LOT MAY BE SUBJECT TO ASSESSMENT OR CALLED UPON TO BEAR A PORTION OF OR ALL OF THE EXPENSE OF CONSTRUCTION, MAINTENANCE OR IMPROVEMENT OF ROADS, DRAINAGE, WATER AND SEWER FACILITIES.



THIS PLAT, AS RECORDED IN ITS GRAPHIC FORM IS THE OFFICIAL RECORD OF THE DESCRIBED LANDS DESCRIBED HEREIN AND WILL BE SO CONSIDERED BY ANY OTHER GRAPHIC OR DIGITAL FORM OF THE PLAT. THERE MAY BE ADDITIONAL REVISIONS THAT ARE NOT RECORDED ON THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.

COUNTY APPROVALS:

APPROVED BY THE COUNTY ENGINEER: *[Signature]*
APPROVED BY THE COUNTY SURVEYOR: *[Signature]*
APPROVED BY THE COUNTY CLERK: *[Signature]*

CLERK OF COURT CERTIFICATION:

I, *[Signature]*, Clerk of Court, do hereby certify that the foregoing is a true and correct copy of the original as recorded in the Public Records of Lee County, Florida.

REVIEW BY COUNTY PROFESSIONAL SURVEYOR & MAPPER:

I, *[Signature]*, County Professional Surveyor & Mapper, do hereby certify that the foregoing is a true and correct copy of the original as recorded in the Public Records of Lee County, Florida.

SURVEYOR'S CERTIFICATION:

I, *[Signature]*, Surveyor, do hereby certify that the foregoing is a true and correct copy of the original as recorded in the Public Records of Lee County, Florida.

THIS INSTRUMENT WAS PREPARED BY JERRY L. ROYFELMACHER, P.S.M. #6130



[Signatures of individuals]

ACKNOWLEDGEMENT

I, *[Signature]*, do hereby acknowledge that I have read the foregoing and understand the contents thereof.

ACKNOWLEDGEMENT

I, *[Signature]*, do hereby acknowledge that I have read the foregoing and understand the contents thereof.

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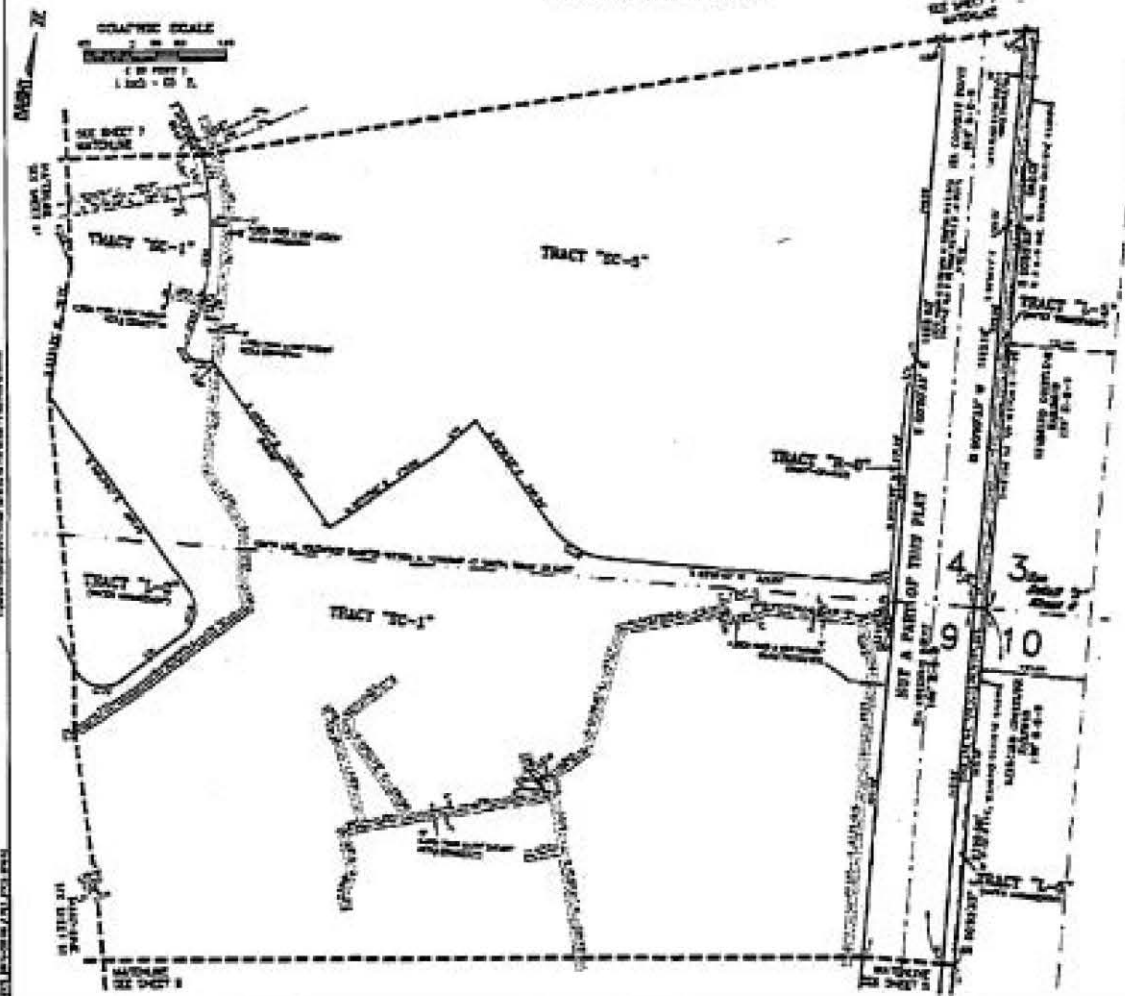
ACKNOWLEDGEMENT

I, *[Signature]*, do hereby acknowledge that I have read the foregoing and understand the contents thereof.

COCONUT POINT - AREA 2

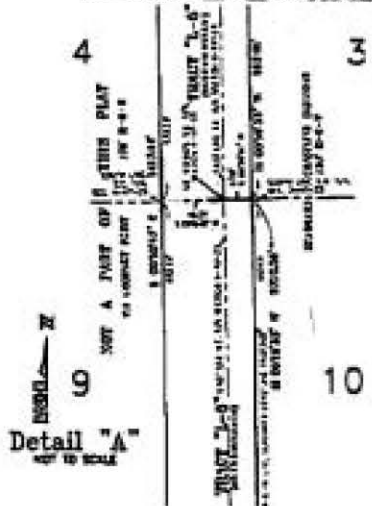
A SUBDIVISION LOCATED IN A PORTION OF SECTIONS 3, 4, 9 & 10, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA

INSTR. # 2006-0112-AC
SHEET 6 of 12



TRACT NO.	AREA (SQ. FT.)	AREA (AC.)	PERCENTAGE OF TOTAL
10-1			
10-2			
10-3			
10-4			
10-5			
10-6			
10-7			
10-8			
10-9			
10-10			
TOTAL			

TRACT NO.	AREA (SQ. FT.)	AREA (AC.)	PERCENTAGE OF TOTAL
10-1			
10-2			
10-3			
10-4			
10-5			
10-6			
10-7			
10-8			
10-9			
10-10			
TOTAL			



THIS INSTRUMENT WAS PREPARED BY
JERRY L. ROTTMACHER, P.S.M. #6130

JRM
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EXHIBIT A
(Page 7 of 13)

COCONUT POINT - AREA 2

A SUBDIVISION LOCATED IN A PORTION OF SECTIONS 3, 4, 9 & 10, TOWNSHIP 47 SOUTH, RANGE 25 EAST,
LEE COUNTY, FLORIDA

INSTR. # 20240001 00442
SHEET 7 of 12

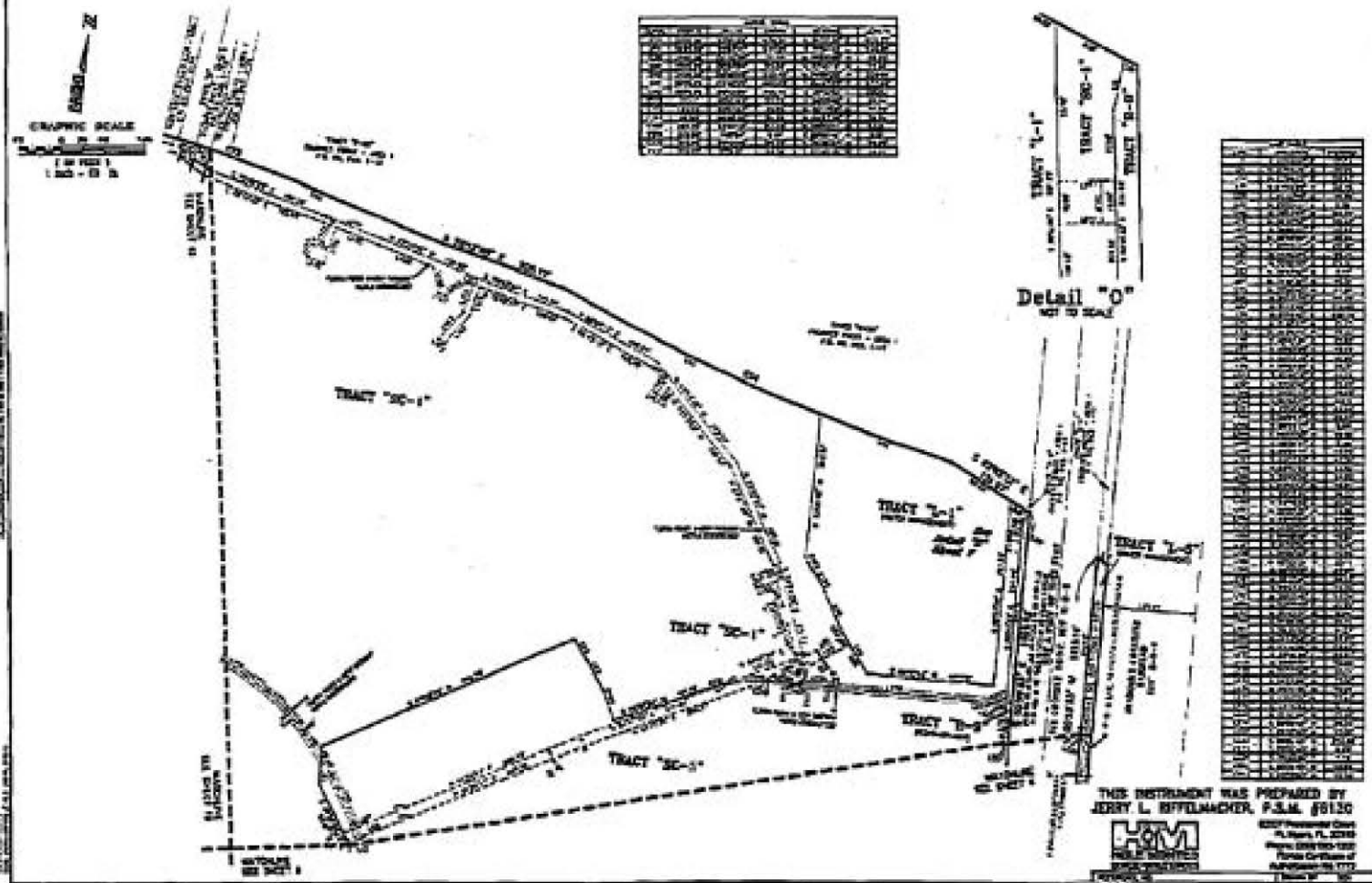


EXHIBIT A
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COCONUT POINT - AREA 2

A SUBDIVISION LOCATED IN A PORTION OF SECTIONS 3, 4, 9 & 10, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA

BOOK 8 200-001-001-013
SHEET 9 of 12

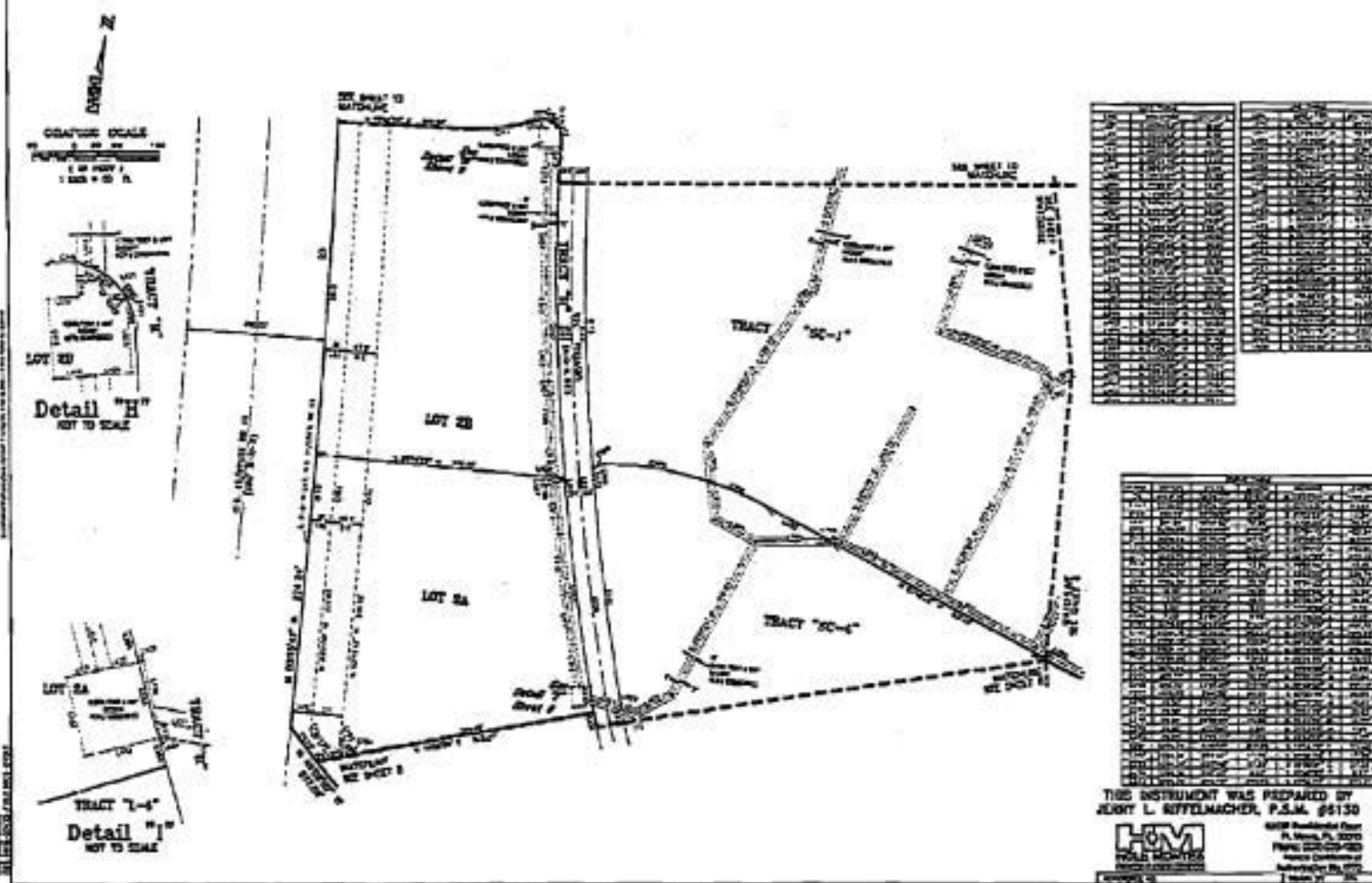


EXHIBIT A
(Page 10 of 13)

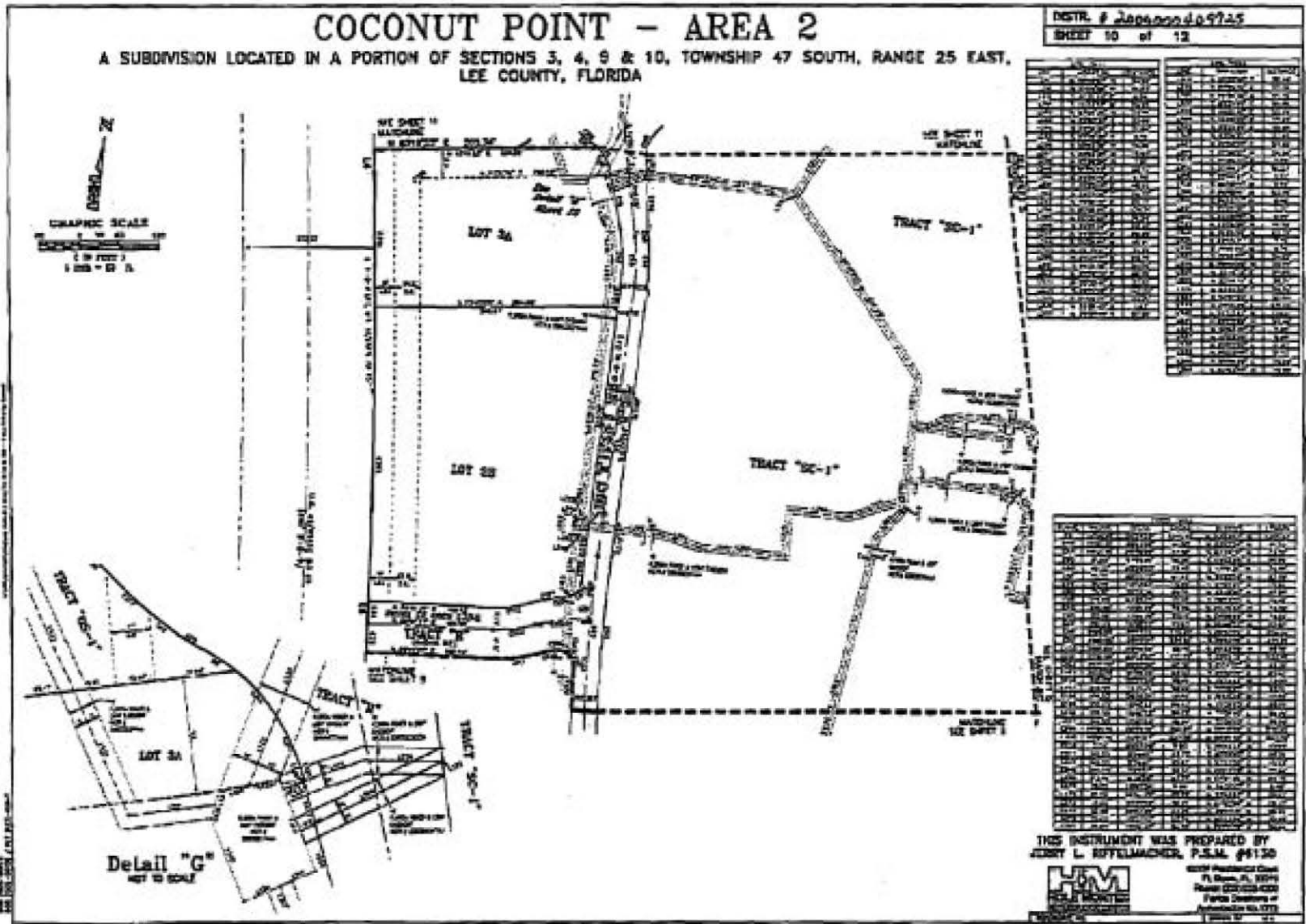


EXHIBIT A
(Page 11 of 13)

