



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.7.

12/6/2022

Subject:

Assignment and Assumption of Exchange Agreement and Right-of-Way Use Agreement

Fiscal Impact:

None.

Dept/Office:

County Attorney's Office

Requested Action:

It is requested that the Board of County Commissioners consent to, and authorize the Chair to execute, the Assignment and Assumption of an Exchange Agreement and Right-of-Way Use Agreement from NASA Investment Partners, LLC, to Rex Hoffman and Heidi Hoffman, as Trustees of The Rex and Heidi Hoffman Trust dated November 30, 2012.

Summary Explanation and Background:

On July 23, 2019, NASA Investment Partners, LLC (the "Assignor") and the County entered into an agreement authorizing the exchange of certain real property and property interests, subject to the terms and conditions set forth in an Exchange Agreement. The Exchange Agreement relates to the Assignor's development of a 7-Eleven at the southeastern corner of West NASA Boulevard and Wickham Road.

In August 2021, the Exchange Agreement was amended, and the Assignor and the County entered into a Right-of-Way Use Agreement. The Right-of-Way Use Agreement involved the Assignor's use of certain County right-of-way abutting the Crane Creek Drainage District Canal L-7, for the purpose of installing improvements to allow for site ingress-egress and access from West NASA Boulevard to Old NASA Road. The Assignor is obligated to maintain the improvements installed in the County right-of-way.

The Assignor has contracted to sell the subject 7-Eleven property to Rex Hoffman and Heidi Hoffman, as Trustees of The Rex and Heidi Hoffman Trust dated November 30, 2012 (the "Assignee"). The Assignor wishes to assign, and the Assignee agrees to assume, all of the Assignor's rights, privileges, duties, obligations, and liabilities under the Exchange Agreement and the Right-of-Way Use Agreement. The Right-of-Way Use Agreement requires the County's consent prior to any assignment. It also provides that, in the event of an assignment, the Assignor and any assignee shall be jointly and severally responsible for the Assignor's responsibilities under the agreement.

Clerk to the Board Instructions:

Chair to execute two originals and return one to the County Attorney's Office for NASA Investment Partners, LLC.



December 7, 2022

MEMORANDUM

TO: Morris Richardson, County Attorney

RE: Item F.7., Assignment and Assumption of Exchange Agreement and Right-of-Way Use Agreement

The Board of County Commissioners, in regular session on December 6, 2022, authorized the Chair to execute the Assignment and Assumption of an Exchange agreement and Right-of-Way Use Agreement from NASA Investment Partners, LLC, to Rex Hoffman and Heidi Hoffman, as Trustees of The Rex and Heidi Hoffman Trust date November 30, 2012. Enclosed are two signed Agreements.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

/sm

Encl. (2)

cc: County Manager

ASSIGNMENT AND ASSUMPTION OF EXCHANGE AGREEMENT AND RIGHT-OF-WAY USE AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION (this "Assignment") is made and entered into as of the date of last signature below (the "Effective Date"), by and between NASA Investment Partners, LLC, a Florida limited liability company, hereinafter referred to as the "Assignor", and Rex Hoffman and Heidi Hoffman, as Trustees of The Rex and Heidi Hoffman Trust dated November 30, 2012, hereinafter referred to as the "Assignee."

WITNESSETH:

WHEREAS, on July 23, 2019, the Assignor and Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "County", entered into an agreement authorizing the exchange of certain real property and property interests subject to terms and conditions, hereinafter referred to as the "Exchange Agreement", which is incorporated herein by this reference; and

WHEREAS, in August 2021, the Exchange Agreement was amended and the Right-of-Way Use Agreement was executed by the Assignor and the County, both of which are incorporated herein by this reference and included within the term "Exchange Agreement"; and

WHEREAS, Assignor has agreed to transfer, set over, assign, and convey to Assignee all of Assignor's rights, privileges, duties, and obligations in, to, and under that certain Exchange Agreement, subject to the joint and several liability obligations identified in the Exchange Agreement, and Assignee has agreed to assume and perform Assignor's duties and obligations arising under the Exchange Agreement on or after the Effective Date, all in accordance with this Assignment.

NOW, THEREFORE, for good and valuable consideration, the sum, receipt, and sufficiency of which is hereby acknowledged, and intending to be legally bound, Assignor and Assignee agree as follows:

1. **Incorporate Recitals.** The recitals set forth above are true and correct and are incorporated herein.
2. **Assignment.** Assignor hereby transfers, sets over, assigns, and conveys unto Assignee all of Assignor's rights, privileges, duties, and obligations in, to, and under the above referenced Exchange Agreement together with any and all rights, powers, and privileges conferred by the Exchange Agreement upon Assignor, as a party to the Exchange Agreement, and Assignor hereby authorizes Assignee to exercise said rights, powers, and privileges in as full a manner as Assignor is authorized to exercise the same. Unless stated otherwise herein, the terms and conditions of the Exchange Agreement, and any duly authorized amendments or modifications thereto, shall remain in full force and effect. In accordance with Section 12 of the Right-of-Way Use Agreement, both the Assignor and Assignee shall be jointly and severally responsible for the Assignor's responsibilities under the Right-of-Way Use Agreement.
3. **Consent by County.** This Assignment shall not be effective until such time as the County has given written approval to this Assignment pursuant to Section 12 of the Right-of-

Way Use Agreement. County gives its written approval to this Assignment by executing this Assignment. By executing this Assignment, County also confirms that the Exchange Agreement remains in full force and effect, that Assignee will be assuming all obligations of Assignor thereunder, and, unless otherwise stated in the Exchange Agreement or this Assignment, Assignor is released from any and all obligations under the Exchange Agreement on or after the Effective Date.

4. Assumption. Assignee hereby assumes and agrees to be bound by all of the covenants, obligations, liabilities, and burdens of Assignor under the Exchange Agreement and agrees to perform all obligations of Assignor under the Exchange Agreement.

5. Indemnity. Assignee shall indemnify and hold the County harmless from any claim, liability, cost, or expense arising out of Assignee's failure to perform any obligations or liability under the Exchange Agreement arising on or after the Effective Date upon which the Exchange Agreement is assumed by Assignee hereunder. The County's liability obligations shall be subject to the County's common law right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes, as amended. Nothing in this Assignment or the Exchange Agreement is intended to inure to the benefit of any third-party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing herein shall constitute a waiver of the County's sovereign immunity. Specific consideration has been exchanged for this provision.

6. Representations and Warranties. Assignor hereby represents and warrants to Assignee (a) that it has full power and authority to assign the Exchange Agreement to Assignee, and (b) that the Exchange Agreement is in full force and effect and has not been modified or amended in any manner whatsoever, unless with the prior written consent of the County.

7. Amendments in Writing. No amendment or modification of this Assignment shall be valid unless the amendment or modification is in writing and signed by Assignor and Assignee, and consented to by County.

8. Entire Agreement. This Assignment and any attachments hereto, if any, constitute the entire agreement between Assignor and Assignee, and there are no other covenants, contracts, promises, terms and provisions, conditions, undertakings, or understandings either oral or written, between them concerning this Assignment other than those herein set forth.

9. No Third-Party Rights. Neither this Assignment nor anything set forth herein is intended to, nor shall it, confer any rights on any person or entity other than the parties identified herein, and all third-party rights are expressly negated.

10. Governing Law and Venue. This Assignment shall be interpreted and construed in accordance with and governed by the laws and ordinances of Brevard County and the State of Florida. Venue for any action brought by any party to this Assignment to interpret, construe, or enforce this Assignment shall be in a court of competent jurisdiction in and for Brevard County, Florida.

11. WAIVE RIGHT TO JURY TRIAL. ASSIGNOR AND ASSIGNEE HEREBY **WAIVE ANY RIGHT TO JURY TRIAL** IN THE EVENT ASSIGNOR AND/OR ASSIGNEE BRING AN ACTION ARISING OUT OF THIS ASSIGNMENT.

12. Attorneys' Fees. If any action or proceeding is commenced by Assignor or Assignee to enforce their rights under this Assignment or to collect damages as a result of the breach of any of the provisions of this Assignment, the prevailing party in such action or proceeding, including, without limitation, any bankruptcy, insolvency, or appellate proceedings, shall be entitled to recover all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, in addition to any other relief awarded by the court. However, in any action or proceeding involving the County, the County shall not be responsible for attorneys' fees, costs, or expenses of any other party, and shall only be responsible for its own fees, costs, and expenses, unless it is the prevailing party.

13. Interpretation. Captions, numbering, and headings of this Assignment are for convenience of reference only and shall not be considered in the interpretation of this Assignment.

14. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

15. Successors. This Assignment shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, legal representatives, successors, and assigns.

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SIGNATURES TO FOLLOW

IN WITNESS WHEREOF, the parties authorized representatives have executed this Assignment as of the date set forth below.

ASSIGNOR:


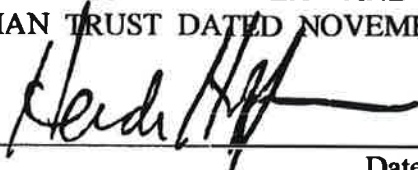
NASA INVESTMENT PARTNERS, LLC

By:  12/6/2022
Date

Name: Robert M. Renfro, Manager

ASSIGNEE:

REX HOFFMAN AND HEIDI HOFFMAN, AS
TRUSTEES OF THE REX AND HEIDI
HOFFMAN TRUST DATED NOVEMBER 30,
2012


By:  11/30/22
Date

Name: REX HOFFMAN & HEIDI HOFFMAN

Title: TTES OF REX & HEIDI HOFFMAN TRUST

CONSENT BY:

BREVARD COUNTY, FLORIDA

By: 
Rita Pritchett, Chair Date

ATTEST:

BREVARD COUNTY, FLORIDA

By: 
RACHEL M. SADOFF, CLERK