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**FIFTH AMENDMENT TO
AGREEMENT FOR PURCHASE AND SALE**

Murdock Village Community Redevelopment Agency
Lost Lagoon Development, LLLP
Charlotte County

THIS FIFTH AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE (the "Fifth Amendment") is dated the 9th day of July, 2024, and is entered into by and between the **Murdock Village Community Redevelopment Agency**, a public body corporate and politic under the laws of the State of Florida, established pursuant to Part III of Chapter 163, Florida Statutes (the "**MVCRA**" or "**Seller**") and **Lost Lagoon Development, LLLP**, a Florida limited liability limited partnership ("**Lost Lagoon**" or "**Buyer**") and **Charlotte County**, a political subdivision of the State of Florida ("**County**") and **Kolter Group Acquisitions LLC**, a Florida limited liability company ("**Kolter**") and, collectively, the parties to this agreement shall be referred to as the "parties".

RECITALS

A. MVCRA, Lost Lagoon and County entered into that certain Agreement for Purchase and Sale dated October 24, 2017 (the "Agreement"), as amended by that certain First Addendum and Amendment to Purchase and Sale Agreement dated March 24, 2020, that certain Second Amendment to Agreement for Purchase and Sale dated April 14, 2020, that Third Amendment to Agreement for Purchase and Sale dated July 23, 2020, and that Fourth Amendment to Agreement for Purchase and Sale dated November 10, 2020 (collectively, the "Agreement"); and

B. The Phase I Closing was completed on September 18, 2020; and

C. Buyer has completed all due diligence and waives any of the Agreement's conditions to close except for those itemized herein; and

D. Buyer is under contract to sell to Kolter the portion of the Property acquired from Seller at the Phase I Closing as described on the attached **Exhibit A** ("**Phase I Property**") and the remaining property to be conveyed by MVCRA to Buyer under the Agreement as described on the attached **Exhibit B** (the "**Remaining Property**") (the Phase I Property and Remaining Property are collectively referred to as the "**Subject Property**"); and

E. MVCRA and County require that the closing contemplated by this Amendment shall not be consummated unless all of the Subject Property shall be deeded to Kolter; and

F. MVCRA and County shall execute the documents necessary to transfer the Remaining Property direct to Kolter or its designated affiliate; however, such documents shall not be delivered to Buyer but shall be held in escrow and delivered to Kolter pursuant to this Amendment's terms; and

G. MVCRA, Lost Lagoon, County and Kolter have agreed to extend the deadline to close on the Remaining Property and have agreed to certain other amendments to the Agreement as hereafter provided.

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NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in the Agreement and this Fifth Amendment, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties agree as follows:

1. **Recitals; Defined Terms.** The above recitals are true and correct and are hereby incorporated herein. The defined terms set forth in this Fifth Amendment shall have the same meaning and definition as set forth in the Agreement.

2. **Final Closing.** Closing shall occur on all Remaining Property (the “**Final Closing**”) on or before thirty (30) days after satisfaction of the Conditions to Final Closing (defined below).

3. **Project.** The Subject Property is being developed by Kolter or its affiliate as a mixed-use development (“**Project**”) and shall include retail/commercial, office, hotel, townhomes, single family residential and other related uses, which in the Master Development Agreement are referenced as the “**Intended Uses**.” The Intended Uses will not exceed the following:

1. 250,000 square feet of retail/commercial.
2. Hotel totaling 250 keys.
3. 240 townhomes.
4. 350 single family homes.
5. 150,000 square feet of government uses.
6. 150 affordable multifamily units.

The Project’s Intended Uses as described in this paragraph may not exceed the total allowed intensities for the Murdock Village Community Redevelopment Area (CRA). The Project’s final authorized Intended Uses shall not exceed the total allowable development rights for the Murdock Village CRA. The Project’s final Intended Uses shall be included in the PD Zoning Ordinance as amended. The residential development rights must be authorized through the use of the Murdock Village Mixed Use (MVMU) Equivalency Matrix as established in the County’s comprehensive plan.

4. **Conditions to Final Closing.** Buyer’s, Kolter’s and Seller’s obligations to close are conditioned upon the satisfaction of the following conditions (“**Conditions to Final Closing**”):

a) Amendment of Ordinance No. 2020-008, inclusive of subsequent amendments if any, and its concept plan for the Subject Property to include the Buyer’s Intended Uses (“**Zoning Modification**”) in a final form acceptable to Buyer and Kolter, which will include a stipulation that Kolter and County will cooperate as to design of the intersection of Toledo Blade Blvd. and SR776 and recognize that the FDOT permit requirements will control. Kolter agrees to submit a complete application for the Zoning Modification and an amended Master Development Agreement within sixty (60) days after the full execution of this Fifth Amendment. If Buyer and Kolter jointly agree that a timely appeal of the Zoning Modification was filed in the Circuit Court in and for Charlotte County, Florida, and that such appeal is likely to succeed, the parties agree that this transaction may be terminated by a joint notice from Buyer and Kolter delivered to Seller no later than 10 days after the filing date of such appeal; and

b) Unless, Kolter has already acquired the Remaining Property from Buyer, Buyer, MVCRA, County and Kolter shall escrow the deeds for the sale of the Subject Property and such deeds shall not be released until after all funds and documents required to close the transaction between Buyer and Kolter and simultaneously close the transaction between Buyer and Seller, whereafter the deeds and related documents for the Subject Property shall be released from escrow

and delivered to Kolter. The parties shall enter into an escrow agreement to facilitate this condition; and

c) execution by County and Kolter or its designated affiliate of an Amended and Restated Master Developer's Agreement in the form attached as **Exhibit C** to this Amendment; and

d) payment of the balance of the Purchase Price in the amount of \$2,924,015.12 in cleared funds to the Clerk of the Circuit Court and County Comptroller to be held pursuant to that certain Escrow Agreement dated July 22, 2020 (as amended, the "**Escrow Agreement**") which results in a total of \$6,679,625.12 having been paid into escrow, and execution and delivery of an assignment by Buyer to Kolter of all of Buyer's rights as to funds held in escrow under the Escrow Agreement, including any accrued interest, if any.

5. **Additional Amendments to Agreement.** The parties agree to additional amendments to the Agreement as follows:

a) Section 4.2.3 is amended to provide that upon completion and acceptance of all of Buyer's Public Infrastructure Improvements by the County, the balance of the escrow funds held by Escrow Agent shall be disbursed to Kolter.

b) Section 10 is deleted. Kolter shall not be entitled to impact fee credits for any costs expended by Kolter for Buyer's Public Infrastructure Improvements in excess of the amount of the total escrow funds.

c) Section 11 is amended to delete the following:

Notwithstanding anything to the contrary above or in **Section 4.2.3**, in the event Buyer's Public Infrastructure Improvements are completed and accepted by County in their entirety prior to the occurrence of all Closings and the approved Reimbursement cannot be funded in its entirety from funds escrowed at the Closings that have occurred, Buyer shall have the following options (at its sole election):

(a) delay Reimbursement for the amount of the deficit in the form of a credit against the Purchase Price in immediately subsequent Closing(s) (based on compliance with the Application procedure set forth above); or

(b) accept impact fee credits for the amount of the deficit, but in no event shall the total of impact fee credits for Buyer's Public Infrastructure Improvements exceed the total of: (i) the Cost Estimate, plus (ii) \$2,500,000.00, LESS the Escrow Amounts (as defined in **Section 10** above).

d) The Master Developer Agreement shall obligate Kolter to improve two parcels ("**County Parcels**") within the Project as Pad Ready Sites to include a government use parcel of approximately 15 acres ("**Government Parcel**") and an approximately 4.5 acre parcel to be used for affordable housing ("**Affordable Housing Parcel**") to be located substantially in accordance with the conceptual site plan attached as **Exhibit D** to this Amendment ("**Site Plan**"). As used herein the term "Pad Ready Sites" shall mean that the County Parcels have been cleared and rough graded to 18 inches above the level of the crown of the respective parcel's access road, with utilities

(water and sewer) extended to points of connection within the boundaries of the County Parcels, access roadways providing access to the County Parcels completed, and all stormwater retention required for development of the County Parcels provided in off-site retention areas. Kolter shall complete the work required to deliver the County Parcels as Pad Ready Sites and convey marketable title to the County Parcels to the County within 18 months after County approval of site and construction plans for the Project. In addition to conveyance of the County Parcels, Kolter shall grant to the County insurable easements for the use of off-site access, utilities and drainage improvements required for development and use of the County Parcels that are not public. The deed conveying the County Parcels to the County shall provide that Kolter shall have, for a period not to exceed two years after County approval of site and construction plans for the Project, a right of first refusal upon the sale by County of either of the County Parcels with Kolter to be notified in writing of the terms of sale proposed by a third party that County intends to accept and Kolter to have 15 business days to elect to purchase the County Parcel to be sold on the same terms and conditions as set forth in the third party offer.

e) Kolter, County and MVCRA agree that the Master Development Agreement shall state that the PII shall include four-lanes of improvement to Toledo Blade Boulevard from the point south of US 41 where the existing the four-lanes terminate and extend to SR 776, including the intersection of SR 776 and Toledo Blade Boulevard. These improvements including the intersection of Toledo Blade Boulevard and SR 776 shall be configured pursuant to FDOT requirements and applicable County laws ordinances and regulations. Reimbursements paid to Kolter shall not exceed the funds included in the escrow account and County shall not be responsible for any costs over and above the funds included in the escrow account.

f) Connector Road: Kolter intends to construct a connector road, also known as West Port crossing, that will begin in the initial West Port development and terminate at SR 776. Any intersection improvements needed shall be paid for solely by Kolter pursuant to applicable statutes and the laws, ordinances and regulations of Charlotte County.

g) The County shall cooperate with the Zoning Modification application process as a property owner; however, the parties understand and agree that certain "County Parcels" shall be indicated in the zoning application. The parties further understand and agree that the County Parcels' uses shall be designated solely by the County but shall be a part of the final Planned Development for the general area. The County Parcels shall not be included in, or subject to, any Community Development District (CDD) or association, broadly defined. The County shall pay costs related to the County Parcels if such costs are incurred after the completion of the Zoning Modification.

h) The Master Developer Agreement shall provide that if the Public Infrastructure Improvements are not completed by Kolter within 48 months after the Final Closing or a performance bond posted by Kolter with County ensuring completion by that deadline, County shall have the option, to be exercised by written demand to require Kolter to convey title to the portion of the Subject Property described as follows: Lots 1, 2, 3 & 4 of Toledo Blade-Section One as per plat thereof recorded in Plat Book 23, Pages 18A-18B, of the Public Records of Charlotte County Florida, to County, free of any liens or encumbrances except such matters of record that were on such property prior to the conveyance to Buyer or Kolter, in exchange for payment by County to Kolter of the balance held in escrow pursuant to the Escrow Agreement. The provisions

of the fully executed Master Development Agreement shall prevail over this provisions contained in this paragraph.

6. **MVCRA and County Right to Terminate.** The parties grant to MVCRA and County the right, individually or collectively, to terminate the transfers contemplated under this Amendment if for any reason Buyer and Kolter do not or cannot consummate the transfer of the Phase I Property to Kolter. If said transaction fails, Buyer or Kolter shall immediately notify the MVCRA and County that the transaction failed and shall immediately instruct the escrow or closing agent to return the MVCRA and County deeds back to the MVCRA. No party may claim damages against another party if the MVCRA or County invoke this provision. The Board of County Commissioners hereby delegates full authority under this provision to the County Administrator to invoke this provision without further action by the Board. The intent of this provision, if invoked, is to return each of the parties to its status quo ante.

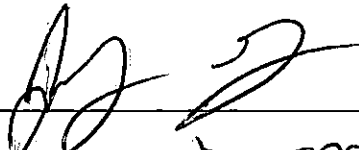
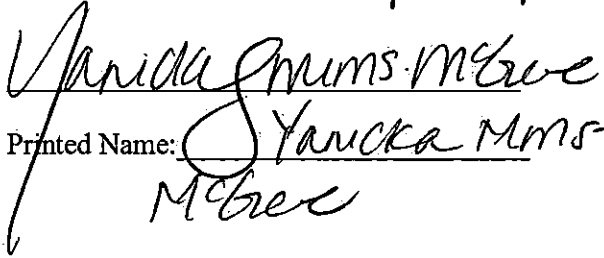
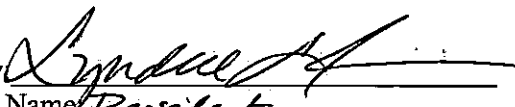
7. **Construction Inspection Fees.** Kolter, or its successors or assigns, agrees to pay Charlotte County Public Works Construction Inspection Fees pursuant to the county's adopted policies. Specifically, the Agreement as amended shall be interpreted to require payment of construction inspection fees regardless of any possible interpretation otherwise in the Agreement. Kolter acknowledges and agrees that the County relies upon these fees and does not have any legal authority to waive them.

8. **Conflict.** The parties intend this Fifth Amendment to supplement the Agreement. Where one or more provisions of this Fifth Amendment or the Agreement may be read to fulfill the intent of both documents, the parties intend that this Fifth Amendment and the Agreement be interpreted to give each document its fullest meaning. Where the provisions of this Fifth Amendment and those of the Agreement directly conflict, the parties intend that this Fifth Amendment prevail. The parties intend that all other provisions of the Agreement not in conflict with the Fifth Amendment remain undisturbed.

9. **Counterparts.** This Fifth Amendment may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument. Any party may execute this Amendment by signing any one counterpart.

{SIGNATURES FOLLOW ON NEXT PAGE}

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on the respective dates set forth above.

WITNESSES:  Printed Name: <u>Courtney Taylor</u>  Printed Name: <u>Yanicka Mims-McGee</u>	LOST LAGOON/BUYER: Lost Lagoon Development, LLLP, a Florida limited liability limited partnership By: Lost Lagoon Management, LLC, Its General Partner By: J-Tek Entertainment, Inc., Its Manager By:  Name: <u>Syndee</u> Title: <u>President</u> Date: <u>June 18, 2024</u>
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WITNESSES: _____ Printed Name: _____ _____ Printed Name: _____	KOLTER: Kolter Group Acquisitions LLC, a Florida limited liability company By: _____ Name: James P. Harvey Title: Authorized Signatory Date: _____
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{SIGNATURES FOLLOW ON NEXT PAGE}

<p>WITNESSES:</p> <p>_____</p> <p>Printed Name: _____</p> <p>_____</p> <p>Printed Name: _____</p>	<p>LOST LAGOON/BUYER:</p> <p>Lost Lagoon Development, LLLP, a Florida limited liability limited partnership</p> <p>By: Lost Lagoon Management, LLC, Its General Partner</p> <p>By: J-Tek Entertainment, Inc., Its Manager</p> <p>By: _____ Name: Title:</p> <p>Date: _____</p>
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{SIGNATURES FOLLOW ON NEXT PAGE}

Signed, sealed and delivered
in the presence of:

Attest:

Roger D. Eaton, Clerk of Circuit Court
And Ex-Officio Clerk of the Board of
County Commissioners

By: Kimberly Welsh
Deputy Clerk A.AGR 2017-098

COUNTY:

Board of County Commissioners of
Charlotte County, Florida

By: William G. Jones
Printed Name: William G. Jones

Its: Chairman

Date: July 9, 2024

MVCRA/SELLER:

Board of County Commissioners of
Charlotte County, Florida, a Political
Subdivision of the State of Florida,
as Ex-Officio of Mudlock Village
Community Redevelopment Agency

By: William G. Jones
Printed Name: William G. Jones

Its: Chairman

Date: July 9, 2024

Approved as to form and legal sufficiency:

By: Janette S. Knowlton
Janette S. Knowlton, County Attorney
LR16-0749 JRK

Exhibit A

Phase I Property

Lots 1 & 4 of Toledo Blade-Section One as per plat thereof recorded in Plat Book 23, Pages 18A-18B, of the Public Records of Charlotte County Florida.

Exhibit B

Remaining Property

Lots 2 & 3 of Toledo Blade-Section One as per plat thereof recorded in Plat Book 23, Pages 18A-18B, of the Public Records of Charlotte County Florida.

Together with:

41 Gateway Lots:

- Lot 59 - PCH 041 0676 0059**
- Lot 58 - PCH 041 0676 0058**
- Lot 57 - PCH 041 0676 0057**
- Lot 49 - PCH 041 0676 0049**
- Lot 48 - PCH 041 0676 0048**
- Lots 47 & 46 - PCH 041 0676 0046**
- Lot 45 - PCH 041 0676 0045**

Seymour Gateway Lots:

- Lot 7 - PCH 041 0676 0007**
- Lot 9 - PCH 041 0676 0009**
- Lot 10A - PCH 041 0676 010A**
- Lot 15 - PCH 041 0676 0015**
- Lot 16 - PCH 041 0676 0016**

Exhibit C

FORM OF AMENDED AND RESTATED MASTER DEVELOPER'S AGREEMENT

*Kolter Group Acquisitions LLC,
Charlotte County*

THIS AMENDED AND RESTATED MASTER DEVELOPER'S AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2024, by and between **KOLTER GROUP ACQUISITIONS LLC**, a Florida limited liability company (the "**Developer**"), and **CHARLOTTE COUNTY**, a political subdivision of the State of Florida (the "**County**").

WITNESSETH:

WHEREAS, the Murdock Village Community Redevelopment Agency (the "**MVCRA**"), Lost Lagoon Development, LLLP, a Florida limited liability limited partnership ("**Lost Lagoon**"), and County entered into that certain Agreement for Purchase and Sale dated October 24, 2017, as amended, (the "**PSA**"), whereby Lost Lagoon is the contract purchaser of that certain real property located in Port Charlotte, Charlotte County, Florida, more particularly described on **Exhibit A** attached hereto and incorporated herein by reference, (the "**MVCRA Property**"); and

WHEREAS, Lost Lagoon and County entered into that certain Master Developer's Agreement for Lost Lagoon Development dated April 14, 2020, recorded in Official Records Book 4565, Page 26 of the Public Records of Charlotte County, Florida ("**Original MDA**"); and

WHEREAS, on September 17, 2020, MVCRA conveyed to Lost Lagoon a portion of the MVCRA Property by County Deed recorded in Official Records Book 4633, Page 240 of the Public Records of Charlotte County, Florida ("**Phase I Property**"); and

WHEREAS, Lost Lagoon intends to close under the PSA with the remaining MVCRA Property ("**Remaining Property**") to be deeded by MVCRA directly to Kolter and simultaneously or prior to such conveyance, Lost Lagoon shall convey to Developer the Phase I Property in accordance with the Fifth Amendment to the PSA executed by MVCRA, County, Lost Lagoon and Developer dated June __, 2024 (the Phase I Property and Remaining Property are collectively referred to as the "**Total Property**"); and

WHEREAS, Developer intends to develop the portion of the Total Property described as follows: Lots 1, 2, 3 & 4 of Toledo Blade-Section One as per plat thereof recorded in Plat Book 23, Pages 18A-18B, of the Public Records of Charlotte County Florida, (the "**Property**") as a mixed-use commercial and residential project pursuant to and in accordance with Ordinance Number 2024-____ (the "**Project**"); and

WHEREAS, County and Developer desire to enter into this Agreement to amend and restate in its entirety the Original MDA and to set forth the required improvements to be constructed in conjunction with the development of the Property, to set forth the terms governing their development, and to address certain utility services and concurrency requirements related to the Property.

NOW, THEREFORE, in consideration of the premises and in reliance on the mutual promises, covenants, undertakings, recitals and other matters contained herein, the parties hereby covenant and agree as follows:

1. **Recitals True and Correct:** The recitals set forth above are true and correct and are incorporated herein by reference.

2. **Amendment and Restatement:** This Agreement amends and restates in its entirety the Original MDA. Lost Lagoon is released from any obligation or liability under the Original MDA.

3. **Property Subject to this Agreement:** The property subject to this Agreement is that certain Total Property located in Port Charlotte, Charlotte County, Florida, more particularly described on **Exhibit A**.

4. **Permitted Development Uses:** The Property is being developed as a mixed-use development and shall include retail/commercial, office, hotel, apartments, single family residential and other related uses, which in this Master Development Agreement uses are referenced as the “Intended Uses.” The Intended Uses are generally planned as follows:

1. 250,000 square feet of retail/commercial.
2. Hotel totaling 250 keys.
3. 240 townhomes.
4. 350 single family homes.
5. 150,000 square feet of government uses.
6. 150 affordable multifamily units.

The Intended Uses as described in this paragraph may not exceed the total allowed intensities for the Murdock Village Community Redevelopment Area (CRA). The Project’s final authorized Intended Uses shall not exceed the total allowable development rights for the Murdock Village CRA. The final Intended Uses shall be included in the PD Zoning Ordinance as amended. The residential development rights must be authorized through the use of the Murdock Village Mixed Use (MVMU) Equivalency Matrix as established in the County’s comprehensive plan.

The Intended Uses shall be developed in conformance with Ordinance Number 2024-___ as recorded in Official Record Book ___ beginning at Page ___ of the Public Records of Charlotte County, Florida (the “**Zoning Modification**”).

5. **Developer’s Improvements:**

In conjunction with the development of the Property, Developer shall design, permit and construct certain the following improvements in the manner and timeframe set forth below:

(A) **Toledo Blade Improvements.**

1. Developer shall design, permit and construct certain road improvements to Toledo Blade (the “**Toledo Blade Improvements**”) in accordance with the conceptual plans set forth on **Exhibit B** attached hereto and incorporated herein by reference. The Toledo Blade Improvements will include road improvements to the Toledo Blade/SR776 intersection to provide for future 4-lane intersection as approved by the County and FDOT. Developer’s cost estimate for the Toledo Blade Improvements is attached hereto and incorporated herein by reference as **Exhibit C** (“**Cost Estimate**”). Construction plans for the Toledo Blade Improvements subsequently approved by the County Engineer, shall become fully a part of **Exhibit B** as if attached to this Agreement or repeated herein. Deviations required by state or federal permits, deviations resulting from field conditions, or, construction-related deviations, shall be

allowed with written approval from the County Engineer. County shall grant to Developer all permits required by the County to construct the Toledo Blade Improvements, including but not limited to any required right-of-way permits (“**County Permitting**”) upon receipt of sufficient plans that conform with the County’s Code of Laws and Ordinances and all other applicable laws and regulations. Developer will coordinate with County on not less than monthly inspections throughout construction to confirm conformance with the approved plans and specifications.

2. Developer shall commence construction of the Toledo Blade Improvements within ninety (90) days after receipt of required permits from the County and FDOT for the Toledo Blade Improvements. Developer shall complete construction within twelve (12) months following commencement of the Toledo Blade Improvements. If construction will not be completed by the above deadline, Developer shall provide written notice to County a minimum of ten (10) days prior to the deadline and state the reason for the delay in completion. With County’s approval, such approval to not be unreasonably denied, Developer shall have a grace period of an additional six (6) months prior to Developer being in default. Neither party shall be responsible for any delay or failure in performance under this Agreement to the extent that such delay or failure is caused by a force majeure event described in section 13 hereof.

(B) Stormwater Pond.

1. Developer shall design, permit and construct a stormwater pond (the “**Stormwater Pond**”) in the general location and in accordance with the conceptual plans set forth in **Exhibit B**. Construction plans for the Stormwater Pond subsequently approved by the County Engineer, shall become fully a part of **Exhibit B** as if attached to this Agreement or repeated herein. Deviations required by state or federal permits, deviations resulting from field conditions, or, construction-related deviations, shall be allowed with written approval from the county Engineer. County shall grant to Developer all permits required by the county to construct the Stormwater Pond upon receipt of sufficient plans that conform with the County’s Code of Laws and Ordinances and all other applicable laws and regulations. Developer will coordinate with County on not less than monthly inspections throughout construction to confirm conformance with the approved plans and specifications.
2. Developer shall commence construction of the Stormwater Pond concurrently with the construction of the Toledo Blade Improvements. Developer shall complete construction of the Stormwater Pond within twelve (12) months following commencement of the Toledo Blade Improvements. If construction will not be completed by the above deadline, Developer shall provide written notice to County a minimum of ten (10) days prior to the deadline and state the reason for the delay in completion. With County’s approval, such approval to not be unreasonably denied, Developer shall have a grace period of an additional six (6) months prior to Developer being in default. Neither party shall be responsible for any delay or failure in performance under this Agreement to the extent that such delay or failure is caused by a force majeure event described in section 13 hereof.
3. Upon completion of the Stormwater Pond and the Toledo Blade Improvements, Developer shall provide County a nonexclusive easement to utilize the Stormwater Pond for drainage, retention and outfall for stormwater associated with Toledo Blade

in substantially the same form as that attached hereto and incorporated herein by reference as **Exhibit D** ("**Drainage Easement**").

(C) **Certificates of Occupancy and Performance Bond.**

1. No temporary certificate of occupancy or certificate of occupancy shall be issued until *either* (a) the Toledo Blade Improvements *and* Stormwater Pond are substantially complete and accepted by the County Engineer (acceptance by the County Engineer shall not be unreasonably withheld or delayed); *or* (b) Developer has tendered a performance bond to the County with a value of 125% of the County approved engineer's cost estimate, from which the following shall be deducted:
 - a. the sums previously paid by Developer for the construction of the Toledo Blade Improvements and Stormwater Pond as of the date of such performance bond ("**Paid Amount**"); and
 - b. the total sums held in escrow pursuant to the PSA as of the date of such performance bond ("**Escrowed Funds**").

Prior to obtaining the performance bond, Developer shall supply the County with detailed documentation identifying the Paid Amount, which may include copies of paid invoices, payment affidavits, copies of cancelled checks or wire transfer receipts.

2. In the event a performance bond is tendered to the County pursuant to section (C)1. above, and Developer has failed to complete the Toledo Blade Improvements and/or Stormwater Pond within the time periods provided in sections (A)2. And (B)2. above, subject to certain extensions as provided therein, the County, after thirty (30) days written notice to Developer, may draw upon the respective performance bond to secure completion of such improvements, and use the proceeds to install or to have installed or completed said required improvements.
3. In the event a performance bond is tendered to the County pursuant to section (C)1. above, such performance bond shall be released upon substantial completion and acceptance by the County Engineer of the Toledo Blade Improvements and Stormwater Pond. Acceptance by the County Engineer shall not be unreasonably withheld or delayed.
4. The Developer agrees to include a provision in all contracts and bid documents related to the Toledo Blade Improvements and Stormwater Pond stating that each contract or bid shall be fully assignable to the County and that the County shall have the right but not the obligation to accept such assignment. Such contracts and bid documents shall itemize the total costs of the Toledo Blade Improvements and the Stormwater Pond. For purposes of this Agreement, the total costs shall be estimated as \$11,429,982.00 which is based on Exhibit C attached to and made part of this Agreement and which supersedes any similar estimates contained in the PSA. However, the parties agree that the final total cost of the Toledo Blade Improvements and the Stormwater Pond shall be the sum described in the contracts and/or bid documents for the Toledo Blade Improvements and Stormwater Pond.

6. **Reimbursement for Toledo Blade Improvements.** The Toledo Blade Improvements shall be constructed in accordance with applicable County Standards. As the Toledo Blade Improvements work is being performed, the County shall reimburse Developer based on percentage completion of the work and subject to the limits described in the PSA and any applicable provisions of the County Code of Laws and Ordinances or any other applicable law or regulation.

7. **Description of Public Facilities:** County shall provide the following public facilities and services to serve the Property pursuant to a separate utility agreement between the parties, subject to the County's Code of Laws and Ordinances and other laws and regulations:

(A) **Potable Water:** Charlotte County Utilities has a potable water system that currently has sufficient capacity to provide potable water to the Property at build-out of the Intended Uses as currently described. Current and future capacity is only guaranteed upon Developer's payment of connection fees and any related charges. On-site and off-site potable water facilities to be constructed by Developer at Developer's expense will be determined when plans are submitted by Developer.

(B) **Sanitary Sewer:** Charlotte County Utilities has a sanitary water system that currently has sufficient capacity to provide sanitary sewer service to the Property at build-out of the Intended Uses as currently described. Current and future capacity is only guaranteed upon Developer's payment of connection fees and any related charges. On-site and off-site sewer facilities to be constructed by Developer at Developer's expense will be determined when plans are submitted by Developer.

(C) **Reclaimed Water:** Charlotte County Utilities has a reclaimed water system with sufficient capacity currently in place to provide reclaimed water to the Property to serve the Property at build-out of the Intended Uses as currently described. Reclaimed water shall be subject to the County's normal and customary usage charges.

(D) **Solid Waste:** The County shall provide solid waste management services to the Property in sufficient quantity to serve the Property at build-out of the Intended Uses, subject to the provisions of any third-party agreements between the County and a solid waste management services provider, if applicable. The Property, and any of its successors in interest, shall pay any and all fees associated with provision of solid waste services. This provision shall not operate to transfer any responsibility to the County to pay the costs of provision of these services other than those described in the third-party agreement or applicable laws or regulations.

8. **Transportation Concurrency:** The Property is vested from transportation concurrency at build-out of the Intended Uses on the Property, as currently described. Developer shall be responsible for any operational improvements required for the Project and for any transportation currency fees arising from changes to the Developer's Intended Uses. This provision shall not be interpreted to shift any costs to the County for Developer's improvements to the Property.

9. **County Parcels:** Kolter agrees to improve two parcels ("**County Parcels**") within the Project as Pad Ready Sites to include a government use parcel of approximately 15 acres ("**Government Parcel**") and an approximately 4.5 acre parcel to be used for affordable housing ("**Affordable Housing Parcel**") to be located substantially in accordance with the conceptual site plan attached as **Exhibit B** to this Agreement ("**Site Plan**"). As used herein the term "**Pad Ready Sites**" shall mean that the County Parcels have been cleared and rough graded to 18 inches above the level of the crown of the respective parcel's access road, with utilities (water and sewer) extended to points of connection within the boundaries of the County Parcels, access roadways providing access to the County Parcels completed, and all stormwater retention required for development of the County Parcels provided in off-site retention areas.

Kolter shall complete the work required to deliver the County Parcels as Pad Ready Sites and convey marketable title to the County Parcels to the County within 18 months after County approval of site and development plans for the Project. In addition to conveyance of the County Parcels Kolter shall grant to the County insurable easements for the use of off-site access, utilities and drainage improvements required for development and use of the County Parcels that are not public. The County shall cooperate with the Zoning Modification application process as a property owner; however, the parties understand and agree that certain "County Parcels" shall be indicated in the zoning application. The parties further understand and agree that the County Parcels' uses shall be designated solely by the County but shall be a part of the final Planned Development for the general area. The County Parcels shall not be included in, or subject to, any Community Development District (CDD) or association, broadly defined. The County shall pay costs related to the County Parcels if such costs are incurred after the completion of the Zoning Modification. The deed conveying the County Parcels to the County shall provide that Kolter shall have, for a period not to exceed two years after County approval of site and construction plans for the Project, a right of first refusal upon the sale by County of either of the County Parcels with Kolter to be notified in writing of the terms of sale proposed by a third party that County intends to accept, and Kolter to have 15 business days to elect to purchase the County Parcel to be sold on the same terms and conditions as set forth in the third party offer.

10. **Option to Repurchase.** If Developer fails to satisfy the provisions set forth in section 5(C) of this Agreement by a date no later than 48 months after the date the deed to the Remaining Property is recorded in the Public Records of Charlotte County, Florida, County shall have the option, to be exercised by written demand, to require Developer to convey title to the Property and any improvements thereto, to County, free of any liens or encumbrances, except such matters of record encumbering such property prior to Final Closing, in exchange for payment by County to Developer of the escrow balance on the date of written demand held in escrow pursuant to the Escrow Agreement. If a performance bond is tendered to the County that satisfies the requirements in section 5(C)1. above, the option to repurchase granted by this Section 10 shall be terminated and of no further force or effect.

11. **Effective Date.** The Effective Date of this Agreement shall be the date of adoption by the Board of County Commissioners.

12. **Amendments:** Amendments to this Agreement, including any such amendments extending the term of the Agreement, shall not be effective unless reduced to writing and executed by the County and Developer.

13. **Successors and Assigns:** This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, County and Developer and their respective legal representatives, successors and assigns. Successors in interest and assigns shall assume the duties, obligations and liabilities of the Developer and assignors under this Agreement. In the event of any such permitted assignment, assignor shall not be relieved of its duties and obligations hereunder.

14. **Applicable Law and Venue:** This Agreement shall be construed, and the rights and obligations of the parties hereunder shall be determined, in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusive in Charlotte County, Florida, unless prohibited by law.

15. **Force Majeure.** No party shall be liable for any failure to perform, or delay in the performance of, any obligation under this Agreement if such failure is caused by hurricane, tornado, fire,

earthquake, civil commotion or failure or disruption of utility services, or other like cause beyond the reasonable control of the party obliged to perform. However, a party must notify the other party that it intends to invoke this paragraph and such notice must be delivered and received no later than thirty (30) days after the cause of the failure or delay of performance is known to the claiming party. For ongoing disruptions, a party shall be deemed to have knowledge of the Force Majeure when a reasonable person would reasonably know of the existence of the Force Majeure. Failure to provide notice under this paragraph shall be deemed a waiver of a claim under this paragraph. Neither party may invoke the provisions of this paragraph to avoid liability for Force Majeure events that occurred before the Effective Date.

16. **Omission from Agreement:** The failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve either party of the necessity of complying with applicable laws and regulations (inclusive without limitation the applicable provisions of the Charlotte County Code of Laws and Ordinances, the County's Comprehensive Plan and land development regulations) governing said permitting requirements, conditions, terms or restrictions.

17. **Recording of this Agreement:** The Clerk of the Circuit Court of Charlotte County, as Clerk to the Board of County Commissioners (the "Clerk"), shall record this Agreement in the Public Records of Charlotte County, Florida, as soon as may be practicable after the execution of this Agreement by all parties. Developer shall bear the expense of recording this Agreement. Additionally, to the extent required by the Charlotte County Code of Laws and Ordinances: (a) the Clerk or the Planning Director (as such term is defined in the Charlotte County Code of Laws and Ordinances) shall mail a recorded copy of this Agreement to the State of Florida Department of Economic Opportunity within one (1) month after, and (b) the County shall record a notice in the Public Records of Charlotte County to reflect the date indicated on the return receipt card to establish the date of receipt by the Department of Economic Opportunity.

18. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties hereto as the subject matter contained herein and supersedes any and all prior understandings, if any. There are no other oral or written promises, conditions, representations, understandings or terms of any kind as conditions or inducements to the execution hereof, and none have been relied upon by either party. Any subsequent conditions, representations, warranties, or agreements shall not be valid and binding upon the parties unless they are in writing signed by both parties and executed in the same manner as this Agreement.

19. **Severability:** In the event any term or provision of this Agreement shall be held invalid by a Court of competent jurisdiction, such invalid term or provision should not affect the validity of any other term or provision hereof. All terms and provisions hereof shall be enforceable to the fullest extent permitted by law if such invalid term or provision had never been part of this Agreement; provided, however, if any term or provision of this Agreement is held to be invalid due to the scope or extent thereof, then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

20. **Parties Drafted Equally:** The County and Developer agree that both parties have played an equal and reciprocal part in drafting this Agreement and have had the benefit of consultation with legal counsel prior to its execution. Therefore, no provision of this Agreement shall be construed by a Court or judicial authority against any party hereto because such party is deemed to have drafted or structured such provisions.

21. **Compliance with Law:** This Developer's Agreement shall not supersede any provision of the Code of Laws and Ordinances of Charlotte County, Florida, including any rule or regulation promulgated pursuant to law.

22. **Nature of Agreement; Tolling.** This Agreement shall not be construed either separately or together with the PSA, as amended, to be a "design-build" contract. No declarations of emergency, either federal, state or local, shall toll the time periods for performance of this Agreement.

23. **Time of the Essence:** Time is of the essence with respect to each provision of this Agreement that requires action to be taken by any Party within a stated time period or upon a specified date.

24. **Notices:** All notices, demands, requests for approvals or other communications given by either party to another shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested or by a recognized national overnight courier service, or by hand delivery to the office of each party indicated below and addressed as follows:

To Developer: Kolter Group Acquisitions LLC
14025 Riveredge Drive, Suite 175
Tampa, Florida 33637
Attn: Jim Manners
Telephone No. (813) 615-1244 ext. 204
Email: jmanners@kolter.com

With a Copy to: Kolter Group Acquisitions LLC
14025 Riveredge Drive, Suite 175
Tampa, Florida 33637
Attn: Bryon LoPreste
Telephone No. (813) 615-1244 ext. 205
Email: blopreste@kolter.com

With Copy to: The Kolter Group LLC
105 NE 1st Street
Delray Beach, Florida 33444
Telephone No. (561) 682-9500
Email: legalnotice@kolter.com

With Copy to: Greene Hamrick Schermer & Johnson, P.A.
410 43rd Street West, Suite N
Bradenton, Florida 34209
Attn: Robert F. Greene, Esq.
Telephone No. (941) 747-1871
Email: rgreene@manateelegal.com

To County: Charlotte County Administrator
18500 Murdock Circle
Port Charlotte, FL 33948

With a Copy to: Charlotte County Attorney
18500 Murdock Circle, Bldg. A, Ste. 573
Port Charlotte, FL 33948

With a Copy to: Charlotte County Economic Development Director
18501 Murdock Circle, Suite 302

Port Charlotte, FL 33948

25. **List of Exhibits.** Exhibits attached hereto and incorporated herein by reference are as follows:

Exhibit A	Property
Exhibit B	Conceptual Site Plan
Exhibit C	Cost Estimate
Exhibit D	Drainage Easement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set after or preceding their respective signatures.

WITNESSES: _____ (Signature) Print Name: _____ _____ (Signature) Print Name: _____	DEVELOPER: KOLTER GROUP ACQUISITIONS LLC, a Florida limited liability company By: _____ Name: James P. Harvey Title: Authorized Signatory Date: _____
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STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence, or ☐ online notarization, this ____ day of _____, 2024, by James P. Harvey, as Authorized Signatory of Kolter Group Acquisitions LLC, a Florida limited liability company, on behalf of the company, who ☐ is personally known to me, or who ☐ has produced the following as identification:

(Notary Seal)

Notary Public, State of Florida

Print Name: _____

My commission expires on _____

This Agreement is passed, duly adopted and signed on this ____ day of _____, 2024.

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

By: _____

Printed name: _____
Chairman

ATTEST:
Roger D. Eaton, Clerk of
Circuit Court and Ex-Officio
Clerk to the Board of County
Commissioners

By: _____
Deputy Clerk

Approved as to form:

Janette S. Knowlton, County Attorney
LR16-0749 _____

Exhibit A
(to Amended and Restated Master Developer's Agreement)

Lots 1, 2, 3 & 4 of Toledo Blade-Section One as per plat thereof recorded in Plat Book 23, Pages 18A-18B, of the Public Records of Charlotte County Florida.

Together with:

41 Gateway Lots:

- Lot 59 - PCH 041 0676 0059**
- Lot 58 - PCH 041 0676 0058**
- Lot 57 - PCH 041 0676 0057**
- Lot 49 - PCH 041 0676 0049**
- Lot 48 - PCH 041 0676 0048**
- Lots 47 & 46 - PCH 041 0676 0046**
- Lot 45 - PCH 041 0676 0045**

Seymour Gateway Lots:

- Lot 7 - PCH 041 0676 0007**
- Lot 9 - PCH 041 0676 0009**
- Lot 10A - PCH 041 0676 010A**
- Lot 15 - PCH 041 0676 0015**
- Lot 16 - PCH 041 0676 0016**

[illegible]

Exhibit C
(to Amended and Restated Master Developer's Agreement)

Developer's Agreement
Exhibit "C"

**Lost Lagoon Conceptual Infrastructure
Highway Rework/Widening Improvements, Charlotte County, FL**

		Quantity	Unit	Unit Price	Extension
Earthwork and Grading					
D-1	Clearing & Grubbing	31	AC	\$11,000	\$341,000.00
D-2	Removal Existing Asphalt/Concrete/Reg Excavation	38,750	CY	\$6	\$222,812.50
D-3	Silt Fence/Erosion Control	12,900	LF	\$5	\$58,050.00
D-4	Embankment	75,604	CY	\$8	\$604,832.00
D-5	Milling Existing Asphalt	18,785	SY	\$3	\$56,355.00
					\$1,283,049.50
Storm Drainage					
U-1	Type D Inlet Control Structure	4	EA	\$6,250	\$25,000.00
U-2	Type P-5 Inlet	36	EA	\$6015	\$216,540.00
U-3	Type J-5 Inlet	12	EA	\$7,700	\$92,400.00
U-4	Junction Box	3	EA	\$7,150	\$21,450.00
U-5	24" R.C.P.	3,900	LF	\$81	\$315,900.00
U-6	30" R.C.P.	500	LF	\$105	\$52,500.00
U-7	24" M.E.S.	10	EA	\$1,805	\$18,050.00
U-8	30" M.E.S.	3	EA	\$2,926	\$8,778.00
					\$750,618.00
Roadway & Sidewalks					
S-1	2 3/4" Asphalt Type S-1 (1st Lift)	6,627	TN	\$129	\$854,883.00
S-2	1 1/2" Asphalt Type S-3 (2nd Lift)	4,050	TN	\$120	\$486,000.00
S-3	Base Group 9 per FDOT	24,853	SY	\$26	\$646,178.00
S-4	12" Subgrade (LBR-70)	18,900	SY	\$12	\$226,800.00
S-5	Type F Curb	9,300	LF	\$22	\$204,600.00
S-6	Type E Curb	9,300	LF	\$18	\$167,400.00
S-7	4" Thick Concrete Sidewalk	6,566	SY	\$54	\$300,664.00
S-8	8" Sidewalk Subgrade (LBR-70)	5,472	SY	\$14	\$76,608.00
S-9	1 1/2" Asphalt Path Type S-3	1,750	TN	\$146	\$254,861.25
S-10	8" Path Limerock Base (LBR-100)	8,200	SY	\$14	\$114,513.00
S-11	Median Concrete Divider	3,170	LF	\$130	\$412,100.00
S-12	Sod	51,500	SY	\$5	\$257,500.00
S-13	Signage & Markings	1	LS	\$126,350	\$126,350.00
					\$4,128,357.30
Utilities					
W-1	12" PVC Potable water Main	6,190	LF	\$57	\$352,830.00
W-2	10" PVC Wastewater Force main	6,190	LF	\$52	\$321,880.00
W-3	8" PVC Reuse Main	6,190	LF	\$51	\$315,690.00
W-4	Major Lift stations	2	EA	\$275,350	\$550,700.00
W-5	Fire Hydrants	9	EA	\$12,850	\$115,650.00
					\$1,656,750.00
Miscellaneous					
O-1	Mobilization	1	LS	\$611,297	\$611,297.00
O-2	Engineering	1	LS	\$459,450	\$459,450.00
O-3	Surveying	1	LS	\$175,450	\$175,450.00
O-4	Maintenance of Traffic	1	LS	\$475,710	\$475,710.00
O-5	SR 776 Turn lanes (Left & Right)	1	LS	\$525,350	\$525,350.00
O-6	Roadway Lighting	1	LS	\$718,950	\$718,950.00
O-7	Roadway Landscape & Irrigation	1	LS	\$645,000	\$645,000.00
					\$3,611,207.00
	Road Rework/Widening Construction				\$11,429,981.80

Exhibit D
(to Amended and Restated Master Developer's Agreement)

Prepared by:
Robert F Greene, Esq.
Greene Hamrick Schermer & Johnson, P.A.
410 43rd Street West, Suite N
Bradenton, Florida 34209

DRAINAGE EASEMENT

THIS DRAINAGE EASEMENT is made as of the ____ day of _____, 20__, between **KOLTER GROUP ACQUISITIONS LLC**, a Florida limited liability company (hereinafter "**Grantor**"), and **CHARLOTTE COUNTY**, a political subdivision of the State of Florida (hereinafter "**Grantee**").

W I T N E S S E T H:

THAT Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold, and transferred, and by these presents does grant, bargain, sell, and transfer unto Grantee, a non-exclusive, permanent easement for stormwater drainage retention and outfall over, under, and across that certain real property situated in Charlotte County, Florida, more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Easement Area**").

THAT Grantor reserves unto itself, its successors, or assigns, the right to the continued free use and enjoyment of the Easement Area for any purposes which are not inconsistent with the rights granted herein unto the Grantee.

THAT Grantor reserves unto itself, its successors, or assigns, the right to the continued free use and enjoyment of the Easement Area for any purposes which are not inconsistent with the rights granted herein unto the Grantee; and Grantor reserves unto itself the right to clear and keep clear all trees, undergrowth, and other obstructions that may interfere with normal operation or maintenance of the drainage facilities, including but not limited to the stormwater pond located in the Easement Area; and the Grantor reserves the right to expand, improve, or otherwise modify the drainage facilities located in the Easement Area, including but not limited to the stormwater pond, in any way that does not materially interfere with the rights granted herein.

[SIGNATURES AND ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name by its proper agent or officer thereunto duly authorized, the day and year first above written.

WITNESSES:

(Signature)

Print Name: _____

(Signature)

Print Name: _____

GRANTOR:

KOLTER GROUP ACQUISITIONS LLC,
a Florida limited liability company

By: _____

Name: James P. Harvey

Title: Authorized Signatory

Date: _____

**STATE OF FLORIDA
COUNTY OF HILLSBOROUGH**

The foregoing instrument was acknowledged before me by means of () physical presence or () online notarization, this ____ day of _____, 20__, by James P. Harvey, as Authorized Signatory of Kolter Group Acquisitions LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification. If no type of identification is indicated, the above-named person is personally known to me.

(Notary Seal)

Notary Public, State of Florida

Print Name: _____

My commission expires on _____

EXHIBIT "A"

The Easement Area

See sketch and description attached hereto and incorporated herein by reference.

Site Plan

