



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.2.

2/24/2026

Subject:

Consideration of a Settlement Agreement with Merritt Island Development to settle alleged claims under the Bert Harris Act purportedly arising from an amendment to the Comprehensive Plan relating to property on Merritt Island, and providing for Brevard County's acquisition of certain real property.

Fiscal Impact:

If approved, the Settlement Agreement will release Brevard County (General Fund) from contingent liability for pending alleged claims including purported diminution in property value, prejudgment interest, attorneys' fees, expert fees and costs of more than \$4 million. The Settlement Agreement further provides for Brevard County's acquisition of approximately 147 acres of property for stormwater outfall, stormwater storage, conservation, recreation, and other public purposes for a total of \$3 million, apportioned as follows: \$578,045 SOIRL Basin 835 Stormwater Treatment (Fund 1260-271010, FP 516647); \$487,058 SOIRL Basin 840 Stormwater Treatment (Fund 1260-271010, FP 516647); \$424,069 SOIRL Basin 827 Stormwater Treatment (Fund 1260-271010, FP 516647); \$588,000 FDEP Grant 22FRP98 West Crisafulli Road Drainage Improvements (Fund 1700-313937); up to \$562,828 NMI West Crisafulli/Church Street CIP (Fund 1112-260030, FP 6964202); \$360,000 from the Environmentally Endangered Lands (EEL) Program, subject to adjustment based on appraisal, plus the cost of appraisal (Fund 3218, CC 340241).

Dept/Office:

County Attorney's Office

Requested Action:

Staff requests that the Board of County Commissioners (1) approve a tentative Settlement Agreement that, subject to Court approval, will resolve the case of Waters Mark Development Enterprises, LC v. Brevard County, Brevard County Circuit Court Case No. 05-2014-CA-041947-XXXX-XX; (2) as part of the settlement agreement and pursuant to the Bert Harris Act and as further described herein, authorize the acquisition of approximately 147 acres of property for stormwater treatment, flood mitigation, conservation, recreation, and other public purposes for a total of \$3 million as described herein; (3) authorize the Chair to execute the Settlement Agreement upon County Attorney and Risk Management approval, and authorize the Chair, County Manager, or County Attorney, as appropriate, to execute such other documents as may be necessary to finalize and effectuate the settlement and related real property acquisitions; (4) authorize the Chair to execute an amendment to FDEP Grant 22FRP98 to be spent solely on land acquisition for the drainage project, if required; (5) authorize the Chair to execute a Declaration of Restrictive Covenants that shall be recorded and run with the land for the portion of property acquired for the drainage project with FDEP grant funds; (6) approve a waiver of the EEL Land Acquisition Manual to facilitate the acquisition of a 120-acre parcel and a 2.19-acre parcel identified for preservation, conservation, and long-term management under the EEL program; and (7) authorize the County Manager to execute necessary budget amendments (BCRs).

Summary Explanation and Background:

The dispute that is the subject of this Agreement involves a 109.06-acre parcel located on Merritt Island, Real Estate Account #2317059 (the "MID Property"), owned by Merritt Island Development, LLC f/k/a Waters Mark Development Enterprises, LC ("Waters Mark"). In 2006, Waters Mark purchased the MID Property for \$10,000,000. At the time Waters Mark purchased, the MID Property, the Future Land Use Map designation applicable to the Property was Residential 1 (one unit per acre), the zoning designation was EU-2 (one unit per acre), and the Property was subject to a 1997 Binding Development Plan that, among other things, limited total development on the Property to not more than 130 units.

From 2006 to 2009, Waters Mark sought various development approvals from the County and the St. Johns River Water Management District for a proposed 84 lot subdivision on the Property. In 2009, the County adopted Ordinance No. 09-21, which set forth amendments to the Brevard County Comprehensive Plan. Among other things, the plan amendments set forth in Ordinance No. 09-21 changed the Future Land Use Map designation for the Property from Residential 1 to Residential 1:2.5 (one unit per two and one-half acres).

On September 11, 2014, Waters Mark filed a claim pursuant to the Bert J. Harris Private Property Rights Protection Act, Section 70.001, Florida Statutes (the "Harris Act") against the County, Case Number 05-2014-CA-041947-XXXX-XX in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida (the "Litigation"). In the Litigation, Waters Mark contends that the application of Ordinance 09-21 to the Property reduced the development potential of the Property from the proposed 84 lot subdivision to a maximum of 38 lots. In an October 23, 2013 Harris Act presuit notice, Waters Mark alleged a resulting diminution in value of the Property from \$4,320,000 to \$1,770,000 and sought more than \$2.5 million in compensation, together with attorneys' fees, expert fees, costs, and prejudgment interest.

Apart from the Litigation, Brevard County has long sought to obtain a stormwater outfall in the vicinity of the MID Property to facilitate an important flood mitigation project, benefiting generally the area west of N. Courtenay Parkway, from W. Crisafulli Road on the north end, to just past Porcher Road on the south. The proposed Settlement Agreement provides for the County to acquire approximately 25 acres along the southern edge of the MID Property for the public purposes of the needed stormwater outfall, stormwater treatment ponds to reduce pollution discharge into the Indian River Lagoon, and possibly for public recreational access to the Indian River Lagoon. The County will also acquire a 60-foot-wide nonexclusive easement located on the northern portion of the MID Property to construct an underground piped stormwater outfall.

Waters Mark also owns a 120-acre parcel located generally southeast of the Property, on the north side of East Hall Road, Real Estate Account #2318766 (the "Hall Road Parcel"). The Settlement Agreement provides for Waters Mark's use of the Hall Road Parcel for mitigation pursuant to a St. Johns River Water Management District permit. Waters Mark will remove all non-native invasive plants, foreign debris, and otherwise comply with the SJRWMD permit requirements. Waters Mark will then convey the 120-acre Hall Road Parcel to the EEL Program. The Hall Road Parcel will be stripped of all development potential and maintained by EEL for preservation and conservation. As such, it will continue to provide important stormwater storage for the area and mitigate against future flood risk.

Brevard County will also acquire a 2.19-acre peninsular parcel located to the west of the MID Property (the

"Horn Parcel"). The Horn Parcel will be maintained by the EEL Program, for public purposes including preservation and conservation, with potential for passive and active recreation if access allows.

In consideration of the above-described land conveyances, Brevard County will pay Waters Mark a total of \$3 million, with the allocation between departments and funds being as described in the Fiscal Impact section of this report. Should appraised value of the Hall Road Parcel result in increased allocation to the EEL Program, the portion of the overall purchase price apportioned to the NMI West Crisafulli/Church Street CIP will be reduced accordingly.

The Settlement Agreement provides for a release of Waters Mark's claims against Brevard County including purported diminution in property value, prejudgment interest, attorneys' fees, expert fees and costs alleged to exceed \$4 million, and dismissal of the Litigation with prejudice. In consideration of the release, Brevard County will restore the development potential on the MID Property to up to 84 single-family units (an increase in development potential of 46 units over the current 38 units allowed under the RES 1:2.5 future land use map designation). Brevard County will also allow Waters Mark to develop a residential marina with a maximum of 42 slips, subject to meeting all regulatory agency requirements including the County, Florida Department of Environmental Protection, and United States Army Corps of Engineers. Other than the marina, Waters Mark may develop only one community viewing pier (no mooring), and two single docks associated with larger lots on the MID Property. No other docks will be permitted for individual waterfront lots, thus reducing the proliferation of individual docks associated with Waters Mark's earlier subdivision applications.

The Settlement Agreement further provides for Brevard County's extension of a sanitary sewer force main that will terminate at or near the intersection of North Tropical Trail and Porcher Road and have sufficient capacity to serve the up to 84-unit subdivision. The design for this sewer force main extension is underway in the Utilities Department. In addition to the Waters Mark subdivision, the force main extension project will facilitate area septic to sewer conversions.

On February 17, 2026, the County Attorney, Natural Resources Stormwater Program Manager Bach McClure, and Natural Resources Environmental Policy and Resilience Administrator Darcie McGee attended a special meeting of the North Merritt Island Homeowners Association Board of Directors to discuss the settlement proposal and answer questions. The NMI HOA Board members generally expressed support for the proposal, particularly the portions of the agreement providing stormwater outfalls for local flood mitigation projects and preservation and conservation of the 120-acre Hall Road Parcel.

Clerk to the Board Instructions:

Please provide the County Attorney's Office with a copy of the Clerk's Memorandum and signed copy of the Settlement Agreement with Clerk's attestation.



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

Telephone: (321) 637-2001

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Kimberly.Powell@brevardclerk.us

March 10, 2026

MEMORANDUM

TO: Morris Richardson, County Attorney

RE: Item H.2., Consideration of a Settlement Agreement with Merritt Island Development to Settle Alleged Claims Under the Bert Harris Act Purportedly arising from Amendment to the Comprehensive Plan Relating to Property on Merritt Island, and Providing for Brevard County's Acquisition of Certain Real Property

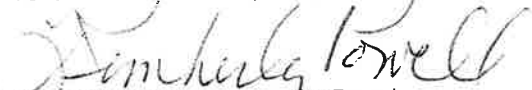
This is to correct the memorandum dated February 25, 2026. The Board of County Commissioners, in regular session on February 24, 2026, approved a tentative settlement agreement that, subject to court approval, will resolve the Waters Mark Development Enterprises, LC v. Brevard County, Brevard County Circuit Case No. 05-2014-CA-041947-XXXX-XX; as part of the settlement agreement and pursuant to Bert Harris Act, authorized the acquisition of approximately 147 acres of property for stormwater treatment, flood mitigation, conservation, recreation, and other public purposes for a total of \$3,000,000, apportioned as follows: \$578,045 SOIRL Basin 835 Stormwater Treatment (Fund 1260-271010, FP 516647), \$487,058 SOIRL Basin 840 Stormwater Treatment (Fund 1260-271010, FP 516647), \$424,069 SOIRL Basin 827 Stormwater Treatment (Fund 1260-271010, FP 516647), \$588,000 Florida Department of Environmental Protection (FDEP) Grant 22FRP98 West Crisafulli Road Drainage Improvements (Fund 1700-313937), \$442,828 (plus the cost of appraisal) NMI West Crisafulli/Church Street CIP (Fund 1112-260030, FP 6964204), \$480,000 from the Environmentally Endangered Lands (EEL) Program (Fund 3218, CC 340241), and NMI West Crisafulli/Church Street CIP and EEL funding are subject to adjustment based on appraisal; authorized the Chair to execute the settlement agreement, upon County Attorney and Risk Management approval; authorized the Chair, County Manager, or County Attorney, as appropriate, to execute such other documents as may be necessary to finalize and effectuate the settlement and related real property acquisitions; authorized the Chair to execute an amendment to FDEP Grant 22FRP98 to be spent solely on land acquisition for the drainage project, if required; authorized the Chair to execute a Declaration of Restrictive Covenants that shall be recorded and run with the land for the portion of the property acquired for the drainage project with FDEP grant funds; approved a waiver of EEL Land Acquisition Manual to facilitate that acquisition of the 120-acre parcel and 2.19-acre parcel identified for preservation, conservation, and long-term management under the EEL program; and authorized the County Manager to execute necessary budget amendments (BCR).

Upon execution by all parties, please provide a fully-executed Settlement Agreement to this office for inclusion of the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

cc: County Manager
Finance
Budget

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is entered into and made on this 30th day of March, 2026, by and between MERRITT ISLAND DEVELOPMENT, LLC f/k/a WATERS MARK DEVELOPMENT ENTERPRISES, LC, a Florida limited liability company, its successors and assigns ("Waters Mark¹"), MERRITT ISLAND DEVELOPMENT II, LLC, a Florida limited liability company its successors and assigns ("Merritt Island Development"), and

¹ For clarity, consistency, and brevity, and as the Litigation was pursued in the name of Waters Mark as the named plaintiff and records on file with the Brevard County Property Appraiser continue to reflect Waters Mark as the owner of the Property, this Agreement, except as expressly noted otherwise, refers to "Waters Mark". As used in this Agreement, any reference to "Waters Mark" shall be deemed to include and encompass WATERS MARK DEVELOPMENT ENTERPRISES, LC n/k/a Merritt Island Development, LLC, including its successors and assigns, as well as, and including but not limited to, any third-party developer consisting of a person, entity or combination of persons and entities and or their agents, successors or assigns, authorized by Waters Mark to turn the vacant land located on the MID Property into a finished community by submitting a site plan, obtaining all required legal permits, platting, engineering, and other legal requirements, installing and/or constructing infrastructure (roads, utilities, drainage, etc.), amenities (including the community pier, residential marina, tennis/pickle ball courts, walking trails, sidewalks etc.) and up to 84 single-family residential dwelling units on the MID Property.

BREVARD COUNTY, a political subdivision of the State of Florida (“County”), hereinafter collectively referred to as the “Parties.”

WITNESSETH:

WHEREAS, the dispute that is the subject of this Agreement involves a 109.06-acre parcel of property owned by Waters Mark and located on Merritt Island, Real Estate Account #2317059 (the “Property”); and

WHEREAS, Waters Mark purchased the Property for \$10,000,000 in January 2006; and

WHEREAS, at the time Waters Mark purchased the Property, the Future Land Use Map designation applicable to the Property was Residential 1 (one unit per acre), the zoning designation was EU-2 (one unit per acre), and the Property was subject to a 1997 Binding Development Plan that, among other things, limited total development on the Property to not more than 130 units; and

WHEREAS, from 2006 to 2009, Waters Mark sought various development approvals from the County and the St. Johns River Water Management District for a proposed 84 lot subdivision on the Property; and

WHEREAS, in 2009, the County adopted Ordinance No. 09-21, which set forth amendments to the Brevard County Comprehensive Plan; and

WHEREAS, among other things, the plan amendments set forth in Ordinance No. 09-21 changed the Future Land Use Map designation for the Property from Residential 1 to Residential 1:2.5 (one unit per two and one-half acres); and

WHEREAS, on September 11, 2014, Waters Mark filed a claim pursuant to the Bert J. Harris Private Property Rights Protection Act, Section 70.001, Florida Statutes (the “Harris Act”) against the County, Case Number 05-2014-CA-041947-XXXX-XX in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida (the “Litigation”); and

WHEREAS, in the Litigation, Waters Mark contends that the application of Ordinance 09-21 to the Property reduced the development potential of the Property from the proposed 84 lot subdivision to a maximum of 38 lots; and

WHEREAS, in an October 23, 2013 Harris Act presuit notice, Waters Mark alleged a resulting diminution in value of the Property from \$4,320,000 to \$1,770,000 and sought more than \$2.5 million

in compensation, together with attorneys' fees, expert fees, costs, and prejudgment interest; and

WHEREAS, the County desires to obtain approximately 25 acres along the southern edge of the Property, being more particularly described herein (the "New ≈25 Acre County Property"), for the public purposes of a stormwater outfall to facilitate an important flood risk reduction project, and stormwater treatment ponds to reduce pollution discharge into the Indian River Lagoon; The property retained by Waters Mark (approximately 86.36 acres) will be referred to hereinafter as the "MID Property"; and

WHEREAS, the County further desires to obtain a 60-foot-wide nonexclusive easement located on the northern portion of the Property for the public purpose of constructing an underground piped stormwater outfall in furtherance of an important flood risk reduction project; and

WHEREAS, Waters Mark also owns a 120-acre parcel located southeast of the Property on the north side of East Hall Road, Real Estate Account #2318766 (the "Hall Road Parcel"), which contains significant wetlands acreage; and

WHEREAS, Waters Mark desires to restore the Hall Road Parcel, to include the removal of invasive plant species and such other measures as may be necessary to facilitate the Hall Road Parcel's use for mitigation; and

WHEREAS, the County desires that the Hall Road Parcel remain undeveloped, and seeks to acquire the Hall Road Parcel for the public purposes of flood storage and conservation under the County's Environmentally Endangered Lands program; and

WHEREAS, Merritt Island Development owns a 2.19-acre parcel located to the west of the Property (the "Horn Parcel"); and

WHEREAS, the County desires to obtain the Horn Parcel for public purposes including conservation, passive recreation, and active recreation; and

WHEREAS, the Parties desire to limit the proliferation of docks along the shoreline of the Property into the Indian River by providing for a community residential marina and viewing pier, and limiting the number of private docks; and

WHEREAS, the Harris Act authorizes the County to enter into a settlement agreement which would have the effect of a modification, variance, special exception, or any other extraordinary relief from the

application of a rule, regulation, ordinance, or statute as it would otherwise apply to property in unincorporated Brevard County, provided that the relief granted protects the public interest served by the regulations or statute at issue and is the appropriate relief necessary to prevent the governmental regulations from inordinately burdening the property, and so long as the agreement fully resolves all claims asserted under the Harris Act; and

WHEREAS, the County has proposed a tentative settlement offer pursuant to the Harris Act and Waters Mark has accepted the County's tentative settlement offer, the terms and conditions of which are reflected in this Agreement; and

WHEREAS, Waters Mark has determined that this tentative settlement provides the appropriate relief necessary to prevent the governmental regulations from inordinately burdening the Property; and

WHEREAS, this Agreement's provisions for increases or modifications in the density, intensity, or use of areas of development (without the need for a future land use amendment or other land use/zoning change) may contravene the application of a statute as it would otherwise apply to the Property, thus requiring that the

Agreement be subject to approval by the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida to ensure that the relief granted protects the public interest served by the statute at issue and is the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the Property; and

WHEREAS, the Parties, without any party admitting liability or fault, wish to avoid the expense, delay, risk, and uncertainty of further extending what has been a lengthy litigation of more than a decade, and agree that it is in their respective mutual best interests to do so in accordance with the terms set forth herein; and

WHEREAS, the Parties now desire to settle and resolve all disputes between them concerning the Litigation and reduce the settlement to writing so that it shall be binding upon the Parties, the Parties' respective owners, principals, elected officials, officers, employees, agents, attorneys, representatives, insurers, successors, assigns, heirs, departments, agencies, and affiliates.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and consideration set forth in this Agreement, and with the intent to be legally bound, the Parties agree as follows:

1. **Recitals.** The above recitals are true and correct and are hereby incorporated by reference.

2. **The Property.** A legal description of the Property is attached hereto as **Exhibit A.**

3. **The Hall Road Parcel.** A legal description of the Hall Road Parcel is attached hereto as **Exhibit B.**

4. **The Horn Parcel.** A legal description of the Horn Parcel is attached hereto as **Exhibit C.**

5. **Effective Date.** The effective date of this Agreement shall be the date that the Circuit Court approves this Agreement, should that occur, by entering a Final Judgment adopting and incorporating all terms of this Agreement therein.

6. **County Stormwater Treatment Ponds.** After acquiring the New ≈25 Acre County Property the County may construct stormwater treatment ponds to reduce pollution discharge into the Indian River Lagoon. The Parties shall maintain open lines of communication with each other during the County's design, permitting and construction of the ponds and agree that they will work together to accomplish the design, permitting and construction on a timeline that will satisfy both Parties' needs to the greatest

extent reasonably practicable. The County agrees to solicit the input of Waters Mark's, engineer/consultant related to the design, permitting and construction of the stormwater ponds, with Waters Mark being solely responsible for its own engineering/consultant's fees and costs related to such input so long as they are acting strictly on behalf of Waters Mark (and not engaged by the County). The County shall make reasonable efforts to complete the design, permitting, and construction as soon as reasonably practicable and in line with Waters Mark's subdivision planning and permitting time frame; however, such efforts on the part of the County are subject to funding availability and the permitting processes of outside agencies.

To the greatest extent practicable, the County agrees to construct such ponds in a manner that is aesthetically pleasing (which shall include but not be limited to installing native vegetation, native sod/grass, native plants/landscaping and constructing the pond in a naturally occurring curvature design (no squares or rectangles)) as viewed by the MID Property, roads and surrounding properties. The County shall not fence the stormwater treatment ponds, except by written agreement between the County and Waters Mark. The County shall mow the New ≈25 Acre County Property on

at least a quarterly basis and maintain trees and shrubs as needed. Should Waters Mark wish to maintain the New ≈25 Acre County Property more frequently or to a higher aesthetic standard, the County will authorize such maintenance subject to Waters Mark's entry into the County's then current form of maintenance agreement. Waters Mark may add landscaping to enhance the aesthetics of the stormwater ponds at Waters Mark's own expense, subject to the County's prior written approval, which approval shall not be withheld so long as such enhanced landscaping will not unreasonably interfere with the County's access to or use, operation, and maintenance of the stormwater ponds. Waters Mark shall enter into an agreement with the County providing for Waters Mark's maintenance of any such enhanced landscaping in perpetuity.

Waters Mark shall have the right of first refusal to the spoil (dredged/excavated material) removed during excavation and construction of the County stormwater ponds. Should Waters Mark elect to receive all or part of such spoil, the County agrees to move the spoil to an upland accessible location on the MID Property designated by Waters Mark, at no cost to Waters Mark. Waters Mark will have the opportunity to inspect the materials before the County

delivers the spoil/fill/excavated materials to the MID Property. Should Waters Mark elect not to receive the spoil/fill/excavated materials, the County will be responsible for the removal or other disposition of such materials.

In the event Waters Mark requires the stormwater pond spoil/fill/excavated materials prior to the County's excavation, the County agrees that it will timely negotiate in good faith to reach a reasonable agreement that will allow for Waters Mark to design, permit and excavate the stormwater ponds all of which shall be done as soon as reasonably practicable and in line with Waters Mark's subdivision planning, permitting and construction time frame, should Waters Mark elect to do so. Such agreement shall address clearing and grubbing the land, design of the stormwater ponds, permitting, excavation and removal of the excavated material north to the MID Property, and may also include construction, grading, landscaping and final completion of the ponds, subject to the agreement of the Parties. Such agreement shall provide for the County's reimbursement of the reasonable costs and expenses of any clearing, grubbing, design, engineering, permitting, excavating, removal of fill material to the MID Property, constructing, grading,

landscaping, and/or other work undertaken by Waters Mark on behalf of the County.

In the event Waters Mark requires the stormwater pond spoil/fill/excavated materials prior to the County's excavation, it is the Parties' intention that Waters Mark proceed as quickly as it may desire with the design, permitting and/or excavation of the County's stormwater ponds to facilitate Waters Mark's utilization of said excavated materials in the construction of its subdivision, and nothing herein shall be construed to allow the County to unreasonably delay said design, permitting and excavation.

If, after negotiating in good faith and within a reasonable time period (not to exceed ninety (90) days), the Parties are unable to agree on the terms of the aforementioned agreement, the Parties agree that Waters Mark shall be entitled to move forward with designing, permitting and constructing the County's stormwater ponds in a manner that is consistent with industry standards for county/municipality stormwater ponds (with Waters Mark's engineer, designer, planner and other consultants soliciting the County's input related to the design, permitting and construction of the stormwater ponds, and subject to the County's final approval of

any designs or plans, which approval shall not be unreasonably withheld) and that the County shall remain obligated to reimburse Waters Mark for the reasonable costs and expenses of any clearing, grubbing, design, engineering, permitting, excavating, removal of fill material to the MID Property, constructing, grading, landscaping, and/or other work undertaken by Waters Mark on behalf of the County, so as to not delay or hinder Waters Mark's ability to proceed forward with its intended subdivision planning, permitting and construction time frame.

To the greatest extent practicable, the County agrees to allow Waters Mark to use any available excess storage volume within the County's stormwater ponds for stormwater attenuation and outfalls related to the Future Subdivision through piped connections to the County system(s).

7. **Property and Easement Conveyances.** In consideration of the sum of Three Million Dollars (\$3,000,000.00), of which Two Million Nine Hundred and Fifty Thousand (\$2,950,000.00) is to be paid by the County to Waters Mark at a closing to take place on or before June 26, 2026, and Fifty Thousand (\$50,000.00) is to be paid by the County to Merritt Island Development at a closing to take place

on or before June 26, 2026, Waters Mark and Merritt Island Development shall make the following conveyances to the County:

a. North 60-Foot-Wide Nonexclusive Easement.

Waters Mark shall execute a nonexclusive easement in a form acceptable to the County, conveying to the County a 60-foot-wide nonexclusive easement for the purpose of constructing, installing, operating, and maintaining a piped underground stormwater conveyance and appurtenances traversing the north end of the Property in approximately the configuration depicted in **Exhibit D** attached hereto. The Parties agree to designate and locate said nonexclusive easement to an area within the Future Subdivision (as hereinafter defined) to be developed on the MID Property so that the nonexclusive easement will be contained within the north entrance road of the Future Subdivision (as hereinafter defined) to be developed and coinciding with the existing FIND easement of record.

The County agrees to provide Waters Mark with manhole access and a “T” whereby Waters Mark will

have access (without charge other than customary fees such as design review and permitting, as applicable) to tie into and direct its necessary stormwater outflow through the County's piped underground stormwater discharge system located within the nonexclusive easement.

The Parties shall maintain open lines of communication with each other during the County's design, permitting and construction of the piped underground stormwater conveyance and appurtenances and agree that they will work together to accomplish the design, permitting and construction on a timeline that will satisfy both Parties' needs to the greatest extent reasonably practical. The County agrees to solicit the input of Waters Mark's engineer/consultant related to the design, permitting and construction of the piped underground stormwater conveyance and appurtenances, with Waters Mark being solely responsible for its own engineering/consultant's fees and costs related to such

input so long as they are acting strictly on behalf of Waters Mark (and not engaged by the County). The County shall make reasonable efforts to complete the design, permitting, and construction as soon as reasonably practicable and in line with Waters Mark's subdivision planning and permitting time frame; however, such efforts on the part of the County are subject to funding availability and the permitting processes of outside agencies.

In the event Waters Mark requires the piped underground stormwater conveyance and appurtenances to be designed, permitted, and/or constructed prior to the County's performance of said task or tasks, the County agrees that it will timely negotiate in good faith to reach a reasonable agreement that will allow for Waters Mark to design, permit, and construct the piped underground stormwater conveyance and appurtenances all of which shall be done as soon as reasonably practicable and in line with Waters Mark's subdivision planning, permitting and

construction time frame, should Waters Mark elect to do so. Such agreement shall address clearing and grubbing the land, design of the piped underground stormwater conveyance and appurtenances, permitting, excavation and removal of the excavated material and may also include construction, grading, landscaping and final completion of the piped underground stormwater conveyance and appurtenances, subject to the agreement of the Parties. Such agreement shall provide for the County's reimbursement of the reasonable costs and expenses of any such clearing, grubbing design, engineering permitting, excavating constructing, grading, landscaping, and/or other work undertaken by Waters Mark on behalf of the County.

In the event Waters Mark requires the piped underground stormwater conveyance and appurtenances to be designed, permitted, and/or constructed prior to the County's performance of said task or tasks, it is the Parties' intention that Waters Mark proceed as quickly as it may desire with the

design, permitting and/or construction of the County's piped underground stormwater conveyance and appurtenances and nothing herein shall be construed to allow the County to unreasonably delay said clearing, grubbing, design, engineering, permitting, excavating construction, grading, landscaping, and/or other work undertaken by Waters Mark on behalf of the County.

If, after negotiating in good faith and within a reasonable time period (not to exceed ninety (90) days), the Parties are unable to agree on the terms of the aforementioned agreement, the Parties agree that Waters Mark shall be entitled to move forward with designing, permitting and constructing the County's piped underground stormwater conveyance and appurtenances in a manner that is consistent with industry standards for county/municipality piped underground stormwater conveyance and appurtenances (with Waters Mark's engineer, designer, planner and other consultants soliciting the County's input related to the design, permitting and construction

of the piped underground stormwater conveyance and appurtenances, and subject to the County's final approval of any designs or plans, which approval shall not be unreasonably withheld) and that the County shall remain obligated to reimburse Waters Mark for the reasonable costs and expenses of any clearing, grubbing, design, engineering, permitting, excavating, constructing, grading, landscaping, and/or other work undertaken by Waters Mark on behalf of the County, so as to not delay or hinder Waters Mark's ability to proceed forward with its intended subdivision planning, permitting and construction time frame.

When the non-exclusive easement area is excavated to place the County's underground stormwater pipes, the County shall cooperate with Waters Mark (and, to the extent applicable, the Florida Inland Navigation District) to facilitate the collocation of such other party's facilities within the non-exclusive easement while excavated, with such other party to bear any additional

costs of said collocation (e.g., excavation in excess of the County's requirements).

- b. **South Twenty-Five Acre Parcel.** Waters Mark shall convey to the County marketable title by statutory warranty deed free of any liens, encumbrances, exceptions or qualifications, except for those listed and contained within Waters Mark's existing title policy, approximately 25 acres, $\approx$ 15 identified in green color as the "Brevard County Property for Stormwater Treatment" on **Exhibit D**, together with an easement granted to Brevard County for the use of the wetlands lying along the Indian River (however, said fee simple ownership of the easement lands shall remain owned by Waters Marks and included in the MID Property definition) for stormwater pond spreader swale and "sheet flowing" purposes along the Indian River as further depicted on **Exhibit D** and further including the entirety ($\approx$ 10 acres) of the Property east of Tropical Trail directly north of Porcher Road (together the "New $\approx$ 25 Acre County Property"), in approximately the

configuration depicted in **Exhibit D** hereto. Without the need to execute any other documents, at the time of conveyance and closing on the New ≈25 Acre County Property any development rights under the Brevard County Land Development Regulations (“LDRs”) allowing for the ability to impact wetlands on the New ≈25 Acre County Property shall be transferred to the MID Property, not to exceed 0.45 acres in additional allowable wetland impacts. Waters Mark is responsible for all wetland mitigation and state and federal permitting associated with the transferred 0.45 acres in additional allowable wetland impacts. The Parties agree that the transfer of additional wetland impacts on the MID Property will continue in perpetuity and run with the land in perpetuity regardless of any amendment to the Brevard County Comprehensive Plan, change in minimum lot size designation, change in zoning classification, or change in any other land use rule(s), regulation(s), ordinance(s), or statute(s) affecting the MID Property or any future change in ownership of the

MID Property. After the conveyance and closing on the New ≈25 Acre County Property, the County shall be responsible for all property taxes, wetlands, invasive species, tortoise, plants, drainage, and all costs and expenses associated with ownership of said property in perpetuity. The County shall grant Waters Mark permission to construct an elevated boardwalk or walking trail around the unfenced stormwater treatment ponds located on the New ≈25 Acre County Property, to the extent allowable by County, state and federal permitting requirements and not inconsistent with County use of the New ≈25 Acre County Property. All required permits and any associated mitigation required for allowable wetland impacts shall be the responsibility of Waters Mark. No direct impacts to wetlands on County-owned property shall be permitted.

- c. **Legal Description and Survey.** The County will select and engage a land surveyor to determine and mark out, in accordance with the Parties' agreed upon placement as outlined in Section 7.a. above, the South Twenty-Five

Acre Parcel and North 60-Foot-Wide nonexclusive Easement to be conveyed to the County. Waters Mark will authorize the surveyor to enter the Property and conduct surveys of the New ≈25 Acre County Property and 60-foot nonexclusive easement. The surveyor will prepare a survey and legal / metes and bounds descriptions of the parcel and nonexclusive easement, consistent with **Exhibit D** attached hereto. The County will deliver a copy of each survey to Waters Mark within ninety (90) days of the Effective Date. Waters Mark agrees to be bound by the surveys and legal / metes and bounds descriptions prepared in accordance with this paragraph, subject to Waters Mark's approval of the same, which approval shall not be unreasonably withheld.

- d. **The Horn Parcel.** In consideration of \$50,000.00 to be paid by the County in accordance with the terms of section 7 of this Agreement, Merritt Island Development shall convey to the County marketable title to the Horn Parcel by statutory warranty deed free of any liens,

encumbrances, exceptions or qualifications except for those listed and contained within Merritt Island Development's existing title policy and nothing herein shall be implied or expressly stated that Waters Mark warrants any or grants any access to the Horn Parcel. The Horn Parcel shall be used for public purposes which may include conservation, passive recreation, or active recreation. The Parties agree that the transfer of additional wetland impacts on the MID Property will continue in perpetuity and run with the land in perpetuity regardless of any amendment to the Brevard County Comprehensive Plan, change in minimum lot size designation, change in zoning classification, or change in any other land use rule(s), regulation(s), ordinance(s), or statute(s) affecting the MID Property or any future change in ownership of the MID Property. After the conveyance and closing on the Horn Parcel, the County shall be responsible for all property taxes, wetlands, invasive species, tortoise, plants, drainage,

and all costs and expenses associated with ownership of said property in perpetuity.

- e. **The Hall Road Parcel.** Upon Waters Mark's full compliance with a permit to be issued by the St. Johns River Water Management District and the U.S. Army Corps of Engineers, including wetland mitigation, restoration, and monitoring requirements, Waters Mark shall convey to the County marketable title to the Hall Road Parcel by statutory warranty deed free of any liens, encumbrances, exceptions or qualifications except for those listed and contained within Waters Mark's existing title policy. Waters Mark shall not develop or impact wetlands on the Hall Road Parcel except as to comply with any St. Johns River Water Management District and/or U.S. Army Corps of Engineers requirements in Waters Mark's pursuit of intended wetland mitigation purposes including use of mitigation credits on the MID Property and/or other third party parcels which may acquire/use the mitigation credits. Waters Mark will execute a statutory warranty deed to

be delivered to Counsel for the County in trust on or before June 26, 2026, and such deed shall be held “in escrow” by the County Attorney until the Parties jointly agree that the conditions herein have been completed and said deed should be recorded. The beneficial and/or actual ownership of the Hall Road Parcel shall not transfer to the County until the conditions have been satisfied and said deed is recorded. At the time of recording the deed effectuating the conveyance of the Hall Road Parcel to the County (which shall occur upon written agreement by the Parties within ninety 90 days after Waters Mark completes the condition of satisfying its intended wetland mitigation purposes and further disposes of all wetland mitigation credits (which are currently related to Sykes Creek Mitigation Bank Prospectus/Permit No. SAJ-2025-03401) through sale or transfer, which credits shall be the sole property of Waters Mark and shall not be transferred or conveyed to the County). As a further condition and only after Waters Mark has satisfied all required SJRWMD and

USACE permit conditions (including but not limited to invasive plant species removal and continuing monitoring pursuant to SJRWMD and USACE mitigation permits), Waters Mark shall ensure that the Hall Road Parcel is free of Category I and II Invasive Plants as listed in the then-current Florida Invasive Species Council (FISC) List of Invasive Plant Species,² as may be updated from time to time, and foreign debris (e.g., garbage, trash, tires, junk, etc. resulting from illegal dumping or otherwise). The County agrees that Waters Mark shall be provided a *de minimis* grace percentage of five percent (5%) related to the requirement to remove invasive plant species and foreign debris on the Hall Road Parcel. The County shall be entitled to inspect the Hall Road Parcel within the 90-day period prior to closing, which closing shall take place at a date in the future and will not be

² See ***<https://www.floridainvasives.org/plant-list/2023-invasive-plant-species/>*** as may be amended.

simultaneous/concurrent with the closing on the New ≈25 Acre County Property. Waters Mark shall cause to be performed such clean up and maintenance as may be reasonably required by the County, however, not in excess of the aforementioned *de minimis* grace percentage. Without the need to execute any other documents, at the time of conveyance and closing on the New ≈25 Acre County Property, any development rights under the LDRs allowing for the ability to impact wetlands on the Hall Road Parcel shall be transferred to the MID Property, not to exceed 2.16 acres in additional allowable wetland impacts. Waters Mark is responsible for all wetland mitigation and state and federal permitting associated with the transferred 2.16 acres in additional allowable wetland impacts. The Parties agree that the transfer of additional wetland impacts on the MID Property will continue in perpetuity and run with the land in perpetuity regardless of any amendment to the Brevard County Comprehensive Plan, change in minimum lot size designation, change in zoning

classification, or change in any other land use rule(s), regulation(s), ordinance(s), or statute(s) affecting the MID Property or any future change in ownership of the MID Property. After the conveyance and closing on the Hall Road Parcel, the County shall be responsible for all property taxes, wetlands, restoration, monitoring, invasive species, tortoise, plants, drainage, and all costs and expenses associated with ownership of said property in perpetuity.

8. **Development Conditions.** In consideration of the resolution of all disputes, claims, and causes of action arising from or relating in any way, whether directly or indirectly, to the Litigation, the Parties agree to the following:

- a. **Density.** The Parties agree that Waters Mark is entitled to construct up to 84 single-family residential dwelling units on the MID Property, without the need to amend the Future Land Use Map designation, zoning classification of the MID Property. Waters Mark shall make reasonable efforts to develop the MID Property utilizing established low impact development design

features and practices. The Parties agree that the right to construct up to 84 single-family residential units on the MID Property will continue in perpetuity and run with the land in perpetuity regardless of any amendment to the Brevard County Comprehensive Plan Future Land Use Map designation or zoning classification of the MID Property (except to the extent such amendment or change is initiated by Waters Mark) or any future change in ownership of the MID Property. The Parties acknowledge that any density and development rights associated with that portion of the Property to be conveyed to the County, as described herein, will be transferred to the MID Property, so that Waters Mark will remain entitled to construct up to 84 single-family residential dwelling units on the remainder of the Property following such conveyance. The development of the Property shall otherwise comply with all applicable LDRs, except LDRs as herein expressly waived, amended or altered by the County, including but not limited to setbacks and minimum lot

size requirements. The County agrees to waive the minimum 15' subdivision buffer otherwise required by the LDRs on the south, west and east sides of the MID Property. Moreover, the County agrees to waive the minimum 15' subdivision buffer otherwise required by the LDRs on the remainder of the MID Property subject to the written agreement of abutting neighbors of the MID Property to same. Additionally, the County agrees that as long as the Future Subdivision (as hereinafter defined) is obtained through a subdivision and/or site plan application and platted, then Section 62-102 of the LDRs, including but not limited to any restrictions or prohibition of flag lots, shall not apply to the MID Property. Upon Waters Mark's submittal of signed, sealed plans consistent with the cul-de-sac depicted on **Exhibit D**, the County agrees to considered an administrative reduction of the right-of-way width that would otherwise be required for the cul-de-sac if the County development engineer determines that the

criteria for such waiver under Sec. 62-2956, Brevard County Code, are satisfied.

- b. **Conditional Use – Residential Marina.** Waters Mark is entitled to develop a residential marina serving the up to 84 single-family residential dwelling units located on the MID Property (herein after the “Future Subdivision”) not to exceed 42 slips without the need to obtain a conditional use permit from the County (which conditional use permit is otherwise required in order to construct a residential marina) located in the dredged channel known as the Courtenay Channel within the Indian River just west of the inlet at the MID Property. The actual number of slips may be further limited based upon a determination of the total linear feet of contiguous linear shoreline owned by Waters Mark and Merritt Island Development as of the Effective Date of this Agreement (which shall include but not limited to the total number of contiguous linear feet of shoreline of the MID Property, the New ≈25 Acre County Property, and the Horn Parcel, collectively), based on the ratio of

one powerboat slip per 100 feet of contiguous linear shoreline as provided in the Brevard County Manatee Protection Plan.. The residential marina will be developed with the intent of becoming a Green Marina and earn the Florida Department of Environmental Protection Agencies Clean Marina Program designation. Fueling, repair facilities, and other commercial activities as defined in the Brevard County Manatee Protection Plan, Section II.C.I, as amended, shall be prohibited. Wastewater pump out may be permitted consistent with applicable federal, state, and local regulation. Only residents of the Future Subdivision to be developed on the Property, or State/Federal/local emergency resources/vessels on a temporary basis, may use the marina slips, however nothing herein shall prohibit Waters Mark from selling the slips to residents of the Future Subdivision to be developed or otherwise designating which residential lot owners are entitled to use/own said marina slips. Slips may not be sold, let, or rented to persons not residing within the Future

Subdivision, however, guests of residents may temporarily dock or moor at the marina when visiting residents and while boarding, packing, or unloading for up to 24 hours. If Waters Mark successfully permits and constructs an overwater residential marina with the required Non-County regulatory agencies, then the restrictions set forth herein shall be incorporated in the recorded covenants, conditions, and restrictions for the Future Subdivision to be developed on the MID Property, which shall be subject to the review and approval of the County for consistency with this Agreement. Waters Mark or successor homeowners' association may adopt more stringent restrictions on the use of the marina than set forth in this Agreement. The recorded marina restrictions shall not be modified without the express written consent of the County. The marina must otherwise comply with all applicable LDRs and regulatory agency requirements, except LDRs as herein expressly waived, amended or altered by the County. In the event Waters Mark is unable to obtain

all permits and required approvals for the residential marina from regulatory agencies, nothing herein shall prohibit, restrict, or limit the individual lot owners (or Waters Mark) from seeking their own individual dock in the future, and Waters Mark shall not be required to include any restrictions related to the marina in the recorded covenants, conditions, and restrictions for the Future Subdivision to be developed on the MID Property. The County agrees that it will not oppose any such approvals from non-County regulatory agencies. In the event non-County regulatory agencies require confirmation of Waters Mark's entitlement to develop the Marina under the LDRs or other applicable County land use regulation, the County agrees that it shall issue a Zoning Verification Letter, signed by the County Zoning Official, confirming Waters Mark's entitlement to said conditional use within thirty days of Waters Mark notifying the County of said requirement, in writing (email sufficient), from a Non-County regulatory agency. The Parties agree that the right to develop a

residential marina with up to 42 slips serving the Future Subdivision on the MID Property without the need for a conditional use permit will continue in perpetuity and run with the land in perpetuity regardless of any future change in ownership of the MID Property.

- c. **Community Observation Pier.** Waters Mark is entitled to construct an observation pier to serve the Future Subdivision at the MID Property. Such pier may not be used for dockage or mooring purposes and must be designed and constructed in a way to discourage such use. The observation pier must comply with all applicable LDRs, except LDRs as herein expressly waived, amended, or altered by the County, and regulatory agency requirements. The Parties agree that the right to construct and develop a Community Observation Pier serving the Future Subdivision on the MID Property will continue in perpetuity and run with the land in perpetuity regardless of any future change in ownership of the MID Property.

d. **Private Docks.** Waters Mark is entitled to construct private docks, each to be associated with a riverfront lot on the portion of the MID Property north of the Courtenay Channel on the MID Property. The shoreline associated with a lot having a private dock will be excluded in the calculation of maximum number of slips available for the residential marina. In the event Waters Mark receives approval from all regulatory agencies and constructs a residential marina, then no other docks (except as expressly provided herein) may be constructed on the Property. The Parties agree that the right to construct private docks serving the northern riverfront lots in the Future Subdivision on the MID Property will continue in perpetuity and run with the land in perpetuity regardless of any change in ownership of the MID Property.

e. **Horn Access.** If the County provides public access to the Horn Property, then the County shall grant Waters Mark permission to construct an elevated boardwalk or walking trail across the eastern, western, and southern

portions of the New ≈25 Acre County Property, to the extent allowable by County, state and federal permitting requirements and not inconsistent with County use of the New ≈25 Acre County Property, so that residents of the Future Subdivision can access the Horn Property from the southwestern corner of the Future Subdivision. All required permits and any associated mitigation required for allowable wetland impacts shall be the responsibility of Waters Mark. No direct impacts to wetlands on County-owned property shall be permitted. The County shall not be required to provide public access to the Horn Parcel, such access being subject to physical conditions of the property, funding, and other considerations solely within the discretion of the County.

9. **Sanitary Sewer Force Main.** On or before December 31, 2028, the County shall complete the design, permitting, and construction (collectively the “Project Costs”) of a sanitary sewer force main terminating at or near the intersection of North Tropical Trail and Porcher Road with adequate capacity to serve up to 84 single-

family residences on the MID Property. Should the County project become delayed beyond the anticipated December 31, 2028 completion date to an extent that will materially impact Waters Mark's development plans for the MID Property, or if Waters Mark begins development of the MID Property prior to December 31, 2028, the County agrees that it will timely negotiate in good faith to reach a reasonable agreement that will allow for Waters Mark to design, permit construct the force main extension, all of which shall be done as soon as reasonably practicable and in line with Waters Mark's subdivision planning, permitting and construction time frame, should Waters Mark elect to do so. Such agreement shall address the design, permitting and construction of the force main extension and may also include construction, grading, landscaping and final completion of the force main extension, subject to the agreement of the Parties. Such agreement shall provide for the County's reimbursement of the reasonable costs and expenses of any such clearing, grubbing design, engineering, permitting, excavating constructing, grading, landscaping, and/or other work undertaken by Waters Mark on behalf of the County, on an agreed upon payment schedule, which final payment shall not be due for payment by the

County until the later of final completion of the project or December 31, 2028.

In the event Waters Mark requires the force main extension designed, permitted, and/or constructed prior to the County's performance of said task or tasks, it is the Parties' intention that Waters Mark proceed as quickly as it may desire with the design, permitting and/or construction of the County's force main extension and nothing herein shall be construed to allow the County to unreasonably delay said design, permitting, excavation and construction.

If, after negotiating in good faith and within a reasonable time period (not to exceed ninety (90) days), the Parties are unable to agree on the terms of the aforementioned agreement, the Parties agree that Waters Mark shall be entitled to move forward with designing, permitting and constructing the County's force main extension in a manner that is consistent with industry standards for county/municipality force main extensions (with Waters Mark's engineer, designer, planner and other consultants soliciting the County's input related to the design, permitting and construction of the force main extension, and subject to the County's final approval

of any designs or plans, which approval shall not be unreasonably withheld, and that the County shall remain obligated to reimburse Waters Mark for the reasonable costs and expenses of any clearing, grubbing, design, engineering, permitting, excavating, constructing, grading, landscaping, and/or other work undertaken by Waters Mark on behalf of the County, so as to not delay or hinder Waters Mark's ability to proceed forward with its intended subdivision planning, permitting and construction time frame.

10. **Applicability of LDRs and Concurrency.** Except as specifically provided herein, the Parties agree that this Agreement does not exempt Waters Mark from applying for and obtaining the relevant development orders required by the LDRs, including, but not limited to any subdivision plans and plats. Except as otherwise expressly provided herein, Waters Mark agrees to comply with all other relevant provisions of the LDRs and concurrency requirements, payments, and improvements that may be required by the County for approval of a development order on the Property. The County represents and warrants to Waters Mark that as of the Effective Date the County does not have any plans to revise or change any of the LDRs that impact or affect the MID Property and further agrees that

in accordance with Florida Senate Bill 180, the County is prohibited from (i) proposing and/or adopting any moratorium on construction, reconstruction or redevelopment of any property damaged by a hurricane, (ii) proposing and/or adopting more restrictive or burdensome amendments to its comprehensive plan or land development regulations and (iii) proposing and/or adopting more restrictive or burdensome procedures concerning review, approval, or issuance of a site plan, development permit, or development order, to the extent those terms are defined by s. 163.3164, Florida Statutes, before October 1, 2027 (and as may be extended by the terms of Florida Senate Bill 180) and any such moratorium or restrictive or burdensome comprehensive plan amendment, land development regulation, or procedure shall be null and void ab initio as it relates to the Property and MID Property.

11. **Impact Fees.** Waters Mark understands and agrees that this Agreement does not exempt Waters Mark from paying impact fees. Nothing in this Agreement shall constitute a waiver of any impact fees.

12. **Permits.** Waters Mark understands and agrees that all applicable local, state, and federal permits must be obtained before commencement of development on the MID Property.

13. **Resolution of Litigation.** Upon the Court entering a Final Judgment adopting and incorporating all terms of this Agreement therein, the Litigation shall be fully and finally resolved as to all claims and all parties except the Court shall retain jurisdiction to enforce the terms of this Agreement and the Final Judgment.

14. **Attorney's Fees, Costs.** The Parties are responsible for their own attorney's fees and costs incurred in the Litigation and performance of this Agreement. In the event of any action to enforce the terms of this Agreement, each party shall be responsible for its own attorney's fees and costs.

15. **Conformity with LDRs.** Except as otherwise expressly provided herein, the terms of this Agreement shall not be construed as rendering the Property in any way non-conforming with the LDRs.

16. **Board Approval Required.** The Parties agree that this Agreement shall become effective and enforceable only upon approval by the Brevard County Board of County Commissioners (the "Board") and subsequent approval by the Circuit Court as provided below.

The Parties further acknowledge and agree any consideration of the terms of the Settlement by the Board shall occur at a duly noticed public meeting held in accordance with Sections 70.001 and 286.011, Florida Statutes, the Brevard County Code of Ordinances, and any other applicable provisions of Florida law. Waters Mark and Merritt Island Development expressly acknowledge and agree the Board is under no obligation to approve this Agreement and any decision whether to approve this Agreement is a discretionary governmental act of the Board. Should the Board not approve this Agreement, the tentative settlement reflected herein shall be of no force and effect, and this Agreement shall be null and void in all respects.

17. **Court Approval Required.** Should the Board approve this Agreement and the settlement contained herein, the Parties agree to jointly seek approval of this Agreement by the Circuit Court pursuant to Section 70.001(4)(d), Florida Statutes. Should the Circuit Court not approve this Agreement, the tentative settlement reflected herein and this Agreement shall be null and void in all respects. Should the Circuit Court approve this Agreement, all references to this Agreement being a tentative settlement shall be null and void in all

respects and this Agreement shall become fully binding upon all Parties in all respects.

18. **Release.** In consideration of the resolution of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, each Party, on behalf of itself, its principals, its members, its managers, and each of their attorneys, agents, representatives, heirs, successors, and assigns, hereby expressly releases and forever discharges the other Party, as well as its elected officials, officers, employees, agents, attorneys, representatives, successors, assigns, insurers, departments, agencies, and affiliates, from any and all claims, demands, causes of action, damages, costs, liens, attorney's fees, expenses, and obligations of any kind or nature whatsoever, that the first Party has asserted or could have asserted in the Litigation or that arise from or relate or refer in any way, whether directly or indirectly, accrued or unaccrued, known or unknown, to the Litigation or any incident, event, or allegation referred to in the Litigation.

19. **No Admission.** The terms and conditions set forth above are in compromise of disputed claims and will not be construed as

an admission of liability or fault by either party, which is expressly denied. Provided, however, that this Agreement will be admissible to enforce its terms.

20. **Non-Waiver.** The waiver by any Party of a breach of any of this Agreement by any other Party shall not operate or be interpreted as a waiver of any later breach of that provision or any other provision.

21. **Authority.** The signatories to this Agreement have the authority and are expressly authorized to resolve all matters as set forth herein and by their signatures here represent and affirm their authority to execute this Agreement.

22. **Recording.** The County shall record this Agreement in the public records of Brevard County, Florida, within thirty (30) days of the Effective Date.

23. **Notices.** All notices required or permitted to be given hereunder shall be in writing and shall be deemed given when (a) hand delivered, or (b) delivered via FedEx, UPS, or other nationally recognized overnight courier service, receipt required, or (c) transmitted via email or facsimile, provided a copy is sent the next business day by method (a) or (b). Notices shall be deemed delivered

on the date hand delivered or on the date shown on the receipt. All notices shall be addressed as follows:

County: County Manager
2725 Judge Fran Jamieson Way
Building C, Suite 301
Viera, Florida 32940

Copy To: County Attorney
2725 Judge Fran Jamieson Way
Building C, Suite 308
Viera, Florida 32940

Waters Mark: Pette P.A.
Attn: Geoffrey Pette, Esq.
12565 Orange Drive, Suite 411
Davie, Florida 33325

Copy To: Pette P.A.
Attn: Geoffrey Pette, Esq.
Geoff@pettepa.com

24. **Entire Agreement.** This Agreement constitutes the entire and integrated agreement by and between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous negotiations, discussions, understandings, representations, or agreements, whether oral or written. Each Party expressly acknowledges and agrees it has not relied upon, and shall not be entitled to rely upon, any verbal or written assurance, representation, statement, promise, inducement, or understanding

of any kind whatsoever, whether made before or after the execution of this Agreement, unless expressly set forth herein. This Agreement may not be amended, modified, waived, or supplemented informally or by implication, including by course of dealing, course of conduct of any agent, employee, officer, or representative, of any Party. This Agreement may be amended only by a written instrument expressly identifying itself as an amendment to this Agreement, signed by all Parties, and approved by the Board and the Circuit Court should the Parties agree Circuit Court approval is needed.

25. **Additional Documents.** The Parties agree to cooperate as to the preparation, executions, and filing (if needed) of any supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to this Agreement, including the execution of deeds as contemplated herein and any related closing documents.

26. **Breach.** In the event of a breach of any provision of this Agreement, the non-breaching party shall provide written notice via certified mail and 30 days to cure, unless mutually extended by the Parties within 30 days of delivery of said notice to cure. If no resolution can be reached within 30 days of delivery of said notice,

the Parties agree that all underlying causes of action or claims have been extinguished by this Agreement and that the sole remedy for breach of this Agreement shall be for specific performance of the terms and conditions of this Agreement.

27. **Joint Preparation of Agreement:** The Parties agree that they jointly and collaboratively prepared this Agreement, and it should be construed and interpreted as such. The Parties agree that they have each reviewed this Agreement and signed this Agreement only after due consideration and with ample opportunity to confer with counsel of their choice. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants, and warranties concerning the subject matter hereto are merged herein.

28. **Venue; Jury Trial Waiver:** The Parties agree that (i) the sole venue for any action to enforce this Agreement shall be in the Eighteenth Judicial Circuit in and for Brevard County, Florida or appellate court with jurisdiction therein, (ii) this Agreement shall be construed under and governed by the laws of the State of Florida, and (iii) any trial shall be non-jury.

29. **Binding Effect; Benefit.** This Agreement shall inure to the benefit of and be binding on the Parties and their respective heirs, legatees, legal representatives, personal representatives, successors, and assigns.

30. **Run with the Land.** Any and all rights, entitlements, variances, and other consideration obtained by, granted to and/or acquired by Waters Mark under this Agreement shall continue in perpetuity and run with the land in perpetuity.

31. **Signatures:** This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original. All counterparts taken together shall constitute one and the same Agreement, which shall be binding and effective as to all Parties. A facsimile or PDF version of a signature shall be deemed an original and shall be enforceable as if it is an original signature.

IN WITNESS WHEREOF, the Parties have signed and sealed this Settlement Agreement on the dates first noted above, as set forth below.

**MERRITT ISLAND DEVELOPMENT,
LLC f/k/a WATERS MARK
DEVELOPMENT ENTERPRISES, LC**

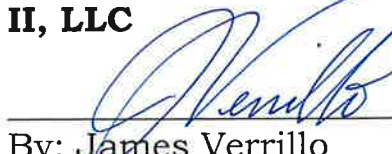


By: Daniel Lambert

Its: Manager

Dated: March 30, 2026

**MERRITT ISLAND DEVELOPMENT
II, LLC**



By: James Verrillo

Its: Manager

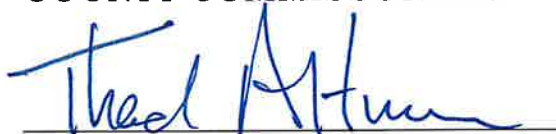
Dated: March 30, 2026

ATTEST:



Rachel Sadoff

**BREVARD COUNTY BOARD OF
COUNTY COMMISSIONERS**



Thad Altman, Chair

Clerk of the Court

As approved by the Board on 02/24/2026

EXHIBIT A

Exhibit A

Parcel 1

Tract 1:

A parcel of land lying in Section 27, Township 23 South, Range 36 East, said lands being that part of Parcel (a) as described in O.R. Book 3776, Page 0606, of the public records of Brevard County more fully described as all of Government Lots No. 3 and 4 of said Section 27, together with that portion of the Southeast 1/4 of said Section 27, which lies westerly of the right-of-way of North Tropical Trail, an existing County road of unspecified width or deed dedication.

Tract 2:

A parcel of land lying in Section 34, Township 23 South, Range 36 East, said lands being that part of Parcel (b) of the lands described in O.R. Book 3776, Page 0606, of the Brevard County Public Records more fully described as the North 1/4 of Government Lot 1 together with the North 1/4 of the Northwest 1/4 of the Northeast 1/4 of said Section 34 which lies westerly of the right-of-way of North Tropical Trail, an existing County road of unspecified width or deed dedication.

LESS AND EXCEPT:

A parcel of land lying in Government Lot 4 of Section 27 and in the North 1/4 of Government Lot 1 of Section 34, both of Township 23 South, Range 36 East, Brevard County, Florida; said subject parcel being more fully described as follows:

Commence at the Northeast corner of said Section 34 as marked by a p.k. nail and washer stamped: "Fredlund & Packard" as shown on Florida Department of Natural Resources Certified Corner Record Document ("C.C.R.D.") No. 0020446; thence S.87°40'35"W., along the north line of the Northeast 1/4 of said Section 34, a distance of 2654.10 feet to the northeast corner of said Government Lot 1 as marked by a four (4) inch square concrete monument stamped "Allen Eng. LB #0266"; thence continue S.87°40'35"W., along the north line of said Government Lot 1, a distance of 1210.71 feet to the Mean Water Level Line ("M.W.L.L.") of the west bank of an existing cove of the Indian River as shown on the Mean High Water Surveys ("M.H.W.S.") No. 1880 and No. 1881 as filed in the Public Repository of the Florida Department of Environmental Protection, Bureau of Surveying and Mapping, also being the Point-of-Beginning of the lands herein described; thence departing said north line and along said M.W.L.L. of the west bank of the existing cove, the following six (6) courses to wit: S.17°16'15" E., a distance of 37.31 feet; S.31°55'58"W., a distance of 71.42 feet; S.19°38'16" W., a distance of 38.15 feet; S.11°18'40"W., a distance of 55.33 feet; S.01°07'59" E., a distance of 62.38 feet; S.13°07'34" E., a distance of 71.17 feet to the southerly bank of said cove; thence along said M.W. L.L. of said southerly bank, the following three (3) courses to wit: S.66°44'11" E., a distance of 26.45 feet; N. 89°56'13"E., a distance of 58.08 feet; N.85°09'53" E., a distance of 72.50 feet; thence departing said M.W.L.L. of the southerly bank, S.02°18'25"E., a distance of 5.29 feet to the south line of said North 1/4 of Government Lot 1 of Section 34; thence S.87°41'35" W., along said south line, a distance of 466.47 feet to the M.W.L.L. of the east bank of the Indian River as shown on said M.H.W.S. No. 1881; thence along said M.W.L.L. of the east bank of the Indian River as shown on said M.H.W.S. No. 1881 and No. 1880, the following twenty-one (21) courses to wit: N.21°07'28"E., a distance of 22.20 feet; N.24°10'39"E., a distance of 42.37 feet; N.06°26'04"E., a distance of 43.87 feet; N.38°14'03" E., a distance of 39.39 feet; N.40°27'44" E., a distance of 53.05 feet; N.36°09'40"E., a distance of 28.77

feet; N.41°16'02"E., a distance of 26.76 feet; N.33°56'00" E., a distance of 45.98 feet; N.21°53'27" E., a distance of 29.78 feet; N.55°02'16"E., a distance of 8.47 feet; N.05°24'01"E., a distance of 30.35 feet; N.14°10'33"E., a distance of 21.81 feet to the south line of said Government Lot 4 of Section 27; N.69°27'33"E., a distance of 22.83 feet; N.13°48'05"E., a distance of 35.73 feet; N.17°52'54"E., a distance of 30.97 feet; N.00°45'09"E., a distance of 49.61 feet; N.13°46'56"E., a distance of 27.87 feet; N.08°21'19"E., a distance of 13.71 feet; N.08°56'32"W., a distance of 16.43 feet; N.53°49'56"W., a distance of 18.04 feet; N.27°57'51"E., a distance of 36.64 feet to said M.W.L.L. of the west bank of the existing cove; thence along said M.W.L.L. of the west bank of the cove the following seven (7) course to wit: S.61°12'12"E., a distance of 35.18 feet; S.43°45'18" E., a distance of 31.00 feet; S.24°34'53"E., a distance of 41.78 feet; S.26°18'48"E., a distance of 40.48 feet; S.16°20'58"E., a distance of 51.52 feet; S.19°36'35"E., a distance of 39.31 feet; S.17°16'15"E., a distance of 15.44 feet to the Point-of-Beginning.

Parcel (2):

A parcel of land lying in Section 34, Township 23 South, Range 36 East, Brevard County, Florida which is more fully described as follows:

That portion of Parcel (b) of the lands recorded in O.R. Book 3776, Page 0606, of the Brevard County Public Records described as the North 1/4 of the Northwest 1/4 of the Northeast 1/4 of said Section 34 which lies easterly of the physical easterly line of an existing paved county road known as Tropical Trail and northerly of the physical northerly line of an existing paved county road known as Porcher Road (both being unrecorded rights-of-way);

Together with:

All of parcels (c) of the lands recorded in said O.R. Book 3776, Page 0606 described as that portion of the North 1/4 of the Northeast 1/4 of the Northeast 1/4 of said Section 34 which lies 500.00 feet westerly, by right angle measure, of the westerly right-of-way line of State Road No. 3, a 100.00 foot wide right-of-way per State Road Department Right-of-Way Map Section 7014-104 and which lies northerly of the physical northerly line of an existing paved county road known as Porcher Road (an unrecorded right-of-way).

Parcel (3):

That portion of Deed Book "J", Page 0289, of the Brevard County Public Records which lies in Government Lot 2 of Section 27, Township 23 South, Range 36 East, and which lies westerly of the west line, and its northerly and southerly extensions, of the lands described in Deed Book "L", Page 0363, of said Public Records, said west line being parallel with and 318.00 feet west, by right angle measure, of the east line of said Government Lot 2.

EXHIBIT B

Exhibit B

The Southwest 1/4 of the Northwest ¼ and the Northwest 1/4 of the Southwest 1/4 and the Southwest 1/4 of the Southwest 1/4 all of Section 36, Township 23 South, Range 36 East, Brevard County, Florida. LESS AND EXCEPT the following as described in O.R. Book 3075, Page 552, Public Records of Brevard County, Florida described as follows: A parcel of land lying in Section 36, Township 23 South, Range 36 East, Brevard County, Florida, being more particularly described as follows: A strip of land 30 feet wide lying 15 feet each side of the following described center line: Commence at the Southwest corner of Section 36, said Township and Range, thence South 89 degrees 42'13" East, along the South line of said Section 36, a distance of 1308.10 feet to the POINT OF BEGINNING.

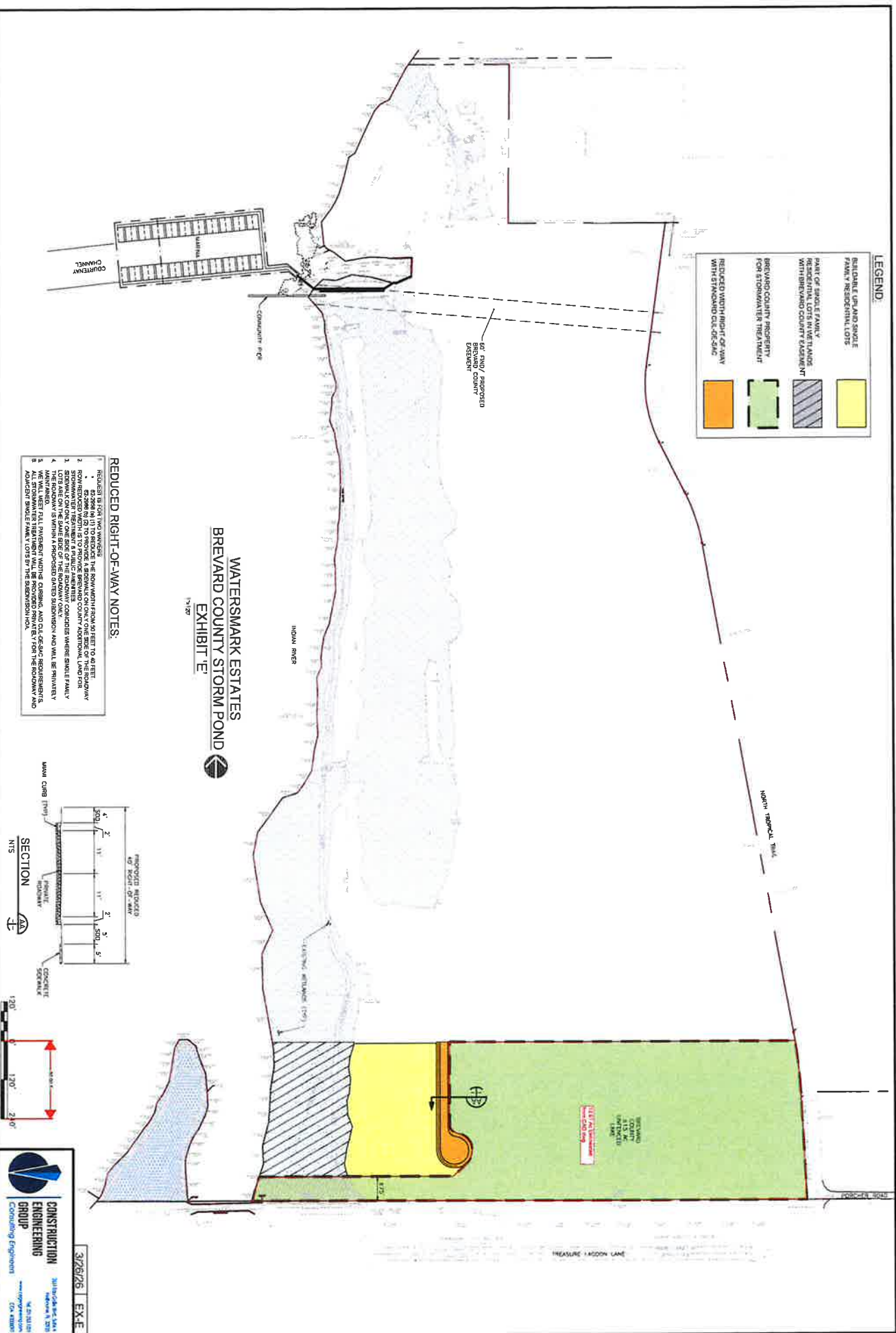
EXHIBIT C

Exhibit C

A parcel of land lying in Government Lot 4 of Section 27 and in the North 1/4 of Government Lot 1 of Section 34, both of Township 23 South, Range 36 East, Brevard County, Florida; said subject parcel being more fully described as follows:

Commence at the Northeast corner of said Section 34 as marked by a p.k. nail and washer stamped: "Fredlund & Packard" as shown on Florida Department of Natural Resources Certified Corner Record Document ("C.C.R.D.") No. 0020446; thence S.87°40'35"W., along the north line of the Northeast 1/4 of said Section 34, a distance of 2654.10 feet to the northeast corner of said Government Lot 1 as marked by a four (4) inch square concrete monument stamped "Allen Eng. LB #0266"; thence continue S.87°40'35"W., along the north line of said Government Lot 1, a distance of 1210.71 feet to the Mean Water Level Line ("M.W.L.L.") of the west bank of an existing cove of the Indian River as shown on the Mean High Water Surveys ("M.H.W.S.") No. 1880 and No. 1881 as filed in the Public Repository of the Florida Department of Environmental Protection, Bureau of Surveying and Mapping, also being the Point-of-Beginning of the lands herein described; thence departing said north line and along said M.W.L.L. of the west bank of the existing cove, the following six (6) courses to wit: S.17°16'15" E., a distance of 37.31 feet; S.31°55'58"W., a distance of 71.42 feet; S.19°38'16" W., a distance of 38.15 feet; S.11°18'40"W., a distance of 55.33 feet; S.01°07'59" E., a distance of 62.38 feet; S.13°07'34" E., a distance of 71.17 feet to the southerly bank of said cove; thence along said M.W. L.L. of said southerly bank, the following three (3) courses to wit: S.66°44'11" E., a distance of 26.45 feet; N. 89°56'13"E., a distance of 58.08 feet; N.85°09'53" E., a distance of 72.50 feet; thence departing said M.W.L.L. of the southerly bank, S.02°18'25"E., a distance of 5.29 feet to the south line of said North 1/4 of Government Lot 1 of Section 34; thence S.87°41'35" W., along said south line, a distance of 466.47 feet to the M.W.L.L. of the east bank of the Indian River as shown on said M.H.W.S. No. 1881; thence along said M.W.L.L. of the east bank of the Indian River as shown on said M.H.W.S. No. 1881 and No. 1880, the following twenty-one (21) courses to wit: N.21°07'28"E., a distance of 22.20 feet; N.24°10'39"E., a distance of 42.37 feet; N.06°26'04"E., a distance of 43.87 feet; N.38°14'03" E., a distance of 39.39 feet; N.40°27'44" E., a distance of 53.05 feet; N.36°09'40"E., a distance of 28.77 feet; N.41°16'02"E., a distance of 26.76 feet; N.33°56'00" E., a distance of 45.98 feet; N.21°53'27" E., a distance of 29.78 feet; N.55°02'16"E., a distance of 8.47 feet; N.05°24'01"E., a distance of 30.35 feet; N.14°10'33"E., a distance of 21.81 feet to the south line of said Government Lot 4 of Section 27; N.69°27'33"E., a distance of 22.83 feet; N.13°48'05"E., a distance of 35.73 feet; N.17°52'54"E., a distance of 30.97 feet; N.00°45'09"E., a distance of 49.61 feet; N.13°46'56"E., a distance of 27.87 feet; N.08°21'19"E., a distance of 13.71 feet; N.08°56'32"W., a distance of 16.43 feet; N.53°49'56"W., a distance of 18.04 feet; N.27°57'51"E., a distance of 36.64 feet to said M.W.L.L. of the west bank of the existing cove; thence along said M.W.L.L. of the west bank of the cove the following seven (7) course to wit: S.61°12'12"E., a distance of 35.18 feet; S.43°45'18" E., a distance of 31.00 feet; S.24°34'53"E., a distance of 41.78 feet; S.26°18'48"E., a distance of 40.48 feet; S.16°20'58"E., a distance of 51.52 feet; S.19°36'35"E., a distance of 39.31 feet; S.17°16'15"E., a distance of 15.44 feet to the Point-of-Beginning.

EXHIBIT D



3/26/26 EX-E

Fiscal Impact:

If approved, the Settlement Agreement will release Brevard County (General Fund) from contingent liability for pending alleged claims including purported diminution in property value, prejudgment interest, attorneys' fees, expert fees and costs of more than \$4 million. The Settlement Agreement further provides for Brevard County's acquisition of approximately 147 acres of property for stormwater outfall, stormwater storage, conservation, recreation, and other public purposes for a total of \$3 million, apportioned as follows: \$578,045 SOIRL Basin 835 Stormwater Treatment (Fund 1260-271010, FP 516647); \$487,058 SOIRL Basin 840 Stormwater Treatment (Fund 1260-271010, FP 516647); \$424,069 SOIRL Basin 827 Stormwater Treatment (Fund 1260-271010, FP 516647); \$588,000 FDEP Grant 22FRP98 West Crisafulli Road Drainage Improvements (Fund 1700-313937); \$442,828 (plus the cost of appraisal) NMI West Crisafulli/Church Street CIP (Fund 1112-260030, FP 6964202); \$480,000 from the Environmentally Endangered Lands (EEL) Program (Fund 3218, CC 340241); NMI West Crisafulli/Church Street CIP and EEL funding are subject to adjustment based on appraisal.

Requested Action:

Staff requests that the Board of County Commissioners (1) approve a tentative Settlement Agreement that, subject to Court approval, will resolve the case of Waters Mark Development Enterprises, LC v. Brevard County, Brevard County Circuit Court Case No. 05-2014-CA-041947-XXXX-XX; (2) as part of the settlement agreement and pursuant to the Bert Harris Act and as further described herein, authorize the acquisition of approximately 147 acres of property for stormwater treatment, flood mitigation, conservation, recreation, and other public purposes for a total of \$3 million as described herein; (3) authorize the Chair to execute the Settlement Agreement upon County Attorney and Risk Management approval, and authorize the Chair, County Manager, or County Attorney, as appropriate, to execute such other documents as may be necessary to finalize and effectuate the settlement and related real property acquisitions; (4) authorize the Chair to execute an amendment to FDEP Grant 22FRP98 to be spent solely on land acquisition for the drainage project, if required; (5) authorize the Chair to execute a Declaration of Restrictive Covenants that shall be recorded and run with the land for the portion of property acquired for the drainage project with FDEP grant funds; (6) approve a waiver of the EEL Land Acquisition Manual to facilitate the acquisition of a 120-acre parcel and a 2.19-acre parcel identified for preservation, conservation, and long-term management under the EEL program; and (7) authorize the County Manager to execute necessary budget amendments (BCRs).

A handwritten signature in blue ink, appearing to read "M. Smith", is located on a yellow rectangular background in the bottom right corner of the page.