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SECOND AMENDED AND RESTATED OFF-SITE UTILITIES AGREEMENT

THIS SECOND AMENDED AND RESTATED OFF-SITE UTILITIES AGREEMENT ("Second Amendment") is made and entered into this 23rd day of November, 2021, by and between CHARLOTTE COUNTY, a political subdivision of the State of Florida, whose address is 18500 Murdock Circle, Port Charlotte, FL 33948 ("COUNTY") and TUCKERS POINT I LIMITED PARTNERSHIP, a Florida Limited Partnership, whose address is 7995 Mahogany Run Lane, Naples, FL 34113 ("DEVELOPER").

WHEREAS, COUNTY and DEVELOPER entered into that certain Off-Site Utilities Agreement dated September 11, 2018 and recorded in Book 4358, Page 1047 of the Public Records of Charlotte County, Florida (hereinafter the "Agreement"); and

WHEREAS, County and Developer entered into that certain Amended and Restated Off-Site Utilities Agreement dated November 12, 2019 and recorded in Book 4504, Page 449 of the Public Records of Charlotte County, Florida ("Amendment"); and

WHEREAS, COUNTY and DEVELOPER desire to modify the scope of the off-site improvements so that development of off-site improvements is undertaken by DEVELOPER only; and

WHEREAS, COUNTY and DEVELOPER desire to modify the specifications of the off-site improvements; and

WHEREAS, on April 14, 2020, COUNTY adopted Ordinance Number 2020-014, amending Charlotte County Code of Ordinances to revise and clarify COUNTY's Utility Extension Standards; and

WHEREAS, on November 23, 2021, COUNTY has agreed to accept the terms set forth in the License Agreements for Underground Water and Sewer Main Installations and Occupations for Tuckers Grade.

WHEREAS, COUNTY and DEVELOPER deem it advisable and desire to amend and revise the terms of the Agreement in a single document.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, COUNTY and DEVELOPER hereby amend and restate the Agreement in its entirety, effective as of the date first above written, to read as follows:

RECITALS

WHEREAS, DEVELOPER is the owner of certain real property in Charlotte County, Florida more particularly described in Exhibit "A," which is attached hereto and incorporated herein by reference ("Property"); and

WHEREAS, the Property is located within the utility service area for Charlotte County; and

WHEREAS, DEVELOPER desires the provision of potable water and wastewater facilities to allow service to the Property that precedes COUNTY's extension of its utility system to that area; and

WHEREAS, DEVELOPER intends to develop its property as a mixed-use development ("PROJECT") which, at this time, is planned to include up to one thousand six hundred and eighty-nine (1,689) residential units, three hundred eighty thousand (380,000) square feet of commercial retail development and four hundred (400) hotel rooms; and

WHEREAS, COUNTY desires to allow the extension, at DEVELOPER'S expense, of potable water and wastewater facilities to allow for future service to the Property under the terms and conditions as contained herein; and

WHEREAS, DEVELOPER has agreed to construct the off-site potable water and wastewater transmission system improvements needed to connect DEVELOPER'S property to COUNTY'S utility systems; and

WHEREAS, DEVELOPER agrees to construct and subsequently convey the off-site transmission lines, from and including the PROJECT'S property line to the point of connection with COUNTY'S utility system as identified in Exhibit "B" attached hereto and incorporated herein by this reference ("Transmission Mains"), to the COUNTY; and

WHEREAS, the COUNTY and DEVELOPER are entering into this Agreement to establish the respective rights of the parties.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the parties agree as follows:

1. The above recitals are true and correct and are incorporated herein by this reference.
2. DEVELOPER agrees to extend potable water and wastewater facilities, at DEVELOPER'S expense, from Station 327+40, Burnt Store Road Phase 2 Utility Improvements north to Notre Dame Boulevard ("Burnt Store Road Improvements") and then east to the Property ("Notre Dame Improvements" and together "Developer Improvements"). Developer Improvements shall generally consist of potable water main and appurtenances and wastewater force main and appurtenances.

3. DEVELOPER shall not be required to extend the Developer Improvements beyond the point where the Developer Improvements access DEVELOPER's Property, however, on-site development of the Property will require the additional extension of potable water and wastewater transmission systems as part of the on-site project.

- a. The pipe sizes for the Burnt Store Road Improvements are sixteen-inch (16") potable water mains and twenty-inch / sixteen-inch (20"/16") wastewater force mains as designed by Johnson Engineering pursuant to Supplemental Agreement #5 and the modeling report commissioned by COUNTY.
- b. The pipe sizes for the Notre Dame Improvements are sixteen-inch (16") potable water mains and appurtenances and sixteen-inch / twelve-inch (16"/12") wastewater force mains and appurtenances as designed by Southwest Engineering.
- c. The Developer Improvements shall be installed in the Burnt Store Road right of way, the Notre Dame right of way, easements acquired by DEVELOPER, and the Tamiami Trail right of way and the Seminole Gulf Railway LP right of way generally consistent with Branch A and Branch B on Exhibit "C."
- d. DEVELOPER has paid \$72,300.00 to COUNTY for costs incurred by COUNTY for the design of potable water and wastewater facilities pursuant to Supplemental Agreement #5 with Johnson Engineering which design is generally consistent with Branch A as shown on Exhibit "C" hereto and incorporated herein from Station 327+40 to a point that is approximately

1,100 feet south of the intersection of Burnt Store Road and Notre Dame Boulevard.

4. All additional easements utilized by DEVELOPER for installation of the Developer Improvements have been obtained by DEVELOPER without cost to COUNTY, at DEVELOPER'S sole expense, and provided to COUNTY.

5. DEVELOPER shall include a sixteen-inch (16") reclaimed water main in its design of the Developer Improvements, but DEVELOPER shall not be required to extend a reclaimed water main to the Property. Should COUNTY desire to extend the reclaimed water main for any distance, DEVELOPER shall do so at COUNTY'S sole cost and expense.

6. The design for Developer Improvements authorized by this Agreement have been prepared by a professional engineer registered in the State of Florida and regularly engaged in the field of Civil, Sanitary, or Environmental Engineering. The design proposed by DEVELOPER has been approved by the COUNTY Utility Department and Public Works Department and conforms to all COUNTY standards, including the Charlotte County Utilities Design Compliance Standards dated November 1, 2011 and current addendums for installation and extension of such facilities. DEVELOPER shall obtain all required licenses, permits, and easements, including, but not limited to: the license agreements for underground sewer and water main installation with Seminole Gulf Railway, L.P., Public Works utility right of way permits, FDOT highway crossing permits, and pay permit, inspection, and other applicable fees. Prior to commencing construction, DEVELOPER shall provide COUNTY with a Performance and Payment Bond, a Letter of

Credit, or other form of security acceptable to the COUNTY to insure completion of the Developer Improvements.

7. During all phases of the construction and installation of the Developer Improvements, COUNTY will inspect all facilities installed to ensure that they are in conformance with the Utilities' Design Compliance Standards dated November 1, 2011 and all current addendums and the Public Works utility Right of Way permit. All constructed facilities determined not to be in compliance with COUNTY practices, regulations, or ordinances shall be corrected by DEVELOPER at DEVELOPER'S sole expense. At COUNTY'S discretion, COUNTY will be present at all tests of the component parts of the system installed by DEVELOPER to ensure that the system, as constructed, conforms to COUNTY'S standards.

8. It shall be DEVELOPER'S obligation to furnish to COUNTY accurate information with respect to matters of engineering, licenses, permitting, and construction. DEVELOPER is responsible for compliance with the conditions of all permits, licenses, approvals, ordinances, and approved construction documents relative to the Developer Improvements.

9. It shall be the responsibility of the DEVELOPER to connect the Developer Improvements to the COUNTY'S utility system. COUNTY reserves the right to inspect all such connections to ensure that same have been done properly and in accordance with COUNTY'S rules governing such connections and that such connections, as made, are free from infiltration or inflow or any other defects. Any connection covered without the benefit of inspection by COUNTY may result in DEVELOPER being required to reopen the connection for subsequent inspection without cost to the COUNTY.

10. Upon completion of construction of the Developer Improvements pursuant to this Agreement, and upon acceptance of the Developer Improvements by COUNTY, which acceptance shall not be unreasonably delayed, the DEVELOPER agrees that the Developer Improvements shall be conveyed to COUNTY by Bill of Sale in a form acceptable to COUNTY. DEVELOPER shall also provide a Certificate of Contributory Assets and Release of Lien from the contractor that installed the Developer Improvements. DEVELOPER shall provide COUNTY with accurate as-built and/or record drawings for the Developer Improvements in accordance with the Charlotte County Utilities Design Compliance Standards dated November 1, 2011 and all subsequent addendums.

11. In consideration of the installation of the Developer Improvements at DEVELOPER'S expense and subsequent conveyance of the Developer Improvements to COUNTY, COUNTY agrees to provide DEVELOPER with credits ("Credits") towards payment of "TAP" fees (transmission fee, accrued guaranteed revenue fee, and plant fee) defined in COUNTY'S Utility Extension Standards as the fee representing the proportionate share of the capital costs of the utility system capacity allocated to a new or modified connection. COUNTY agrees to provide DEVELOPER with Credits in a sum equal to the total construction costs of the Developer Improvements, less the agreed upon COUNTY share of costs. The total dollar amount of the Credits shall be memorialized in an Addendum to this Agreement, executed by the Parties, and recorded in Charlotte County Official Records after all construction of the Development Improvements is complete ("Credits Addendum"). The "Total Construction Costs" shall be the sum of the final contract invoices for those costs of inspection, license fees, labor, equipment, and

materials incurred to construct the Developer Improvements as submitted by DEVELOPER and approved by COUNTY plus the cost to re-sod all swales damaged by the construction of the Developer Improvements and the cost to repair all physical damage to abutting property caused by the Developer Improvements. "Extra Costs" are not included in Total Construction Costs, as set forth in Paragraph 15, below.

12. DEVELOPER costs associated with project engineering and permitting are not part of the Total Construction Costs and are not included in the calculation of Credits.

13. Current COUNTY TAP Fee rates in effect at the time (County Utility Rate Resolution) Credits are utilized by DEVELOPER shall be used to determine the applicable amount to be deducted from the total dollar amount of Credits available. Credits may only be used by DEVELOPER, its successors or assigns, for applicable TAP fees for structures located on the Property as part of one or more separate on-site utility agreements and shall be valid for fifteen (15) years from the effective date of the Credits Addendum.

14. Development fees associated with the development of the Property and required on-site facilities for the connection to COUNTY's utility system are not included in this Agreement. TAP Fees, Distribution Fees, and Collection Fees, as defined in COUNTY'S Utility Extension Standards for on-site facilities shall be paid by DEVELOPER to COUNTY pursuant to one or more separate utility agreements to be entered into as set forth in Paragraph 13 and shall be paid at or before the time DEVELOPER connects to COUNTY'S system. CREDITS will be applied to offset TAP Fees identified in such separate utility agreement in the manner set forth in Paragraph 13, above.

15. DEVELOPER's cost to install: (1) approximately 2.5 miles of re-use lines in the Burnt Store Road right-of-way and (2) the cost for engineering, surveying, biologist's assessment and additional property restoration costs necessitated by COUNTY's post-100% plan changes to the design and location of the Developer Improvements located within the Notre Dame Boulevard right-of-way (together the "Extra Costs"), are not included in this Agreement. COUNTY's reimbursement to Developer for Extra Costs shall be addressed in a separate agreement.

16. This Agreement is not intended to, and does not, grant any third party any rights whatsoever under this Agreement for service from the COUNTY. COUNTY reserves the right to refuse connection to, and commencement of, any service to any user seeking to be connected to any portion of the facilities installed by the DEVELOPER under this Agreement until all terms and conditions of this Agreement have been complied with by DEVELOPER.

17. DEVELOPER, its contractors, and subcontractors shall be insured against all losses and injury that may be caused by the construction and installation of the Developer Improvements authorized by this Agreement. DEVELOPER agrees to indemnify and hold harmless the COUNTY and its officers and employees from all 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 of DEVELOPER and persons employed or utilized by DEVELOPER in the performance of this Agreement. The foregoing obligation to indemnify is conditioned upon: (a) prompt written notice by COUNTY to DEVELOPER of any claim, action or demand for which indemnity is claimed; (b) complete control of the defense and

settlement thereof by DEVELOPER, provided that no settlement of an indemnified claim shall be made without the consent of COUNTY, such consent not to be unreasonably withheld or delayed; and (c) reasonable cooperation by COUNTY in the defense as DEVELOPER may request. COUNTY shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense. DEVELOPER shall not be liable for any expenses incurred by COUNTY to review, oversee or participate in the indemnified claims. During and after the construction of the Developer Improvements authorized by this Agreement, DEVELOPER shall (i) reimburse COUNTY for all damages to property owned or under the control of or use by COUNTY caused by said installation or construction of the Developer Improvements, and (ii) reimburse every owner of property abutting the location of any Developer Improvements installed under this Agreement for any physical injury or loss caused by said installation or construction activities.

18. The Contractor(s) for the construction of the Developer Improvements must be State Certified or must hold a valid Certificate of Competency in underground utility construction.

19. Assignment. DEVELOPER may assign this Agreement to a duly-approved Community Development District without prior COUNTY approval or to a subsequent purchaser of the Property subject to COUNTY'S prior written consent, which consent shall not be unreasonably withheld. Upon assignment, the assignee shall enjoy and undertake the same rights and obligations herein of DEVELOPER as if the assignee is the DEVELOPER hereunder.

20. Binding Agreement. The covenants and agreement contained herein shall be binding upon and inure to the benefit of COUNTY and DEVELOPER and their respective successors, assigns and legal representatives. This Agreement shall be recorded in the Official Records maintained by the Charlotte County Clerk of Circuit Court.

21. Counterparts. This Agreement may be executed in multiple counterparts each of which shall be deemed to be an original and all of which together shall constitute one and the same document.

22. Governing Law. This Agreement shall be governed by the laws of the State of Florida and venue for any action brought to enforce the provisions hereof shall be in Charlotte County, Florida.

23. Severability. If any section, paragraph, term, or provision of this Agreement is determined to be illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such determination shall have no effect on any other section, paragraph, term, or provision hereof, all of which shall remain in full force and effect for the term of this Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Agreement on the date indicated above.

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

(SEAL)

By:


William C. Truex, Chairman

ATTEST:

Roger D. Eaton, Clerk of the
Circuit Court and Ex-officio Clerk
of the Board of County
Commissioners

By:



Deputy Clerk

A.AGR 2018-057

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By:



Janette S. Knowlton, County Attorney
LR2021-0430

Signed, sealed, and delivered
in the presence of:

**TUCKERS POINT I LIMITED
PARTNERSHIP**, a Florida Limited
Partnership

By: Tuckers Point, LLC, a Florida
Limited Liability Company, its general
partner

By: Joseph D. Boff, President

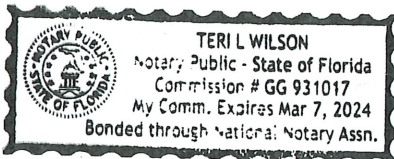
Rensuylje Lampbeene
Print Name: Rensuylje Lampbeene

Birgit de Lange
Print Name: Birgit de Lange

STATE OF FLORIDA)

COUNTY OF COLLIER)

The foregoing was acknowledged before me this 9TH day of DECEMBER
2021 by Joseph D. Boff as President of Tuckers Point, LLC as General Partner of
Tuckers Point I Limited Partnership on behalf of the limited partnership who is personally
known to me or who has produced _____ as identification
and who did not take an oath.



Teri L. Wilson
Notary Public, State of Florida
My Commission Expires: 3/7/2024

EXHIBIT "A"

DESCRIPTION:

BASED ON FIRST AMERICAN TITLE INSURANCE COMPANY COMMITMENT FOR TITLE INSURANCE NUMBER 5011612-2038-2389184, DATED JANUARY 25, 2017 @ 8:00 A.M.

PARCEL 1 (ESSEX-CAPE CORAL)

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF CHARLOTTE, LYING IN SECTION 35, TOWNSHIP 41 SOUTH, RANGE 23 EAST, BEING THE PARCEL AS DESCRIBED IN OFFICIAL RECORDS BOOK 2159, PAGE 1340, CHARLOTTE COUNTY PUBLIC RECORDS AND BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 35; THENCE N.02°35'58"E., ALONG THE NORTH-SOUTH QUARTER SECTION LINE OF SAID SECTION 35, FOR 68.36 FEET TO THE NORTH RIGHT OF WAY LINE OF TUCKERS BOULEVARD (STATE ROAD 762) AND THE POINT OF BEGINNING; THENCE CONTINUE N.02°35'58"E., ALONG SAID QUARTER SECTION LINE, FOR 2728.09 FEET; THENCE N.89°28'43"E., ALONG THE EAST-WEST QUARTER SECTION LINE OF SAID SECTION 35, FOR 1352.36 FEET; THENCE N.02°40'44"E., ALONG THE WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 35, FOR 2008.27 FEET TO AN INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE 75; THENCE S.44°03'54"E., ALONG SAID RIGHT OF WAY LINE, FOR 206.77 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING: A RADIUS OF 5567.58 FEET, A CENTRAL ANGLE OF 17°48'37", A CHORD BEARING OF S.35°09'35"E. AND A CHORD LENGTH OF 1723.71 FEET; THENCE ALONG SAID RIGHT OF WAY LINE AND THE ARC OF SAID CURVE, AN ARC LENGTH OF 1730.67 FEET TO THE END OF SAID CURVE; THENCE S.63°44'43"W., NON-TANGENTLY, ALONG SAID RIGHT OF WAY LINE, FOR 75.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, HAVING: A RADIUS OF 5492.58 FEET, A CENTRAL ANGLE OF 04°51'39", A CHORD BEARING OF S.23°49'27"E. AND A CHORD LENGTH OF 465.84 FEET; THENCE ALONG SAID RIGHT OF WAY LINE AND THE ARC OF SAID CURVE, AN ARC LENGTH OF 465.98 FEET TO AN INTERSECTION WITH THE EAST LINE OF SAID SECTION 35; THENCE S.02°45'24"W., ALONG SAID EAST LINE AND SAID RIGHT OF WAY LINE OF INTERSTATE 75, FOR 1517.33 FEET; THENCE N.89°09'03"W., ALONG THE BOUNDARY OF THE PARCEL AS DESCRIBED IN OFFICIAL RECORDS BOOK 1902, PAGE 586, SAID PUBLIC RECORDS, FOR 467.51 FEET; THENCE S.02°45'24"W., ALONG SAID BOUNDARY, FOR 467.51 FEET; THENCE S.89°09'03"E., ALONG SAID BOUNDARY, FOR 417.48 FEET; THENCE S.02°45'24"W., ALONG SAID BOUNDARY, FOR 689.23 FEET TO AN INTERSECTION WITH SAID RIGHT OF WAY LINE OF INTERSTATE 75; THENCE S.89°40'55"W., ALONG SAID RIGHT OF WAY LINE, FOR 230.59 FEET; THENCE N.89°09'53"W., ALONG SAID RIGHT OF WAY LINE, FOR 117.71 FEET; THENCE S.41°44'59"W., ALONG SAID RIGHT OF WAY LINE, FOR 99.25 FEET; THENCE N.89°09'54"W., ALONG SAID RIGHT OF WAY LINE, FOR 541.70 FEET; THENCE N.89°17'00"W., ALONG SAID RIGHT OF WAY LINE AND SAID NORTH RIGHT OF WAY LINE OF TUCKERS BOULEVARD (STATE ROAD 762), FOR 257.08 FEET (PASSING THE RIGHT OF WAY CHANGE AT 50.94 FEET); THENCE S.85°00'21"W., ALONG SAID NORTH RIGHT OF WAY LINE OF TUCKERS BOULEVARD (STATE ROAD 762) FOR 100.50 FEET; THENCE N.89°17'00"W., ALONG SAID NORTH RIGHT OF WAY LINE, FOR 1300.00 FEET; THENCE S.87°51'15"W., ALONG SAID NORTH RIGHT OF WAY LINE, FOR 35.52 FEET TO THE POINT OF BEGINNING.

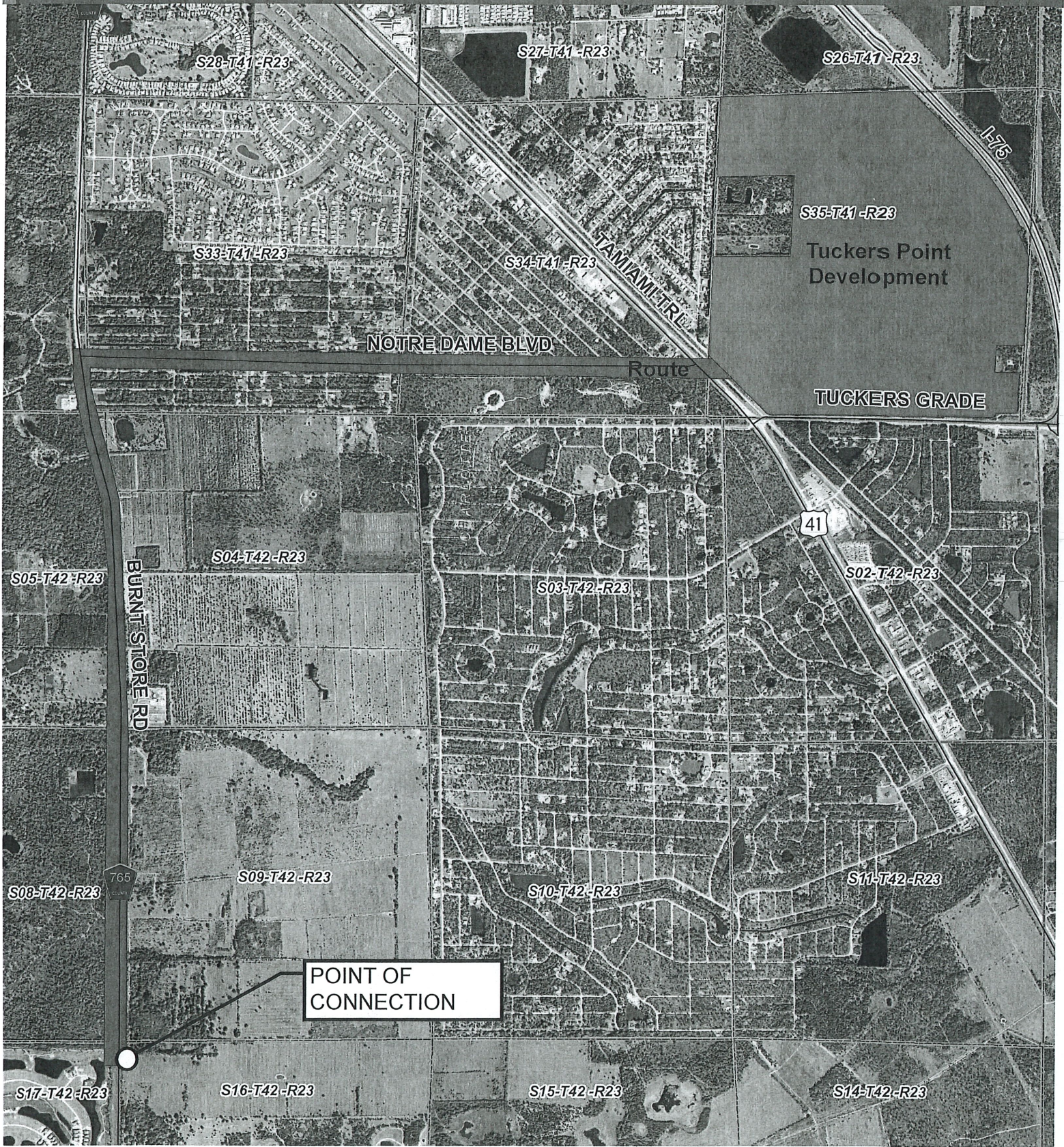
PARCEL 2 (TUCKERS GRADE)

THE N 1/2 OF THE NW 1/4; ALSO THE SE 1/4 OF THE NW 1/4; ALSO THE W 1/2 OF THE NE 1/4; ALSO THAT PORTION OF THE SW 1/4 LYING NORTHERLY AND EASTERLY OF ATLANTIC COASTLINE RAILROAD RIGHT-OF-WAY; ALL BEING IN SECTION 35, TOWNSHIP 41 SOUTH, RANGE 23 EAST, CHARLOTTE COUNTY, FLORIDA.

LESS AND EXCEPT THAT CERTAIN PARCEL OF LAND TAKEN BY THE DIVISION OF ADMINISTRATION, STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION IN THAT CERTAIN ORDER OF TAKING RECORDED IN OFFICIAL RECORDS BOOK 533, PAGES 290 THROUGH 292, OF THE PUBLIC RECORDS OF CHARLOTTE COUNTY, FLORIDA.

AND LESS AND EXCEPT RIGHT-OF-WAY FOR TUCKERS BOULEVARD (S.R. #762) PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP 01001-2501.

EXHIBIT "B" POINT OF CONNECTION



Title: Infrastructure_Route
 Date: 11/8/2021
 Created By: David E. Cain
 Coordinate System: NAD 1983 StatePlane Florida West FIPS 0902 Feet
 Projection: Transverse Mercator
 Center: 81°59'59.9496"W 26°51'3.6396"N
 DISCLAIMER: This map is a representation of compiled information.
 It is believed to be an accurate and true depiction for
 the stated purpose, but Charlotte County Utilities and
 its employees make no guarantees, implied or otherwise
 as to the accuracy or completeness. We therefore do not
 accept any responsibilities as to its use. This is not a
 survey or is it to be used for design. No part of this map
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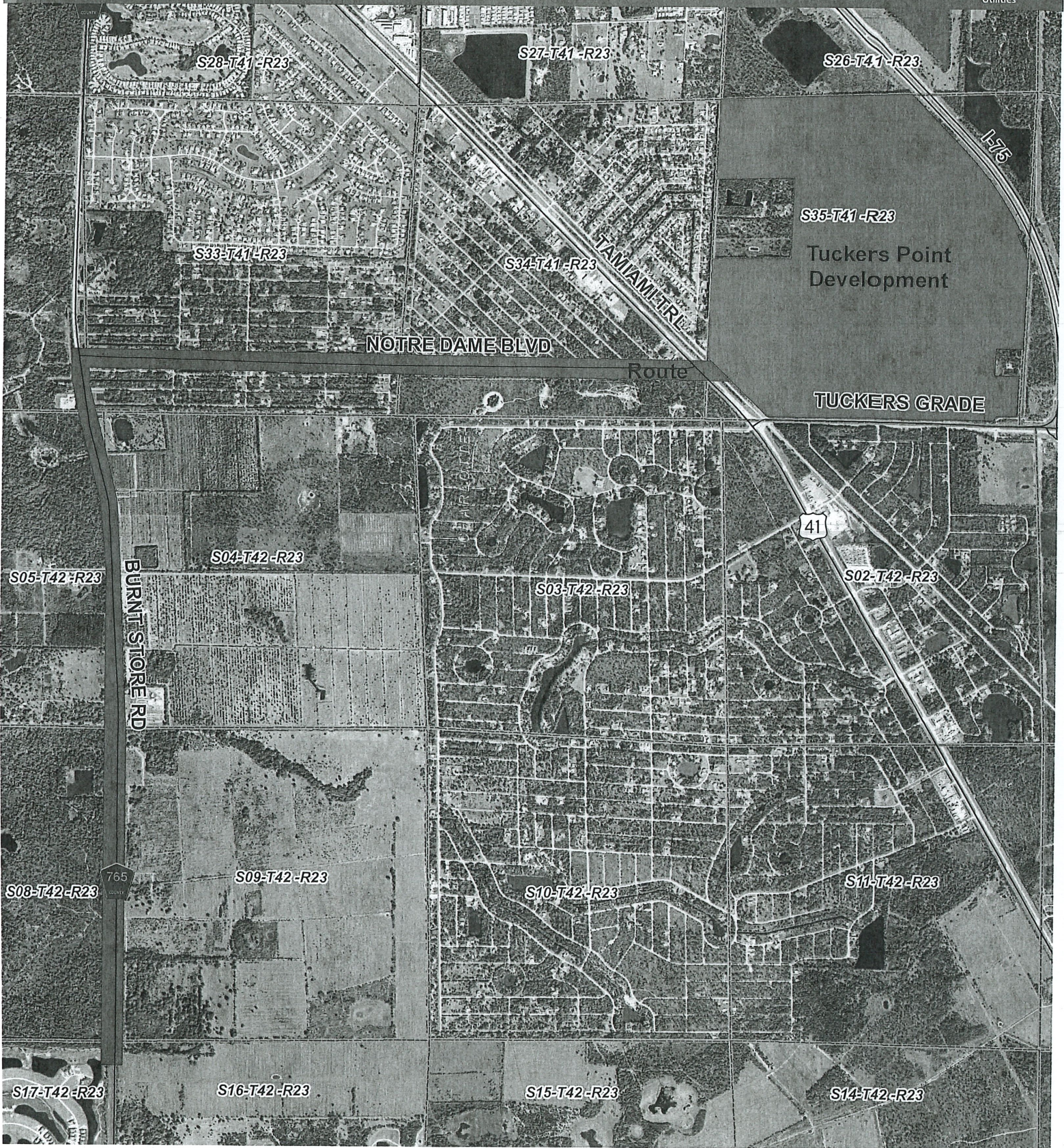
Tuckers Point Infrastructure

ROUTE
 TuckersPoint



0 950 1,900 3,800
 Feet

EXHIBIT "C" ROUTE OF COUNTY AND DEVELOPER IMPROVEMENTS



File: Infrastructure_Route
Date: 11/8/2021
Created By: David E. Cain
Coordinate System: NAD 1983 StatePlane Florida West FIPS 0902 Feet
Projection: Transverse Mercator
Center: 81°59'59.9496"W 26°51'3.6396"N
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Tuckers Point Infrastructure

- ROUTE
- TuckersPoint



0 950 1,900 3,800
Feet