

CH6  
BCC  
N

AMENDED AND RESTATED OFF-SITE UTILITIES AGREEMENT

THIS AMENDED AND RESTATED OFF-SITE UTILITIES AGREEMENT (hereinafter "Amendment") is made and entered into this 13<sup>th</sup> day of November, 2019, by and between CHARLOTTE COUNTY, a political subdivision of the State of Florida, whose address is 18500 Murdock Circle, Port Charlotte, FL 33948 (hereinafter "COUNTY") and TUCKERS POINT I LIMITED PARTNERSHIP, a Florida Limited Partnership, whose address is 7995 Mahogany Run Lane, Naples, FL 34113 (hereinafter "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, DEVELOPER has now requested the COUNTY to construct a portion of the off-site improvements in a different location; and

WHEREAS, COUNTY and DEVELOPER desire to modify the scope of the off-site improvements to now include construction by both the COUNTY and DEVELOPER; and

WHEREAS, COUNTY and DEVELOPER desire to modify the route in which the off-site improvements will be installed; and

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

WHEREAS, COUNTY and DEVELOPER deem it advisable and desire to amend and revise the terms of the Agreement, and also to restate the terms of said 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:

W I T N E S S E T H

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 (hereinafter the "Property"); and

WHEREAS, the aforesaid real 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 (the PROJECT) which, at this point of time, is planned to include up to one thousand six hundred and eighty nine (1,689) residential units, four hundred eighty thousand (480,000) 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 sewer facilities to allow for future service to the Property under the terms and conditions as contained herein; and

WHEREAS, COUNTY agrees to construct a portion of the off-site potable water and sewer transmission system improvements at DEVELOPER'S expense; and

WHEREAS, DEVELOPER has agreed to construct the remaining off-site potable water and sewer transmission system improvements needed to connect DEVELOPER's property to COUNTY's utility system; 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 mains 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. COUNTY agrees to extend and construct potable water and sewer facilities, at DEVELOPER's expense, generally consistent with "Branch A" as shown on Exhibit "C" attached hereto and incorporated herein, from Station 327+50 to a point that is approximately 1,100 feet south of the intersection of Burnt Store Road and Notre Dame Boulevard (the "County Improvements"). COUNTY shall include a twelve inch (12") reclaimed water main in its design of the County Improvements, but DEVELOPER shall not be required to pay for the cost of constructing a reclaimed water main as part of the County Improvements. DEVELOPER shall pay for all costs incurred by the COUNTY for the design of the County Improvements.

3. The County Improvements shall be included in the construction of the Burnt Store Road (Phase 2) Widening project (the "Project") via a change order process approved by the COUNTY. COUNTY shall approve the change order in its sole discretion and shall have sole management authority over any contract and change order awarded for construction of the Project (the "Project Contract"). However, COUNTY shall provide DEVELOPER the opportunity to review and comment on any subsequent change orders to the Project Contract that affect the County Improvements. Not less than fifteen (15) days prior to the scheduled approval of the change order by the COUNTY, Developer shall deposit the Project Contract change order price of the County Improvements and the design costs (\$72,300 Supplemental Agreement #5 with Johnson Engineering) by wire transfer to the order of the McCrory Law Firm ("Escrow Agent") which shall hold the money in an interest-bearing account. DEVELOPER is entitled to all interest on the escrowed funds.

4. COUNTY shall exercise customary and reasonable due diligence in validating requests for payment pursuant to the Project Contract. COUNTY shall invoice DEVELOPER as payments for the County Improvements become due under the terms of the Bid Contract. DEVELOPER shall issue an authorization for payment to Escrow Agent within seven (7) days after receipt of invoices from COUNTY.

5. DEVELOPER agrees to extend potable water and sewer facilities, at DEVELOPER's expense, from the termination of the County Improvements to the Property (the "Developer Improvements"). These Developer Improvements shall generally consist of potable water main and appurtenances and sewer force main and appurtenances. The pipe size for these improvements shall be determined by COUNTY

upon completion of a modeling report to be prepared for COUNTY by Johnson Engineering, which report will be completed no later than January 31, 2020. In the event the modeling report recommends upsizing the potable water main pipe to more than sixteen inches (16") and/or a sewer force main to more than twenty inches (20"), DEVELOPER shall be reimbursed for the cost of such upsizing. The Developer Improvements shall be installed in the Burnt Store Road right of way, the Notre Dame right of way, the Tamiami Trail right of way and the Seminole Gulf Railway LP right of way as shown in blue in Exhibit "C."

6. All easements utilized by DEVELOPER for installation of the Developer Improvements shall be obtained by DEVELOPER, at DEVELOPER's sole expense, and transferred to COUNTY. Such grant or conveyance shall be in a form satisfactory to the County Attorney. Such conveyances shall be made without cost to the COUNTY as part of the consideration for this Agreement.

7. DEVELOPER shall include a twelve inch (12") 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.

8. The design for the County Improvements and the Developer Improvements authorized by this Agreement shall be 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 must be approved by the COUNTY Utility Department and Public Works Department and must conform 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 permits, including, but not limited to the railroad crossing, Public Works utility right of way and FDOT highway crossings, and pay permit, inspection and other applicable fees. COUNTY shall review the engineering plans and furnish to DEVELOPER's engineer information regarding location and criteria at no charge to DEVELOPER. 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.

9. 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 its sole expense. At its 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 standards.

10. It shall be DEVELOPER's obligation to furnish to COUNTY accurate information with respect to matters of engineering, construction of buildings, and proposed uses. The DEVELOPER is responsible for compliance with the conditions of all permits and approvals, ordinances and approved construction documents relative to the Developer Improvements.

11. It shall be the responsibility of the DEVELOPER to connect the Developer Improvements to the County Improvements. 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.

12. Upon completion of construction of the Developer Improvements pursuant to this Agreement, and acceptance 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 record drawings for the Developer Improvements in accordance with the Charlotte County Utilities Design Compliance Standards dated November 1, 2011 and all subsequent addendums.

13. In consideration of the installation of the County Improvements and the Developer Improvements at DEVELOPER's expense and subsequent conveyance of the Developer Improvements to COUNTY, COUNTY agrees to provide DEVELOPER with a credit towards payment of future connection fees that is equal to the total construction costs for the County Improvements paid for by the DEVELOPER plus the Developer Improvements constructed by Developer ("Connection Fee Credits"). The total dollar amount available to Developer for Connection Fee Credits shall be memorialized in an Addendum to this Agreement that is executed by the parties and recorded in Charlotte County Official Records after all construction of the off-site utility facilities is complete



("Connection Fee Addendum"). The total construction cost shall be the sum of the Project Contract change order price of the COUNTY Improvements, as evidenced by the invoices submitted by COUNTY to DEVELOPER for payment, plus the final contract invoices for those costs of inspection, labor, equipment, and materials incurred to construct the Developer Improvements as submitted by DEVELOPER and approved by COUNTY together with the cost to re-sod all swales damaged by the construction of the Developer Improvements and to repair all physical damage caused by the Developer Improvements to abutting property. DEVELOPER costs associated with project engineering and permitting are not part of the total construction cost and are not included in the calculation of connection fee credits. When Connection Fee Credits are utilized by DEVELOPER, the Connection Fee rates in effect at the time the Credits are used shall be deducted from the total dollar amount of Connection Fee Credits available. Connection Fee Credits may only be used by DEVELOPER, its successors or assigns, for structures located on the Property and shall be valid for fifteen (15) years from the effective date of the Connection Fee Addendum. On site facilities and fees due COUNTY for connection to COUNTY's utility system are not included in this Agreement. Connection fees shall be paid by DEVELOPER to COUNTY pursuant to a separate Agreement and shall be paid at or before the time DEVELOPER connects to COUNTY's system.

14. This Agreement is not intended to nor shall it grant any third party any rights whatsoever under this Agreement for service from the COUNTY and the 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.

15. 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.

16. 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.

17. Assignment. DEVELOPER may assign this Agreement 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.

18. 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.

19. 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.

20. 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.

21. 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.

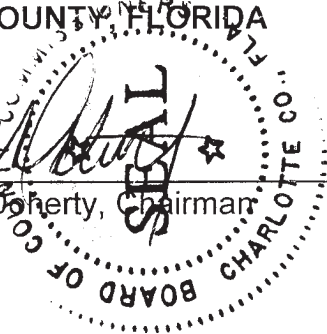
IN WITNESS WHEREOF the parties have entered into this Agreement on the date indicated above.

**BOARD OF COUNTY COMMISSIONERS  
OF CHARLOTTE COUNTY, FLORIDA**

(SEAL)

By:

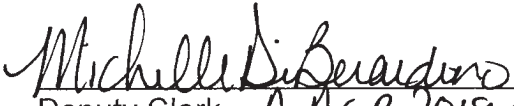
  
Kenneth W. Doherty, Chairman



ATTEST:

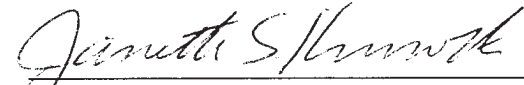
Roger D. Eaton, Clerk of the  
Circuit Court and Ex-officio  
Clerk of the Board of County  
Commissioners

By:

  
Deputy Clerk A. A6R2018-057

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:


By:

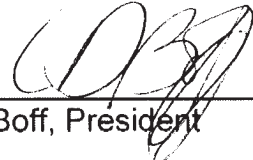
  
Janette S. Knowlton, County Attorney  
LR19-0281 1904 (MM)


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

  
Print Name: JOEL F BOFFLOW

By:   
Joseph D. Boff, President


  
Print Name: Birgit de Lange

STATE OF FLORIDA )

COUNTY OF COLLIER )

The foregoing was acknowledged before me this 7<sup>TH</sup> day of NOVEMBER,  
20 19 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.



  
Notary Public, State of Florida  
My Commission Expires:

## 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:

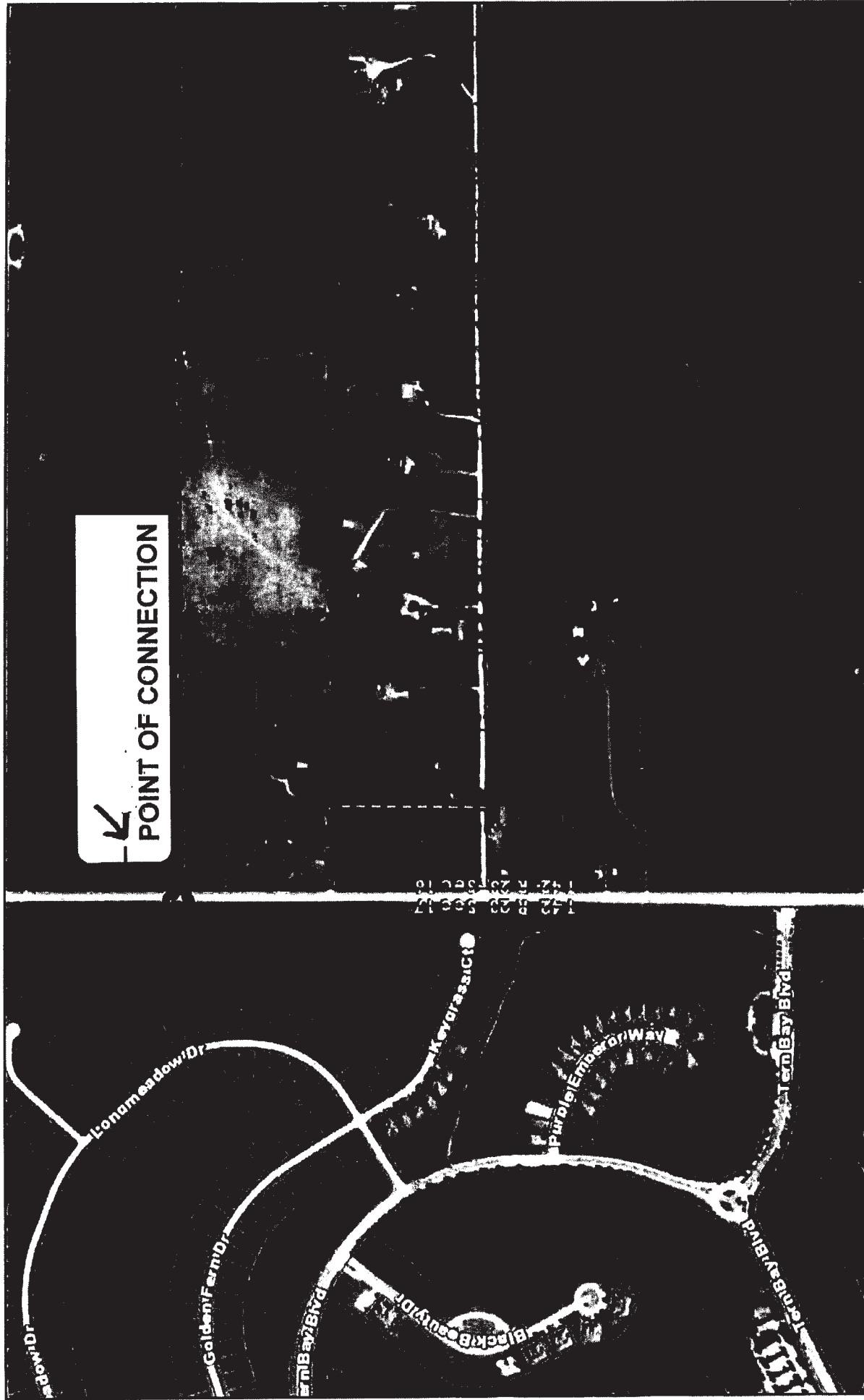
COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 35; THENCE N.02°35'58"E., ALONG THE NORTH-SOUTH QUARTER SECTION LINE OF SAID SECTION 35, FOR 68.36 FEET TO THE NORTH RIGHT OF WAY LINE OF TUCKERS BOULEVARD (STATE ROAD 762) AND THE POINT OF BEGINNING; THENCE CONTINUE N.02°35'58"E., ALONG SAID QUARTER 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-TANGENTIALLY, 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.



September 6, 2018

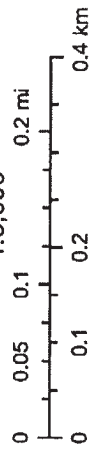
☐ City of Punta Gorda Boundary

Block Number

☐ Property Ownership

Lots

1:8,000



Charlotte County  
Charlotte County GIS

**Exhibit "C"**

**Route of County and Developer Improvements**



