



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.1.

12/21/2021

Subject:

Approval, Re: Resolution and Exchange Agreement between Brevard County and Space Coast Town Centre I, L.L.C. - District 5.

Fiscal Impact:

None; all costs associated with the Exchange Agreement to be paid by Space Coast Town Centre I, L.L.C.

Dept/Office:

Public Works Department / Land Acquisition

Requested Action:

It is requested that the Board of County Commissioners: 1) adopt and authorize the Chair to execute the attached Resolution, 2) authorize the Chair to execute the attached Exchange Agreement between Brevard County and Space Coast Town Centre I, L.L.C. (the "Developer"), and 3) authorize the Chair, or designee, to execute any and all documents required to effectuate this Exchange Agreement and obtain the applications and documents required by the agencies that will be issuing the necessary permits.

Summary Explanation and Background:

The subject property is located in Section 3, Township 28 South, Range 36 East, on the east side of St. Johns Heritage Parkway in West Melbourne.

The Board of County Commissioners, in regular session on October 26, 2021, authorized the advertisement of a Public Notice for proposed Exchange Agreement between Brevard County and the Developer, pending final negotiations, in accordance with and as required by Section 125.37, Florida Statutes. The terms of the agreement have been finalized and approved by staff. Pursuant to Florida law, the required timeframes for advertising the Exchange have been met.

Space Coast Town Center is a proposed development project of an approximate 154-acre phased, mixed-use project. The Developer is proposing an Exchange Agreement with the County for a parcel located along the east side of St. Johns' Heritage Parkway in exchange for easement rights to a new retention pond.

The Developer is the successor in interest to Parkway 192 Associates, L.L.C., a Florida limited liability company, which in turn is the successor in interest to Diversified Properties, a Florida partnership, and 192 Associates, a Florida partnership, the original owners. The County and the original owners entered into a contract dated July 9, 2013, which contained a provision that the original owners could provide additional land to relocate the 4.65-acre retention pond (County-owned parcel) and would reasonably cooperate with the County to expand or relocate the Retention Pond for surface water and stormwater treatment and/or storage purposes in accordance with the requirements identified in the County Contract. When the proposed County parcel in the

exchange was first acquired by the County for a roadway stormwater treatment pond and a discharge easement for the St. Johns Heritage Parkway at a cost of \$72,100 (part of a larger roughly 16.58-acre transaction in fee for \$876,450), the original contract contemplated the possibility, but not the requirement, that such retention and drainage use would be moved or otherwise adjusted at the expense of the prior owner or their successors. This proposed Exchange is consistent with that previously contemplated contract although today the land is considerably more valuable.

Currently, the Retention Pond is visible from and occupying frontage along the Parkway. The transfer of the County property to the Developer will allow, after the exchange, for the development of the former County property into viable commercial facilities that will increase overall tax revenue, as well as provide employment opportunities to the residents of the County. The county's maintenance expense related to the current stormwater pond is estimated to be \$2,000 annually. The County will be relieved of this ongoing maintenance obligation. The new Developer-built pond located in Tract B will increase the capacity of the existing County retention pond to account for the existing stormwater and surface water runoff from Basin G of the Parkway and account for additional volume from any expansion of the Parkway to a six-lane road resulting from the same basin.

Terms and conditions for the purposes of relocating the County retention pond, include but are not limited to, the Developer, its assigns and successors, 1) providing the County with a non-exclusive easement over an area of the Project Land running from the Parkway to and including Tract B, Plat Book 68 Page 50. For the purpose of this Easement, the obligations to service, maintain, repair and replace the Water Management System shall include, but are not limited to: (i) maintaining all infrastructure, including piping, catch basins, swales and exfiltration trenches; (ii) maintaining the Water Management System components on Tract B, including, but not limited to, the swales, the dry retention, the wet retention (the lake), perimeter of the lake (the berms) and landscaping; (iii) maintaining the Water Management System recertification, as applicable; (iv) monitoring the ground water wells and periodic sampling and reporting to the applicable governmental authority, as applicable; and (v) performing all repairs necessary to effectuate the foregoing; 2) constructing in the Easement Area the required piping and other structures sufficient in size and capacity to handle the surface water and stormwater runoff from Basin G of the Parkway (the "Stormwater Improvements"); 3) maintaining in perpetuity the Stormwater Improvements located in the Easement Area, including those Stormwater Improvements located in Tract B; 4) providing sufficient capacity in the retention pond to be located in Tract B to replace and increase the capacity of the existing Retention Pond (the "Required Capacity") to account for the existing stormwater and surface water run-off from Basin G of the Parkway, as well as any additional volume from Basin G resulting from the expansion of the Parkway to a six-lane road; 5) providing in the Easement Agreement an undertaking to maintain the Stormwater Improvements located in the Easement Area to account for existing drainage capacity from Basin G, as well as increased drainage capacity from Basin G as a result of the future road widening of St. Johns Heritage Parkway to a six-lane road, in perpetuity (collectively referred to herein as the "Easement Rights and Obligations"); and 6) creating an escrow account to ensure maintenance obligations for the Stormwater Improvements can be undertaken by the County in cases of emergency or default.

This Exchange Agreement follows the policies and procedures as set forth in Administrative Order 37.

Clerk to the Board Instructions:

Upon execution by the Chair, Public Works Department will contact the Clerk's office to make arrangements to pick up the original executed Resolution with Exhibits and two fully executed Exchange Agreements with Exhibits.

BOARD OF COUNTY COMMISSIONERS

#3596

AGENDA REVIEW SHEET

AGENDA: Resolution and Exchange Agreement Between Brevard County and
Space Coast Town Centre I, L.L.C. – District 5.

AGENCY: Public Works Department / Land Acquisition

AGENCY CONTACT: Lucy Hamelers, Land Acquisition Supervisor

CONTACT PHONE: 321-350-8336

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Lucy Hamelers, Supervisor	 _____	_____	<u>12/3/21</u>
COUNTY ATTORNEY Alex Esseeesse Assistant County Attorney	 _____	_____	<u>12/3/21</u>



December 22, 2021

M E M O R A N D U M

TO: Marc Bernath, Public Works Director


RE: Item H.1., Approval of Resolution and Exchange Agreement between Brevard County and Space Coast Town Centre I, LLC

The Board of County Commissioners, in regular session on December 21, 2021, executed and adopted Resolution No. 21-176, authorizing the exchange of County property for other real property interests owned by Space Coast Town Centre I, LLC; authorized the Chair to execute the Exchange Agreement between Brevard County and Space Coast Town Centre I, LLC; and authorized the Chair, or her designee, to execute any and all documents required to effectuate this Exchange Agreement and obtain the applications and documents required by the agencies that will be issuing the necessary permits. Enclosed are the fully-executed Resolution and two Exchange Agreements.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

Encls. (3)

RESOLUTION NO 2021 - 176

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, ("COUNTY") PURSUANT TO SECTION 125.37, FLORIDA STATUTES, AUTHORIZING THE EXCHANGE OF COUNTY PROPERTY FOR OTHER REAL PROPERTY INTERESTS OWNED BY SPACE COAST TOWN CENTRE I, L.L.C. ("DEVELOPER"); AND PROVIDING FOR AN EFFECTIVE DATE.

Whereas, the County owns that certain property of the size as identified on and as legally described on Exhibit "A" attached hereto and made a part hereof (the "County Property") that is currently used as a surface water and stormwater management tract and retention pond (the "Retention Pond") for Basin G, as defined in the permit documentation labeled "Drainage Design Documentation For ST John's Heritage Parkway (From the City of Palm Bay line to US 192)" dated March 2014 as a part of the St. Johns River Water Management District (the "S.J.R.W.M.D.") Permit No. 126163-2 (the "County Permit") consisting of approximately +/-13.37 acres ("Basin 'G'"), of the St. Johns Heritage Parkway (the "Parkway") in Brevard County, Florida; and

Whereas, the Developer is developing the Space Coast Town Center project (the "Project"), an approximately 154-acre phased, mixed-use project approved by the City Council of West Melbourne following duly noticed public hearings held on July 8, 2019 and July 16, 2019, located on lands adjacent to and immediately abutting the County Property (the "Project Land"); and

Whereas, the Developer and the County desire, in accordance with the provisions set forth in Section 125.37, Florida Statutes, to effectuate an exchange of property interests of the County Property for easement rights over the Developer's

Property in an area to be determined prior to the completion of the exchange but including an easement over the Tract B property, as defined below, for improved stormwater and surface water drainage off of the Parkway; and

Whereas, a portion of the Project Land has been platted pursuant to that certain plat titled Space Coast Town Centre East – Phase I, pursuant to the plat recorded in Plat Book 68, Page 50 of the Public Records of Brevard County, Florida (the "Plat"), which Plat includes an area identified as "Tract B" that is intended for use as stormwater management and parks and recreation purposes ("Tract B"); and

Whereas, the Developer has proposed that the Developer and the County enter into an Exchange Agreement, the form of which is attached hereto as Exhibit "B" (the "Exchange Agreement"), which incorporates as an exhibit thereto the form of an easement agreement in favor of the County (the "Easement Agreement"); and

Whereas, for purposes of relocating the Retention Pond from the County Property, the Developer, its assigns and successors, intend to: i) provide the County with the Easement Agreement providing for a non-exclusive perpetual easement over an area of the Project Land running from the Parkway to and including Tract B (the "Easement Area"); ii) construct in the Easement Area the required piping and other structures sufficient in size and capacity to handle the surface water and stormwater runoff from Basin G of the Parkway (the "Stormwater Improvements"); iii) maintain in perpetuity the Stormwater Improvements located in the Easement Area, including those Stormwater Improvements located in Tract B; iv) provide sufficient capacity in the retention pond to be located in Tract B to replace and increase the capacity of the

existing Retention Pond (the "Required Capacity") to account for the existing stormwater and surface water run-off from Basin G of the Parkway, as well as any additional volume from Basin G resulting from the expansion of the Parkway to a six-lane road; v) provide in the Easement Agreement an undertaking to maintain the Stormwater Improvements located in the Easement Area to account for existing drainage capacity from Basin G, as well as increased drainage capacity from Basin G as a result of the future road widening of St. Johns Heritage Parkway to a six-lane road, in perpetuity (collectively referred to herein as the "Easement Rights and Obligations"); and vi) create an escrow account to ensure maintenance obligations for the Stormwater Improvements can be undertaken by the County in cases of emergency or default; and

Whereas, the Developer proposes to provide the County with the Easement Rights and Obligations in exchange for the transfer by the County of the County Property to the Developer in fee simple with full rights of use and ownership by County Deed; and

Whereas, the Developer and the County desire, in accordance with the provisions set forth in Section 125.37, Florida Statutes, to effectuate an exchange of the County Property for the Easement Rights and Obligations for the purposes of and on the terms as set forth in the Exchange Agreement; and

Whereas, the County, acting through its Board of County Commissioners, finds and determines that the exchange provided for herein complies with the provisions set forth in Section 125.37, Florida Statutes; and

Whereas, the County, acting through its Board of County Commissioners, hereby finds that, upon completion and final approval from authorities having jurisdiction of the Stormwater Improvements, including, but not limited to, those in Tract B and the remainder of the Easement Area, which will have sufficient stormwater and surface water improvements to allow for increased storage capacity, the County will no longer need the County Property for County purposes, and desires to acquire the Easement Rights and Obligations, after the terms and conditions identified in the Exchange Agreement have been satisfied, which will serve the best interests of the County; and

Whereas, in lieu of the Retention Pond being visible from and occupying frontage along the Parkway, the transfer of the County Property to the Developer will allow, after the exchange, for the development of the former County Property into viable commercial facilities that will increase overall tax revenue, as well as provide employment opportunities to the residents of the County; and

Whereas, the County is willing to exchange the County Property for the Easement Rights and Obligations for the Developer, its assigns and successors, to provide for increased stormwater and surface water capacity once the Parkway is expanded to six (6) lanes and to relieve the County of responsibility to service, repair, maintain and make replacements to the Retention Pond on a regular basis in perpetuity; and

Whereas, to facilitate the effectiveness of the existing Retention Pond, the Prior Owners granted to the County that certain easement recorded in Official Records Book

7102, at Page 1082 of the Public Records of Brevard County, Florida (the "Existing Easement"); and

Whereas, once the Stormwater Improvements are operational and approved by the County, and the Easement Agreement is delivered to the County and recorded in the Public Records of Brevard County, Florida, there shall no longer be a need for the Existing Easement, and the County and the Developer intend to enter into a termination of the Existing Easement via a County deed or termination agreement reasonably acceptable to the County and the Developer; and

Whereas, the Space Coast Town Centre Property Owner's Association, Inc., a Florida not for profit corporation (the "Association"), has been established to own and/or operate certain of the common areas and facilities of the Project and is intended to be assigned and to assume the rights and obligations under the Exchange Agreement and the Easement Agreement as an Area of Common Responsibility as that term is defined in the Master Declaration of Covenants, Conditions and Restrictions, Space Coast Town Centre, West Melbourne, Florida, recorded in Official Records Book 8844, at Page 372 of the Public Records of Brevard County, Florida (the "Master Declaration"). Such Master Declaration shall be amended by the Developer or Association, and their respective assigns and successors in interest, as needed, to effectuate the purposes and objectives outlined herein; and

Whereas, notice of this exchange was properly advertised as required by Section 125.37, Florida Statutes.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY
COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:**

The foregoing recitals are incorporated herein and adopted as part of this resolution.

The parcel to be exchanged is described as follows:

See Exhibit "A" attached hereto.


The real property easement and other rights to be acquired are described in the Exchange Agreement and Easement Agreement, the forms of which are attached as Exhibit "B" hereto.

This resolution shall take effect immediately and the County Attorney is directed to prepare the necessary instruments. However, the exchange of real property and any interests therein shall not occur prior to the satisfaction by the Developer of all conditions and closing described above and pursuant to the Exchange Agreement executed between the parties on the 21 day of December, 2021.

DONE, ORDERED AND ADOPTED, in Regular Session, this 21 day of December, 2021.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Rachel Sadoff, Clerk



Kristine Zonka, Chair

As approved by the board on 12/21/2021

LOCATION MAP

Section 3, Township 28 South, Range 36 East - District: 5

PROPERTY LOCATION: East side of St. John's Heritage Parkway

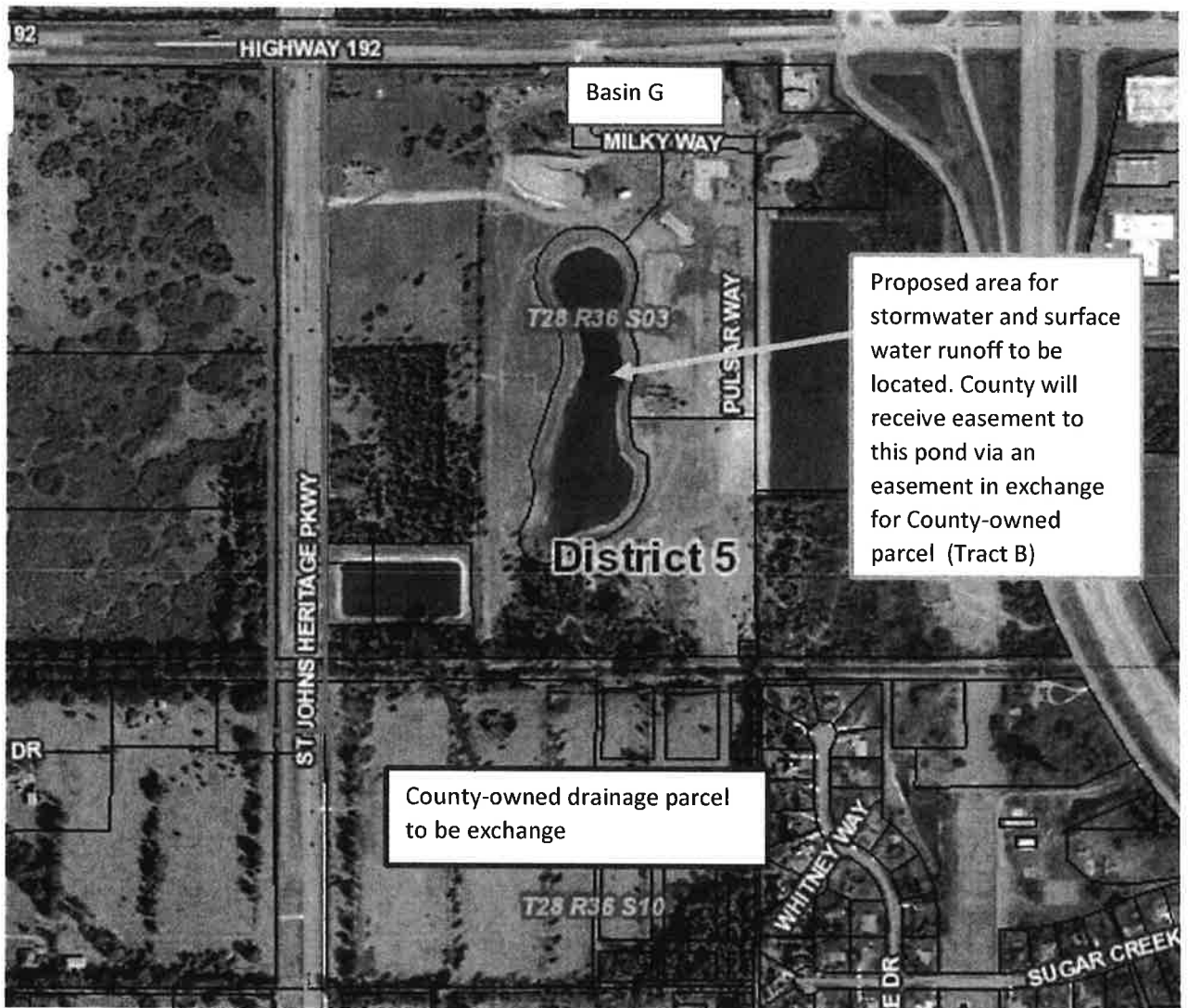


EXHIBIT "A"
LEGAL DESCRIPTION OF THE COUNTY PROPERTY

A parcel of land located within Lot 6, FLORIDA INDIAN RIVER LAND COMPANY, as recorded in Plat Book 2, Page 80, Public Records of Brevard County, Florida, and being in the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East, being described as follows: COMMENCE at the Southwest corner of the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East; thence run North 89 degrees 35 minutes 56 seconds East along the South line of said Southwest 1/4 (One-Quarter), a distance of 1322.84 feet; thence, departing said South line, run North 00 degrees 24 minutes 04 seconds West, a distance of 48.00 feet to the North Right-of-Way line of Melbourne Tillman Drainage District Canal No. 84; thence run North 89 degrees 35 minutes 56 seconds East, along said North Right-of-Way line, a distance of 210.04 feet to a point on a non-tangent curve to the right having a radius of 22,813.31 feet; thence, departing said North Right-of-Way line, from a chord bearing of North 00 degrees 50 minutes 50 seconds East, run Northerly along said curve an arc distance of 115.89 feet through a central angle of 00 degrees 17 minutes 28 seconds to the point of reverse curvature of a curve having a radius of 23,023.31 feet; thence run Northerly along said curve an arc distance of 274.51 feet through a central angle of 00 degrees 40 minutes 59 seconds to a point on said curve and the POINT OF BEGINNING; thence continue along said curve an arc distance of 83.31 feet through a central angle of 00 degrees 12 minutes 26 seconds to the end of said curve; thence run South 89 degrees 54 minutes 13 seconds East, a distance of 190.46 feet; thence South 00 degrees 12 minutes 08 seconds East, a distance of 83.31 feet; thence North 89 degrees 54 minutes 13 seconds West, a distance of 191.05 feet to the POINT OF BEGINNING.

Said lands containing 0.365 acres, more or less.

Together with:

A parcel of land located within Lot 6, FLORIDA INDIAN RIVER LAND COMPANY, as recorded in Plat Book 2, Page 80, Public Records of Brevard County, Florida, and being in the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East, being described as follows: COMMENCE at the Southwest corner of the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East; thence run North 89 degrees 35 minutes 56 seconds East along the South line of said Southwest 1/4 (One-Quarter), a distance of 1322.84 feet; thence, departing said South line, run North 00 degrees 24 minutes 04 seconds West, a distance of 48.00 feet to the North Right-of-Way line of Melbourne Tillman Drainage District Canal No. 84; thence run North 89 degrees 35 minutes 56 seconds East, along said North Right-of-Way line, a distance of 210.04

feet to a point on a non-tangent curve to the right having a radius of 22,813.31 feet; thence, departing said North Right-of-Way line, from a chord bearing of North 00 degrees 50 minutes 50 seconds East, run Northerly along said curve an arc distance of 115.89 feet through a central angle of 00 degrees 17 minutes 28 seconds to the point of reverse curvature of a curve having a radius of 23,023.31 feet; thence run Northerly along said curve an arc distance of 14.64 feet through a central angle of 00 degrees 02 minutes 11 seconds to the POINT OF BEGINNING; thence continue along said curve an arc distance of 259.87 feet through a central angle of 00 degrees 38 minutes 48 seconds to the end of said curve; thence run South 89 degrees 54 minutes 13 seconds East, a distance of 191.05 feet; thence South 00 degrees 12 minutes 08 seconds East, a distance of 258.17 feet; thence run South 89 degrees 35 minutes 56 seconds West, a distance of 194.84 feet to the POINT OF BEGINNING.

Said lands containing 1.146 acres, more or less.

Together with:

A parcel of land located within Lots 5 and 6, FLORIDA INDIAN RIVER LAND COMPANY, as recorded in Plat Book 2, Page 80, Public Records of Brevard County, Florida, and being in the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East, being described as follows: COMMENCE at the Southwest corner of the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East; thence run North 89 degrees 35 minutes 56 seconds East

along the South line of said Southwest 1/4 (One-Quarter), a distance of 1729.97 feet to the Southerly projection of the West line of the lands described in Official Records Book 5564, Page 6498, Public Records of Brevard County, Florida; thence departing said South line, run North 00 degrees 12 minutes 08 seconds West, along said Southerly projection and said West line, a distance of 178.50 feet to the POINT OF BEGINNING; thence continue North 00 degrees 12 minutes 08 seconds West, along said West line, a distance of 341.48 feet; thence departing said West line, run South 89 degrees 54 minutes 13 seconds East, a distance of 402.50 feet; thence run South 00 degrees 12 minutes 12 seconds East, a distance of 337.98 feet; thence run South 89 degrees 35 minutes 56 seconds West, a distance of 402.50 feet to the POINT OF BEGINNING.

Said lands containing 3.139 acres, more or less.

Total acreage of all 3 parcels is 4.65 acres, more or less.

EXHIBIT "B"
FORM OF EXCHANGE AGREEMENT

EXHIBIT B

EXCHANGE AGREEMENT

This Exchange Agreement (the "Agreement") is made and entered into the date of last signature below by and between Brevard County, Florida, a political subdivision of the State of Florida (the "County"), and Space Coast Town Centre I, L.L.C., a Delaware limited liability company (the "Developer"). "Party" or "Parties" means the parties to this Agreement, individually or collectively as indicated in the context by which it appears.

Whereas, the County owns that certain property described on Exhibit A attached hereto and made a part hereof (the "County Property") that is currently used as a surface water and stormwater management tract and retention pond (the "Retention Pond") for Basin G, as defined in the permit documentation labeled "Drainage Design Documentation For ST John's Heritage Parkway (From the City of Palm Bay line to US 192)" dated March 2014 as a part of the St. Johns River Water Management District (the "S.J.R.W.M.D.") Permit No. 126163-2 (the "County Permit") consisting of approximately +/-13.37 acres ("Basin G"), of the St. Johns Heritage Parkway (the "Parkway") in Brevard County, Florida; and

Whereas, the Developer is developing the Space Coast Town Center project (the "Project"), an approximately 154-acre phased, mixed-use project approved by the City Council of West Melbourne following duly noticed public hearings held on July 8, 2019 and July 16, 2019, located on lands adjacent to and immediately abutting the County Property (the "Project Land"); and

Whereas, the Project is subject to an approved development agreement, recorded on October 7, 2019 at Official Records Book 8556, Page 2570 of the Public Records of Brevard County, Florida, as may be amended from time to time (the "Development Agreement"), which sets forth the terms and conditions on which the Project is to be developed as a phased, mixed-use project, including a master development plan attached and incorporated into the Development Agreement (the "M.D.P."); and

Whereas, the M.D.P. contemplates the future inclusion of the County Property in the Project; and

Whereas, a portion of the Project Land has been platted pursuant to that certain plat titled Space Coast Town Centre East – Phase I, pursuant to the plat recorded in Plat Book 68, Page 50 of the Public Records of Brevard County, Florida (the "Plat"), which Plat includes an area identified as "Tract B" that is intended for use as stormwater management and parks and recreation purposes ("Tract B"); and

Whereas, the Developer is the successor in interest to Parkway 192 Associates, L.L.C., a Florida limited liability company ("Parkway 192 Associates"), which in turn is the successor in interest to Diversified Properties, a Florida partnership, and 192 Associates, a Florida partnership (the "Original Owners"); and

Whereas, the County and the Original Owners entered into that certain Contract dated July 9, 2013 that provided for the sale by the Original Owners and the purchase by the County of certain lands for the Parkway, including the County Property (the "County Contract"); and

Whereas, Paragraph 5.c. of the Addendum to the County Contract provided that the Original Owners, or their successors and assigns, could provide additional land to relocate the Retention Pond and would reasonably cooperate with the County to expand or relocate the Retention Pond for surface water and stormwater treatment and/or storage purposes in accordance with the requirements identified in the County Contract; and

Whereas, for purposes of relocating the Retention Pond from the County Property, the Developer, its assigns and successors, intend to: i) provide the County with an easement agreement in substantial form as Exhibit B attached hereto and made a part hereof (the "Easement Agreement") providing for a non-exclusive perpetual easement over an area of the Project Land running from the Parkway to and including Tract B (the "Easement Area"); ii) construct in the Easement Area the required piping and other structures sufficient in size and capacity to handle the surface water and stormwater runoff from Basin G of the Parkway (the "Stormwater Improvements"); iii) maintain in perpetuity the Stormwater Improvements located in the Easement Area, including those Stormwater Improvements located in Tract B; iv) provide sufficient capacity in the retention pond to be located in Tract B to replace and increase the capacity of the existing Retention Pond (the "Required Capacity") to account for the existing stormwater and surface water run-off from Basin G of the Parkway, as well as any additional volume from Basin G resulting from the expansion of the Parkway to a six-lane road; v) provide in the Easement Agreement an undertaking to maintain the Stormwater Improvements located in the Easement Area to account for existing drainage capacity from Basin G, as well as increased drainage capacity from Basin G as a result of the future road widening of St. Johns Heritage Parkway to a six-lane road, in perpetuity (collectively referred to herein as the "Easement Rights and Obligations"); and vi) create an escrow account to ensure maintenance obligations for the Stormwater Improvements can be undertaken by the County in cases of emergency or default; and

Whereas, for purposes of clarification, the Stormwater Improvements do not include any improvements currently or in the future installed or constructed by the County, or its successors and assigns, within the right-of-way of the Parkway (the "Parkway Improvements") for the collection or diversion of surface water and stormwater from the Parkway to the

Stormwater Improvements located in the Easement Area, which Parkway Improvements shall remain the responsibility of the County, and its successors and assigns, as the owner of the Parkway or other appropriate party by agreement; and

Whereas, the Developer proposes to provide the County with the Easement Rights and Obligations in exchange for the transfer by the County of the County Property to the Developer in fee simple with full rights of use and ownership by County Deed; and

Whereas, the Developer and the County desire to effectuate an exchange of the County Property for the Easement Rights and Obligations for the purposes of and on the terms as set forth herein; and

Whereas, the Developer and the County desire, in accordance with the provisions set forth in Section 125.37, Florida Statutes, to effectuate an exchange of the County Property for the Easement Rights and Obligations for the purposes of and on the terms as set forth herein; and

Whereas, the County, acting through its Board of County Commissioners, has found and determined that the exchange provided for herein complies with the County Contract and provides for a fair and equitable exchange of the County Property for the Easement Rights and Obligations; and

Whereas, the County, acting through its Board of County Commissioners, has found and determined that, even if the exchange provided for herein were not to comply with the County Contract, the County may and is authorized to effectuate such an exchange pursuant to the provisions set forth in Section 125.37, Florida Statutes, without competitive bidding or solicitation, irrespective of any related provisions in the County Charter or Code of Ordinances; and

Whereas, the County, acting through its Board of County Commissioners, hereby finds that, upon completion of the Stormwater Improvements, including, but not limited to, those in Tract B and the remainder of the Easement Area, which will have sufficient stormwater and surface water improvements to allow for the storage capacity required herein, the County will no longer need the County Property for County purposes, and that such an exchange will be in the best interest of the County; and

Whereas, in lieu of the Retention Pond being visible from and occupying frontage along the Parkway, the transfer of the County Property to the Developer will allow, after the exchange, for the development of the former County Property into viable commercial facilities that will increase overall tax revenue, as well as provide employment opportunities to the residents of the County; and

Whereas, the County is willing to exchange the County Property for the Easement Rights and Obligations in compliance with the County Contract and for the Developer, its assigns and successors, to relieve the County of responsibility to service, repair, maintain and make replacements to the Retention Pond on a regular basis in perpetuity; and

Whereas, the County, acting through its Board of County Commissioners, hereby finds that, upon completion and final approval from authorities having jurisdiction of the Stormwater Improvements in the Easement Area, the County will no longer need the County Property for County purposes and desires to acquire the Easement Rights and Obligations, after the terms and conditions identified herein have been satisfied, which will serve the best interests of the County; and

Whereas, to facilitate the effectiveness of the existing Retention Pond, the Prior Owners granted to the County that certain easement recorded in Official Records Book 7102, at Page 1082 of the Public Records of Brevard County, Florida (the "Existing Easement"); and

Whereas, once the Stormwater Improvements are operational and approved by the County, and the Easement Agreement is delivered to the County and recorded in the Public Records of Brevard County, Florida, there shall no longer be a need for the Existing Easement, and the County and the Developer intend to enter into a termination of the Existing Easement via a County deed or termination agreement reasonably acceptable to the County and the Developer; and

Whereas, the Space Coast Town Centre Property Owner's Association, Inc., a Florida not for profit corporation (the "Association"), has been established to own and/or operate certain of the common areas and facilities of the Project and is intended to be assigned and to assume the rights and obligations under this Agreement and the Easement Agreement as an Area of Common Responsibility as that term is defined in the Master Declaration of Covenants, Conditions and Restrictions, Space Coast Town Centre, West Melbourne, Florida, recorded in Official Records Book 8844, at Page 372 of the Public Records of Brevard County, Florida (the "Master Declaration"). Such Master Declaration shall be amended by the Developer or Association, and their respective assigns and successors in interest, as needed, to effectuate the purposes and objectives outlined herein.

Now, therefore, in consideration of the promises, covenants and conditions set forth in this Agreement, as set forth below, Developer, and its successors and assigns, and the County hereby agree as follows:

1. Recitals

The recitals set forth above are incorporated by reference in this Agreement and the matters set forth in those recitals are true representations and findings agreed upon by both Parties.

2. Exchange, Consideration and Conditions

As consideration for this Agreement, Developer agrees to perform the conditions set forth herein, and the County and Developer agree to exchange the County Property for the Easement Rights and Obligations, and the County and Developer agree to terminate the Existing Easement subject to the satisfaction of the Developer's Obligations and County's Obligations set forth below.

Developer's Obligations

- a. The closing of the exchange of the County Property and the Easement Rights and Obligations shall be conditioned upon satisfaction of the following conditions by the Developer and/or the Association, any of which may be waived by the County in its sole discretion:
 - (1) Order and deliver to the County, surveys, sketches, and legal descriptions of the Easement Area (less the portion of Tract B identified in the recorded Plat) and the County Property at Developer's sole cost.
 - (2) Order and deliver to the County, surveys, sketches, and legal descriptions of the Existing Easement at Developer's sole cost.
 - (3) Engage appropriate engineers and other consultants to design, prosecute and obtain all required permits and approvals from any and all authorities having jurisdiction, including, but not limited to, (a) the S.J.R.W.M.D.; (b) the Melbourne-Tillman Water Control District; (c) the County; and (d) the City of West Melbourne to allow for the closure and filling of the Retention Pond and relocation and use of the stormwater infrastructure and storage facility from the County Property to the Easement Area at Developer's sole cost; including any required amendments to or replacements of the County Permit and/or S.J.R.W.M.D. Permit No. 108610-2 (the "Developer Permit"), as needed.
 - (4) Construct the Stormwater Improvements in the Easement Area at Developer's sole cost and obtain a Certificate of Completion or other appropriate evidence of satisfactory completion of the permitted work from the authority(ies) having jurisdiction.
 - (5) Provide the County an as-built survey of the newly constructed Stormwater Improvements in the Easement Area. The Developer understands that the St. Johns Heritage Parkway will be improved to a six-lane road and, as a result, the

Stormwater Improvements shall accommodate such anticipated increased surface water and stormwater volume.

- (6) Obtain the consent and joinder to the Easement Agreement of all parties holding a mortgage lien encumbering all or any portion of the Easement Area.
 - (7) Prepare all required documentation for the closing of the exchange of the County Property for the Easement Rights and Obligations.
 - (8) Provide proof to the County that the individual authorized to sign on the Developer's behalf has received permission and been delegated authority in accordance with the Developer's Operating Agreement and Articles of Organization.
 - (9) Bear all closing costs, recording costs, and costs for publishing the required statutory notice of the exchange, as well as the preparation and recording of the documents necessary to complete the exchange.
 - (10) Update and modify any stormwater permit(s), as necessary, for any authority(ies) having jurisdiction for the St. Johns Heritage Parkway expansion to six (6) lanes to be located in Basin G. This provision is partial consideration for this Exchange and shall survive closing.
 - (11) Developer and/or the Association, and its assigns and successors in interest, understand that the St. Johns Heritage Parkway will be expanded to six (6) lanes and shall not unreasonably object to the expansion of the St. Johns Heritage Parkway to six (6) lanes. This provision is partial consideration for this Exchange and shall survive closing.
 - (12) Establish an escrow account in accordance with Section 9 of the Easement Agreement.
- b. Prior to Closing, Developer and its authorized agents and representatives shall be entitled to enter the County Property at reasonable times upon reasonable notice, and in a manner that does not interfere with the County's operation of the Retention Pond, for the purpose of inspecting the County Property and the Retention Pond.
- c. At closing of the exchange, the Developer will execute and/or deliver or cause to be delivered to the County the following closing documents:
- (1) The Easement Agreement creating the easement over the Easement Area and the other rights and obligations identified therein subject only to matters either consented to or not timely objected to by the County pursuant to paragraph 4 below and containing the consent and joinder of all parties holding a mortgage lien encumbering all or any portion of the Easement Area.

- (2) An as-built survey of the Stormwater Improvements constructed in the Easement Area and those located within Tract B prior to obtaining Certificate(s) of Completion.
- (3) An appropriate and customary mechanic's lien and gap affidavit in form reasonably required by County's title company.
- (4) A mutually acceptable termination agreement of the Existing Easement.
- (5) A closing statement and such other documents as are reasonably necessary to effectuate this transaction.

County's Obligations

- a. The closing of the exchange of the County Property and the Easement Rights and Obligations shall be conditioned upon satisfaction of the following conditions by the County, any of which may be waived by the Developer in its reasonable discretion:
 - (1) Deliver to the Developer copies of any surveys, title policies, tests, studies, engineering plans and maintenance records in the County's possession that relate to the County Property.
 - (2) Deliver to the Developer copies of all permit applications, submittals and final permits related to the use of the County Property for surface water and stormwater treatment and/or storage purposes in the County's possession.
- b. The County shall reasonably and timely cooperate with Developer and execute any necessary documents required by agencies for Developer to acquire permits from any non-County agency that are necessary for the relocation and operation of the Retention Pond to the Easement Area. The County's approval of this Agreement shall constitute the authority for the Chair, or designee, to execute any and all documents required to effectuate this exchange and obtain the applications and documents required by the agencies that will be issuing the necessary permits. The County's approval of this Agreement shall also constitute authorization for Developer to apply for any land use, zoning, site plan or other approval required to utilize the County Property for commercial use, but shall not guarantee approval of such application.
- c. Plans and Approvals. Within 30 business days after the date of last signature below (the "Effective Date"), the Developer shall deliver to the County proposed engineered plans and specifications for the Stormwater Improvements, stormwater calculations, and location of the Easement Area ("Developer's Initial Plans"). Within fifteen (15) business days following receipt of the Developer's Initial Plans, the County shall review same and notify the Developer whether it approves or

disapproves of the Developer's Initial Plans, which approval shall not be unreasonably withheld, conditioned or delayed. The County can request, and will not be unreasonably denied, any extension of time not to exceed five (5) business days in order to review the Developer's Initial Plans. If the County disapproves any portion of the Developer's Initial Plans, such disapproval shall be in writing and shall specify the basis for disapproval in reasonable detail. Following its receipt of the County's objections, the Developer shall have twenty (20) business days to resubmit to the County revised Developer's Initial Plans consistent with the reasonable objections of the County. The Developer's Initial Plans, as approved, are referred to in this Agreement as the "Developer's Plans." With respect to any surveys, as-built surveys, sketches, legal descriptions, draft closing documents and other materials required to be delivered by Developer to the County hereunder, the County shall review same and, within fifteen (15) business days following receipt of each of such materials, notify the Developer whether it approves or disapproves of such materials, which approval shall not be unreasonably withheld, conditioned or delayed.

- d. Prior to Closing, County and its authorized agents and representatives shall be entitled to enter the Easement Area at reasonable times upon reasonable notice (except in an emergency, when no notice is required) and in a manner that does not interfere with Developer's business operations, for the purpose of inspecting the Easement Area and the Stormwater Improvements.
- e. At closing of the exchange, the County will execute and/or deliver or cause to be delivered to Developer the following closing documents:
 - (1) a County deed conveying the County Property to Developer subject only to matters either consented to or not timely objected to by Developer pursuant to paragraph 4 and providing that the County releases all phosphates, metals, minerals and petroleum reservations, if any, it may have pursuant to Section 270.11, Florida Statutes.
 - (2) an assignment, without representation or warranty, of any licenses and permits, intangible property, warranties, and plans and specifications concerning the County Property.
 - (3) an appropriate and customary mechanic's lien and gap affidavit in form reasonably required by Developer's title company.
 - (4) an affidavit of exclusive possession to the County Property.

- (5) Proof of publication of the notice required under Section 125.37, Florida Statutes, or proof of compliance with the standards and procedures as may have been prescribed under Section 125.37, Florida Statutes.
- (6) an affidavit satisfactory to the title company executed by an appropriate County Official confirming that the applicable requirements of Chapter 125, Florida Statutes, as to the exchange have been satisfied.
- (7) A mutually acceptable termination of the Existing Easement via a County deed or termination agreement.
- (8) A closing statement and such other documents as are reasonably necessary to effectuate this transaction.

3. Title Evidence and Insurance.

Developer shall provide marketable title for the easement rights transferred to County by the form of the Easement Agreement attached hereto, in substantial form, as Exhibit B. At least twenty (20) calendar days prior to Closing Date (as defined below), a title insurance commitment for the Easement Area shall be issued by a Florida licensed title insurer with the County as the insured, with legible copies of instruments listed as exceptions attached thereto (the "County Title Commitment") and, after Closing, an Easement Owner's Policy of title insurance (the "County's Owner's Policy") shall be obtained and delivered to the County. The Developer shall designate the Closing Agent and pay for the County's Owner's Policy and premium charges due in connection therewith, including charges for closing services.

County shall provide marketable title to the County Property which shall be conveyed to the Developer by County deed. At least twenty (20) calendar days prior to Closing Date, a title insurance commitment for the County Property may be obtained by the Developer, at Developer's sole expense, which shall be issued by a Florida licensed title insurer with the Developer as the insured, with legible copies of instruments listed as exceptions attached thereto (the "Developer Title Commitment") and, after Closing, an Owner's Policy of title insurance (the "Developer's Owner's Policy") shall be obtained and delivered to the Developer. The Developer shall designate the Closing Agent and pay for Developer's Owner's Policy and premium charges due in connection therewith, including charges for closing services.

4. Title Examination

The County and the Developer shall each have ten (10) business days after receipt of the respective Title Commitments to examine them and notify the other Party in writing specifying defect(s), if any, that render title unmarketable. If the County Title Commitment is delivered to the County less than ten (10) business days prior to Closing Date, the County may extend Closing for up to five (5) business days after date of receipt to examine same in accordance with

this section. Each Party shall have thirty (30) calendar days ("Cure Period") after receipt of the other Party's notice to take reasonable diligent efforts to remove defects. If either Party fails to so notify the other Party, such Party shall be deemed to have accepted title as it then is. If either party cures the noticed defects within the Cure Period, such Party will deliver written notice to the other Party (with proof of cure acceptable to the receiving Party and their attorney) and the Parties will close this exchange on the Closing Date (or if Closing Date has passed, within ten (10) business days after the receiving Party's receipt of the other Party's notice). If either Party is unable to cure defects within the Cure Period, then the Party that gave notice of the title defect may, within five (5) business days after expiration of Cure Period, deliver written notice to the other Party:

- extending the Cure Period for a specified period not to exceed one hundred twenty (120) calendar days within which the noticed Party shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or
- elect to accept title with existing defects and close this exchange on the Closing Date (or if the Closing Date has passed, within the earlier of ten (10) business days after end of the Extended Cure Period or the other Party's notice), or
- elect to terminate this Agreement, thereby releasing the County and Developer from all further obligations under this Agreement. If after reasonable diligent effort either Party is unable to timely cure defects and the other Party does not waive the defects, this Agreement shall terminate, thereby releasing the County and Developer from all further obligations under this Agreement.

On or before Closing, Developer shall cause the Title Commitments to be updated and if such updates should reveal any matter rendering title to the Easement Area or the County Property unmarketable and not disclosed in the original Title Commitments and not caused by, through or under the Developer as to the County Property or the County as to the Easement Area, the affected Party may notify the other Party of the new defect. Each Party shall have ten (10) calendar days after receipt of the other Party's notice to take reasonable diligent efforts to remove the new defects. If the notified Party is unable to cure the new defect within such ten (10) day period, then the Party that gave notice of the new title defect may, within five (5) business days after expiration of such ten (10) day period, deliver written notice to the other Party electing one of the options provided above for uncured defects identified during the initial title review period.

5. Closing

The closing of the exchange (the "Closing Date") shall take place within fifteen (15) calendar days after completion by the Developer of the requirements identified under this Agreement, including Paragraph 2(a) below the heading "Developer Requirements".

6. Closing Documents and Costs

Developer shall, at or prior to Closing, execute and deliver, as applicable, the documents identified in Section 2 above and County shall, at or prior to Closing, execute and deliver, as applicable, the documents identified in Section 2 above. Developer shall furnish to the County and pay for one or more surveys of the County Property and the Easement Area (less the portion of Tract B identified in the recorded Plat), which surveys shall also identify any easements or other encumbrances encumbering the County Property or the Easement Area. Said surveys shall be subject to review and approval by the County and County survey staff. Developer shall be responsible for the preparation of all closing documents. Developer shall also pay all closing costs and the costs of the premiums for the title insurance policies, including gap insurance, insuring the County's interest in the Easement Area and the Developer's interest in the County Property.

7. Representations

Developer hereby warrants and represents to the County that it is a Delaware limited liability company and not a "foreign person" as defined by F.I.R.P.T.A., Section 1445 of the Internal Revenue Code.

Developer hereby represents and warrants to the County that, during its period of ownership of the Easement Area, it has not received any citation, notice of violation or other written communication from any governmental authority or other third party stating that Hazardous Materials (as defined below) may exist on or under the Easement Area, and to the best of the knowledge of Developer there are no existing violations of any Environmental Laws (as defined below) with respect to the Easement Area and there are no underground or aboveground storage tanks on the Easement Area.

County hereby represents and warrants to Developer that, during its period of ownership of the County Property, it has not received any citation, notice of violation or other written communication from any governmental authority or other third party stating that Hazardous Materials may exist on or under the County Property, and to the best of the knowledge of the County there are no existing violations of any Environmental Laws with respect to the County Property and there are no underground or aboveground storage tanks on the County Property.

For purposes of this Agreement, the term "Environmental Laws" shall mean all laws, ordinances, statutes, codes, rules, regulations, agreements, judgments, orders, and decrees, now or hereafter enacted, promulgated, or amended, of the United States, the states, the counties, the cities, or any other political subdivisions in which the County Property and the Easement Area are located, regulating or concerning the release of Hazardous Materials (as

defined herein) into the environment (including, without limitation, ambient air, surface water, ground water or land or soil).

For the purposes of this Agreement, the term "Hazardous Materials" shall mean any substance which is or contains (i) any "hazardous substance" as now or hereafter defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.) ("C.E.R.C.L.A.") or any regulations promulgated under or pursuant to CERCLA; (ii) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. §6901 et. seq.) ("R.C.R.A.") or regulations promulgated under or pursuant to RCRA; (iii) any substance regulated by the Toxic Substances Control Act (15 U.S.C. §2601 et seq.); (iv) gasoline, diesel fuel, or other petroleum hydrocarbons; and (v) any additional substances or materials which are now or hereafter regulated or considered to be hazardous or toxic under Environmental Laws (as hereinafter defined). The term Hazardous Materials shall not include customary cleansers and solvents or other substances in quantities typically used in the ordinary course of business.

8. Maintenance and Defaults Rights.

Developer agrees that the County shall have the rights provided in the attached Easement Agreement in the event of a default by Developer, its successors or assigns, to maintain the drainage facilities as required in the Easement Agreement after Closing.

Developer, or its assigns or successors in interest, and the Association, agree as follows:

- a. to maintain the new retention pond in perpetuity for stormwater collection and drainage purposes, subject to the Easement Agreement. Such maintenance shall be to County and State of Florida Department of Transportation ("F.D.O.T.") standards and shall include replacement of underdrains, pipes, or reconstruction of any associated improvements as necessary.
- b. to notify the County in writing thirty (30) days prior to any non-routine replacements or reconstruction work and obtain any necessary permits or approvals as may be required.
- c. that in the event the Developer, its assigns or successors, or the Association defaults on its maintenance obligation(s), after delivering thirty (30) days written notice of default, except in an emergency when no notice is required, and right to cure to Developer and the Association, the County may invoice the Developer or the Association, as applicable, for the reasonable cost to maintain the Stormwater Improvements together with the reasonable administrative costs to the County (any such invoice being referred to herein as a "County Invoice"). Upon such time as the Developer assigns the obligations under this Agreement

and the Easement Agreement to the Association, the County may invoice the Association (and not the Developer) for such costs and expenses.

- d. the maintenance of the Stormwater Improvements is being agreed to by the Parties as partial consideration for the exchange provided for in this Agreement.
- e. Delinquent amounts due for the cost to cure maintenance deficiencies by Developer, or its successors or assigns, or the Association shall become due and payable to the County at the Office of the County Manager thirty (30) calendar days after the County Invoice for such costs is delivered to the Developer or Association, as applicable. If the amount is not paid or the lack of maintenance is not cured within thirty (30) calendar days, the County may enforce its right to payment for such invoice by action at law and, thereafter, the amount due to satisfy the County Invoice shall bear interest at the rate of two percent above the prime interest rate per annum, as determined by the Wall Street Journal Prime Rate.
- f. Collection of any such County Invoice, including interest, penalties, and reasonable attorney's fees, may be made by the Board of County Commissioners by instituting proceedings in a court with jurisdiction as provided by law provided that the County agrees that the County shall not seek to enforce the rights to payment by legal action if the Association confirms in writing to the County within thirty (30) days of the receipt of the County Invoice that the Association will pay the County its demanded cost and expenses within the Association's then current fiscal year or within the first ninety (90) days of the start of the Association's next following fiscal year (such written notice being referred to herein as an "Association Payment Notice").

In order to secure the obligation of the Developer, and the Association after the Developer assigns the obligations under the Easement Agreement to the Association, to reimburse the County for any costs that may be incurred by the County should it exercise its rights under the Easement Agreement to maintain any portion of the Water Management System, on the Closing Date, the Developer shall deliver to the County an amount equal to ten percent (10%) of the actual costs to build and install the Water Management System, exclusive of the costs to construct the portion of the Water Management System located in Tract B, to hold in escrow during the existence of the Easement Agreement (the "Escrowed Funds"). The County shall be entitled to draw upon the Escrowed Funds, including interest, pursuant to the procedure identified in Section 9.b. of the Easement Agreement. In lieu of the escrow account process provided for in Section 9.b. of the Easement Agreement, the Developer and the Association may

request the County, in its sole discretion, adopt and utilize the lien process outlined in Section 9.c. of the Easement Agreement.

- g. The maintenance obligation and collection rights provided for in this Section 8 shall survive closing.

9. Licensing

All contractors, subcontractors, consultants, sub-consultants, engineers, or other required professionals employed or contracted by Developer to perform the requirements of this Agreement, including any and all future maintenance obligations herein identified, shall be properly licensed as required by the State of Florida and the County. This provision shall survive closing.

10. Assignability

This Agreement and Developer's obligations hereunder may be assigned by Developer to the Association, or to any affiliated entity or to any successor in interest to Developer, with advance written notice to the County. Notice shall be provided by Developer to the County within fifteen (15) calendar days of any such assignment. Such notice shall include contact information for the assignee. Developer shall also be permitted to identify a designee to be named as the grantee on the deed delivered by the County at closing for the County Property. Following the closing of the exchange, all provisions surviving closing shall be binding upon all such successors and assigns and Developer shall be released from any continuing obligations under this Agreement provided the assignee assumes the continuing obligations under this Agreement. Notwithstanding the above, the County agrees that the Developer may assign the rights and obligations under the Easement Agreement to the Association without prior notice or approval, provided the Association assumes the continuing obligations under this Agreement. Proof of the Association's assumption of the continuing obligations identified herein shall be provided to the County. This provision shall also survive closing.

Upon transfer of the ownership or maintenance obligations of the Parkway by the County to another governmental entity, the County may assign its rights under this Agreement to such party without the prior approval of the Developer, or its assigns or successors in interest. However, the County shall provide written notice of such assignment to the Developer, or its assigns or successors in interest.

11. Attorney's Fees

If any legal action is commenced to enforce or interpret any provision of this Agreement other than the maintenance provisions outlined in Section 8 above, each Party shall bear their own

legal fees, costs, and expenses of suit, including, without limitation, attorney, paralegal, and expert fees. This provision shall survive closing.

12. Venue

Venue for any legal action by any Party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida and **ANY TRIAL SHALL BE NON-JURY.**

13. Insurance

Developer, or their successors and assigns, and any contractor, sub-contractor, consultant or sub-consultant retained by Developer to provide services necessary to fulfill the terms of this Agreement, including, but not limited to, all maintenance activities required by this Agreement, shall have in place the following minimum levels of insurance:

- **General Liability Insurance:** General Liability Insurance issued by responsible insurance companies and in a form acceptable to the County, with combined single limits of not less than One Million Dollars for Bodily Injury and Property Damage per occurrence.
- **Automobile Liability Insurance:** Automobile Liability coverage shall be in the minimum amount of One Million Dollars combined single limits for Bodily Injury and Property Damage per accident.
- **Workers' Compensation Coverage:** Full and complete Workers' Compensation Coverage, as required by Florida law, shall be provided.
- **Insurance Certificates:** Developers shall provide certificates of insurance to the County demonstrating that the aforementioned insurance requirements have been met under this Agreement and upon insurance renewal annually. Insurance carriers providing coverage required herein must be licensed or authorized to conduct business in the State of Florida and must possess A.M. Best's Financial Strength Rating of A- Class VIII or better. Said Liability Policies shall provide that the County be an additional insured for the General Liability and Auto Liability insurance. The County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) calendar days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the County and licensed and authorized under the laws of the State of Florida.
- After the assignment of the rights and obligations under this Agreement and/or the Easement Agreement by Developer to the Association and the assumption thereof by the Association, the Association shall maintain the Insurance Requirements and Developer shall no longer be required to carry such insurance.

14. Indemnification

- a. Until the assignment of the rights and obligations under this Agreement by Developer to the Association and the assumption thereof by the Association, Developer, and its successors and assigns, shall indemnify and hold harmless the County and its agents, officers, and employees (the "County Parties") from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of its work under this Agreement, where such claim, damage, loss, or expense is caused, in whole or in part, by the act or omission of Developer, or anyone directly or indirectly employed by Developer, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified thereunder. In any and all claims against any of the County Parties, the Developer's obligations, and the obligations of anyone directly or indirectly employed by or anyone for whose acts Developer may be liable, under this paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for the custodial contractor, under workers' compensation acts, or other related policies of insurance. Upon the assignment of the rights and obligations under this Agreement by the Developer to the Association, the Association shall indemnify and hold harmless the County Parties from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of its work under this Agreement, where such claim, damage, loss, or expense is caused, in whole or in part, by the act or omission of the Association, or anyone directly or indirectly employed by the Association, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified thereunder and Developer shall no longer be obligated to indemnify or hold harmless County as otherwise provided above. In any and all claims against any of the County Parties, the Association's obligations, and the obligations of anyone directly or indirectly employed by or anyone for whose acts the Association may be liable, under this paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for the custodial contractor, under workers' compensation acts, or other related policies of insurance.

The Parties acknowledge specific consideration has been exchanged for this provision. Nothing contained in this paragraph shall be construed as a waiver of the County's right to the protections of and/or limitations on damages afforded by sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on County's potential liability under state or federal law. This indemnification shall survive the termination of this Agreement. This indemnification shall apply to maintenance

activities included in Section 8 above. Nothing in this Agreement shall be interpreted to create any causes of action for any third parties not a party to this Agreement.

- b. Developer, and its successors and assigns, agree to include the following indemnification in all contracts with contractors, subcontractors, consultants, or subconsultants who perform work in connection with this Agreement, including any future maintenance activities required in paragraph 8:

"To the fullest extent permitted by law, the contractor shall indemnify and hold harmless Brevard County, Florida, and its officers, agents, and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct or omission of the contractor and persons employed or utilized by the contractor in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the County's sovereign immunity. Specific consideration has been given for this provision."This provision shall survive closing.

15. Independent Contractor

Nothing in this Agreement shall be interpreted or construed to constitute Developer, or any of its agents or employees, or any contractors, subcontractors, consultants, sub-consultants retained by Developer to be the agent, employee or representative of the County.

16. Right to Audit Records

In performance of this Agreement, Developer shall keep books, records, and accounts of all activities related to this Agreement in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by Developer in conjunction with this Agreement, and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the County. Developer shall retain all documents, books and records for a period of five years after termination of this Agreement, unless such records are exempt from Section 24(a) of Article I of the State Constitution and Chapter 119, Florida Statutes. It will be Developer's duty to identify any information in records created by Developer which it deems is exempt under Florida or federal law and identify the statute number which requires the information be held exempt. All records or documents created by or provided to Developer by the County in connection with this Agreement are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to the County in a format compatible with the information technology systems of the County. Developer shall ensure that public records which are exempt or confidential and exempt from public records disclosure

requirements are not disclosed, except as authorized by law, for the duration of the Agreement and following termination of the Agreement if Developer does not transfer the records to the public agency. Developer shall specifically identify what statutory provisions apply to records or information that is claimed to be confidential and/or exempt from disclosure. Developer shall hire attorneys and indemnify the County in any cause of action brought in which the validity of such confidential and/or exempt status is challenged. In lieu of retaining all public records upon termination of this Agreement, Developer may transfer, at no cost to the County, all public records in possession of Developer. If Developer transfers all public records to the County upon termination of the Agreement, Developer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. Upon the assignment of the Developer's rights and obligations under this Agreement and under the Easement Agreement to the Association, the Association shall be responsible for the obligations under this paragraph and the Developer shall be released from further obligation under this paragraph except that the Developer shall have the continuing obligations provided above as to the books, records, and accounts generated or used by the Developer prior to the assignment to the Association unless the Developer transfers such books, records, and accounts to the Association for compliance with this paragraph.

17. Public Records

Pursuant to Section 119.0701, Florida Statutes, a request to inspect or copy public records relating to this Agreement must be made directly to the County. If the County does not possess the requested records, the County shall immediately notify Developer of the request and Developer must provide the records to the County or allow the records to be inspected or copied within twenty-four hours (not including weekends and legal holidays) of the request so the County can comply with the requirements of Section 119.07, Florida Statutes. Developer may also provide a cost estimate to produce the requested documents consistent with the policy set forth in Brevard County Administrative Order-47, incorporated herein by this reference. A copy of Administrative Order-47 is available upon request from the County's public records custodian designated below.

If Developer fails to provide the requested public records to the County within a reasonable time, Developer may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties. Developer's failure to comply with public records requests is considered a material breach of this Agreement and grounds for termination.

Should the County face any legal action to enforce inspection or production of the records within Developer's possession and control, Developer agrees to indemnify the County for all damages and expenses, including attorney's fees and costs. Developer shall hire and

compensate attorney(s) to represent Developer and County in defending such action. Developer shall pay all costs to defend such action and any costs and attorney's fees awarded pursuant to Section 119.12, Florida Statutes.

Upon the assignment of the Developer's rights and obligations under this Agreement and under the Easement Agreement to the Association, the Association shall be responsible for the obligations under this paragraph and the Developer shall be released from further obligation under this paragraph except that the Developer shall have the continuing obligations provided above as to the records generated or used by the Developer prior to the assignment to the Association unless the Developer transfers such records to the Association for compliance with this paragraph.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS:

ROBERT HENDRICKS 321-617-7202

robert.hendricks@brevardfl.gov

2725 Judge Fran Jamieson Way, Suite A-201

Viera, FL 32940

18. Notice

Notice shall be provided to the Parties as follows:

- County: Public Works, c/o Public Works Director, 2725 Judge Fran Jamieson Way, Viera, FL 32940
- Developer: Space Coast Town Centre I, L.L.C., 7485 Fairway Drive, Suite 430, Miami Lakes, FL 33014, Attention Mr. Robert Gorlow

19. Entirety

This Agreement represents the understanding and agreement of the Parties in its entirety. There shall be no amendments to the Agreement unless such amendments are in writing and signed by both Parties. This Agreement shall not be recorded in the Public Records of Brevard County, Florida until closing, at which point the Easement Agreement shall be recorded in the Public Records of Brevard County at the Developer's sole expense.

20. Severability

In the event any provision of this Agreement is declared or determined to be unlawful, invalid, or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of the Agreement. Each provision of the Agreement is deemed to be separate and severable from each other provision.

21. Effective Date

This Agreement shall take effect upon date of execution by the last Party to the Agreement.

22. Counterparts

This Agreement may be executed in counterparts all of which, when taken together, shall constitute one and the same Agreement.

23. Radon Gas

RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

[NOTE: THIS PARAGRAPH IS PROVIDED FOR INFORMATIONAL PURPOSES PURSUANT TO SECTION 404.056(7), FLORIDA STATUTES (1988).]

24. Brokers

The Parties each represent and warrant to the other that no real estate broker, salesperson or finder has been involved in this transaction. If a claim for commission in connection with this transaction is made by any broker, salesperson or finder claiming to have dealt through or on behalf of one of the Parties hereto ("Indemnitor"), Indemnitor shall indemnify, defend and hold harmless the other Party hereunder ("Indemnatee"), and Indemnatee's officers, directors, agents and representatives, from and against all liabilities, damages, claims, costs, fees and expenses whatsoever (including reasonable attorney's fees and court costs at trial and all appellate levels) with respect to said claim for commission. This provision shall survive closing.

[Remainder of page intentionally left blank]

In witness whereof, the Parties hereto have set their hands and seals the day and year last below written.

Attest:

Brevard County, Florida

Rachel Sadoff, Clerk

BY: _____

Kristine Zonka, Chair

Date: 12/21/2021

Approved by the Board on: 12/21/2021

Approved as to legal form and content
solely for Brevard County:

BY: *Alex Gussese*
Assistant County Attorney

Space Coast Town Centre I, L.L.C., a Delaware
limited liability company

BY: Space Coast Town Centre Holdings, LLC, a Delaware
limited liability company, its Sole Member

Witnesses:

Tina Caldwell
Tina Caldwell

Printed Name

Trina McLeod
Trina McLeod

Printed Name

BY: Multiverse Global, LLC, a Florida limited
liability company, its Manager

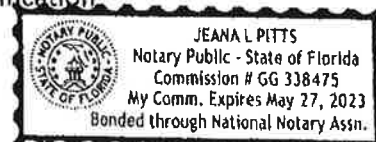
BY: *Edgar Jones*
Edgar Jones, Manager

Date: 12/21/21

STATE OF Florida
COUNTY OF Indian River

The foregoing instrument was acknowledged before me by X physical presence or _____ online notarization
this 2nd day of December 2021 by Edgar Jones as a Manager of Multiverse Global, LLC, a Florida
limited liability company as the Manager of Space Coast Town Center Holdings, LLC, a Delaware limited
liability company as the Sole Member of Space Coast Town Centre I, L.L.C., a Delaware corporation on behalf
of the corporation. He is personally known to me or provided as identification.

Jeana L. Pitts
(Notary Signature – State of Florida)



Print, Type, or Stamp Commissioned Name of Notary Public
Commission No.: GG 338475
My Commission Expires: May 27, 2023

EXHIBIT A

LEGAL DESCRIPTION OF COUNTY PROPERTY

A parcel of land located within Lot 6, FLORIDA INDIAN RIVER LAND COMPANY, as recorded in Plat Book 2, Page 80, Public Records of Brevard County, Florida, and being in the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East, being described as follows: COMMENCE at the Southwest corner of the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East; thence run North 89 degrees 35 minutes 56 seconds East along the South line of said Southwest 1/4 (One-Quarter), a distance of 1322.84 feet; thence, departing said South line, run North 00 degrees 24 minutes 04 seconds West, a distance of 48.00 feet to the North Right-of-Way line of Melbourne Tillman Drainage District Canal No. 84; thence run North 89 degrees 35 minutes 56 seconds East, along said North Right-of-Way line, a distance of 210.04 feet to a point on a non-tangent curve to the right having a radius of 22,813.31 feet; thence, departing said North Right-of-Way line, from a chord bearing of North 00 degrees 50 minutes 50 seconds East, run Northerly along said curve an arc distance of 115.89 feet through a central angle of 00 degrees 17 minutes 28 seconds to the point of reverse curvature of a curve having a radius of 23,023.31 feet; thence run Northerly along said curve an arc distance of 274.51 feet through a central angle of 00 degrees 40 minutes 59 seconds to a point on said curve and the POINT OF BEGINNING; thence continue along said curve an arc distance of 83.31 feet through a central angle of 00 degrees 12 minutes 26 seconds to the end of said curve; thence run South 89 degrees 54 minutes 13 seconds East, a distance of 190.46 feet; thence South 00 degrees 12 minutes 08 seconds East, a distance of 83.31 feet; thence North 89 degrees 54 minutes 13 seconds West, a distance of 191.05 feet to the POINT OF BEGINNING.

Said lands containing 0.365 acres, more or less.

Together with:

A parcel of land located within Lot 6, FLORIDA INDIAN RIVER LAND COMPANY, as recorded in Plat Book 2, Page 80, Public Records of Brevard County, Florida, and being in the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East, being described as follows: COMMENCE at the Southwest corner of the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East; thence run North 89 degrees 35 minutes 56 seconds East along the South line of said Southwest 1/4 (One-Quarter), a distance of 1322.84 feet; thence, departing said South line, run North 00 degrees 24 minutes 04 seconds West, a distance of 48.00 feet to the North Right-of-Way line of Melbourne Tillman Drainage District Canal No. 84; thence run North 89 degrees 35 minutes 56 seconds East, along said North Right-of-Way line, a distance of 210.04 feet to a point on a non-tangent curve to the right having a radius of 22,813.31 feet; thence, departing said North Right-of-Way line, from a chord bearing of North 00 degrees 50 minutes 50 seconds East, run Northerly along said curve an arc distance of 115.89 feet through a central angle of 00 degrees 17 minutes 28 seconds to the point of reverse

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curvature of a curve having a radius of 23,023.31 feet; thence run Northerly along said curve an arc distance of 14.64 feet through a central angle of 00 degrees 02 minutes 11 seconds to the POINT OF BEGINNING; thence continue along said curve an arc distance of 259.87 feet through a central angle of 00 degrees 38 minutes 48 seconds to the end of said curve; thence run South 89 degrees 54 minutes 13 seconds East, a distance of 191.05 feet; thence South 00 degrees 12 minutes 08 seconds East, a distance of 258.17 feet; thence run South 89 degrees 35 minutes 56 seconds West, a distance of 194.84 feet to the POINT OF BEGINNING.

Said lands containing 1.146 acres, more or less.

Together with:

A parcel of land located within Lots 5 and 6, FLORIDA INDIAN RIVER LAND COMPANY, as recorded in Plat Book 2, Page 80, Public Records of Brevard County, Florida, and being in the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East, being described as follows: COMMENCE at the Southwest corner of the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East; thence run North 89 degrees 35 minutes 56 seconds East along the South line of said Southwest 1/4 (One-Quarter), a distance of 1729.97 feet to the Southerly projection of the West line of the lands described in Official Records Book 5564, Page 6498, Public Records of Brevard County, Florida; thence departing said South line, run North 00 degrees 12 minutes 08 seconds West, along said Southerly projection and said West line, a distance of 178.50 feet to the POINT OF BEGINNING; thence continue North 00 degrees 12 minutes 08 seconds West, along said West line, a distance of 341.48 feet; thence departing said West line, run South 89 degrees 54 minutes 13 seconds East, a distance of 402.50 feet; thence run South 00 degrees 12 minutes 12 seconds East, a distance of 337.98 feet; thence run South 89 degrees 35 minutes 56 seconds West, a distance of 402.50 feet to the POINT OF BEGINNING.

Said lands containing 3.139 acres, more or less.

Total acreage of all 3 parcels is 4.65 acres, more or less.

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EXHIBIT B
FORM OF EASEMENT AGREEMENT

**THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:**

EXHIBIT B

Richard M. Bezold, Esq.
AKERMAN LLP
98 SE 7th Street, Suite 1100
Miami, Florida 33131

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Easement"), is made and entered into the date of last signature below ("Effective Date"), by and between SPACE COAST TOWN CENTRE I, L.L.C., a Delaware limited liability company, having an address of 7485 Fairway Drive, Suite 430, Miami Lakes, FL 33014 ("Grantor"), and BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, having an address of Public Works, c/o Public Works Director, 2725 Judge Fran Jamieson Way, Viera, FL 32940 ("Grantee") and joined in by the Association as described below. Grantor and Grantee are sometimes individually referred to as a "Party" and collectively as the "Parties."

RECITALS:

A. Grantor is the owner of certain real property in Brevard County, Florida, as more particularly described on **Exhibit "A"** and as depicted on **Exhibit "B"** both attached hereto and incorporated herein by this reference (the "Easement Area").

B. As of the Effective Date of this Easement, a portion of the Easement Area has been platted pursuant to that certain plat titled Space Coast Town Centre East – Phase I, pursuant to the plat recorded in Plat Book 68, Page 50 of the Public Records of Brevard County, Florida (the "Plat"), which Plat includes an area identified as "Tract B" that is intended for use as stormwater management and parks and recreation purposes ("Tract B").

C. The Easement Area is located within a phased, mixed-use project of approximately 154 acres known as the Space Coast Town Center approved by the City Council of West Melbourne following duly noticed public hearings held on July 8, 2019 and July 16, 2019 (the "Project").

D. The Project is subject to an approved development agreement, recorded on October 7, 2019 at Official Records Book 8556, Page 2570 of the Public Records of Brevard

County, Florida, as may be amended from time to time, (the "Development Agreement") which sets forth the terms and conditions on which the Project is to be developed as a phased, mixed-use project, including a master development plan attached and incorporated into the Development Agreement (the "M.D.P.").

E. The Space Coast Town Centre Property Owner's Association, Inc., a Florida not for profit corporation (the "Association"), has been established to own and/or operate certain of the common areas and facilities of the Project, including, but not limited to, Tract B, pursuant to that certain Master Declaration of Covenants, Conditions and Restrictions, Space Cost Town Centre, West Melbourne, Florida, recorded in Official Records Book 8844, at Page 372 of the Public Records of Brevard County, Florida (the "Master Declaration").

F. Grantee maintains and operates the St. Johns Heritage Parkway in Brevard County, Florida (the "Parkway"), which is located adjacent to and west of the Easement Area.

G. Grantor desires to grant to Grantee a perpetual, non-exclusive easement for: (1) drainage and retention (and a reasonable right of water flow) over, into and through the Water Management System (as defined in Section 2 below) to facilitate the drainage, retention and conveyance of stormwater and surface water from Basin G as defined in the permit documentation labeled "Drainage Design Documentation For ST John's Heritage Parkway (From the City of Palm Bay line to US 192)" dated March 2014 as a part of the St. Johns River Water Management District (the "S.J.R.W.M.D.") Permit No. 126163-2 (the "County Permit") consisting of approximately +/-13.37 acres of the Parkway ("Basin G") into and through the Water Management System; and (2) ingress, egress, and access to conduct emergency maintenance to restore drainage flow and other allied uses pertaining thereto, over, under, upon, across, and through the Easement Area, pursuant to the terms and conditions more particularly described herein.

H. The Parties understand that the Parkway is set to be widened to six (6) lanes, and surface water and stormwater capacity, and associated drainage requirements, have been included in the calculations for the Permit (as defined below) to provide for existing stormwater and surface water volume, as well as future volume from Basin G upon completion of the road expansion. Any permit modifications needed to account for the additional stormwater and surface water drainage from Basin G shall be coordinated between the Parties.

I. Grantor has obtained from the S.J.R.W.M.D. _____ Permit No. _____ providing for the construction and operation of the Water Management System within the Easement Area (the "Permit"). **[Amend as required pursuant to the final permit from the S.J.R.W.M.D.]**

J. Grantor desires to grant to the Association the easement rights identified in Section 4 below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Easement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows.

1. Recitals

The foregoing recitals are true and correct and, by this reference, are hereby incorporated into this Easement as if fully set forth herein.

2. Water Management System

For the purposes of this Easement, the "Water Management System" means the Easement Area and all surface water and stormwater management improvements constructed within the Easement Area pursuant to the Permit, from time to time, including the lake on Tract B, that are designed and constructed or implemented to control surface water and stormwater discharges from Basin G of the Parkway as identified in the Permit, including discharges resulting from future expansion of the Parkway within Basin G to six lanes, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges, including, but not limited to, the requirements established pursuant to the Permit and the systems established in the Easement Area pursuant thereto. The Water Management System shall account for existing surface water and stormwater discharges, and for increased surface water and stormwater discharges and drainage associated with the planned road widening of the Parkway to a six-lane road. For purposes of clarification, the Water Management System does not include any improvements currently or in the future installed or constructed by the Grantee, or its successors and assigns, within the right-of-way of the Parkway (the "Parkway Improvements") for the collection or diversion of surface water and stormwater from the Parkway to the Water Management System located in the Easement Area, which Parkway Improvements shall remain the responsibility of the Grantee and its successors and assigns as the owner of the Parkway or other appropriate party by agreement. The Grantee, the Grantor and the Association, and their respective successors and assigns, agree to cooperate in the development, construction and maintenance of the tie-in point(s) between the Grantee's Parkway Improvements located in the Parkway right-of-way and the Water Management System located in the Easement Area.

3. Water Management Easements in Favor of Grantee

Grantor does hereby grant, convey, declare and establish, for the benefit of Grantee a perpetual, non-exclusive easement for: (1) drainage and retention (and a reasonable right of water flow) over, into and through the Water Management System, solely for drainage, retention and conveyance of stormwater and surface water from Basin G of the Parkway into and through the Water Management System; and (2) ingress, egress, and access to conduct emergency maintenance to restore drainage flow and other allied uses pertaining thereto, over,

under, upon, across, and through the Easement Area. The Parkway will be expanded to a six-lane roadway. Grantee shall not discharge, nor allow the discharge of, stormwater or surface water into the Water Management System from any portion of the Parkway or other lands except those portions of the Parkway specifically identified as part of Basin G in the Permit.

4. Water Management Easements in Favor of the Association

Grantor does hereby grant, convey, declare and establish, for the benefit of the Association over the portions of the Easement Area located outside of Tract B, as an Area of Common Responsibility (as that term is defined in the Master Declaration), a perpetual, non-exclusive easement for: (1) drainage and retention (and a reasonable right of water flow) over, into and through the Water Management System, solely for drainage, retention and conveyance of stormwater and surface water from Basin G of the Parkway into and through the Water Management System; and (2) ingress, egress, and access to conduct maintenance, repairs and replacements of improvements located in the Easement Area to provide uninterrupted drainage flow and other allied uses pertaining thereto, over, under, upon, across, and through the Easement Area for the duration of this Easement Agreement.

5. Maintenance of Water Management System

As of the Effective Date of this Easement, Grantor has installed the facilities for the Water Management System as required by the Permit and applicable governmental authorities and shall be responsible for the maintenance obligations of the Water Management System. The Association agrees to maintain the retention pond located in Tract B and the Grantor, or its successors or assigns in interest, which may include the Association, agrees to maintain the portions of the Easement Area located outside of Tract B in perpetuity. All such maintenance shall be to Brevard County, State of Florida Department of Transportation ("F.D.O.T.") and S.J.R.W.M.D. standards, as applicable, for retention ponds and stormwater systems of this nature and shall include replacement of underdrains, pipes, or reconstruction of any associated improvements as necessary. Grantor or the Association, as applicable, shall notify the Grantee in writing thirty (30) days prior to any non-routine replacements or reconstruction work and obtain any necessary permits or approvals as may be required. In the event that the Grantor or the Association fails to properly maintain the Water Management System, the Grantee is hereby authorized to service, maintain, repair and replace (and assess such costs), as necessary, the Water Management System following written notice to the Grantor or the Association, as applicable, of said maintenance default by Grantor or the Association, or in cases of emergency, in which case no notice shall be required. Grantor or the Association shall service, maintain, repair and replace the Water Management System at its sole expense until such time as the rights and obligations under this Easement are assigned to the Association as to Grantor's interests in the improvements located in the Easement Area outside of Tract B, at which time the Association shall service, maintain, repair and replace the Water Management System located outside of Tract B, in addition to the Tract B portions thereof currently being

maintained by the Association and the Developer shall be released from any further obligations under this Easement. For purposes of this Easement, the obligations to service, maintain, repair and replace the Water Management System shall include, but are not limited to: (i) maintaining all infrastructure, including piping, catch basins, swales and exfiltration trenches; (ii) maintaining the Water Management System components on Tract B, including, but not limited, the swales, the dry retention, the wet retention (the lake), perimeter of the lake (the berms) and landscaping; (iii) maintaining the Water Management System recertification, as applicable; (iv) monitoring the ground water wells and periodic sampling and reporting to the applicable governmental authority, as applicable; and (v) performing all repairs necessary to effectuate the foregoing. Upon assignment of the rights and obligations outlined herein of Grantor to the Association, in addition to the Tract B portions thereof currently being maintained by the Association, the Association shall maintain the Easement Area and the Water Management System identified in this Easement as an Area of Common Responsibility and as a part of the Surface Water Management System as defined in the Master Declaration. As provided above, the Water Management System does not include any improvements currently or in the future installed or constructed within the right-of-way of the Parkway for the collection or diversion of surface water and stormwater from the Parkway to the Water Management System located in the Easement Area which Parkway Improvements shall remain the responsibility of the Grantee, and its successor and assigns, as the owner of the Parkway or other appropriate party by agreement.

6. Use of Easement Rights

The Parties shall utilize the easement rights granted herein in accordance with the rules and regulations of, and pursuant to, all permits issued by any applicable governmental authorities, including, but not limited to, the Permit. Grantee hereby recognizes and acknowledges that the Grantor, the Association and other current and future owners of property in the Project may utilize Tract B (and other portions of the Easement Area) for surface water and stormwater treatment and/or storage for other portions of the Project and as a recreational amenity for the owners, tenants and invitees of the Project in accordance with the densities, intensities and uses specified in the Development Agreement as the same may be amended from time to time subject to the terms of the Master Declaration, in addition to being used for surface water and stormwater treatment and/or storage for the Basin G area of the Parkway by the Grantee.

7. Insurance and Indemnification

- a. Until the assignment of the rights and obligations under this Easement by Grantor to the Association, Grantor and any contractor, sub-contractor, consultant or sub-consultant retained by Grantor to provide services necessary to fulfill the terms of this Easement, including, but not limited to, all maintenance activities required by this Easement for the Water Management System, shall have in place the following minimum levels of

insurance: (a) General Liability Insurance: General Liability Insurance issued by responsible insurance companies and in a form acceptable to Grantee, with combined single limits of not less than One Million Dollars for Bodily Injury and Property Damage per occurrence; (b) Automobile Liability Insurance: Automobile Liability coverage shall be in the minimum amount of One Million Dollars combined single limits for Bodily Injury and Property Damage per accident; (c) Workers' Compensation Coverage: Full and complete Workers' Compensation Coverage, as required by Florida law, shall be provided; (d) Insurance Certificates: Grantor shall provide certificates of insurance to Grantee demonstrating that the aforementioned insurance requirements have been met under this Agreement and upon insurance renewal annually (collectively, the "Insurance Requirements"). Insurance carriers providing coverage required herein must be licensed or authorized to conduct business in the State of Florida and must possess A.M. Best's Financial Strength Rating of A- Class VIII or better. Said Liability Policies shall provide that Grantee be an additional insured for the General Liability and Auto Liability insurance. Grantee shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to Grantee and licensed and authorized under the laws of the State of Florida. After the assignment of the rights and obligations under this Easement by Grantor to the Association as to the portions of the Easement Area located outside of Tract B, the Association shall maintain the above-mentioned Insurance Requirements and Grantor shall no longer be required to carry such insurance.

- b. Until the assignment of the rights and obligations under this Easement by Grantor to the Association as to the portions of the Easement Area located outside of Tract B, Grantor shall be deemed to have agreed to save, defend, indemnify and hold Grantee harmless against and from any and all claims, suits, liabilities, damages, costs and expenses, including reasonable attorneys' fees (incurred at trial, on appeal or otherwise), because of personal injury or death of persons or damage to or destruction of property resulting from the negligent, willful, or intentional acts or omissions of Grantor or any of its employees, representatives, agents or contractors occurring in connection with this Easement. Upon the assignment of the rights and obligations under this Easement by Grantor to the Association as to the portions of the Easement Area located outside of Tract B, the Association shall save, defend, indemnify and hold Grantee harmless against and from any and all claims, suits, liabilities, damages, costs and expenses, including reasonable attorneys' fees (incurred at trial, on appeal or otherwise), because of personal injury or death of persons or damage to or destruction of property resulting from the negligent, willful, or intentional acts or omissions of the Association or any of its employees, representatives, agents or contractors occurring in connection with this Easement and Grantor shall no longer be obligated to indemnify or hold harmless Grantee as otherwise provided above. Nothing herein is intended to be or shall be

construed as a waiver of the Grantee's sovereign immunity protections and limitations outlined in Section 768.28, Florida Statutes. The Parties acknowledge that specific consideration has been exchanged for this provision.

To the extent permitted under Section 768.28, Florida Statutes, as a condition to the Grantee's (i) exercising and utilizing its drainage and retention easement rights hereunder, and (ii) exercising its rights to service, maintain, repair and replace the Water Management System provided herein, the Grantee shall be responsible for any and all claims, suits, liabilities, damages, costs and expenses, including reasonable attorneys' fees (incurred at trial, on appeal or otherwise), because of personal injury or death of persons or damage to or destruction of property solely resulting from the negligent acts or omissions by Grantee and its respective employees, representatives, agents or contractors of the rights granted to Grantee under this Easement.

- c. As a condition to the Association's (i) exercising and utilizing its drainage and retention easement rights hereunder, and (ii) exercising, as to the portions of the Easement Area located outside of Tract B, upon the Association's assumption of the obligations to maintain the same as provided herein, its assumed rights and obligations to service, maintain, repair and replace the Water Management System provided herein, the Association shall be deemed to have accepted and agreed to save, defend, indemnify and hold Grantor and any other owners of all or any part of the Easement Area harmless against and from any and all claims, suits, liabilities, damages, costs and expenses, including reasonable attorneys' fees (incurred at trial, on appeal or otherwise), because of personal injury or death of persons or damage to or destruction of property resulting from the exercise or utilization by the Association and its respective employees, representatives, agents or contractors of the rights and obligations granted to or assumed or exercised by the Association under this Easement.
- d. Grantor, and its successors and assigns, agree to include the following indemnification in all contracts with contractors, subcontractors, consultants, or subconsultants who perform work in connection with this Agreement, including any future maintenance activities required in paragraph 5:

"To the fullest extent permitted by law, the contractor shall indemnify and hold harmless Brevard County, Florida, and its officers, agents, and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct or omission of the contractor and persons employed or utilized by the contractor in the performance of this Easement. This indemnification shall survive the termination of this Easement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the

Grantee's sovereign immunity. Specific consideration has been given for this provision."

8. Not a Public Dedication

Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Easement Area or the Water Management System to the general public or for the general public or for general public purposes whatsoever, it being the intention of Grantor that this Easement shall be strictly limited to and for the purposes herein expressed.

9. Covenants Run With the Land; Assignment by Grantor and Grantee

- a. The rights, obligations and other covenants contained herein shall be appurtenant to Grantee's interests in the Parkway and shall be a burden on the Easement Area and shall run with the land. This Easement shall inure to the benefit of and be binding upon Grantee, Grantor and the Association and their respective assigns or successors in interest; provided, however, that if Grantor conveys fee simple title to the Easement Area (or any portion thereof) and transfers the maintenance obligations and responsibilities to the Association, Grantor shall thereupon be relieved of and released and discharged from any and all rights or obligations in connection with such Easement Area (or portion thereof) under this Easement to be performed or arising after the conveyance of said fee simple title, but shall remain liable for all obligations arising under this Easement prior to the conveyance of such title. From and after the assignment of the obligations under this Easement to the Association as to the portions of the Easement Area located outside of Tract B, the Association shall assume all rights, liabilities, and obligations in connection with this Easement as an Area of Common Responsibility. This Easement shall encumber the Easement Area, but subsequent owners of all or portions of the Easement Area, other than the Association should it obtain title to any portions of the Easement Area, shall not have any obligations to maintain the Water Management System located on its portion of the Easement Area, which shall be the responsibility of the Association, its assigns or successors in interest, as provided herein. Any failure(s) to maintain the Water Management System shall result in costs incurred by Grantee to conduct such maintenance being imposed upon Grantor until such time as Grantor assigns the obligations under this Easement to the Association as to the portions of the Easement located outside of Tract B and currently as to the Association with respect to Tract B and then, from and after that time, shall result in costs being imposed on the Association (and not the Grantor), and/or any other successor or assign responsible for such obligations. In the event the Grantor, its assigns or successors, or the Association, as applicable, defaults on its maintenance obligation(s), after delivering thirty (30) days written notice of default, except in an emergency when no notice is required, and right to cure to Grantor and the Association,

the Grantee may invoice the Grantor or the Association, as applicable, for the reasonable cost to maintain the Water Management System together with the reasonable administrative costs to the Grantee (any such invoice being referred to herein as a "County Invoice"). Delinquent amounts due for the cost to cure maintenance deficiencies by Grantor, or its successors or assigns, or the Association, shall become due and payable to the Grantee (payable to the Board of County Commissioners of Brevard County, Florida; and sent to the Brevard County Manager's Office) thirty (30) calendar days after the County Invoice for such costs is delivered to the Grantor and the Association, as applicable. If the amount is not paid or the lack of maintenance is not cured within thirty (30) calendar days, the Grantee may enforce its right to payment for such invoice by action at law and, thereafter, the amount due to satisfy the County Invoice shall bear interest at the rate of two percent above the prime interest rate per annum, as determined by the Wall Street Journal Prime Rate. Upon such time as the Grantor assigns the obligations under this Easement to the Association, the Grantee may invoice the Association (and not the Grantor) for such costs and expenses. Collection of any such County Invoice, including interest, penalties, and reasonable attorneys' fees, may be made by the Grantee by instituting proceedings in a court with jurisdiction as provided by law provided that the Grantee agrees that Grantee shall not seek to enforce the rights to payment by legal action if the Association confirms in writing to Grantee within thirty (30) days of the receipt of the County Invoice that the Association will pay the Grantee its demanded cost and expenses within the Association's then current fiscal year or within the first ninety (90) days of the start of the Association's next following fiscal year (such written notice being referred to herein as an "Association Payment Notice").

- b. In order to secure the obligation of the Grantor, and the Association after the Grantor assigns the obligations under this Easement to the Association, to reimburse Grantee for any costs that may be incurred by the Grantee should it exercise its rights under this Easement to maintain any portion of the Water Management System, on the Effective Date hereof, Grantor has delivered to Grantee, prior to or at the time of delivery of this Easement, the amount of ____ Thousand ____ Hundred Dollars (\$_____) **[This amount to be added after completion of the System and the costs have been identified]**, representing an amount equal to ten percent (10%) of the actual costs to build and install the Water Management System, exclusive of the costs to construct the portion of the Water Management System located in Tract B, to hold in escrow during the term of this Easement (the "Escrowed Funds"). The Escrowed Funds shall be held by the Grantee as the "Escrow Agent" in an interest-bearing account at a federally insured financial institution acceptable to the Grantee in its sole discretion (the "Escrow Account"). In the event that the Grantee incurs any costs under Section 9.a. hereof, the Grantee may, after giving the Grantor or Association, as applicable, thirty (30) calendar days prior notice, draw from the Escrowed Funds the amount required to pay the

applicable County Invoice, unless the Association has paid such amount to the Grantee or delivered an Association Payment Notice to Grantee prior to the end of such thirty (30) calendar day period. If the Association delivers an Association Payment Notice but fails to pay to the Grantee the amount identified in the County Invoice within thirty (30) days of the County Invoice, or within ninety (90) days after the start of the Association's next following fiscal year, the Grantee may draw from the Escrowed Funds the amount required to pay the County Invoice. Should the Grantee ever draw any amounts from the Escrowed Funds, the Grantor, until such time as the Grantor assigns the obligations under this Easement to the Association and then the Association, will be responsible to replace into the Escrow Account any such amounts drawn by Grantee within ninety (90) days after the start of the Association's next following fiscal year in order to maintain a minimum level of Escrow Funds of ten percent (10%) of the actual costs to build and install the Water Management System, exclusive of the costs to construct the portion of the Water Management System located in Tract B. The Escrowed Funds are not intended to be a cap on the Grantor's or Association's responsibility to pay the full amount on any County Invoice delivered by Grantee. In the event that this Easement is ever terminated by the Parties hereto in accordance with the terms of this Agreement, any amounts up to the 10% minimum balance requirement for the Escrow Account then held in the Escrow Account and not required to pay a County Invoice at that time shall be paid to the Association and any interest on such amount then in the Escrow Account shall be paid to the Grantee. The Grantee, in its sole discretion, shall be entitled to utilize any funds, including interest, above the 10% minimum balance requirement for the Escrow Account as permitted by law. The Grantee shall be the party responsible for any income taxes that may become due on any interest accrued on the Escrow Account. Neither the Grantor nor the Association, or their respective successors and assigns, shall receive any benefit from such interest. If the lien option outlined in Section 9.c. below is chosen by the parties, the Grantee shall be entitled to the accrued interest prior to the Escrow Account funds being released to the Grantor or Association, as applicable. The Grantee shall be the party identified on any IRS Form 1099-INT or Form 1099-MISC filings, or future alternative IRS forms, required to report interest income on the Escrowed Funds with the Internal Revenue Service.

- c. As an alternative to the escrow procedure identified in Section 9.b. above, at any point after the Effective Date hereof, the Grantor or the Association, or assigns and successors in interest, as applicable, may offer the Grantee the right to impose a lien on a parcel of real property owned by the Grantor or the Association ("Lien Parcel"). The Grantee, acting through its County Manager, or his/her designee, may decide, in its sole discretion, to: (1) accept the property offered, in which case the Escrow Account funds will be released to the Grantor or Association, as applicable ("Lien Option"); or (2) reject the lien option and continue with the Escrow Account option. If the Grantee decides to accept the Lien Option, the Grantee may file a lien after giving the Grantor or

Association, as applicable, thirty (30) calendar days prior notice of unpaid Grantee costs. The Grantor or Association, as applicable, must provide an Association Payment Notice within the thirty (30) calendar day period stating the payment will be made within thirty (30) calendar days of the Payment Notice or within ninety (90) days after the start of the Association's following fiscal year. If the Association fails to meet these timelines, the Grantee is entitled to file a claim of lien, which shall be recorded in the Public Records of Brevard County, Florida, on the Lien Parcel to secure the amount identified in the applicable Grantee Invoice unless the Association has paid such amount to the Grantee. The lien rights provided in this Section shall be a covenant running with, and a burden on, the Lien Parcel and shall run with the Grantor's and the Association's, and their assigns' and successors' in interest, title to the Lien Parcel. If applicable, any such lien shall at all times be subordinate and subject to the terms of the Plat and Master Declaration, as the same may be amended from time to time. If the Grantee chooses the Lien Option and records a claim of lien as provided herein, such claim may be enforced in accordance with the procedures identified in Part I of Chapter 713, Florida Statutes, as may be amended, for the enforcement of construction liens. If the Lien Parcel is encumbered (as defined below) then neither the Grantee nor the Association shall be permitted to elect to terminate the escrow procedure outlined above in lieu of the Lien Option unless and until the Mortgage, Assignment of Leases and Rents and Security Agreement recorded in Official Records Book 8523, Page 2837, in the Public Records of Brevard County, Florida (the "Mortgage"), as the same may be amended from time to time, has been satisfied and released of record in the Public Records of Brevard County, Florida, or the holder of such Mortgage has consented to the grant of the lien rights identified in this Section.

- d. Grantor's rights and obligations hereunder may be assigned in whole or in part to the Association pursuant to an express written assignment and assumption agreement. Any such assignment may be made with respect to all or any portion of the Easement Area owned by Grantor. In the event of a transfer or assignment of any portion of the Easement Area to any party other than the Association, the transferee or assignee shall not be deemed the Grantor nor responsible or liable for any obligations of Grantor or the Association outside the scope of such assignment, but may exercise such rights and shall be responsible for such obligations of Grantor specifically assigned to it. Grantor shall be relieved of and released and discharged from all rights and obligations (but none arising prior to such assignment) arising under this Easement once it has assigned the rights and obligations under this Easement to the Association as to the portions of the Easement Area located outside of Tract B. Grantor's release of responsibility and obligations outlined herein shall only be specific to the portion(s) of the Easement Area transferred to the Association or other such party. Grantor shall notify the Grantee in writing, with a copy of the written assignment and assumption agreement attached thereto, upon assignment of any or all rights and obligations outlined herein.

- e. Upon transfer of the ownership or maintenance obligations of the Parkway by Grantee to another governmental entity, the Grantee may assign its rights under this Agreement to such party without the prior approval of the Grantor, or its assigns or successors, or the Association, as applicable. However, the County shall provide written notice of such assignment to the Grantor, or its assigns or successors in interest, or the Association, as applicable.

10. Amendments and Modifications

Grantor, its successors and assigns, specifically including the Association, may relocate, modify or amend the location of the Easement Area, the Water Management System and the improvements located therein, at Grantor's and/or the Association's sole cost and expense, with the prior written consent and approval of Grantee (including required governmental permits and approvals). Grantor, its successors or assigns, must obtain written consent and approval from the County Manager, or his/her designee, prior to such relocation, modification, or amendment. Such consent and approval to relocate, modify or amend the Easement Area, the Water Management System or the improvements located therein shall not be unreasonably withheld, conditioned, or denied by the Grantee if the Easement Area, Water Management System or the improvements located therein continue to provide the same level of service and capacity for the collection, retention and disposal of stormwater runoff from the Parkway as it did prior to such change. Notwithstanding the foregoing, Grantor, for itself and its successors and assigns, specifically including the Association, reserves the right to alter, amend, repeal or modify any provision in this Easement, upon advanced written notice to the Grantee, in order to comply with applicable laws, rules or regulations of any permit issued by, or mandate of, any applicable governmental authority. Grantee agrees to not unreasonably withhold, condition or delay its consent and joinder to any permit application or any modification of this Easement that complies with the requirements of this Section 10. The Grantor and/or the Association, its assigns and successors in interest, understand that the Parkway will be expanded to six (6) lanes and shall not unreasonably object to the expansion of the Parkway to six (6) lanes. Additionally, the Grantor and/or the Association, its assigns and successors in interest, shall update and modify any stormwater permit(s), as necessary, for any authority(ies) having jurisdiction for the Parkway expansion to six (6) lanes to be located in Basin G.

11. Enforcement

This Easement may be enforced by Grantee by any action available at law or in equity, including, but not limited to, by injunctive relief and specific performance. In addition to any other right to cure or remedy set forth elsewhere in this Easement, in the event the Grantor, or the Association after the assignment of the Water Management System to the Association by Grantor, or any other assign or successor, defaults in the performance of any of its obligations pursuant to this Easement, and such default continues for a period of thirty (30) days after receipt of written notice of said default from Grantee, Grantee shall have the reasonable right

to enter onto the necessary portion of the Easement Area to maintain or repair the portions of the Water Management System required to be maintained by Grantor and/or the Association or otherwise cure such default, provided, (i) Grantor or Association, as applicable, is not then in the process of diligently attempting to cure the default, and (ii) no notice or opportunity to cure shall be required in the event the default creates an emergency or interferes with the use of the Parkway. Any and all reasonable expenses incurred by Grantee in curing such default shall be payable by Grantor or Association, or other assign or successor, as applicable, depending on which of them was responsible for maintaining the Water Management System at that time. Such payment(s) shall be made within thirty (30) days of written demand by Grantee to Grantor or Association, as applicable, but subject to Section 9.a. above.

12. Entirety

This Easement embodies the entire agreement and understanding between the parties hereto, and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein. No alteration, change, or modification of the terms of this Easement shall be valid unless made in writing and signed by both parties, or their assigns or successors, hereto.

13. Severability

If any clause, sentence or other portion of this Easement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

14. Attorneys' Fees

In the event of any action to enforce this Easement (including an action to recover damages for its breach), any provision hereof or any matter arising here from, each party shall be responsible for their own costs and fees, including, but not limited to, attorneys' fees and court costs.

15. Governing Law/Venue

This Agreement shall be governed by and construed under the laws of the State of Florida. Venue for any action arising out of this Agreement shall be Brevard County, Florida. ANY TRIAL SHALL BE NON-JURY.

16. Time

Time is of the essence of this Easement, provided that any date that falls on a Saturday, Sunday or legal holiday shall be automatically extended to the next business day.

17. Waiver

No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of the breach of any provision of this Easement shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Easement.

18. Counterparts

This Easement may be executed in several counterparts, and all such executed counterparts shall constitute the same agreement.

19. Further Assurances

The Parties acknowledge that the operation and maintenance of the Water Management System may require modifications to the easements and agreements contained herein. The Parties and the Association, therefore, provide a mutual assurance and agreement that neither Party nor the Association shall unreasonably withhold approval of any reasonably necessary modifications to the easements or provisions of this Agreement where such modifications will allow or facilitate the performance of the Parties' and the Association's respective obligations under this Agreement.

20. No Merger

Notwithstanding anything herein to the contrary, should any future transfers or assignments of the rights and or obligations herein or of title to the Easement Area result in one and the same person or entity holding the interests of both the Grantor and Grantee under this Easement, no merger of interests shall occur that could result in the termination of this Easement unless and until a termination of this Easement is executed by all parties then holding any interest in this Easement and the Easement Area.

21. Recording

This Easement Agreement shall be recorded in the Public Records of Brevard County, Florida, at the Grantor's sole cost.

[signatures on next page]

IN WITNESS WHEREOF, Grantor and Grantee have duly executed this Easement as of the day and year last written below.

"GRANTOR"

Signed, sealed and delivered
in the presence of

SPACE COAST TOWN CENTRE I, L.L.C., a
Delaware limited liability company

Print Name: _____

By: _____

Name: _____

Title: _____

Print Name: _____

Date: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2021, by _____, as _____ of Space Coast Town Centre I, L.L.C., a Delaware limited liability company, on behalf of the company. Said person (check one) ☐ is personally known to me or ☐ produced _____ as identification.

(Notary Signature – State of Florida)

Print, Type, or Stamp Commissioned Name of Notary Public

Commission No.: _____

My Commission Expires: _____

"GRANTEE"

Attest:

BREVARD COUNTY, FLORIDA

Rachel Sadoff, Clerk

By: _____

Kristine Zonka, Chair

Date: _____

Approved as to legal form and content
for Brevard County:

Approved by the Board on: _____

By: _____

Assistant County Attorney

JOINDER BY ASSOCIATION

The undersigned, Space Coast Town Centre Property Owners' Association, Inc., a Florida corporation not for profit ("Association"), which is the association identified in the Master Declaration of Covenants, Conditions and Restrictions, Space Coast Town Centre, West Melbourne, Florida, recorded in Official Records Book 8844, at Page 372 of the Public Records of Brevard County, Florida (the "Master Declaration"), does hereby execute this Joinder for the purpose of consenting to the Easement Agreement to which this Joinder is attached and acknowledging the acceptance of the grant of easement herein to the Association and for the purposes of accepting the obligations of the Association identified in the Easement Agreement to maintain the Water Management System (as defined in the Easement Agreement) and as provided in the Master Declaration, including as an Area of Common Responsibility as that term is defined in the Master Declaration.

IN WITNESS OF THE FOREGOING, the Association has executed this Joinder as of the _____ day of _____, _____.

**Space Coast Town Centre Property
Owners' Association, Inc., a Florida
corporation not for profit**

By: _____

Name: _____

Title: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2021, by _____ as _____ of Space Coast Town Centre Property Owners' Association, Inc., a Florida corporation not for profit, on behalf of the corporation. Said person (check one) ☐ is personally known to me or ☐ produced _____ as identification.

(Notary Signature – State of Florida)

Print, Type, or Stamp Commissioned Name of Notary Public

Commission No.: _____

My Commission Expires: _____

JOINDER BY MORTGAGEE

The undersigned, Parkway 192 Associates, L.L.C., a Florida limited liability company (together with its successor and assigns "Mortgagee"), which is the holder of that Mortgage, Assignment of Leases and Rents and Security Agreement executed by Space Coast Town Centre I, L.L.C., a Delaware limited liability company ("Mortgagor"), recorded in OR Book 8523, Page 2837, and that Collateral Assignment of Contracts, Permits, Licenses, Warranties, Plans and Drawings recorded in OR Book 8523, Page 2860 as supplemented by document recorded in OR Book 8844, Page 1083 and re-recorded in OR Book 8867, Page 574 all in the Public Records of Brevard County, Florida (collectively, the "Mortgage"), as the same may be amended from time to time, does hereby execute this Joinder for the sole purpose of consenting to the Easement Agreement to which this Joinder is attached. By its execution hereof, Mortgagee does not make any representations or warranties with respect to any matters set forth in or pertaining to the Easement Agreement or undertake any of the obligations or liabilities contained therein. Except only as expressly provided herein, this consent does not affect or impair the rights and remedies of Mortgagee as set forth in the Mortgage.

IN WITNESS OF THE FOREGOING, the Mortgagee has executed this Joinder as of the _____ day of _____, _____.

**PARKWAY 192 ASSOCIATES, L.L.C., a
Florida limited liability company**

By: _____

Name: _____

Title: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2021, by _____ as _____ of Parkway 192 Associates, L.L.C., a Florida limited liability company, on behalf of the company. Said person (check one) ☐ is personally known to me or ☐ produced _____ as identification.

(Notary Signature – State of Florida)

Print, Type, or Stamp Commissioned Name of Notary Public

Commission No.: _____

My Commission Expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE EASEMENT AREA

[Grantor shall cause a surveyor to prepare the legal description of the Easement Area for the Grantee's review and approval prior to Closing. At Closing, the legal description shall be added here.]

EXHIBIT "B"
SKETCH OF THE EASEMENT AREA

[Grantor shall cause a surveyor to prepare the sketch of the Easement Area for the Grantee's review and approval prior to Closing. At Closing, the sketch shall be added here.]

EXCHANGE AGREEMENT

This Exchange Agreement (the "Agreement") is made and entered into the date of last signature below by and between Brevard County, Florida, a political subdivision of the State of Florida (the "County"), and Space Coast Town Centre I, L.L.C., a Delaware limited liability company (the "Developer"). "Party" or "Parties" means the parties to this Agreement, individually or collectively as indicated in the context by which it appears.

Whereas, the County owns that certain property described on Exhibit A attached hereto and made a part hereof (the "County Property") that is currently used as a surface water and stormwater management tract and retention pond (the "Retention Pond") for Basin G, as defined in the permit documentation labeled "Drainage Design Documentation For ST John's Heritage Parkway (From the City of Palm Bay line to US 192)" dated March 2014 as a part of the St. Johns River Water Management District (the "S.J.R.W.M.D.") Permit No. 126163-2 (the "County Permit") consisting of approximately +/-13.37 acres ("Basin "G"), of the St. Johns Heritage Parkway (the "Parkway") in Brevard County, Florida; and

Whereas, the Developer is developing the Space Coast Town Center project (the "Project"), an approximately 154-acre phased, mixed-use project approved by the City Council of West Melbourne following duly noticed public hearings held on July 8, 2019 and July 16, 2019, located on lands adjacent to and immediately abutting the County Property (the "Project Land"); and

Whereas, the Project is subject to an approved development agreement, recorded on October 7, 2019 at Official Records Book 8556, Page 2570 of the Public Records of Brevard County, Florida, as may be amended from time to time (the "Development Agreement"), which sets forth the terms and conditions on which the Project is to be developed as a phased, mixed-use project, including a master development plan attached and incorporated into the Development Agreement (the "M.D.P."); and

Whereas, the M.D.P. contemplates the future inclusion of the County Property in the Project; and

Whereas, a portion of the Project Land has been platted pursuant to that certain plat titled Space Coast Town Centre East – Phase I, pursuant to the plat recorded in Plat Book 68, Page 50 of the Public Records of Brevard County, Florida (the "Plat"), which Plat includes an area identified as "Tract B" that is intended for use as stormwater management and parks and recreation purposes ("Tract B"); and

Whereas, the Developer is the successor in interest to Parkway 192 Associates, L.L.C., a Florida limited liability company ("Parkway 192 Associates"), which in turn is the successor in interest to Diversified Properties, a Florida partnership, and 192 Associates, a Florida partnership (the "Original Owners"); and

Whereas, the County and the Original Owners entered into that certain Contract dated July 9, 2013 that provided for the sale by the Original Owners and the purchase by the County of certain lands for the Parkway, including the County Property (the "County Contract"); and

Whereas, Paragraph 5.c. of the Addendum to the County Contract provided that the Original Owners, or their successors and assigns, could provide additional land to relocate the Retention Pond and would reasonably cooperate with the County to expand or relocate the Retention Pond for surface water and stormwater treatment and/or storage purposes in accordance with the requirements identified in the County Contract; and

Whereas, for purposes of relocating the Retention Pond from the County Property, the Developer, its assigns and successors, intend to: i) provide the County with an easement agreement in substantial form as Exhibit B attached hereto and made a part hereof (the "Easement Agreement") providing for a non-exclusive perpetual easement over an area of the Project Land running from the Parkway to and including Tract B (the "Easement Area"); ii) construct in the Easement Area the required piping and other structures sufficient in size and capacity to handle the surface water and stormwater runoff from Basin G of the Parkway (the "Stormwater Improvements"); iii) maintain in perpetuity the Stormwater Improvements located in the Easement Area, including those Stormwater Improvements located in Tract B; iv) provide sufficient capacity in the retention pond to be located in Tract B to replace and increase the capacity of the existing Retention Pond (the "Required Capacity") to account for the existing stormwater and surface water run-off from Basin G of the Parkway, as well as any additional volume from Basin G resulting from the expansion of the Parkway to a six-lane road; v) provide in the Easement Agreement an undertaking to maintain the Stormwater Improvements located in the Easement Area to account for existing drainage capacity from Basin G, as well as increased drainage capacity from Basin G as a result of the future road widening of St. Johns Heritage Parkway to a six-lane road, in perpetuity (collectively referred to herein as the "Easement Rights and Obligations"); and vi) create an escrow account to ensure maintenance obligations for the Stormwater Improvements can be undertaken by the County in cases of emergency or default; and

Whereas, for purposes of clarification, the Stormwater Improvements do not include any improvements currently or in the future installed or constructed by the County, or its successors and assigns, within the right-of-way of the Parkway (the "Parkway Improvements") for the collection or diversion of surface water and stormwater from the Parkway to the

Stormwater Improvements located in the Easement Area, which Parkway Improvements shall remain the responsibility of the County, and its successors and assigns, as the owner of the Parkway or other appropriate party by agreement; and

Whereas, the Developer proposes to provide the County with the Easement Rights and Obligations in exchange for the transfer by the County of the County Property to the Developer in fee simple with full rights of use and ownership by County Deed; and

Whereas, the Developer and the County desire to effectuate an exchange of the County Property for the Easement Rights and Obligations for the purposes of and on the terms as set forth herein; and

Whereas, the Developer and the County desire, in accordance with the provisions set forth in Section 125.37, Florida Statutes, to effectuate an exchange of the County Property for the Easement Rights and Obligations for the purposes of and on the terms as set forth herein; and

Whereas, the County, acting through its Board of County Commissioners, has found and determined that the exchange provided for herein complies with the County Contract and provides for a fair and equitable exchange of the County Property for the Easement Rights and Obligations; and

Whereas, the County, acting through its Board of County Commissioners, has found and determined that, even if the exchange provided for herein were not to comply with the County Contract, the County may and is authorized to effectuate such an exchange pursuant to the provisions set forth in Section 125.37, Florida Statutes, without competitive bidding or solicitation, irrespective of any related provisions in the County Charter or Code of Ordinances; and

Whereas, the County, acting through its Board of County Commissioners, hereby finds that, upon completion of the Stormwater Improvements, including, but not limited to, those in Tract B and the remainder of the Easement Area, which will have sufficient stormwater and surface water improvements to allow for the storage capacity required herein, the County will no longer need the County Property for County purposes, and that such an exchange will be in the best interest of the County; and

Whereas, in lieu of the Retention Pond being visible from and occupying frontage along the Parkway, the transfer of the County Property to the Developer will allow, after the exchange, for the development of the former County Property into viable commercial facilities that will increase overall tax revenue, as well as provide employment opportunities to the residents of the County; and

Whereas, the County is willing to exchange the County Property for the Easement Rights and Obligations in compliance with the County Contract and for the Developer, its assigns and successors, to relieve the County of responsibility to service, repair, maintain and make replacements to the Retention Pond on a regular basis in perpetuity; and

Whereas, the County, acting through its Board of County Commissioners, hereby finds that, upon completion and final approval from authorities having jurisdiction of the Stormwater Improvements in the Easement Area, the County will no longer need the County Property for County purposes and desires to acquire the Easement Rights and Obligations, after the terms and conditions identified herein have been satisfied, which will serve the best interests of the County; and

Whereas, to facilitate the effectiveness of the existing Retention Pond, the Prior Owners granted to the County that certain easement recorded in Official Records Book 7102, at Page 1082 of the Public Records of Brevard County, Florida (the "Existing Easement"); and

Whereas, once the Stormwater Improvements are operational and approved by the County, and the Easement Agreement is delivered to the County and recorded in the Public Records of Brevard County, Florida, there shall no longer be a need for the Existing Easement, and the County and the Developer intend to enter into a termination of the Existing Easement via a County deed or termination agreement reasonably acceptable to the County and the Developer; and

Whereas, the Space Coast Town Centre Property Owner's Association, Inc., a Florida not for profit corporation (the "Association"), has been established to own and/or operate certain of the common areas and facilities of the Project and is intended to be assigned and to assume the rights and obligations under this Agreement and the Easement Agreement as an Area of Common Responsibility as that term is defined in the Master Declaration of Covenants, Conditions and Restrictions, Space Coast Town Centre, West Melbourne, Florida, recorded in Official Records Book 8844, at Page 372 of the Public Records of Brevard County, Florida (the "Master Declaration"). Such Master Declaration shall be amended by the Developer or Association, and their respective assigns and successors in interest, as needed, to effectuate the purposes and objectives outlined herein.

Now, therefore, in consideration of the promises, covenants and conditions set forth in this Agreement, as set forth below, Developer, and its successors and assigns, and the County hereby agree as follows:

1. Recitals

The recitals set forth above are incorporated by reference in this Agreement and the matters set forth in those recitals are true representations and findings agreed upon by both Parties.

2. Exchange, Consideration and Conditions

As consideration for this Agreement, Developer agrees to perform the conditions set forth herein, and the County and Developer agree to exchange the County Property for the Easement Rights and Obligations, and the County and Developer agree to terminate the Existing Easement subject to the satisfaction of the Developer's Obligations and County's Obligations set forth below.

Developer's Obligations

- a. The closing of the exchange of the County Property and the Easement Rights and Obligations shall be conditioned upon satisfaction of the following conditions by the Developer and/or the Association, any of which may be waived by the County in its sole discretion:
 - (1) Order and deliver to the County, surveys, sketches, and legal descriptions of the Easement Area (less the portion of Tract B identified in the recorded Plat) and the County Property at Developer's sole cost.
 - (2) Order and deliver to the County, surveys, sketches, and legal descriptions of the Existing Easement at Developer's sole cost.
 - (3) Engage appropriate engineers and other consultants to design, prosecute and obtain all required permits and approvals from any and all authorities having jurisdiction, including, but not limited to, (a) the S.J.R.W.M.D.; (b) the Melbourne-Tillman Water Control District; (c) the County; and (d) the City of West Melbourne to allow for the closure and filling of the Retention Pond and relocation and use of the stormwater infrastructure and storage facility from the County Property to the Easement Area at Developer's sole cost; including any required amendments to or replacements of the County Permit and/or S.J.R.W.M.D. Permit No. 108610-2 (the "Developer Permit"), as needed.
 - (4) Construct the Stormwater Improvements in the Easement Area at Developer's sole cost and obtain a Certificate of Completion or other appropriate evidence of satisfactory completion of the permitted work from the authority(ies) having jurisdiction.
 - (5) Provide the County an as-built survey of the newly constructed Stormwater Improvements in the Easement Area. The Developer understands that the St. Johns Heritage Parkway will be improved to a six-lane road and, as a result, the

Stormwater Improvements shall accommodate such anticipated increased surface water and stormwater volume.

- (6) Obtain the consent and joinder to the Easement Agreement of all parties holding a mortgage lien encumbering all or any portion of the Easement Area.
 - (7) Prepare all required documentation for the closing of the exchange of the County Property for the Easement Rights and Obligations.
 - (8) Provide proof to the County that the individual authorized to sign on the Developer's behalf has received permission and been delegated authority in accordance with the Developer's Operating Agreement and Articles of Organization.
 - (9) Bear all closing costs, recording costs, and costs for publishing the required statutory notice of the exchange, as well as the preparation and recording of the documents necessary to complete the exchange.
 - (10) Update and modify any stormwater permit(s), as necessary, for any authority(ies) having jurisdiction for the St. Johns Heritage Parkway expansion to six (6) lanes to be located in Basin G. This provision is partial consideration for this Exchange and shall survive closing.
 - (11) Developer and/or the Association, and its assigns and successors in interest, understand that the St. Johns Heritage Parkway will be expanded to six (6) lanes and shall not unreasonably object to the expansion of the St. Johns Heritage Parkway to six (6) lanes. This provision is partial consideration for this Exchange and shall survive closing.
 - (12) Establish an escrow account in accordance with Section 9 of the Easement Agreement.
- b. Prior to Closing, Developer and its authorized agents and representatives shall be entitled to enter the County Property at reasonable times upon reasonable notice, and in a manner that does not interfere with the County's operation of the Retention Pond, for the purpose of inspecting the County Property and the Retention Pond.
- c. At closing of the exchange, the Developer will execute and/or deliver or cause to be delivered to the County the following closing documents:
- (1) The Easement Agreement creating the easement over the Easement Area and the other rights and obligations identified therein subject only to matters either consented to or not timely objected to by the County pursuant to paragraph 4 below and containing the consent and joinder of all parties holding a mortgage lien encumbering all or any portion of the Easement Area.

- (2) An as-built survey of the Stormwater Improvements constructed in the Easement Area and those located within Tract B prior to obtaining Certificate(s) of Completion.
- (3) An appropriate and customary mechanic's lien and gap affidavit in form reasonably required by County's title company.
- (4) A mutually acceptable termination agreement of the Existing Easement.
- (5) A closing statement and such other documents as are reasonably necessary to effectuate this transaction.

County's Obligations

- a. The closing of the exchange of the County Property and the Easement Rights and Obligations shall be conditioned upon satisfaction of the following conditions by the County, any of which may be waived by the Developer in its reasonable discretion:
 - (1) Deliver to the Developer copies of any surveys, title policies, tests, studies, engineering plans and maintenance records in the County's possession that relate to the County Property.
 - (2) Deliver to the Developer copies of all permit applications, submittals and final permits related to the use of the County Property for surface water and stormwater treatment and/or storage purposes in the County's possession.
- b. The County shall reasonably and timely cooperate with Developer and execute any necessary documents required by agencies for Developer to acquire permits from any non-County agency that are necessary for the relocation and operation of the Retention Pond to the Easement Area. The County's approval of this Agreement shall constitute the authority for the Chair, or designee, to execute any and all documents required to effectuate this exchange and obtain the applications and documents required by the agencies that will be issuing the necessary permits. The County's approval of this Agreement shall also constitute authorization for Developer to apply for any land use, zoning, site plan or other approval required to utilize the County Property for commercial use, but shall not guarantee approval of such application.
- c. Plans and Approvals. Within 30 business days after the date of last signature below (the "Effective Date"), the Developer shall deliver to the County proposed engineered plans and specifications for the Stormwater Improvements, stormwater calculations, and location of the Easement Area ("Developer's Initial Plans"). Within fifteen (15) business days following receipt of the Developer's Initial Plans, the County shall review same and notify the Developer whether it approves or

disapproves of the Developer's Initial Plans, which approval shall not be unreasonably withheld, conditioned or delayed. The County can request, and will not be unreasonably denied, any extension of time not to exceed five (5) business days in order to review the Developer's Initial Plans. If the County disapproves any portion of the Developer's Initial Plans, such disapproval shall be in writing and shall specify the basis for disapproval in reasonable detail. Following its receipt of the County's objections, the Developer shall have twenty (20) business days to resubmit to the County revised Developer's Initial Plans consistent with the reasonable objections of the County. The Developer's Initial Plans, as approved, are referred to in this Agreement as the "Developer's Plans." With respect to any surveys, as-built surveys, sketches, legal descriptions, draft closing documents and other materials required to be delivered by Developer to the County hereunder, the County shall review same and, within fifteen (15) business days following receipt of each of such materials, notify the Developer whether it approves or disapproves of such materials, which approval shall not be unreasonably withheld, conditioned or delayed.

- d. Prior to Closing, County and its authorized agents and representatives shall be entitled to enter the Easement Area at reasonable times upon reasonable notice (except in an emergency, when no notice is required) and in a manner that does not interfere with Developer's business operations, for the purpose of inspecting the Easement Area and the Stormwater Improvements.
- e. At closing of the exchange, the County will execute and/or deliver or cause to be delivered to Developer the following closing documents:
 - (1) a County deed conveying the County Property to Developer subject only to matters either consented to or not timely objected to by Developer pursuant to paragraph 4 and providing that the County releases all phosphates, metals, minerals and petroleum reservations, if any, it may have pursuant to Section 270.11, Florida Statutes.
 - (2) an assignment, without representation or warranty, of any licenses and permits, intangible property, warranties, and plans and specifications concerning the County Property.
 - (3) an appropriate and customary mechanic's lien and gap affidavit in form reasonably required by Developer's title company.
 - (4) an affidavit of exclusive possession to the County Property.

- (5) Proof of publication of the notice required under Section 125.37, Florida Statutes, or proof of compliance with the standards and procedures as may have been prescribed under Section 125.37, Florida Statutes.
- (6) an affidavit satisfactory to the title company executed by an appropriate County Official confirming that the applicable requirements of Chapter 125, Florida Statutes, as to the exchange have been satisfied.
- (7) A mutually acceptable termination of the Existing Easement via a County deed or termination agreement.
- (8) A closing statement and such other documents as are reasonably necessary to effectuate this transaction.

3. Title Evidence and Insurance.

Developer shall provide marketable title for the easement rights transferred to County by the form of the Easement Agreement attached hereto, in substantial form, as Exhibit B. At least twenty (20) calendar days prior to Closing Date (as defined below), a title insurance commitment for the Easement Area shall be issued by a Florida licensed title insurer with the County as the insured, with legible copies of instruments listed as exceptions attached thereto (the "County Title Commitment") and, after Closing, an Easement Owner's Policy of title insurance (the "County's Owner's Policy") shall be obtained and delivered to the County. The Developer shall designate the Closing Agent and pay for the County's Owner's Policy and premium charges due in connection therewith, including charges for closing services.

County shall provide marketable title to the County Property which shall be conveyed to the Developer by County deed. At least twenty (20) calendar days prior to Closing Date, a title insurance commitment for the County Property may be obtained by the Developer, at Developer's sole expense, which shall be issued by a Florida licensed title insurer with the Developer as the insured, with legible copies of instruments listed as exceptions attached thereto (the "Developer Title Commitment") and, after Closing, an Owner's Policy of title insurance (the "Developer's Owner's Policy") shall be obtained and delivered to the Developer. The Developer shall designate the Closing Agent and pay for Developer's Owner's Policy and premium charges due in connection therewith, including charges for closing services.

4. Title Examination

The County and the Developer shall each have ten (10) business days after receipt of the respective Title Commitments to examine them and notify the other Party in writing specifying defect(s), if any, that render title unmarketable. If the County Title Commitment is delivered to the County less than ten (10) business days prior to Closing Date, the County may extend Closing for up to five (5) business days after date of receipt to examine same in accordance with

this section. Each Party shall have thirty (30) calendar days ("Cure Period") after receipt of the other Party's notice to take reasonable diligent efforts to remove defects. If either Party fails to so notify the other Party, such Party shall be deemed to have accepted title as it then is. If either party cures the noticed defects within the Cure Period, such Party will deliver written notice to the other Party (with proof of cure acceptable to the receiving Party and their attorney) and the Parties will close this exchange on the Closing Date (or if Closing Date has passed, within ten (10) business days after the receiving Party's receipt of the other Party's notice). If either Party is unable to cure defects within the Cure Period, then the Party that gave notice of the title defect may, within five (5) business days after expiration of Cure Period, deliver written notice to the other Party:

- extending the Cure Period for a specified period not to exceed one hundred twenty (120) calendar days within which the noticed Party shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or
- elect to accept title with existing defects and close this exchange on the Closing Date (or if the Closing Date has passed, within the earlier of ten (10) business days after end of the Extended Cure Period or the other Party's notice), or
- elect to terminate this Agreement, thereby releasing the County and Developer from all further obligations under this Agreement. If after reasonable diligent effort either Party is unable to timely cure defects and the other Party does not waive the defects, this Agreement shall terminate, thereby releasing the County and Developer from all further obligations under this Agreement.

On or before Closing, Developer shall cause the Title Commitments to be updated and if such updates should reveal any matter rendering title to the Easement Area or the County Property unmarketable and not disclosed in the original Title Commitments and not caused by, through or under the Developer as to the County Property or the County as to the Easement Area, the affected Party may notify the other Party of the new defect. Each Party shall have ten (10) calendar days after receipt of the other Party's notice to take reasonable diligent efforts to remove the new defects. If the notified Party is unable to cure the new defect within such ten (10) day period, then the Party that gave notice of the new title defect may, within five (5) business days after expiration of such ten (10) day period, deliver written notice to the other Party electing one of the options provided above for uncured defects identified during the initial title review period.

5. Closing

The closing of the exchange (the "Closing Date") shall take place within fifteen (15) calendar days after completion by the Developer of the requirements identified under this Agreement, including Paragraph 2(a) below the heading "Developer Requirements".

6. Closing Documents and Costs

Developer shall, at or prior to Closing, execute and deliver, as applicable, the documents identified in Section 2 above and County shall, at or prior to Closing, execute and deliver, as applicable, the documents identified in Section 2 above. Developer shall furnish to the County and pay for one or more surveys of the County Property and the Easement Area (less the portion of Tract B identified in the recorded Plat), which surveys shall also identify any easements or other encumbrances encumbering the County Property or the Easement Area. Said surveys shall be subject to review and approval by the County and County survey staff. Developer shall be responsible for the preparation of all closing documents. Developer shall also pay all closing costs and the costs of the premiums for the title insurance policies, including gap insurance, insuring the County's interest in the Easement Area and the Developer's interest in the County Property.

7. Representations

Developer hereby warrants and represents to the County that it is a Delaware limited liability company and not a "foreign person" as defined by F.I.R.P.T.A., Section 1445 of the Internal Revenue Code.

Developer hereby represents and warrants to the County that, during its period of ownership of the Easement Area, it has not received any citation, notice of violation or other written communication from any governmental authority or other third party stating that Hazardous Materials (as defined below) may exist on or under the Easement Area, and to the best of the knowledge of Developer there are no existing violations of any Environmental Laws (as defined below) with respect to the Easement Area and there are no underground or aboveground storage tanks on the Easement Area.

County hereby represents and warrants to Developer that, during its period of ownership of the County Property, it has not received any citation, notice of violation or other written communication from any governmental authority or other third party stating that Hazardous Materials may exist on or under the County Property, and to the best of the knowledge of the County there are no existing violations of any Environmental Laws with respect to the County Property and there are no underground or aboveground storage tanks on the County Property.

For purposes of this Agreement, the term "Environmental Laws" shall mean all laws, ordinances, statutes, codes, rules, regulations, agreements, judgments, orders, and decrees, now or hereafter enacted, promulgated, or amended, of the United States, the states, the counties, the cities, or any other political subdivisions in which the County Property and the Easement Area are located, regulating or concerning the release of Hazardous Materials (as

defined herein) into the environment (including, without limitation, ambient air, surface water, ground water or land or soil).

For the purposes of this Agreement, the term "Hazardous Materials" shall mean any substance which is or contains (i) any "hazardous substance" as now or hereafter defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.) ("C.E.R.C.L.A.") or any regulations promulgated under or pursuant to CERCLA; (ii) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. §6901 et. seq.) ("R.C.R.A.") or regulations promulgated under or pursuant to RCRA; (iii) any substance regulated by the Toxic Substances Control Act (15 U.S.C. §2601 et seq.); (iv) gasoline, diesel fuel, or other petroleum hydrocarbons; and (v) any additional substances or materials which are now or hereafter regulated or considered to be hazardous or toxic under Environmental Laws (as hereinafter defined). The term Hazardous Materials shall not include customary cleansers and solvents or other substances in quantities typically used in the ordinary course of business.

8. Maintenance and Defaults Rights.

Developer agrees that the County shall have the rights provided in the attached Easement Agreement in the event of a default by Developer, its successors or assigns, to maintain the drainage facilities as required in the Easement Agreement after Closing.

Developer, or its assigns or successors in interest, and the Association, agree as follows:

- a. to maintain the new retention pond in perpetuity for stormwater collection and drainage purposes, subject to the Easement Agreement. Such maintenance shall be to County and State of Florida Department of Transportation ("F.D.O.T.") standards and shall include replacement of underdrains, pipes, or reconstruction of any associated improvements as necessary.
- b. to notify the County in writing thirty (30) days prior to any non-routine replacements or reconstruction work and obtain any necessary permits or approvals as may be required.
- c. that in the event the Developer, its assigns or successors, or the Association defaults on its maintenance obligation(s), after delivering thirty (30) days written notice of default, except in an emergency when no notice is required, and right to cure to Developer and the Association, the County may invoice the Developer or the Association, as applicable, for the reasonable cost to maintain the Stormwater Improvements together with the reasonable administrative costs to the County (any such invoice being referred to herein as a "County Invoice"). Upon such time as the Developer assigns the obligations under this Agreement

and the Easement Agreement to the Association, the County may invoice the Association (and not the Developer) for such costs and expenses.

- d. the maintenance of the Stormwater Improvements is being agreed to by the Parties as partial consideration for the exchange provided for in this Agreement.
- e. Delinquent amounts due for the cost to cure maintenance deficiencies by Developer, or its successors or assigns, or the Association shall become due and payable to the County at the Office of the County Manager thirty (30) calendar days after the County Invoice for such costs is delivered to the Developer or Association, as applicable. If the amount is not paid or the lack of maintenance is not cured within thirty (30) calendar days, the County may enforce its right to payment for such invoice by action at law and, thereafter, the amount due to satisfy the County Invoice shall bear interest at the rate of two percent above the prime interest rate per annum, as determined by the Wall Street Journal Prime Rate.
- f. Collection of any such County Invoice, including interest, penalties, and reasonable attorney's fees, may be made by the Board of County Commissioners by instituting proceedings in a court with jurisdiction as provided by law provided that the County agrees that the County shall not seek to enforce the rights to payment by legal action if the Association confirms in writing to the County within thirty (30) days of the receipt of the County Invoice that the Association will pay the County its demanded cost and expenses within the Association's then current fiscal year or within the first ninety (90) days of the start of the Association's next following fiscal year (such written notice being referred to herein as an "Association Payment Notice").

In order to secure the obligation of the Developer, and the Association after the Developer assigns the obligations under the Easement Agreement to the Association, to reimburse the County for any costs that may be incurred by the County should it exercise its rights under the Easement Agreement to maintain any portion of the Water Management System, on the Closing Date, the Developer shall deliver to the County an amount equal to ten percent (10%) of the actual costs to build and install the Water Management System, exclusive of the costs to construct the portion of the Water Management System located in Tract B, to hold in escrow during the existence of the Easement Agreement (the "Escrowed Funds"). The County shall be entitled to draw upon the Escrowed Funds, including interest, pursuant to the procedure identified in Section 9.b. of the Easement Agreement. In lieu of the escrow account process provided for in Section 9.b. of the Easement Agreement, the Developer and the Association may

request the County, in its sole discretion, adopt and utilize the lien process outlined in Section 9.c. of the Easement Agreement.

- g. The maintenance obligation and collection rights provided for in this Section 8 shall survive closing.

9. Licensing

All contractors, subcontractors, consultants, sub-consultants, engineers, or other required professionals employed or contracted by Developer to perform the requirements of this Agreement, including any and all future maintenance obligations herein identified, shall be properly licensed as required by the State of Florida and the County. This provision shall survive closing.

10. Assignability

This Agreement and Developer's obligations hereunder may be assigned by Developer to the Association, or to any affiliated entity or to any successor in interest to Developer, with advance written notice to the County. Notice shall be provided by Developer to the County within fifteen (15) calendar days of any such assignment. Such notice shall include contact information for the assignee. Developer shall also be permitted to identify a designee to be named as the grantee on the deed delivered by the County at closing for the County Property. Following the closing of the exchange, all provisions surviving closing shall be binding upon all such successors and assigns and Developer shall be released from any continuing obligations under this Agreement provided the assignee assumes the continuing obligations under this Agreement. Notwithstanding the above, the County agrees that the Developer may assign the rights and obligations under the Easement Agreement to the Association without prior notice or approval, provided the Association assumes the continuing obligations under this Agreement. Proof of the Association's assumption of the continuing obligations identified herein shall be provided to the County. This provision shall also survive closing.

Upon transfer of the ownership or maintenance obligations of the Parkway by the County to another governmental entity, the County may assign its rights under this Agreement to such party without the prior approval of the Developer, or its assigns or successors in interest. However, the County shall provide written notice of such assignment to the Developer, or its assigns or successors in interest.

11. Attorney's Fees

If any legal action is commenced to enforce or interpret any provision of this Agreement other than the maintenance provisions outlined in Section 8 above, each Party shall bear their own

legal fees, costs, and expenses of suit, including, without limitation, attorney, paralegal, and expert fees. This provision shall survive closing.

12. Venue

Venue for any legal action by any Party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida and **ANY TRIAL SHALL BE NON-JURY.**

13. Insurance

Developer, or their successors and assigns, and any contractor, sub-contractor, consultant or sub-consultant retained by Developer to provide services necessary to fulfill the terms of this Agreement, including, but not limited to, all maintenance activities required by this Agreement, shall have in place the following minimum levels of insurance:

- **General Liability Insurance:** General Liability Insurance issued by responsible insurance companies and in a form acceptable to the County, with combined single limits of not less than One Million Dollars for Bodily Injury and Property Damage per occurrence.
- **Automobile Liability Insurance:** Automobile Liability coverage shall be in the minimum amount of One Million Dollars combined single limits for Bodily Injury and Property Damage per accident.
- **Workers' Compensation Coverage:** Full and complete Workers' Compensation Coverage, as required by Florida law, shall be provided.
- **Insurance Certificates:** Developers shall provide certificates of insurance to the County demonstrating that the aforementioned insurance requirements have been met under this Agreement and upon insurance renewal annually. Insurance carriers providing coverage required herein must be licensed or authorized to conduct business in the State of Florida and must possess A.M. Best's Financial Strength Rating of A- Class VIII or better. Said Liability Policies shall provide that the County be an additional insured for the General Liability and Auto Liability insurance. The County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) calendar days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the County and licensed and authorized under the laws of the State of Florida.
- **After the assignment of the rights and obligations under this Agreement and/or the Easement Agreement by Developer to the Association and the assumption thereof by the Association, the Association shall maintain the Insurance Requirements and Developer shall no longer be required to carry such insurance.**

14. Indemnification

- a. Until the assignment of the rights and obligations under this Agreement by Developer to the Association and the assumption thereof by the Association, Developer, and its successors and assigns, shall indemnify and hold harmless the County and its agents, officers, and employees (the "County Parties") from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of its work under this Agreement, where such claim, damage, loss, or expense is caused, in whole or in part, by the act or omission of Developer, or anyone directly or indirectly employed by Developer, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified thereunder. In any and all claims against any of the County Parties, the Developer's obligations, and the obligations of anyone directly or indirectly employed by or anyone for whose acts Developer may be liable, under this paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for the custodial contractor, under workers' compensation acts, or other related policies of insurance. Upon the assignment of the rights and obligations under this Agreement by the Developer to the Association, the Association shall indemnify and hold harmless the County Parties from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of its work under this Agreement, where such claim, damage, loss, or expense is caused, in whole or in part, by the act or omission of the Association, or anyone directly or indirectly employed by the Association, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified thereunder and Developer shall no longer be obligated to indemnify or hold harmless County as otherwise provided above. In any and all claims against any of the County Parties, the Association's obligations, and the obligations of anyone directly or indirectly employed by or anyone for whose acts the Association may be liable, under this paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for the custodial contractor, under workers' compensation acts, or other related policies of insurance.

The Parties acknowledge specific consideration has been exchanged for this provision. Nothing contained in this paragraph shall be construed as a waiver of the County's right to the protections of and/or limitations on damages afforded by sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on County's potential liability under state or federal law. This indemnification shall survive the termination of this Agreement. This indemnification shall apply to maintenance

activities included in Section 8 above. Nothing in this Agreement shall be interpreted to create any causes of action for any third parties not a party to this Agreement.

- b. Developer, and its successors and assigns, agree to include the following indemnification in all contracts with contractors, subcontractors, consultants, or subconsultants who perform work in connection with this Agreement, including any future maintenance activities required in paragraph 8:

"To the fullest extent permitted by law, the contractor shall indemnify and hold harmless Brevard County, Florida, and its officers, agents, and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct or omission of the contractor and persons employed or utilized by the contractor in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the County's sovereign immunity. Specific consideration has been given for this provision."This provision shall survive closing.

15. Independent Contractor

Nothing in this Agreement shall be interpreted or construed to constitute Developer, or any of its agents or employees, or any contractors, subcontractors, consultants, sub-consultants retained by Developer to be the agent, employee or representative of the County.

16. Right to Audit Records

In performance of this Agreement, Developer shall keep books, records, and accounts of all activities related to this Agreement in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by Developer in conjunction with this Agreement, and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the County. Developer shall retain all documents, books and records for a period of five years after termination of this Agreement, unless such records are exempt from Section 24(a) of Article I of the State Constitution and Chapter 119, Florida Statutes. It will be Developer's duty to identify any information in records created by Developer which it deems is exempt under Florida or federal law and identify the statute number which requires the information be held exempt. All records or documents created by or provided to Developer by the County in connection with this Agreement are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to the County in a format compatible with the information technology systems of the County. Developer shall ensure that public records which are exempt or confidential and exempt from public records disclosure

requirements are not disclosed, except as authorized by law, for the duration of the Agreement and following termination of the Agreement if Developer does not transfer the records to the public agency. Developer shall specifically identify what statutory provisions apply to records or information that is claimed to be confidential and/or exempt from disclosure. Developer shall hire attorneys and indemnify the County in any cause of action brought in which the validity of such confidential and/or exempt status is challenged. In lieu of retaining all public records upon termination of this Agreement, Developer may transfer, at no cost to the County, all public records in possession of Developer. If Developer transfers all public records to the County upon termination of the Agreement, Developer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. Upon the assignment of the Developer's rights and obligations under this Agreement and under the Easement Agreement to the Association, the Association shall be responsible for the obligations under this paragraph and the Developer shall be released from further obligation under this paragraph except that the Developer shall have the continuing obligations provided above as to the books, records, and accounts generated or used by the Developer prior to the assignment to the Association unless the Developer transfers such books, records, and accounts to the Association for compliance with this paragraph.

17. Public Records

Pursuant to Section 119.0701, Florida Statutes, a request to inspect or copy public records relating to this Agreement must be made directly to the County. If the County does not possess the requested records, the County shall immediately notify Developer of the request and Developer must provide the records to the County or allow the records to be inspected or copied within twenty-four hours (not including weekends and legal holidays) of the request so the County can comply with the requirements of Section 119.07, Florida Statutes. Developer may also provide a cost estimate to produce the requested documents consistent with the policy set forth in Brevard County Administrative Order-47, incorporated herein by this reference. A copy of Administrative Order-47 is available upon request from the County's public records custodian designated below.

If Developer fails to provide the requested public records to the County within a reasonable time, Developer may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties. Developer's failure to comply with public records requests is considered a material breach of this Agreement and grounds for termination.

Should the County face any legal action to enforce inspection or production of the records within Developer's possession and control, Developer agrees to indemnify the County for all damages and expenses, including attorney's fees and costs. Developer shall hire and

compensate attorney(s) to represent Developer and County in defending such action. Developer shall pay all costs to defend such action and any costs and attorney's fees awarded pursuant to Section 119.12, Florida Statutes.

Upon the assignment of the Developer's rights and obligations under this Agreement and under the Easement Agreement to the Association, the Association shall be responsible for the obligations under this paragraph and the Developer shall be released from further obligation under this paragraph except that the Developer shall have the continuing obligations provided above as to the records generated or used by the Developer prior to the assignment to the Association unless the Developer transfers such records to the Association for compliance with this paragraph.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS:

ROBERT HENDRICKS 321-617-7202

robert.hendricks@brevardfl.gov

2725 Judge Fran Jamieson Way, Suite A-201

Viera, FL 32940

18. Notice

Notice shall be provided to the Parties as follows:

- County: Public Works, c/o Public Works Director, 2725 Judge Fran Jamieson Way, Viera, FL 32940
- Developer: Space Coast Town Centre I, L.L.C., 7485 Fairway Drive, Suite 430, Miami Lakes, FL 33014, Attention Mr. Robert Gorlow

19. Entirety

This Agreement represents the understanding and agreement of the Parties in its entirety. There shall be no amendments to the Agreement unless such amendments are in writing and signed by both Parties. This Agreement shall not be recorded in the Public Records of Brevard County, Florida until closing, at which point the Easement Agreement shall be recorded in the Public Records of Brevard County at the Developer's sole expense.

20. Severability

In the event any provision of this Agreement is declared or determined to be unlawful, invalid, or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of the Agreement. Each provision of the Agreement is deemed to be separate and severable from each other provision.

21. Effective Date

This Agreement shall take effect upon date of execution by the last Party to the Agreement.

22. Counterparts

This Agreement may be executed in counterparts all of which, when taken together, shall constitute one and the same Agreement.

23. Radon Gas

RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT. **[NOTE: THIS PARAGRAPH IS PROVIDED FOR INFORMATIONAL PURPOSES PURSUANT TO SECTION 404.056(7), FLORIDA STATUTES (1988).]**

24. Brokers

The Parties each represent and warrant to the other that no real estate broker, salesperson or finder has been involved in this transaction. If a claim for commission in connection with this transaction is made by any broker, salesperson or finder claiming to have dealt through or on behalf of one of the Parties hereto ("Indemnitor"), Indemnitor shall indemnify, defend and hold harmless the other Party hereunder ("Indemnatee"), and Indemnatee's officers, directors, agents and representatives, from and against all liabilities, damages, claims, costs, fees and expenses whatsoever (including reasonable attorney's fees and court costs at trial and all appellate levels) with respect to said claim for commission. This provision shall survive closing.

[Remainder of page intentionally left blank]

In witness whereof, the Parties hereto have set their hands and seals the day and year last below written.

Attest:

Rachel Sadoff, Clerk

Brevard County, Florida

BY:

Kristine Zonka, Chair

Date: December 21, 2021

Approved by the Board on: 12/21/21

Approved as to legal form and content
solely for Brevard County:

BY:

Assistant County Attorney

Space Coast Town Centre I, L.L.C., a Delaware
limited liability company

BY: Space Coast Town Centre Holdings, LLC, a Delaware
limited liability company, Its Sole Member

Witnesses;

Tina Caldwell
Tina Caldwell

Printed Name

Trina McCloud
Trina McCloud

Printed Name

BY: Multiverse Global, LLC, a Florida limited
liability company, its Manager

BY:

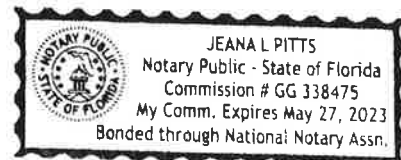
Edgar Jones, Manager

Date: 12/21/21

STATE OF Florida
COUNTY OF Indian River

The foregoing instrument was acknowledged before me by X physical presence or online notarization
this 2nd day of December 2021 by Edgar Jones as a Manager of Multiverse Global, LLC, a Florida
limited liability company as the Manager of Space Coast Town Center Holdings, LLC, a Delaware limited
liability company as the Sole Member of Space Coast Town Centre I, L.L.C., a Delaware corporation on behalf
of the corporation. He is personally known to me or provided as identification

Jeana L. Pitts
(Notary Signature – State of Florida)



Print, Type, or Stamp Commissioned Name of Notary Public

Commission No.:

My Commission Expires:

GG 338475
May 27, 2023

EXHIBIT A
LEGAL DESCRIPTION OF COUNTY PROPERTY

A parcel of land located within Lot 6, FLORIDA INDIAN RIVER LAND COMPANY, as recorded in Plat Book 2, Page 80, Public Records of Brevard County, Florida, and being in the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East, being described as follows: COMMENCE at the Southwest corner of the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East; thence run North 89 degrees 35 minutes 56 seconds East along the South line of said Southwest 1/4 (One-Quarter), a distance of 1322.84 feet; thence, departing said South line, run North 00 degrees 24 minutes 04 seconds West, a distance of 48.00 feet to the North Right-of-Way line of Melbourne Tillman Drainage District Canal No. 84; thence run North 89 degrees 35 minutes 56 seconds East, along said North Right-of-Way line, a distance of 210.04 feet to a point on a non-tangent curve to the right having a radius of 22,813.31 feet; thence, departing said North Right-of-Way line, from a chord bearing of North 00 degrees 50 minutes 50 seconds East, run Northerly along said curve an arc distance of 115.89 feet through a central angle of 00 degrees 17 minutes 28 seconds to the point of reverse curvature of a curve having a radius of 23,023.31 feet; thence run Northerly along said curve an arc distance of 274.51 feet through a central angle of 00 degrees 40 minutes 59 seconds to a point on said curve and the POINT OF BEGINNING; thence continue along said curve an arc distance of 83.31 feet through a central angle of 00 degrees 12 minutes 26 seconds to the end of said curve; thence run South 89 degrees 54 minutes 13 seconds East, a distance of 190.46 feet; thence South 00 degrees 12 minutes 08 seconds East, a distance of 83.31 feet; thence North 89 degrees 54 minutes 13 seconds West, a distance of 191.05 feet to the POINT OF BEGINNING.

Said lands containing 0.365 acres, more or less.

Together with:

A parcel of land located within Lot 6, FLORIDA INDIAN RIVER LAND COMPANY, as recorded in Plat Book 2, Page 80, Public Records of Brevard County, Florida, and being in the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East, being described as follows: COMMENCE at the Southwest corner of the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East; thence run North 89 degrees 35 minutes 56 seconds East along the South line of said Southwest 1/4 (One-Quarter), a distance of 1322.84 feet; thence, departing said South line, run North 00 degrees 24 minutes 04 seconds West, a distance of 48.00 feet to the North Right-of-Way line of Melbourne Tillman Drainage District Canal No. 84; thence run North 89 degrees 35 minutes 56 seconds East, along said North Right-of-Way line, a distance of 210.04 feet to a point on a non-tangent curve to the right having a radius of 22,813.31 feet; thence, departing said North Right-of-Way line, from a chord bearing of North 00 degrees 50 minutes 50 seconds East, run Northerly along said curve an arc distance of 115.89 feet through a central angle of 00 degrees 17 minutes 28 seconds to the point of reverse

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curvature of a curve having a radius of 23,023.31 feet; thence run Northerly along said curve an arc distance of 14.64 feet through a central angle of 00 degrees 02 minutes 11 seconds to the POINT OF BEGINNING; thence continue along said curve an arc distance of 259.87 feet through a central angle of 00 degrees 38 minutes 48 seconds to the end of said curve; thence run South 89 degrees 54 minutes 13 seconds East, a distance of 191.05 feet; thence South 00 degrees 12 minutes 08 seconds East, a distance of 258.17 feet; thence run South 89 degrees 35 minutes 56 seconds West, a distance of 194.84 feet to the POINT OF BEGINNING.

Said lands containing 1.146 acres, more or less.

Together with:

A parcel of land located within Lots 5 and 6, FLORIDA INDIAN RIVER LAND COMPANY, as recorded in Plat Book 2, Page 80, Public Records of Brevard County, Florida, and being in the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East, being described as follows: COMMENCE at the Southwest corner of the Southwest 1/4 (One-Quarter) of Section 3, Township 28 South, Range 36 East; thence run North 89 degrees 35 minutes 56 seconds East along the South line of said Southwest 1/4 (One-Quarter), a distance of 1729.97 feet to the Southerly projection of the West line of the lands described in Official Records Book 5564, Page 6498, Public Records of Brevard County, Florida; thence departing said South line, run North 00 degrees 12 minutes 08 seconds West, along said Southerly projection and said West line, a distance of 178.50 feet to the POINT OF BEGINNING; thence continue North 00 degrees 12 minutes 08 seconds West, along said West line, a distance of 341.48 feet; thence departing said West line, run South 89 degrees 54 minutes 13 seconds East, a distance of 402.50 feet; thence run South 00 degrees 12 minutes 12 seconds East, a distance of 337.98 feet; thence run South 89 degrees 35 minutes 56 seconds West, a distance of 402.50 feet to the POINT OF BEGINNING.

Said lands containing 3.139 acres, more or less.

Total acreage of all 3 parcels is 4.65 acres, more or less.

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EXHIBIT B
FORM OF EASEMENT AGREEMENT

**THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:**

Richard M. Bezold, Esq.
AKERMAN LLP
98 SE 7th Street, Suite 1100
Miami, Florida 33131

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Easement"), is made and entered into the date of last signature below ("Effective Date"), by and between SPACE COAST TOWN CENTRE I, L.L.C., a Delaware limited liability company, having an address of 7485 Fairway Drive, Suite 430, Miami Lakes, FL 33014 ("Grantor"), and BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, having an address of Public Works, c/o Public Works Director, 2725 Judge Fran Jamieson Way, Viera, FL 32940 ("Grantee") and joined in by the Association as described below. Grantor and Grantee are sometimes individually referred to as a "Party" and collectively as the "Parties."

RECITALS:

- A. Grantor is the owner of certain real property in Brevard County, Florida, as more particularly described on **Exhibit "A"** and as depicted on **Exhibit "B"** both attached hereto and incorporated herein by this reference (the "Easement Area").
- B. As of the Effective Date of this Easement, a portion of the Easement Area has been platted pursuant to that certain plat titled Space Coast Town Centre East – Phase I, pursuant to the plat recorded in Plat Book 68, Page 50 of the Public Records of Brevard County, Florida (the "Plat"), which Plat includes an area identified as "Tract B" that is intended for use as stormwater management and parks and recreation purposes ("Tract B").
- C. The Easement Area is located within a phased, mixed-use project of approximately 154 acres known as the Space Coast Town Center approved by the City Council of West Melbourne following duly noticed public hearings held on July 8, 2019 and July 16, 2019 (the "Project").
- D. The Project is subject to an approved development agreement, recorded on October 7, 2019 at Official Records Book 8556, Page 2570 of the Public Records of Brevard

County, Florida, as may be amended from time to time, (the "Development Agreement") which sets forth the terms and conditions on which the Project is to be developed as a phased, mixed-use project, including a master development plan attached and incorporated into the Development Agreement (the "M.D.P.").

E. The Space Coast Town Centre Property Owner's Association, Inc., a Florida not for profit corporation (the "Association"), has been established to own and/or operate certain of the common areas and facilities of the Project, including, but not limited to, Tract B, pursuant to that certain Master Declaration of Covenants, Conditions and Restrictions, Space Cost Town Centre, West Melbourne, Florida, recorded in Official Records Book 8844, at Page 372 of the Public Records of Brevard County, Florida (the "Master Declaration").

F. Grantee maintains and operates the St. Johns Heritage Parkway in Brevard County, Florida (the "Parkway"), which is located adjacent to and west of the Easement Area.

G. Grantor desires to grant to Grantee a perpetual, non-exclusive easement for: (1) drainage and retention (and a reasonable right of water flow) over, into and through the Water Management System (as defined in Section 2 below) to facilitate the drainage, retention and conveyance of stormwater and surface water from Basin G as defined in the permit documentation labeled "Drainage Design Documentation For ST John's Heritage Parkway (From the City of Palm Bay line to US 192)" dated March 2014 as a part of the St. Johns River Water Management District (the "S.J.R.W.M.D.") Permit No. 126163-2 (the "County Permit") consisting of approximately +/-13.37 acres of the Parkway ("Basin G") into and through the Water Management System; and (2) ingress, egress, and access to conduct emergency maintenance to restore drainage flow and other allied uses pertaining thereto, over, under, upon, across, and through the Easement Area, pursuant to the terms and conditions more particularly described herein.

H. The Parties understand that the Parkway is set to be widened to six (6) lanes, and surface water and stormwater capacity, and associated drainage requirements, have been included in the calculations for the Permit (as defined below) to provide for existing stormwater and surface water volume, as well as future volume from Basin G upon completion of the road expansion. Any permit modifications needed to account for the additional stormwater and surface water drainage from Basin G shall be coordinated between the Parties.

I. Grantor has obtained from the S.J.R.W.M.D. _____ Permit No. _____ providing for the construction and operation of the Water Management System within the Easement Area (the "Permit"). **[Amend as required pursuant to the final permit from the S.J.R.W.M.D.]**

J. Grantor desires to grant to the Association the easement rights identified in Section 4 below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Easement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows.

1. Recitals

The foregoing recitals are true and correct and, by this reference, are hereby incorporated into this Easement as if fully set forth herein.

2. Water Management System

For the purposes of this Easement, the "Water Management System" means the Easement Area and all surface water and stormwater management improvements constructed within the Easement Area pursuant to the Permit, from time to time, including the lake on Tract B, that are designed and constructed or implemented to control surface water and stormwater discharges from Basin G of the Parkway as identified in the Permit, including discharges resulting from future expansion of the Parkway within Basin G to six lanes, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges, including, but not limited to, the requirements established pursuant to the Permit and the systems established in the Easement Area pursuant thereto. The Water Management System shall account for existing surface water and stormwater discharges, and for increased surface water and stormwater discharges and drainage associated with the planned road widening of the Parkway to a six-lane road. For purposes of clarification, the Water Management System does not include any improvements currently or in the future installed or constructed by the Grantee, or its successors and assigns, within the right-of-way of the Parkway (the "Parkway Improvements") for the collection or diversion of surface water and stormwater from the Parkway to the Water Management System located in the Easement Area, which Parkway Improvements shall remain the responsibility of the Grantee and its successors and assigns as the owner of the Parkway or other appropriate party by agreement. The Grantee, the Grantor and the Association, and their respective successors and assigns, agree to cooperate in the development, construction and maintenance of the tie-in point(s) between the Grantee's Parkway Improvements located in the Parkway right-of-way and the Water Management System located in the Easement Area.

3. Water Management Easements in Favor of Grantee

Grantor does hereby grant, convey, declare and establish, for the benefit of Grantee a perpetual, non-exclusive easement for: (1) drainage and retention (and a reasonable right of water flow) over, into and through the Water Management System, solely for drainage, retention and conveyance of stormwater and surface water from Basin G of the Parkway into and through the Water Management System; and (2) ingress, egress, and access to conduct emergency maintenance to restore drainage flow and other allied uses pertaining thereto, over,

under, upon, across, and through the Easement Area. The Parkway will be expanded to a six-lane roadway. Grantee shall not discharge, nor allow the discharge of, stormwater or surface water into the Water Management System from any portion of the Parkway or other lands except those portions of the Parkway specifically identified as part of Basin G in the Permit.

4. Water Management Easements in Favor of the Association

Grantor does hereby grant, convey, declare and establish, for the benefit of the Association over the portions of the Easement Area located outside of Tract B, as an Area of Common Responsibility (as that term is defined in the Master Declaration), a perpetual, non-exclusive easement for: (1) drainage and retention (and a reasonable right of water flow) over, into and through the Water Management System, solely for drainage, retention and conveyance of stormwater and surface water from Basin G of the Parkway into and through the Water Management System; and (2) ingress, egress, and access to conduct maintenance, repairs and replacements of improvements located in the Easement Area to provide uninterrupted drainage flow and other allied uses pertaining thereto, over, under, upon, across, and through the Easement Area for the duration of this Easement Agreement.

5. Maintenance of Water Management System

As of the Effective Date of this Easement, Grantor has installed the facilities for the Water Management System as required by the Permit and applicable governmental authorities and shall be responsible for the maintenance obligations of the Water Management System. The Association agrees to maintain the retention pond located in Tract B and the Grantor, or its successors or assigns in interest, which may include the Association, agrees to maintain the portions of the Easement Area located outside of Tract B in perpetuity. All such maintenance shall be to Brevard County, State of Florida Department of Transportation ("F.D.O.T.") and S.J.R.W.M.D. standards, as applicable, for retention ponds and stormwater systems of this nature and shall include replacement of underdrains, pipes, or reconstruction of any associated improvements as necessary. Grantor or the Association, as applicable, shall notify the Grantee in writing thirty (30) days prior to any non-routine replacements or reconstruction work and obtain any necessary permits or approvals as may be required. In the event that the Grantor or the Association fails to properly maintain the Water Management System, the Grantee is hereby authorized to service, maintain, repair and replace (and assess such costs), as necessary, the Water Management System following written notice to the Grantor or the Association, as applicable, of said maintenance default by Grantor or the Association, or in cases of emergency, in which case no notice shall be required. Grantor or the Association shall service, maintain, repair and replace the Water Management System at its sole expense until such time as the rights and obligations under this Easement are assigned to the Association as to Grantor's interests in the improvements located in the Easement Area outside of Tract B, at which time the Association shall service, maintain, repair and replace the Water Management System located outside of Tract B, in addition to the Tract B portions thereof currently being

maintained by the Association and the Developer shall be released from any further obligations under this Easement. For purposes of this Easement, the obligations to service, maintain, repair and replace the Water Management System shall include, but are not limited to: (i) maintaining all infrastructure, including piping, catch basins, swales and exfiltration trenches; (ii) maintaining the Water Management System components on Tract B, including, but not limited, the swales, the dry retention, the wet retention (the lake), perimeter of the lake (the berms) and landscaping; (iii) maintaining the Water Management System recertification, as applicable; (iv) monitoring the ground water wells and periodic sampling and reporting to the applicable governmental authority, as applicable; and (v) performing all repairs necessary to effectuate the foregoing. Upon assignment of the rights and obligations outlined herein of Grantor to the Association, in addition to the Tract B portions thereof currently being maintained by the Association, the Association shall maintain the Easement Area and the Water Management System identified in this Easement as an Area of Common Responsibility and as a part of the Surface Water Management System as defined in the Master Declaration. As provided above, the Water Management System does not include any improvements currently or in the future installed or constructed within the right-of-way of the Parkway for the collection or diversion of surface water and stormwater from the Parkway to the Water Management System located in the Easement Area which Parkway Improvements shall remain the responsibility of the Grantee, and its successor and assigns, as the owner of the Parkway or other appropriate party by agreement.

6. Use of Easement Rights

The Parties shall utilize the easement rights granted herein in accordance with the rules and regulations of, and pursuant to, all permits issued by any applicable governmental authorities, including, but not limited to, the Permit. Grantee hereby recognizes and acknowledges that the Grantor, the Association and other current and future owners of property in the Project may utilize Tract B (and other portions of the Easement Area) for surface water and stormwater treatment and/or storage for other portions of the Project and as a recreational amenity for the owners, tenants and invitees of the Project in accordance with the densities, intensities and uses specified in the Development Agreement as the same may be amended from time to time subject to the terms of the Master Declaration, in addition to being used for surface water and stormwater treatment and/or storage for the Basin G area of the Parkway by the Grantee.

7. Insurance and Indemnification

- a. Until the assignment of the rights and obligations under this Easement by Grantor to the Association, Grantor and any contractor, sub-contractor, consultant or sub-consultant retained by Grantor to provide services necessary to fulfill the terms of this Easement, including, but not limited to, all maintenance activities required by this Easement for the Water Management System, shall have in place the following minimum levels of

insurance: (a) General Liability Insurance: General Liability Insurance issued by responsible insurance companies and in a form acceptable to Grantee, with combined single limits of not less than One Million Dollars for Bodily Injury and Property Damage per occurrence; (b) Automobile Liability Insurance: Automobile Liability coverage shall be in the minimum amount of One Million Dollars combined single limits for Bodily Injury and Property Damage per accident; (c) Workers' Compensation Coverage: Full and complete Workers' Compensation Coverage, as required by Florida law, shall be provided; (d) Insurance Certificates: Grantor shall provide certificates of insurance to Grantee demonstrating that the aforementioned insurance requirements have been met under this Agreement and upon insurance renewal annually (collectively, the "Insurance Requirements"). Insurance carriers providing coverage required herein must be licensed or authorized to conduct business in the State of Florida and must possess A.M. Best's Financial Strength Rating of A- Class VIII or better. Said Liability Policies shall provide that Grantee be an additional insured for the General Liability and Auto Liability insurance. Grantee shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to Grantee and licensed and authorized under the laws of the State of Florida. After the assignment of the rights and obligations under this Easement by Grantor to the Association as to the portions of the Easement Area located outside of Tract B, the Association shall maintain the above-mentioned Insurance Requirements and Grantor shall no longer be required to carry such insurance.

- b. Until the assignment of the rights and obligations under this Easement by Grantor to the Association as to the portions of the Easement Area located outside of Tract B, Grantor shall be deemed to have agreed to save, defend, indemnify and hold Grantee harmless against and from any and all claims, suits, liabilities, damages, costs and expenses, including reasonable attorneys' fees (incurred at trial, on appeal or otherwise), because of personal injury or death of persons or damage to or destruction of property resulting from the negligent, willful, or intentional acts or omissions of Grantor or any of its employees, representatives, agents or contractors occurring in connection with this Easement. Upon the assignment of the rights and obligations under this Easement by Grantor to the Association as to the portions of the Easement Area located outside of Tract B, the Association shall save, defend, indemnify and hold Grantee harmless against and from any and all claims, suits, liabilities, damages, costs and expenses, including reasonable attorneys' fees (incurred at trial, on appeal or otherwise), because of personal injury or death of persons or damage to or destruction of property resulting from the negligent, willful, or intentional acts or omissions of the Association or any of its employees, representatives, agents or contractors occurring in connection with this Easement and Grantor shall no longer be obligated to indemnify or hold harmless Grantee as otherwise provided above. Nothing herein is intended to be or shall be

construed as a waiver of the Grantee's sovereign immunity protections and limitations outlined in Section 768.28, Florida Statutes. The Parties acknowledge that specific consideration has been exchanged for this provision.

To the extent permitted under Section 768.28, Florida Statutes, as a condition to the Grantee's (i) exercising and utilizing its drainage and retention easement rights hereunder, and (ii) exercising its rights to service, maintain, repair and replace the Water Management System provided herein, the Grantee shall be responsible for any and all claims, suits, liabilities, damages, costs and expenses, including reasonable attorneys' fees (incurred at trial, on appeal or otherwise), because of personal injury or death of persons or damage to or destruction of property solely resulting from the negligent acts or omissions by Grantee and its respective employees, representatives, agents or contractors of the rights granted to Grantee under this Easement.

- c. As a condition to the Association's (i) exercising and utilizing its drainage and retention easement rights hereunder, and (ii) exercising, as to the portions of the Easement Area located outside of Tract B, upon the Association's assumption of the obligations to maintain the same as provided herein, its assumed rights and obligations to service, maintain, repair and replace the Water Management System provided herein, the Association shall be deemed to have accepted and agreed to save, defend, indemnify and hold Grantor and any other owners of all or any part of the Easement Area harmless against and from any and all claims, suits, liabilities, damages, costs and expenses, including reasonable attorneys' fees (incurred at trial, on appeal or otherwise), because of personal injury or death of persons or damage to or destruction of property resulting from the exercise or utilization by the Association and its respective employees, representatives, agents or contractors of the rights and obligations granted to or assumed or exercised by the Association under this Easement.
- d. Grantor, and its successors and assigns, agree to include the following indemnification in all contracts with contractors, subcontractors, consultants, or subconsultants who perform work in connection with this Agreement, including any future maintenance activities required in paragraph 5:

"To the fullest extent permitted by law, the contractor shall indemnify and hold harmless Brevard County, Florida, and its officers, agents, and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct or omission of the contractor and persons employed or utilized by the contractor in the performance of this Easement. This indemnification shall survive the termination of this Easement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the

Grantee's sovereign immunity. Specific consideration has been given for this provision."

8. Not a Public Dedication

Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Easement Area or the Water Management System to the general public or for the general public or for general public purposes whatsoever, it being the intention of Grantor that this Easement shall be strictly limited to and for the purposes herein expressed.

9. Covenants Run With the Land; Assignment by Grantor and Grantee

- a. The rights, obligations and other covenants contained herein shall be appurtenant to Grantee's interests in the Parkway and shall be a burden on the Easement Area and shall run with the land. This Easement shall inure to the benefit of and be binding upon Grantee, Grantor and the Association and their respective assigns or successors in interest; provided, however, that if Grantor conveys fee simple title to the Easement Area (or any portion thereof) and transfers the maintenance obligations and responsibilities to the Association, Grantor shall thereupon be relieved of and released and discharged from any and all rights or obligations in connection with such Easement Area (or portion thereof) under this Easement to be performed or arising after the conveyance of said fee simple title, but shall remain liable for all obligations arising under this Easement prior to the conveyance of such title. From and after the assignment of the obligations under this Easement to the Association as to the portions of the Easement Area located outside of Tract B, the Association shall assume all rights, liabilities, and obligations in connection with this Easement as an Area of Common Responsibility. This Easement shall encumber the Easement Area, but subsequent owners of all or portions of the Easement Area, other than the Association should it obtain title to any portions of the Easement Area, shall not have any obligations to maintain the Water Management System located on its portion of the Easement Area, which shall be the responsibility of the Association, its assigns or successors in interest, as provided herein. Any failure(s) to maintain the Water Management System shall result in costs incurred by Grantee to conduct such maintenance being imposed upon Grantor until such time as Grantor assigns the obligations under this Easement to the Association as to the portions of the Easement located outside of Tract B and currently as to the Association with respect to Tract B and then, from and after that time, shall result in costs being imposed on the Association (and not the Grantor), and/or any other successor or assign responsible for such obligations. In the event the Grantor, its assigns or successors, or the Association, as applicable, defaults on its maintenance obligation(s), after delivering thirty (30) days written notice of default, except in an emergency when no notice is required, and right to cure to Grantor and the Association,

the Grantee may invoice the Grantor or the Association, as applicable, for the reasonable cost to maintain the Water Management System together with the reasonable administrative costs to the Grantee (any such invoice being referred to herein as a "County Invoice"). Delinquent amounts due for the cost to cure maintenance deficiencies by Grantor, or its successors or assigns, or the Association, shall become due and payable to the Grantee (payable to the Board of County Commissioners of Brevard County, Florida; and sent to the Brevard County Manager's Office) thirty (30) calendar days after the County Invoice for such costs is delivered to the Grantor and the Association, as applicable. If the amount is not paid or the lack of maintenance is not cured within thirty (30) calendar days, the Grantee may enforce its right to payment for such invoice by action at law and, thereafter, the amount due to satisfy the County Invoice shall bear interest at the rate of two percent above the prime interest rate per annum, as determined by the Wall Street Journal Prime Rate. Upon such time as the Grantor assigns the obligations under this Easement to the Association, the Grantee may invoice the Association (and not the Grantor) for such costs and expenses. Collection of any such County Invoice, including interest, penalties, and reasonable attorneys' fees, may be made by the Grantee by instituting proceedings in a court with jurisdiction as provided by law provided that the Grantee agrees that Grantee shall not seek to enforce the rights to payment by legal action if the Association confirms in writing to Grantee within thirty (30) days of the receipt of the County Invoice that the Association will pay the Grantee its demanded cost and expenses within the Association's then current fiscal year or within the first ninety (90) days of the start of the Association's next following fiscal year (such written notice being referred to herein as an "Association Payment Notice").

- b. In order to secure the obligation of the Grantor, and the Association after the Grantor assigns the obligations under this Easement to the Association, to reimburse Grantee for any costs that may be incurred by the Grantee should it exercise its rights under this Easement to maintain any portion of the Water Management System, on the Effective Date hereof, Grantor has delivered to Grantee, prior to or at the time of delivery of this Easement, the amount of ____ Thousand ____ Hundred Dollars (\$_____) **[This amount to be added after completion of the System and the costs have been identified]**, representing an amount equal to ten percent (10%) of the actual costs to build and install the Water Management System, exclusive of the costs to construct the portion of the Water Management System located in Tract B, to hold in escrow during the term of this Easement (the "Escrowed Funds"). The Escrowed Funds shall be held by the Grantee as the "Escrow Agent" in an interest-bearing account at a federally insured financial institution acceptable to the Grantee in its sole discretion (the "Escrow Account"). In the event that the Grantee incurs any costs under Section 9.a. hereof, the Grantee may, after giving the Grantor or Association, as applicable, thirty (30) calendar days prior notice, draw from the Escrowed Funds the amount required to pay the

applicable County Invoice, unless the Association has paid such amount to the Grantee or delivered an Association Payment Notice to Grantee prior to the end of such thirty (30) calendar day period. If the Association delivers an Association Payment Notice but fails to pay to the Grantee the amount identified in the County Invoice within thirty (30) days of the County Invoice, or within ninety (90) days after the start of the Association's next following fiscal year, the Grantee may draw from the Escrowed Funds the amount required to pay the County Invoice. Should the Grantee ever draw any amounts from the Escrowed Funds, the Grantor, until such time as the Grantor assigns the obligations under this Easement to the Association and then the Association, will be responsible to replace into the Escrow Account any such amounts drawn by Grantee within ninety (90) days after the start of the Association's next following fiscal year in order to maintain a minimum level of Escrow Funds of ten percent (10%) of the actual costs to build and install the Water Management System, exclusive of the costs to construct the portion of the Water Management System located in Tract B. The Escrowed Funds are not intended to be a cap on the Grantor's or Association's responsibility to pay the full amount on any County Invoice delivered by Grantee. In the event that this Easement is ever terminated by the Parties hereto in accordance with the terms of this Agreement, any amounts up to the 10% minimum balance requirement for the Escrow Account then held in the Escrow Account and not required to pay a County Invoice at that time shall be paid to the Association and any interest on such amount then in the Escrow Account shall be paid to the Grantee. The Grantee, in its sole discretion, shall be entitled to utilize any funds, including interest, above the 10% minimum balance requirement for the Escrow Account as permitted by law. The Grantee shall be the party responsible for any income taxes that may become due on any interest accrued on the Escrow Account. Neither the Grantor nor the Association, or their respective successors and assigns, shall receive any benefit from such interest. If the lien option outlined in Section 9.c. below is chosen by the parties, the Grantee shall be entitled to the accrued interest prior to the Escrow Account funds being released to the Grantor or Association, as applicable. The Grantee shall be the party identified on any IRS Form 1099-INT or Form 1099-MISC filings, or future alternative IRS forms, required to report interest income on the Escrowed Funds with the Internal Revenue Service.

- c. As an alternative to the escrow procedure identified in Section 9.b. above, at any point after the Effective Date hereof, the Grantor or the Association, or assigns and successors in interest, as applicable, may offer the Grantee the right to impose a lien on a parcel of real property owned by the Grantor or the Association ("Lien Parcel"). The Grantee, acting through its County Manager, or his/her designee, may decide, in its sole discretion, to: (1) accept the property offered, in which case the Escrow Account funds will be released to the Grantor or Association, as applicable ("Lien Option"); or (2) reject the lien option and continue with the Escrow Account option. If the Grantee decides to accept the Lien Option, the Grantee may file a lien after giving the Grantor or

Association, as applicable, thirty (30) calendar days prior notice of unpaid Grantee costs. The Grantor or Association, as applicable, must provide an Association Payment Notice within the thirty (30) calendar day period stating the payment will be made within thirty (30) calendar days of the Payment Notice or within ninety (90) days after the start of the Association's following fiscal year. If the Association fails to meet these timelines, the Grantee is entitled to file a claim of lien, which shall be recorded in the Public Records of Brevard County, Florida, on the Lien Parcel to secure the amount identified in the applicable Grantee Invoice unless the Association has paid such amount to the Grantee. The lien rights provided in this Section shall be a covenant running with, and a burden on, the Lien Parcel and shall run with the Grantor's and the Association's, and their assigns' and successors' in interest, title to the Lien Parcel. If applicable, any such lien shall at all times be subordinate and subject to the terms of the Plat and Master Declaration, as the same may be amended from time to time. If the Grantee chooses the Lien Option and records a claim of lien as provided herein, such claim may be enforced in accordance with the procedures identified in Part I of Chapter 713, Florida Statutes, as may be amended, for the enforcement of construction liens. If the Lien Parcel is encumbered (as defined below) then neither the Grantee nor the Association shall be permitted to elect to terminate the escrow procedure outlined above in lieu of the Lien Option unless and until the Mortgage, Assignment of Leases and Rents and Security Agreement recorded in Official Records Book 8523, Page 2837, in the Public Records of Brevard County, Florida (the "Mortgage"), as the same may be amended from time to time, has been satisfied and released of record in the Public Records of Brevard County, Florida, or the holder of such Mortgage has consented to the grant of the lien rights identified in this Section.

- d. Grantor's rights and obligations hereunder may be assigned in whole or in part to the Association pursuant to an express written assignment and assumption agreement. Any such assignment may be made with respect to all or any portion of the Easement Area owned by Grantor. In the event of a transfer or assignment of any portion of the Easement Area to any party other than the Association, the transferee or assignee shall not be deemed the Grantor nor responsible or liable for any obligations of Grantor or the Association outside the scope of such assignment, but may exercise such rights and shall be responsible for such obligations of Grantor specifically assigned to it. Grantor shall be relieved of and released and discharged from all rights and obligations (but none arising prior to such assignment) arising under this Easement once it has assigned the rights and obligations under this Easement to the Association as to the portions of the Easement Area located outside of Tract B. Grantor's release of responsibility and obligations outlined herein shall only be specific to the portion(s) of the Easement Area transferred to the Association or other such party. Grantor shall notify the Grantee in writing, with a copy of the written assignment and assumption agreement attached thereto, upon assignment of any or all rights and obligations outlined herein.

- e. Upon transfer of the ownership or maintenance obligations of the Parkway by Grantee to another governmental entity, the Grantee may assign its rights under this Agreement to such party without the prior approval of the Grantor, or its assigns or successors, or the Association, as applicable. However, the County shall provide written notice of such assignment to the Grantor, or its assigns or successors in interest, or the Association, as applicable.

10. Amendments and Modifications

Grantor, its successors and assigns, specifically including the Association, may relocate, modify or amend the location of the Easement Area, the Water Management System and the improvements located therein, at Grantor's and/or the Association's sole cost and expense, with the prior written consent and approval of Grantee (including required governmental permits and approvals). Grantor, its successors or assigns, must obtain written consent and approval from the County Manager, or his/her designee, prior to such relocation, modification, or amendment. Such consent and approval to relocate, modify or amend the Easement Area, the Water Management System or the improvements located therein shall not be unreasonably withheld, conditioned, or denied by the Grantee if the Easement Area, Water Management System or the improvements located therein continue to provide the same level of service and capacity for the collection, retention and disposal of stormwater runoff from the Parkway as it did prior to such change. Notwithstanding the foregoing, Grantor, for itself and its successors and assigns, specifically including the Association, reserves the right to alter, amend, repeal or modify any provision in this Easement, upon advanced written notice to the Grantee, in order to comply with applicable laws, rules or regulations of any permit issued by, or mandate of, any applicable governmental authority. Grantee agrees to not unreasonably withhold, condition or delay its consent and joinder to any permit application or any modification of this Easement that complies with the requirements of this Section 10. The Grantor and/or the Association, its assigns and successors in interest, understand that the Parkway will be expanded to six (6) lanes and shall not unreasonably object to the expansion of the Parkway to six (6) lanes. Additionally, the Grantor and/or the Association, its assigns and successors in interest, shall update and modify any stormwater permit(s), as necessary, for any authority(ies) having jurisdiction for the Parkway expansion to six (6) lanes to be located in Basin G.

11. Enforcement

This Easement may be enforced by Grantee by any action available at law or in equity, including, but not limited to, by injunctive relief and specific performance. In addition to any other right to cure or remedy set forth elsewhere in this Easement, in the event the Grantor, or the Association after the assignment of the Water Management System to the Association by Grantor, or any other assign or successor, defaults in the performance of any of its obligations pursuant to this Easement, and such default continues for a period of thirty (30) days after receipt of written notice of said default from Grantee, Grantee shall have the reasonable right

to enter onto the necessary portion of the Easement Area to maintain or repair the portions of the Water Management System required to be maintained by Grantor and/or the Association or otherwise cure such default, provided, (i) Grantor or Association, as applicable, is not then in the process of diligently attempting to cure the default, and (ii) no notice or opportunity to cure shall be required in the event the default creates an emergency or interferes with the use of the Parkway. Any and all reasonable expenses incurred by Grantee in curing such default shall be payable by Grantor or Association, or other assign or successor, as applicable, depending on which of them was responsible for maintaining the Water Management System at that time. Such payment(s) shall be made within thirty (30) days of written demand by Grantee to Grantor or Association, as applicable, but subject to Section 9.a. above.

12. Entirety

This Easement embodies the entire agreement and understanding between the parties hereto, and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein. No alteration, change, or modification of the terms of this Easement shall be valid unless made in writing and signed by both parties, or their assigns or successors, hereto.

13. Severability

If any clause, sentence or other portion of this Easement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

14. Attorneys' Fees

In the event of any action to enforce this Easement (including an action to recover damages for its breach), any provision hereof or any matter arising here from, each party shall be responsible for their own costs and fees, including, but not limited to, attorneys' fees and court costs.

15. Governing Law/Venue

This Agreement shall be governed by and construed under the laws of the State of Florida. Venue for any action arising out of this Agreement shall be Brevard County, Florida. ANY TRIAL SHALL BE NON-JURY.

16. Time

Time is of the essence of this Easement, provided that any date that falls on a Saturday, Sunday or legal holiday shall be automatically extended to the next business day.

17. Waiver

No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of the breach of any provision of this Easement shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Easement.

18. Counterparts

This Easement may be executed in several counterparts, and all such executed counterparts shall constitute the same agreement.

19. Further Assurances

The Parties acknowledge that the operation and maintenance of the Water Management System may require modifications to the easements and agreements contained herein. The Parties and the Association, therefore, provide a mutual assurance and agreement that neither Party nor the Association shall unreasonably withhold approval of any reasonably necessary modifications to the easements or provisions of this Agreement where such modifications will allow or facilitate the performance of the Parties' and the Association's respective obligations under this Agreement.

20. No Merger

Notwithstanding anything herein to the contrary, should any future transfers or assignments of the rights and or obligations herein or of title to the Easement Area result in one and the same person or entity holding the interests of both the Grantor and Grantee under this Easement, no merger of interests shall occur that could result in the termination of this Easement unless and until a termination of this Easement is executed by all parties then holding any interest in this Easement and the Easement Area.

21. Recording

This Easement Agreement shall be recorded in the Public Records of Brevard County, Florida, at the Grantor's sole cost.

[signatures on next page]

IN WITNESS WHEREOF, Grantor and Grantee have duly executed this Easement as of the day and year last written below.

"GRANTOR"

Signed, sealed and delivered
in the presence of

SPACE COAST TOWN CENTRE I, L.L.C., a
Delaware limited liability company

Print Name: _____

By: _____
Name: _____
Title: _____

Print Name: _____

Date: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2021, by _____, as _____ of Space Coast Town Centre I, L.L.C., a Delaware limited liability company, on behalf of the company. Said person (check one) ☐ is personally known to me or ☐ produced _____ as identification.

(Notary Signature – State of Florida)

Print, Type, or Stamp Commissioned Name of Notary Public

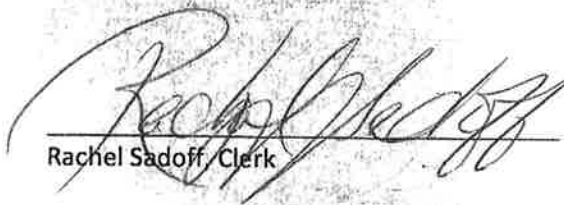
Commission No.: _____


My Commission Expires: _____

"GRANTEE"

Attest:

BREVARD COUNTY, FLORIDA


Rachel Sadoff, Clerk

By: 
Kristine Zonka, Chair
Date: December 21, 2021

Approved as to legal form and content
for Brevard County:

Approved by the Board on: 12/21/21

By: 
Assistant County Attorney

JOINDER BY ASSOCIATION

The undersigned, Space Coast Town Centre Property Owners' Association, Inc., a Florida corporation not for profit ("Association"), which is the association identified in the Master Declaration of Covenants, Conditions and Restrictions, Space Coast Town Centre, West Melbourne, Florida, recorded in Official Records Book 8844, at Page 372 of the Public Records of Brevard County, Florida (the "Master Declaration"), does hereby execute this Joinder for the purpose of consenting to the Easement Agreement to which this Joinder is attached and acknowledging the acceptance of the grant of easement herein to the Association and for the purposes of accepting the obligations of the Association identified in the Easement Agreement to maintain the Water Management System (as defined in the Easement Agreement) and as provided in the Master Declaration, including as an Area of Common Responsibility as that term is defined in the Master Declaration.

IN WITNESS OF THE FOREGOING, the Association has executed this Joinder as of the _____ day of _____, _____.

**Space Coast Town Centre Property
Owners' Association, Inc.**, a Florida
corporation not for profit

By: _____

Name: _____

Title: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2021, by _____ as _____ of Space Coast Town Centre Property Owners' Association, Inc., a Florida corporation not for profit, on behalf of the corporation. Said person (check one) ☐ is personally known to me or ☐ produced _____ as identification.

(Notary Signature – State of Florida)

Print, Type, or Stamp Commissioned Name of Notary Public

Commission No.: _____

My Commission Expires: _____

JOINDER BY MORTGAGEE

The undersigned, Parkway 192 Associates, L.L.C., a Florida limited liability company (together with its successor and assigns "Mortgagee"), which is the holder of that Mortgage, Assignment of Leases and Rents and Security Agreement executed by Space Coast Town Centre I, L.L.C., a Delaware limited liability company ("Mortgagor"), recorded in OR Book 8523, Page 2837, and that Collateral Assignment of Contracts, Permits, Licenses, Warranties, Plans and Drawings recorded in OR Book 8523, Page 2860 as supplemented by document recorded in OR Book 8844, Page 1083 and re-recorded in OR Book 8867, Page 574 all in the Public Records of Brevard County, Florida (collectively, the "Mortgage"), as the same may be amended from time to time, does hereby execute this Joinder for the sole purpose of consenting to the Easement Agreement to which this Joinder is attached. By its execution hereof, Mortgagee does not make any representations or warranties with respect to any matters set forth in or pertaining to the Easement Agreement or undertake any of the obligations or liabilities contained therein. Except only as expressly provided herein, this consent does not affect or impair the rights and remedies of Mortgagee as set forth in the Mortgage.

IN WITNESS OF THE FOREGOING, the Mortgagee has executed this Joinder as of the _____ day of _____, _____.

**PARKWAY 192 ASSOCIATES, L.L.C., a
Florida limited liability company**

By: _____

Name: _____

Title: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2021, by _____ as _____ of Parkway 192 Associates, L.L.C., a Florida limited liability company, on behalf of the company. Said person (check one) ☐ is personally known to me or ☐ produced _____ as identification.

(Notary Signature – State of Florida)

Print, Type, or Stamp Commissioned Name of Notary Public

Commission No.: _____

My Commission Expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE EASEMENT AREA

[Grantor shall cause a surveyor to prepare the legal description of the Easement Area for the Grantee's review and approval prior to Closing. At Closing, the legal description shall be added here.]

EXHIBIT "B"
SKETCH OF THE EASEMENT AREA

[Grantor shall cause a surveyor to prepare the sketch of the Easement Area for the Grantee's review and approval prior to Closing. At Closing, the sketch shall be added here.]