



**AGENDA REPORT**  
**December 4, 2018**

**Approval Re: Second Amendment to M95 Developer's Agreement**

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**SUBJECT:**

Approval Re: First Public Hearing on the Second Amendment to the Developer's Agreement with M95, et.al. (District 5)

**FISCAL IMPACT:**

Since Transportation Impact Fees collected within the City of West Melbourne are typically allocated to projects within the city and administered by them, there should be no fiscal impact to Brevard County.

**DEPT/OFFICE:**

Planning and Development

**REQUESTED ACTION:**

It is requested that the Board of County Commissioners consider approval of the Second Amendment to the Developer's Agreement with with Melbourne 95 New Haven, LLC; Echo Trading Company, LLC; Floridana, Inc.; James E. and Barbara Fulcher; and the City of West Melbourne. If approved, it is requested that the Chair announce that the second public hearing on this item will be held on December 18, 2018 beginning at 9:00 am.

**SUMMARY EXPLANATION and BACKGROUND:**

On July 29, 2008, the Board of County Commissioners approved a Developer's Agreement with Melbourne 95 New Haven, LLC (M95); Echo Trading Company, LLC; Floridana, Inc.; James E. and Barbara Fulcher; and the City of West Melbourne. That agreement required M95 to construct offsite improvements to US192 and John Rodes Boulevard and authorized the County to reimburse M95 from transportation impact fees collected on development in the participating properties.

On March 10, 2009 the Board approved the First Amendment to the Developer's Agreement with M95, et.al. That amendment reduced the amount of the performance bond M95 was required to post to 125% of the accepted bid amount.

On March 5, 2009 the Board of County Commissioners enacted the Transportation Impact Fee moratorium which remained in effect until December 31, 2016. There were no transportation impact fees collected from development on the participating properties during this time period.

This agreement expired on July 29, 2018, ten years after it was adopted. Now that the Transportation Impact Fee moratorium has expired, M95 is requesting a five year extension of the agreement to allow them to recover the remainder of their expenses associated with construction of the offsite improvements which have been delayed due to the moratorium. M95 was initially entitled to receive \$1,260,945.61. To date they have received \$874,710.29 leaving a remaining balance of \$386,235.32.

The City of West Melbourne approved the Second Amendment to the Developer's Agreement on June 19, 2018.

Contact: Steve Swanke, Program Manager, Ext. 52739

**ATTACHMENTS:**

**Description**

- ▢ **Second Amendment to M95 Developer's Agreement**
- ▢ **West Melbourne City Council minutes for June 19, 2018**
- ▢ **Legal ad**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

December 5, 2018

MEMORANDUM

TO: Tad Calkins, Planning and Development Director Attn: Steve Swanke

RE: Item H.4., Public Hearing on Second Amendment to the Developer's Agreement with M95, et al

The Board of County Commissioners, in regular session on December 4, 2018, conducted the first public hearing to consider approval of the second amendment to the Developer's Agreement with Melbourne 95 New Haven, LLC (M95), Echo Trading Company, LLC, Florida, Inc., James E. and Barbara Fulcher, and the City of West Melbourne; and the Chair announced the second public hearing will be held on December 18, 2018, at the Board of County Commissioner's Meeting.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/kp

This instrument prepared by:

Mark A. Watts, Esq.  
Cobb Cole, P.A.  
231 N. Woodland Avenue  
DeLand, FL 32720

## SECOND AMENDMENT TO DEVELOPER'S AGREEMENT

This First Amendment to Developer's Agreement (the "First Amendment") amends that certain Developer's Agreement entered into on July 8, 2008 by and between the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "County"); Melbourne 95 New Haven, LLC, a North Carolina limited liability company, successor-in-interest to Sooner Investment Group, Inc., whose address is 1228 East Morehead Street, Suite 100, Charlotte, North Carolina, 28204 (hereinafter referred to as "M95"); Dike Ventures, LLC, a Florida limited liability company, successor-in-interest to Echo Trading Company and Floridana Incorporated, whose address is 4012 Snowy Egret Drive, Melbourne, FL 32904 (hereinafter referred to as "Dike"); Fulcher, DLG, LLC, a Florida limited liability company, successor-in-interest to James E. Fulcher and Barbara Fulcher, whose address is 350 South Ranger Boulevard, Winter Park, Florida 32792 (hereinafter referred to as "Fulcher DLG"), and the City of West Melbourne, Florida, a municipal corporation, whose address is 2385 Minton Road, West Melbourne, FL 32904 (hereinafter referred to as the "City") (collectively, all signatories to this First Amendment may be referred to as the "Parties"), is based on the following premises.

WHEREAS, the Parties entered into a Developer's Agreement dated July 8, 2008 and with an effective date of September 3, 2008 providing, among other things, for vesting of transportation concurrency and reimbursement of costs incurred in the form of impact fee reimbursements (the "Developer's Agreement"); and

WHEREAS, based on the cost reimbursement commitments made in the Developer's Agreement, M95 incurred substantial costs associated with the design, permitting and construction of certain elements of public transportation infrastructure identified in the Developer's Agreement that provide long term benefits to the City, County and members of the public; and

WHEREAS, under the terms of the Developer's Agreement, the Parties acknowledged that the public transportation improvements provided were of the same nature as public transportation infrastructure improvements that could otherwise be funded from transportation impact fee revenues.

WHEREAS, in recognition of the fact that the public transportation infrastructure improvements provided were eligible for funding from impact fee revenues, the Parties agreed that M95 would be eligible to receive reimbursement for the costs it incurred from the impact fee

payments generated by the development of properties identified in the Developer's Agreement for a ten (10) year period commencing on the date of the Developer's Agreement; and

WHEREAS, subsequent to the execution of the Developer's Agreement, the County enacted a moratorium on the payment of transportation impact fees in connection with the development of property in Brevard County from March, 2009 through January 1, 2017 (the "Impact Fee Moratorium"); and

WHEREAS, as a result of the Impact Fee Moratorium, transportation impact fees which would have been paid to M95 under the terms of the Developer's Agreement were not collected; and

WHEREAS, the City, County and M95 have agreed to this First Amendment as an equitable solution to provide M95 with an opportunity to receive the impact fee reimbursements contemplated by the Developer's Agreement from transportation impact fee revenues now being paid in connection with development activity in Brevard County; and

WHEREAS, the Parties hereby agree to amend the provisions of the Developer's Agreement that provided for a ten (10) year period from the effective date of the Developer's Agreement during which time M95 could receive impact fee reimbursement payments to account for the time period during which the Impact Fee Moratorium was in effect; and

WHEREAS, the Parties further wish to specify that all other terms and conditions of the Developer's Agreement shall remain unchanged, including specifically provisions dealing with the maximum amount of impact fee reimbursements which M95 may be entitled to collect.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged by all Parties, the Parties hereto agree as follows:

1. Recitals. The above recitals are true and correct and are hereby adopted in their entirety, and are fully incorporated into and made an integral part of this First Amendment as though fully set forth herein.
2. Amendments to Paragraph 11. The original terms of Paragraph 11 of the Developer's Agreement are hereby amended as follows (changes shown in ~~strikethrough~~/underline format):
  11. Transportation Impact Fee Reimbursement. In consideration of the financial expenses incurred by M95 for completion of the Project, the County and City agree that M95 and its successors in interest shall enjoy the benefit of a transportation impact fee reimbursement in lieu of transportation impact fee credit for the reasonable expenses associated with completion of any and all Eligible Improvements associated with the Project, subject to the following limitations and conditions:

- (a) for the purposes of transportation impact fee reimbursement only, the term of this Agreement shall be ~~ten~~ fifteen (15) years from the effective date of this Agreement, or the date on which the total impact fee reimbursements associated with the Eligible Improvements to M95 equals the lesser of the full amount of the reimbursement determined pursuant to paragraph 12 below or Three Hundred Eighty-Six Thousand Two Hundred Thirty-Five and 32/100 Dollars (\$386,235.32), whichever occurs first;
- (b) the transportation impact fees used to reimburse M95 or its successors in interest shall be derived exclusively from land development activity commenced on the M95 Property, Dike Property, and Fulcher DLG Property as evidenced by issuance of building permits by the City during the term of this Agreement;
- (c) M95 recognizes that unless land development activity is commenced on the M95, Dike and/or Fulcher DLG Properties during the term of this Agreement, adequate and sufficient transportation impact fees may not be collected by the County, in which case the County shall have no further obligation to pay the full amount of said impact fee reimbursement to M95 or its successors in interest subsequent to the term of this Agreement;
- (d) the full amount of the transportation impact fee reimbursement shall be determined as set forth in paragraph 12 below; provided, however, in no event shall the total impact fee reimbursement to M95 or its successors in interest exceed \$386,235.32; and
- (e) any and all expenses associated with the completion of the site-related improvements shall be the sole responsibility of M95 and pursuant to the Ordinance shall not be reimbursable to M95 or its successors in interest by the County through the use of transportation impact fees.

Within forty five days following final certification of the actual total cost of the Eligible Improvements, the County shall initiate the reimbursement to M95 by payment of all transportation impact fees collected as a result of land development activity on the M95 Property, Dike and Fulcher DLG Property provided that the total amount of the payment shall not exceed the full amount of the reimbursement determined pursuant to paragraph 12 below or \$386,235.32, whichever is less. In the event that the amount of the initial reimbursement payment is less than the full amount of the transportation impact fee reimbursement due to M95 or its successors in interest, the County shall refund any subsequent transportation impact fee collections as a result of land development activity on the M95 Property, Dike Property and Fulcher DLG Property during the term of this Agreement on a quarterly basis until M95 has been paid the full amount of the



With a copy to:

Charles Ian Nash, Esquire  
Nash & Kromash, LLP  
440 South Babcock Street  
Melbourne, FL 32901

5. Effective Date. The effective date of this Agreement shall be the date on which the last of the parties hereto executed this Agreement. The execution of this Agreement has been duly authorized by the appropriate body of each of the parties hereto. Each party has complied with all the applicable requirements of law and has full power and authority to comply with the terms and conditions of this Agreement. The venue of any litigation arising out of this Agreement shall be Brevard County, Florida. The exhibits attached hereto and incorporated by reference herein are by such attachment and incorporation made a part of this Agreement for all purposes. The fact that one of the parties to this Agreement may be deemed to have drafted or structured the provisions of this Agreement, whether in whole or in part, shall not be considered in construing or interpreting any particular provision hereof, whether in favor of or against such party. The terms and conditions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement is solely for the benefit of the parties hereto and their respective successors and assigns, and no right or cause of action shall accrue upon or result by reason hereof to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement, whether express or implied, is intended or shall be construed to confer upon any person other than the parties hereto any right, remedy, or claim under or by reason of this Agreement or any of the provisions hereof. This Agreement may not be changed, amended, or modified in any respect whatsoever, nor may any covenant, condition, agreement, requirement, provision, or obligation contained herein be waived, except in writing signed by all of the parties hereto.
6. Recording. This Agreement shall be recorded in the Public Records of Brevard County, Florida, at the expense of M95.
7. Attorney's Fees/Hold Harmless/Prevailing Party. Should any litigation arise between the parties, each party shall bear its own attorney's fees and costs. In the event of litigation or claims against the County or City from third parties arising from this agreement or the construction described herein, Developer shall indemnify and hold harmless the County or City for any such claims. Developer acknowledges specific consideration has been paid and other good and sufficient consideration has been received for this.
8. Captions. Headings of a particular paragraph of this agreement are inserted only for convenience and are in no way to be construed as part of the agreement or as a limitation of the scope of the paragraphs to which they refer.

9. Severability. If any part of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way. If any party's joinder in or execution of this agreement is deemed invalid for any particular purpose, the sections for which the joinder or execution is valid shall remain in full force and effect.

**IN WITNESS WHEREOF**, this agreement has been fully executed on behalf of the County, M95, Dike, Fulcher DLG, and the City by their duly authorized representatives on the respective dates below.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

BREVARD COUNTY BOARD OF  
COUNTY COMMISSIONERS

ATTEST:

\_\_\_\_\_  
Scott Ellis, Clerk

\_\_\_\_\_  
Rita Pritchett, Chair

As approved by the Board of County  
Commissioner on \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledged before this \_\_\_\_\_ day of \_\_\_\_\_, 2018  
by Rita Pritchett, Chair of the Board of County Commissioners of Brevard County, Florida, who  
is personally known to me or produced \_\_\_\_\_ as identification and who  
did (did not) take an oath.

\_\_\_\_\_  
NOTARY PUBLIC – State of Florida  
My Commission expires:

WITNESSES:

MELBOURNE 95 NEW HAVEN, LLC  
a North Carolina limited liability company

[Signature]

By: [Signature]  
Robert C. Collett, Manager

John Cheek  
Printed Name

(Seal)

[Signature]

Ken Short  
Printed Name

STATE OF North Carolina  
COUNTY OF BURKE

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of October, 2018, by ROBERT C. COLLETT, Manager of MELBOURNE 95 NEW HAVEN, LLC, a North Carolina limited liability company, on behalf of the company. He is personally known to me or has produced \_\_\_\_\_ as identification.



[Signature]  
Notary Public, State of NC at Large  
Printed Name: Shasta R Monn  
Commission No. 200508700194  
My Commission Expires: 5-25-20

WITNESSES:

DIKE VENTURES, LLC  
a Florida limited liability company

By: TPW VENTURES, LLLP, a  
Florida Limited liability limited  
partnership, its sole Member

By: TPW Managers, LLC, a  
Florida limited liability  
company, its sole General  
Partner



Jan Krumreich  
Printed Name



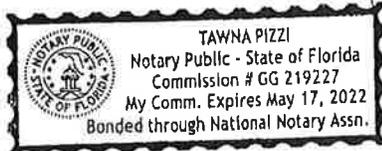
Veronica Horton  
Printed Name



By: Theodore P. Williams  
Name: Theodore P. Williams  
Its: Manager

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of October, 2018, by THEODORE P. WILLIAMS, Manager of TPW Managers, LLC, a Florida limited liability company, the sole general partner of TPW Ventures, LLLP, a Florida limited liability limited partnership, the sole member of Dike Ventures, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced \_\_\_\_\_ as identification.

  
Notary Public, State of Florida  
Printed Name: Tawna Pizzi  
Commission No. GG 219227  
My Commission Expires: May 17, 2022

WITNESSES:

FULCHER DLG, LLC  
a Florida limited liability company

Debra L. Gutierrez

By: James E. Fulcher  
James E. Fulcher, Manager

Debra L. Gutierrez  
Printed Name

(Seal)

[Signature]

Luis A. Lora  
Printed Name

STATE OF FLORIDA  
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 19 day of July, 2018, by JAMES E. FULCHER, Manager of FULCHER DLG, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced Florida Driver License as identification.

[Signature]



Andriy Savchuk  
State of Florida  
My Commission Expires 11/24/2019  
Commission No. FF 938912

Notary Public, State of Florida at Large  
Printed Name: Andriy Savchuk  
Commission No. FF 938912  
My Commission Expires: November 24, 2019

ATTEST:

CITY OF WEST MELBOURNE, FLORIDA  
a Florida municipal corporation

\_\_\_\_\_  
Cynthia Hanscom, Clerk

\_\_\_\_\_  
Hal Rose, Mayor

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledged before this \_\_\_\_\_ day of \_\_\_\_\_, 2018  
by Hal Rose, Mayor of the City of West Melbourne, Florida, who is personally known to me or  
produced \_\_\_\_\_ as identification and who did (did not) take an oath.

\_\_\_\_\_  
NOTARY PUBLIC – State of Florida  
My Commission expires:

Approved as to legal form and sufficiency:

\_\_\_\_\_  
Morris Richardson, City Attorney

**Coastal Commerce Transportation Impact Fee Reimbursement Extension.** City Attorney Richardson stated that Melbourne 95 New Haven LLC had agreed to a transportation impact fee reimbursement agreement in 2008. At that time, an assessment on traffic impacts was determined for needed transportation improvements. The developer completed over \$2,000,000 of improvements at U.S. 192 and Coastal Commerce. Therefore, a portion of those improvements (\$1.9 million) were eligible for reimbursement. The agreement stipulated that over the next 10 years the impact fees paid by developers in the Coastal Commerce area would go to the developer. In the first two years, there were two projects and fees were reimbursed to the developer. Then, the County implemented an impact fee moratorium to spur development which lasted eight years. During that time, projects like Chuck E. Cheese's were developed that would have paid approximately \$832,000 in impact fees. Representatives from Melbourne 95 New Haven LLC approached the City and negotiated an agreement which extends the agreement for an additional five years with a maximum impact fee reimbursement of \$832,522.

Mark Watts, with the law firm of Cobb & Cole in Deland, Florida, thanked the City Attorney for the summary on the request and reiterated that the developer was asking for a way to recoup the dollars that were lost during the moratorium.

Deputy Mayor Bentley moved to approve the amendment extending the Developer's Agreement between the City, Brevard County, Melbourne 95 New Haven, LLC, and other property owners for an additional five years to allow the developer to recoup up to \$832,522 in transportation improvement costs through transportation impact fees generated by development on certain properties near the intersection of Interstate 95 and U.S. 192, including Coastal Commerce Center commercial subdivision. Council Member Dittmore seconded the motion, which passed with a 6-0 vote.

**Sylvan Drive Septic-to-Sewer Interlocal Agreement with Brevard County and Professional Engineering Task Order for the Sylvan Estates Septic-to-Sewer Project.** City Manager Morgan stated one of the goals of Council was to seek external funding to do a septic-to-sewer conversion in the Sylvan Estates neighborhood. The concept engineering had been completed and this resulted in partial grant funding of the proposed project. Council was now being asked to approve the task order for design of the project. Once the project is designed and permitted, staff will be able to compete for additional funding for construction from the St. Johns River Water Management District. He noted that possible St. Johns River grant funding can only be considered for construction that is fully designed.

Council Member Young moved to approve the Save Our Indian River Lagoon Project Cost-Sharing Funding Interlocal Agreement between Brevard County, Florida, and the City of West Melbourne, Florida, and authorize the City Manager to execute the professional engineering task order with Infrastructure Solution Services for the Sylvan

## NOTICE OF INTENT

TO CONSIDER APPROVAL OF A SECOND AMENDMENT TO THE DEVELOPER'S AGREEMENT BETWEEN THE CITY OF WEST MELBOURNE, BREVARD COUNTY, MELBOURNE 95 NEW HAVEN, LLC AND OTHER PROPERTY OWNERS FOR AN ADDITIONAL FIVE YEARS TO ALLOW THE DEVELOPMENT TO RECOUP TRANSPORTATION IMPROVEMENT COSTS THROUGH TRANSPORTATION IMPACT FEES

The Board of County Commissioners of Brevard County, Florida has scheduled two public hearings to consider approval of the Second Amendment to the Developer's Agreement, as described below, between the City of West Melbourne, Brevard County, Melbourne 95 New Haven, LLC, (M95), Dike Ventures, LLC (Dike), and Fulcher DLG, LLC (Fulcher DLG). The first public hearing will be held during the Board of County Commissioners meeting on December 4, 2018 beginning at 5:00 p.m. The second public hearing will be held during the Board of County Commissioners meeting on December 18, 2018 beginning at 9:00 a.m. These meetings will be held at the Viera Government Center in the Commission Chamber Room on the First Floor of Building C, 2725 Judge Fran Jamieson Way, Viera, Florida. Interested parties may appear at the meeting and be heard with respect to the proposed Second Amendment to the Developer's Agreement.

The Developer's Agreement approved by the Board of County Commissioners on July 29, 2008 requires: M95 to construct certain roadway improvements at the intersection of U.S. Highway 192 and Dike Road, and at the intersection of U.S. Highway 192 and John Rodes Boulevard; provides M95 with vesting for transportation concurrency for a period of five years; awards M95 a transportation impact fee reimbursement in lieu of a transportation impact fee credit, and provides for the disbursement of Local Funding Reimbursement Agreement proceeds received by the County from the Florida Department of Transportation for programmed intersection improvements at the intersection of U.S. 192 and John Rodes Boulevard that were lesser in scope and cost than will be required of M95.

The First Amendment to the Developer's Agreement was approved by the Board of County Commissioners on March 24, 2009 to allow M95 to provide a performance bond/letter of credit for 125% of the accepted bid amount rather than the previously estimated cost of the improvements. The terms and conditions of the First Amendment to the Developer's Agreement are subject to change during the course of the public hearing process.

The Second Amendment to the Developer's Agreement extends the time period for collection of impact fee reimbursement by five (5) years and imposes a cap of \$386,235.32 on the total reimbursement amount in order to allow the property owners the opportunity to collect impact fee reimbursements equal to the fees that were not collected during the County's impact fee moratorium.

The following three properties are subject to the Developer's Agreement, First Amendment to the Developer's Agreement and will remain subject to the Second Amendment to the Developer's Agreement:

M95 PROPERTY  
COASTAL COMMERCE CENTER

This property is located on the south side of U.S. Highway 192 immediately east of Dike Road.

LEGAL DESCRIPTION

PART OF LOTS 15 AND 16, SECTION 3, TOWNSHIP 28 SOUTH, RANGE 36 EAST, FLORIDA INDIAN RIVER LAND CO, TOGETHER WITH PART OF LOTS 8 AND 9, SECTION 2, TOWNSHIP 28 SOUTH, RANGE 36 EAST, FLORIDA INDIAN RIVER LAND CO, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 80, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 3 AND RUN S00deg10'01"E, ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 57.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF STATE ROAD NO 500 (US HIGHWAY 192) AND THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE CONTINUE S00deg10'01"E, ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 18.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF THE LIMITED ACCESS RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NUMBER 95 (I-95); THENCE S89deg39'00"W, ALONG SAID LIMITED ACCESS RIGHT-OF-WAY LINE, A DISTANCE OF 198.81 FEET; THENCE CONTINUE ALONG SAID RIGHT-OF-WAY LINE, S74deg48'03"W A DISTANCE OF 290.63 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE, S11°56'45"W A DISTANCE OF 914.08 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE, S00deg02'45"E A DISTANCE OF 63.35 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE EAST AND HAVING A RADIUS OF 2975.36 FEET, A CENTRAL ANGLE OF 4deg07'36", A CHORD LENGTH OF 214.25 FEET AND A CHORD BEARING OF S02deg06'33"E), A DISTANCE OF 214.30 FEET TO A NON-TANGENT INTERSECTION WITH THE SOUTH LINE OF SAID LOT 15; THENCE N89deg36'45"E, ALONG THE SOUTH LINE OF SAID LOTS 15 AND 16, A DISTANCE OF 664.17 FEET TO THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 3 (SAID LINE ALSO BEING THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 2); THENCE N89deg39'43"E, ALONG THE SOUTH LINE OF SAID LOT 9, (SAID LINE ALSO BEING THE NORTH LINE OF SAID LOT 8), A DISTANCE OF 387.49 FEET; THENCE S00deg08'39"E, PARALLEL TO THE EAST LINE OF SAID LOT 8, A DISTANCE OF 1276.33 FEET TO THE NORTH

RIGHT-OF-WAY LINE OF THE MELBOURNE-TILLMAN DRAINAGE DISTRICT CANAL C-84 (AN 88 FOOT WIDE RIGHT-OF-WAY); THENCE N89deg39'50"E, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 273.05 FEET, TO THE EAST LINE OF SAID LOT 8 (SAID LINE ALSO BEING THE WEST RIGHT-OF-WAY LINE OF PENNSYLVANIA AVENUE, ACCORDING TO THE PLAT OF NATIONAL POLICE HOME FDN. INC. SUBDIVISION, SECOND ADDITION AS RECORDED IN PLAT BOOK 20, PAGE 112, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA); THENCE N00deg08'39"W, ALONG THE EAST LINE OF SAID LOT 8, A DISTANCE OF 1276.34 FEET TO THE NORTHEAST CORNER OF SAID LOT 8 (SAID CORNER ALSO BEING THE SOUTHEAST CORNER OF SAID LOT 9); THENCE CONTINUE N00deg08'39"W, ALONG THE EAST LINE OF SAID LOT 9, A DISTANCE OF 956.96 FEET TO THE SOUTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 5112, PAGE 583, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S89deg27'51"W, ALONG THE SOUTH LINE OF SAID PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 5112, PAGE 583, A DISTANCE OF 150.42 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 5112, PAGE 583; THENCE N00deg10'09"W, ALONG THE WEST LINE OF SAID PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 5112, PAGE 583, A DISTANCE OF 306.93 FEET TO THE SOUTH LINE OF STATE ROAD NUMBER 500; THENCE S89deg36'15"W, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 510.49 FEET TO THE POINT OF BEGINNING. CONTAINING 42.7 ACRES, MORE OR LESS.

#### DIKE PROPERTY

This property is located north of U.S. 192 between Interstate 95 and Dike Road.

#### LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 28 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF SECTION 3; THENCE N 00deg14'13" E ALONG THE EAST LINE OF SAID SECTION 3, A DISTANCE OF 859.84 FEET TO THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3700, PAGE 1353 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING THE POINT OF BEGINNING OF THE LANDS DESCRIBED HEREIN; THENCE CONTINUE N 00deg14'13" E ALONG SAID EAST LINE OF SECTION 3 A DISTANCE OF 1452.80 FEET TO THE NORTHEAST CORNER OF SAID SECTION 3; THENCE S 89deg48'58" W ALONG THE NORTH LINE OF SAID SECTION 3, A DISTANCE OF 665.02 FEET TO THE EAST RIGHT OF WAY LINE OF INTERSTATE 95; THENCE S 00deg20'00" W ALONG SAID EAST RIGHT OF WAY LINE A DISTANCE OF 1271.17 FEET; THENCE S 12deg10'00" E CONTINUING ALONG SAID EAST RIGHT OF

WAY LINE A DISTANCE OF 183.63 FEET TO THE SAID NORTH LINE OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3700, PAGE 1353, THENCE EAST ALONG SAID NORTH LINE A DISTANCE OF 627.75 FEET TO THE POINT OF BEGINNING, LESS AND EXCEPT THE NORTH 20.00 FEET AND THE EAST 20.00 FEET FOR ROAD RIGHT OF WAY PER PLAT BOOK 2, PAGE 80 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA

LESS AND EXCEPT

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION PARCEL NO. 112  
(WATER RETENTION AREA)

BEING DESCRIBED AS FOLLOWS:

COMMENCE AT A 5/8" INCH IRON ROD STAMPED "FDOT LB 7121" MARKING THE NORTH QUARTER CORNER OF SECTION 3, TOWNSHIP 28 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA; THENCE RUN NORTH 89deg27'31" EAST ALONG THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION 3, A DISTANCE OF 1825.96 FEET TO THE INTERSECTION WITH THE CENTERLINE OF SURVEY FOR I-95 (STATE ROAD 9) AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP, SECTION 40220, F.P. NO. 405506 3; THENCE CONTINUE NORTH 89deg27'31" EAST ALONG SAID NORTH LINE, A DISTANCE OF 150.00 FEET TO A POINT ON THE EXISTING EASTERLY LIMITED ACCESS RIGHT OF WAY LINE OF SAID I-95; THENCE SOUTH 00deg02'46" EAST ALONG SAID RIGHT OF WAY LINE 20.00 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 20.00 FEET OF THE NORTHEAST ¼ OF SAID SECTION 3 FOR THE POINT OF BEGINNING; THENCE DEPARTING SAID RIGHT OF WAY LINE CONTINUE NORTH 89deg27'31" EAST ALONG THE SOUTH LINE A DISTANCE OF 402.79 FEET TO A POINT LYING 20.00 FEET SOUTH 00deg32'21" EAST OF THE SOUTHEAST CORNER OF SECTION 34, TOWNSHIP 27 SOUTH, RANGE 36 EAST, SAID CORNER BEING MARKED BY AN IRON PIPE WITH A DISK STAMPED "US DEPT OF INTERIOR 1961 34/35 T27S R36E"; THENCE SOUTH 50deg53'13" EAST, A DISTANCE OF 125.36 FEET; THENCE SOUTH 00deg02'46" EAST, PARALLEL WITH THE EXISTING EASTERLY RIGHT OF WAY LINE FOR I-95, A DISTANCE OF 240.00 FEET; THENCE SOUTH 89deg27'31" WEST, A DISTANCE OF 500.00 FEET TO A POINT ON THE EXISTING EASTERLY LIMITED ACCESS RIGHT OF WAY LINE OF SAID I-95; THENCE NORTH 00deg01'46" WEST ALONG SAID EASTERLY RIGHT OF WAY LINE A DISTANCE OF 320.00 FEET TO THE POINT OF BEGINNING, CONTAINING 17.59 ACRES MORE OR LESS.

FULCHER DLG PROPERTY

This property is located to the south of and behind the M95 Property on the south side of U.S. Highway 192.

LEGAL DESCRIPTIONS:

PARCEL 1:

THOSE PARTS OF LOT 1 AND LOT 2, SECTION 3, TOWNSHIP 28 SOUTH, RANGE 36 EAST, FLORIDA INDIAN RIVER LAND CO, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 80, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA LYING EAST OF THE EASTERLY RIGHT-OF-WAY AND THE LIMITED ACCESS RIGHT-OF-WAY OF INTERSTATE 95.

LESS AND EXCEPT:

PARCEL NO. 111

WATER RETENTION AREA RIGHT (EAST) STATION 1070+00 ±

THAT PART OF: "THE SOUTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 3, TOWNSHIP 28 SOUTH, RANGE 36 EAST, LYING EAST OF INTERSTATE NO. 95 EXCEPTING THEREFROM, ROAD AND CANAL RIGHTS-OF-WAY." (SAID PROPERTY BEING A PORTION OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 2357, PAGE 1557 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.) BEING DESCRIBED AS FOLLOWS:

COMMENCE AT A 5/8" IRON ROD AND CAP STAMPED "FDOT LB 7121" MARKING THE SOUTHEAST CORNER OF THE SOUTHEAST 1/4 OF SECTION 3, TOWNSHIP 28 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA; THENCE RUN SOUTH 89 DEGREES 36 MINUTES 06 SECONDS WEST ALONG THE SOUTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 422.55 FEET TO THE INTERSECTION WITH THE CENTERLINE OF SURVEY FOR 1-95 (STATE ROAD 9) AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP, SECTION 70220, F.P. NO. 405506 3; SAID POINT OF INTERSECTION BEING A POINT ON A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 3125.36 FEET; THENCE RUN NORTHERLY 54.63 FEET ALONG THE ARC OF SAID CURVE WITH A CHORD BEARING OF NORTH 28 DEGREES 55 MINUTES 13 SECONDS WEST THROUGH A CENTRAL ANGLE OF 01 DEGREES 00 MINUTES 05 SECONDS TO A POINT ON SAID CURVE; THENCE DEPARTING SAID CURVE AND CENTERLINE OF SURVEY RUN NORTH 89 DEGREES 36 MINUTES 06 SECONDS EAST (NON-RADIAL), A DISTANCE OF 171.15 FEET TO A POINT ON THE EXISTING EASTERLY LIMITED ACCESS RIGHT OF WAY LINE FOR SAID 1-95; SAID POINT BEING THE POINT OF BEGINNING: SAID POINT ALSO BEING A POINT ON A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 2975.36 FEET; THENCE RUN NORTHERLY 910.92 FEET ALONG THE ARC OF SAID CURVE AND RIGHT OF WAY LINE WITH A CHORD BEARING OF NORTH 21 DEGREES 11 MINUTES 51 SECONDS WEST THROUGH A CENTRAL ANGLE OF 17 DEGREES 32 MINUTES 29 SECONDS TO A POINT ON SAID CURVE; THENCE DEPARTING SAID CURVE AND RIGHT OF WAY LINE RUN NORTH 89 DEGREES 37 MINUTES 34 SECONDS EAST (NON-RADIAL), A DISTANCE OF 568.30 FEET TO THE POINT

OF INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF THE MELBOURNE-TILLMAN DRAINAGE DISTRICT CANAL NO. 85 (70 FOOT RIGHT OF WAY) AS SHOWN ON THE MELBOURNE-TILLMAN WATER CONTROL DISTRICT RIGHT-OF-WAY MAP; THENCE SOUTH 00 DEGREES 10 MINUTES 02 SECONDS EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 848.00 FEET TO THE POINT OF INTERSECTION WITH THE NORTHERLY RIGHT OF WAY LINE OF THE MELBOURNE-TILLMAN DRAINAGE DISTRICT CANAL NO. 84 (96 FOOT RIGHT OF WAY) AS SHOWN ON SAID MELBOURNE-TILLMAN WATER CONTROL DISTRICT RIGHT-OF-WAY MAP; THENCE SOUTH 89 DEGREES 36 MINUTES 06 SECONDS WEST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 242.68 FEET TO THE POINT OF BEGINNING. CONTAINING 8.378 ACRES, MORE OR LESS.  
CONTAINING 6.33 NET ACRES, MORE OR LESS

PARCEL 2:

LOT 8, SECTION 2, TOWNSHIP 28 SOUTH, RANGE 36 EAST, FLORIDA INDIAN RIVER LAND CO, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 80, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCEL OF LAND:

AN 8.0 ACRE PARCEL OF LAND IN PART OF LOT 8, SECTION 2, TOWNSHIP 28 SOUTH, RANGE 36 EAST, FLORIDA INDIAN RIVER LAND CO, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 80, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID LOT 8, (SAID CORNER ALSO BEING THE NORTHWEST CORNER OF NATIONAL POLICE HOME FDN. INC. SUBDIVISION, SECOND ADDITION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 20, PAGE 112, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA) AS THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED AND RUN S00deg08'39"E, ALONG THE EAST LINE OF SAID LOT 8, (SAID LINE ALSO BEING THE WEST RIGHT-OF-WAY LINE OF PENNSYLVANIA STREET AS PER THE PLAT OF SAID NATIONAL POLICE HOME FDN. INC. SUBDIVISION, SECOND ADDITION), A DISTANCE OF 1276.34 FEET TO THE NORTH RIGHT-OF-WAY LINE OF THE MELBOURNE-TILLMAN DRAINAGE DISTRICT CANAL C-84 (AN 88 FOOT WIDE RIGHT-OF-WAY); THENCE S89deg39'50"W, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 273.05 FEET; THENCE N00deg08'39"W, PARALLEL TO AND 273.05 FEET WEST OF (AS MEASURED PERPENDICULARLY) THE EAST LINE OF SAID LOT 8, A DISTANCE OF 1276.33 FEET TO THE NORTH LINE OF SAID LOT 8; THENCE N89deg39'43"E A DISTANCE OF 273.05 FEET TO THE POINT OF BEGINNING.

CONTAINING 10.7 ACRES, MORE OR LESS.

PROPOSED DEVELOPMENT USES, POPULATION DENSITY, BUILDING INTENSITY & HEIGHT

M95 PROPERTY / COASTAL COMMERCE CENTER

M95 has received Site Plan approval from the City of West Melbourne for the Coastal Commerce Shopping Center. The Comprehensive Plan Future Land Use Map designation of Commercial and the Zoning Classifications of Commercial Parkway and Low Density Commercial with the Interchange Commercial Overlay district established on this property will permit a variety of retail and service businesses that are normally associated with shopping centers. As a non-residential development, the population density is not applicable. The proposed building intensity is a Floor Area Ratio of 0.19 and the building height will be limited to 45 feet.

DIKE PROPERTY

WEST LAKE APARTMENTS

Dike Ventures, LLC has received Site Plan approval from the City of West Melbourne to construct a 252 unit residential apartment complex on 17.59 acres to be called the West Lake Apartments. The Comprehensive Plan Future Land Use Map designation of High Density Residential and the Zoning Classification of Multi-family Residential would permit a maximum of 15 units per acre with maximum lot coverage of 40 percent. Based on 2.35 persons per unit, the proposed population density would be approximately 35 persons per acre. The height of the buildings is limited to 40 feet.

FULCHER DLG PROPERTY

Fulcher DLG, LLC has not submitted a specific development plan to the City of West Melbourne. The Comprehensive Plan Future Land Use Map designation of Commercial and the Zoning Classification of Commercial Parkway with the Interchange Commercial Overlay district have been established on this 17.03 acre property. These planning and zoning regulations would permit a variety of uses on this property including retail and commercial services, lodging at up to 25 rooms per acre, and multifamily residential at up to 15 units per acre. Based on the permitted uses, a potential population density of approximately 35 persons per acre could be established on this property. Building heights would be limited to 45 feet and lot coverage would be limited to 17 percent.

Copies of the proposed Second Amendment to Developer's Agreement can be viewed at the Brevard County Planning and Zoning Office, 2725 Judge Fran Jamieson Way, Suite A114, Viera, Florida 32940 and at the City of West Melbourne's Clerk's Office, 2285 Minton Road, West Melbourne, Florida 32904. A copy of this Developer's Agreement and First Amendment to Developer's Agreement will be posted online at [www.brevardfl.gov/onlineagendas](http://www.brevardfl.gov/onlineagendas).

If a person decides to appeal any decision made by the Board of County Commissioners with respect to any matter considered at this meeting or hearing, such a person will need a record of this proceeding and that, for such purposes, such person may need to ensure that a verbatim record of this proceeding is made, at his/her own expense, which record includes testimony and evidence upon which any such appeal is to be based.

For additional information contact:

Stephen M. Swanke, Program Manager  
Brevard County Planning and Zoning Office  
2725 Judge Fran Jamieson Way, A114  
Viera, FL 32940  
(321) 633-2069

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