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OFF-SITE UTILITIES AGREEMENT

THIS AGREEMENT is made and entered into this 11th day of September, 2018, 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 7495 Mahogany Run Ln. Naples, FL 34113 (hereinafter "DEVELOPER").

WITNESSETH

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

CHARLOTTE COUNTY CLERK OF CIRCUIT COURT
OR BOOK: 4358 PAGE 1047 PAGE: 1 OF 12
INSTR # 2645719 Doc Type: AGR
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Rec. Fee: RECORDING \$103.50
Cashier By: JOA/IC

WHEREAS, DEVELOPER has agreed to construct 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 existing 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. DEVELOPER agrees to extend potable water and sewer facilities ("off-site improvements"), at its expense, from COUNTY's existing Transmission Mains to DEVELOPER's property. These off-site improvements shall generally consist of sixteen inch (16") PVC potable water main and appurtenances, approximately 200 linear feet of variable size potable water main and appurtenances, approximately 14,000 linear feet of twenty inch (20") sewer force main and appurtenances, and approximately 9,000 linear feet of sixteen inch (16") sewer force main and appurtenances. The off-site improvements shall be installed in the right of way, or in existing or acquired utility easements along the

COUNTY-approved route shown in Exhibit "C," which is attached hereto and incorporated herein by this reference.

3. DEVELOPER shall assist COUNTY in the acquisition of an easement across the northern boundary of the properties with Parcel ID numbers 422316100002, 422316100003, 422316100005, 422316100006, 422316200002, 422316200012, 422316200013 and across either the western boundary of 422315100001 or the eastern boundary of 422316200001 and 422309400001 (the "Burnt Store Easement").

4. All easements utilized by DEVELOPER for installation of the off-site improvements shall be transferred to COUNTY. Such grant or conveyance shall be in a form satisfactory to the County Attorney. With the exception of the conveyance of the Burnt Store Easement, such conveyances shall be made without cost to the COUNTY as part of the consideration for this Agreement.

5. DEVELOPER shall include a twelve inch (12") reclaimed water main in its design of the off-site improvements, but DEVELOPER shall not be required to extend a reclaimed water main to DEVELOPER's property. DEVELOPER's design shall provide sufficient remaining area in the easement/right of way for future installation, by others, of a twenty-four inch (24") potable water transmission main.

6. The design for the off-site 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 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 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 improvements.

7. During all phases of the construction and installation of the off-site improvements, COUNTY will inspect all facilities installed to insure that they are in conformance with the Utilities' Design Compliance Standards dated November 1, 2011 and all current addendums. 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.

8. 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.

9. It shall be the responsibility of the DEVELOPER to connect the off-site improvements to the existing Transmission Mains. 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 off-site improvements installed by DEVELOPER pursuant to this Agreement, and acceptance by COUNTY, which acceptance shall not be unreasonably delayed, the DEVELOPER agrees that the off-site 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 improvements. DEVELOPER shall provide COUNTY with accurate as-built and record drawings for the off-site improvements in accordance with the Charlotte County Utilities Design Compliance Standards dated November 1, 2001 and all subsequent addendums.

11. In consideration of DEVELOPER's installation of the off-site improvements at DEVELOPER's expense and subsequent conveyance of those 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 off-site potable water and sewer transmission facilities constructed by DEVELOPER ("Connection Fee Credits"). The total construction cost shall be established using final contract invoices for those costs of inspection, labor, equipment, materials incurred to construct the off-site transmission facilities as submitted by DEVELOPER and approved by COUNTY and the cost to re-sod all swales damaged by the construction and to repair all physical damage caused 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. 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.

12. 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.

13. DEVELOPER, its contractors and subcontractors shall be insured against all losses and injury that may be caused by the construction and installation of the off-site 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 off-site 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, and (ii) reimburse every owner of property abutting the location of any facilities installed under this Agreement for any physical injury or loss caused by said installation or construction activities.

14. The Contractor(s) for the construction the off-site improvements must be State Certified or must hold a valid Certificate of Competency in underground utility construction.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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:

By:


Roger D. Eaton, AGR2018-057
Clerk of the Circuit Court

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By:


Janette S. Knowlton, County Attorney
LR15-3480 MWH

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

Print Name: JOEL J BOBROW

Print Name: Birgit de Lange

STATE OF FLORIDA)

COUNTY OF COLLIER)

The foregoing was acknowledged before me this 5 day of SEPTEMBER, 2018
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:

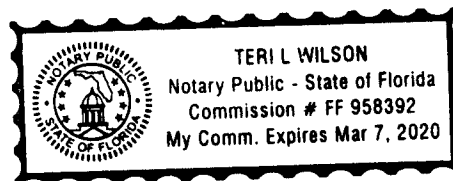


EXHIBIT "A"

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.

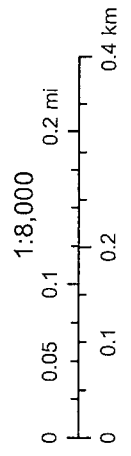
LESS AND EXCEPT THAT CERTAIN PARCEL OF LAND TAKEN BY THE DIVISION OF ADMINISTRATION, STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION IN THAT CERTAIN ORDER OF TAKING RECORDED IN OFFICIAL RECORDS BOOK 533, PAGES 290 THROUGH 292, OF THE PUBLIC RECORDS OF CHARLOTTE COUNTY, FLORIDA.

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



Charlotte County
Charlotte County GIS