DRAFT: 9/24/21 (Council Meeting)

THIS INSTRUMENT WAS PREPARED BY
AND SHOULD BE RETURNED TO:

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City Attorney of Cocoa
Garganese, Weiss, D'Agresta & Salzman, P.A.
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Orlando, FL 32802

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FOR RECORDING DEPARTMENT USE ONLY

SETTLEMENT IMPLEMENTATION AGREEMENT

(Residential Subdivision)

THIS SETTLEMENT IMPLEMENTATION AGREEMENT ("**Agreement**") is made and executed this _____ day of _____, 2021, by and between the **CITY OF COCOA,** a Florida Municipal Corporation ("**City**"), whose address is 65 Stone Street, Cocoa, Florida 32922, and **BEACHLINE PARTNERS, LLC**, a Florida limited liability company ("**Developer**"), whose address is 402 A High Point Drive, Cocoa, Florida 32926.

WITNESSETH:

WHEREAS, Developer has acquired approximately 212.10 acres, more or less, of real property located south of State Road 528 and east of Highway I-95, Cocoa, Florida, more particularly described in Section 3 and depicted on the Preliminary Site Plan referenced in Section 6 of this Agreement ("**Property**"); and

WHEREAS, the Property is subject to that certain City of Cocoa/Hagen-Nicolson Properties, LLC Preceding Development Agreement, dated April 12, 2005, in Official Record Book 5458, Page 5467 of Brevard County, Florida, as amended by City of Cocoa/Barrera Shores, LLC Preceding Development Agreement, dated November 7, 2006 in Official Record Book 5721, Page 8205 of Brevard County, Florida (together referred to as the "**Preceding Development Agreement**"); and

WHEREAS, the Property is also subject to that certain Stipulated Settlement Agreement entered into in Brevard County v. City of Cocoa, Case No. 05-2005-018141, which was recorded on January 9, 2008 in Official Record Book 5837, Page 2226 of Brevard County, Florida ("**Settlement Agreement**"); and

WHEREAS, Developer desires to permit and construct a low-density residential subdivision (approx. 418 units) on the Property generally consistent with the terms and conditions

of the Preceding Development Agreement (unless amended herein or by the Settlement Agreement) and in compliance with the Settlement Agreement and as more specifically required by this Settlement Implementation Agreement; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties mutually agree as follows:

1.0 Recitals. The foregoing recitals are true and correct and are hereby incorporated herein by this reference.

2.0 Authority. This Agreement is entered into pursuant to the Florida Municipal Home Rule Powers Act and in furtherance of implementing the terms and conditions of the Preceding Development Agreement and Stipulated Settlement Agreement.

3.0 The Property.

3.1 The real property subject to this Agreement has a tax parcel identification number of 24-35-10-00-502 and is legally described in **EXHIBIT "A"**, attached hereto and fully incorporated herein by this reference ("**Property**").

3.2 The Parties acknowledge and agree that the Property, as defined in this Agreement, is a portion of the original Property which was described in the Preceding Developer's Agreement and Stipulated Settlement Agreement (the "Original Property") because of the fact that Developer's predecessor in title conveyed Parcel #s: 24-35-10-00-4, 24-35-10-00-503 and 24-35-10-00-504 to Brightline Trains Florida LLC.

4.0 Project Description and Requirements. Developer shall design, permit and construct one of the premier, upscale low-density residential subdivisions in the City of Cocoa. The subdivision and all of its infrastructure and amenities shall be created and constructed in a single or a maximum of three (3) phase(s) and consist of approximately 418 residential lots and homes with a minimum living area under air of one thousand five hundred (1,500) square feet and an average living area under air of one thousand eight hundred (1,800) square feet, with a minimum footprint of 2,400 square feet (40ft. x 60ft.), private streets, and ample private recreational common area green space and amenities, including walking path/nature trail, approximately 5.8 acre park area, dog park, playground and private clubhouse with pool, all of sufficient size, scale and detail to adequately support the number of units being developed (the "**Project**"). If the Developer elects to construct the infrastructure in multiple phases, Developer shall propose a phasing plan for the City's approval, and the phases shall be constructed in accordance with said approved plan. However, if a phasing plan is elected and approved by the City, the first phase shall consist of a minimum of 150 lots and the dog park, playground and private clubhouse with pool, as well as such other infrastructure necessary to support the first phase. The Developer shall construct the homes on the individual lots in accordance with a phasing plan if such phasing plan is required and approved by the City. The Project shall have a homeowner's association, which shall be responsible for maintaining the common areas in perpetuity. The Project shall be permitted and constructed in accordance with the requirements set forth in this Agreement.

5.0 Zoning Application. Developer acknowledges that the current City Comprehensive Plan, Future Land Use Map designation on the Property is very low-density residential with several areas subject to a conservation overlay designation. Developer agrees to comply with the current Future Land Use Map designation. However, the Property does not currently have a City zoning designation. Therefore, in furtherance of compliance with the City's Comprehensive Plan, Developer agrees to seek a City zoning designation for the Property of PUD, Planned Unit Development, which is generally consistent with the very low-density residential Future Land Use Map designation subject to the specific details of a very low-density residential PUD being approved by the City Council consistent with other applicable City Comprehensive Plan and Code requirements. Within one hundred eighty (180) days of the Effective Date, unless an extension is granted by the City Manager for good cause, Developer agrees to submit a complete rezoning application with the City to request approval of a PUD zoning designation consistent with the terms and conditions of this Agreement, and in accordance with City Code, Appendix A-Zoning, Article XI, Sec. 17. The Developer's application shall satisfy either the preliminary PUD development plan requirements, or if the Developer elects to consolidate together the preliminary and final development plan approval process, the application shall satisfy, to the extent applicable, both the preliminary and final PUD development plan requirements. In addition, the PUD zoning application shall be accompanied by a preliminary plat application. The City agrees to process said applications consistent with the requirements of the City Code and law. Nothing contained herein shall be construed or interpreted as requiring the City Council to approve said applications because the applications shall be subject to quasi-judicial requirements and hearings by the City Council including the City Council making a final decision on the application based on procedural due process, essential requirements of law and competent substantial evidence presented at the hearing. The Developer agrees the City cannot waive quasi-judicial requirements and that the City Council will be required to consider and act upon said applications at its discretion at appropriate public hearings pursuant to the requirements of law. If the PUD application is denied by the City Council, the Developer shall submit and process a different rezoning application consistent with the very-low density residential Future Land Use Map designation until such time as the City Council approves an acceptable City zoning designation for the Property. Should a different zoning district be approved, Developer acknowledges that a modification to this Agreement may be required to comply with such approved district's dimensional and/or open space requirements.

6.0 Preliminary Site Plan; PUD, Subdivision and Site Plan Approval; Transportation Improvements.

6.1 The Project shall be substantially developed in accordance with the preliminary development plan which is attached hereto as **EXHIBIT "B"** and incorporated herein by this reference (**"Preliminary Site Plan"**). The Preliminary Site Plan is intended to be the general blueprint which details certain key aspects of the future physical development of the Property, but not all aspects of the development which will be required by the PUD zoning designation, final engineering and applicable law. The Preliminary Site Plan shall also serve as a necessary guide for future permit applications and permitting necessary to complete the construction of the Project. Developer shall have the obligation to further submit and obtain the City's approval of a PUD zoning application inclusive of final site development plan and final engineering plans and a final

subdivision plat (**"Final Plans"**) consistent with the Preliminary Site Plan in all material respects and in compliance with the City Code and the amenities schedule required by Section 8.0 of this Agreement. Furthermore, Developer acknowledges and agrees that the Preliminary Site Plan was not created with specific surveyed dimensions and that during the Final Plans process such dimensions shall be surveyed, duly engineered, and provided to the City for consideration under applicable City Codes. The Preliminary Site Plan shall be subject to reasonable adjustments at the Final Plans phase in order to bring the Project into full compliance with the City Code, and as a result, the exact location, layout and dimensions of the lots, common areas, buildings, landscaping, entrances, utilities, parks, parking and other site improvements may vary slightly between the Preliminary Site Plan approved hereunder and approval of the Final Plans. Further, additional lots greater than the number of lots depicted on the Preliminary Site Plan may be approved at the City's discretion, provided the additional lots do not reduce the proposed amount of open space and recreational areas and preserved wetlands depicted on the Preliminary Site Plan. These changes shall be allowed so long as the changes are consistent with the development standards required by City Code, noted in this Agreement and preserve the general character of the development shown on the Preliminary Site Plan. The City will not unreasonably withhold approval of the Final Plans and amenities schedule on the condition that Developer complies with the terms and conditions of this Agreement, the City Code and other applicable law (including, but not limited to, quasi-judicial requirements). Denial of the Final Plans by the City Council because the Final Plans do not comply with the applicable provisions of the City's Comprehensive Plan, City Code, other applicable law or the terms and conditions set forth in this Agreement shall be deemed a reasonable basis of denial.

6.2 Developer acknowledges that the Stipulated Settlement Agreement requires the Developer to coordinate with Brevard County certain transportation improvements at Friday Road and James Road. Developer agrees to discuss and coordinate said improvements with the County in conjunction with Developer's applications for Final Plans approval. Developer shall keep the City fully and timely updated regarding any and all transportation discussions with, or directives imposed by, Brevard County and/or FDOT. Developer further acknowledges and agrees that Paragraph 7 of the Stipulated Settlement Agreement states that "All traffic calming devices along James Road shall be constructed and completed following land clearing [of the Property] but prior to any further construction or site work being completed [on the Property.]" The City shall not be responsible or liable in any way whatsoever for any permitting or construction delays experienced by Developer resulting from Developer's failure to comply with the transportation improvement requirements set forth in the Stipulated Settlement Agreement.

6.3 The Parties agree that time is of the essence to complete the Project. Therefore, Developer shall have no more than twenty-four (24) months after said Effective Date to obtain Final approval of the preliminary plat and Final Plans (excluding final plat) unless otherwise agreed by the City Council. The final plat shall be submitted and completed in accordance with Section 18-30 of the City Code. The timeline mentioned in this Section 6.3 may be extended pursuant to Section 31 of this Agreement.

7.0 Public Utilities; Project Completion and Reimbursement Obligations.

Pursuant to Section 4.8 of the Preceding Development Agreement, the Developer has elected not to design, permit and construct the extension of the water, sewer and reclaimed utilities to the Property ("**Utilities**"). Therefore, the City will design, permit and construct the extension of the Utilities as determined and deemed appropriate by the City, with sufficient capacity to service the Developer's Project, subject to the following terms and conditions:

7.1 The Parties acknowledge that the City intends to provide water, sewer and reclaimed water to the Original Property by extending said utilities, at its sole cost and expense subject to possible reimbursement under Section 7.9 of this Agreement, from the north crossing under State Road 528. The City is in the process of designing such extension and obtaining approval from the Florida Department of Transportation ("**FDOT**") to make such extension and crossing under State Road 528. Per the Stipulated Settlement Agreement, the City intends to provide a point(s) of connection for said Utilities at the southern boundary of State Road 528 at the southern terminus of the crossing approved by FDOT and the northeast corner of Parcel # 24-35-10-00-4 owned by Brightline Trains Florida, LLC (the "**Point of Connection**"). The City anticipates that the crossing is likely to be located approximately due north from the northeast corner of the Property as depicted on the Preliminary Site Plan, subject to FDOT's approval. Furthermore, Developer acknowledges that the extension of the Utilities to the Property will be designed, permitted and constructed by the City in conjunction with the extension of similar City utilities to the property owned and being developed by Brightline Trains Florida, LLC on the north and south side of State Road 528 and the location of said utilities will impact the location of the Point of Connection required for the Property.

7.2 Developer acknowledges that subsequent to the recording of the Preceding Development Agreement and Stipulated Settlement Agreement, Developer's predecessor in title sold the northern most portion of the Original Property, as originally legally described in the Preceding Development Agreement, to Brightline Trains Florida LLC. This conveyance has caused the Property to no longer be adjacent to State Road 528 as the Parties to the Preceding Development Agreement contemplated for purposes of establishing the City's commitment to extend the Utilities to the boundary of the Original Property. As such, the City's commitment to extend the Utilities, at the City's expense, shall be limited to providing a point(s) of connection for said utilities at the southern boundary of State Road 528 if the crossing under State Road 528 is approved by FDOT. However, said point(s) of connection is contingent upon the City obtaining final approval from the FDOT to extend said Utilities under State Road 528 and the actual location of City utilities being extended to serve the Brightline Trains Florida, LLC property on either the north or south side of State Road 528. If FDOT approves a different crossing location under State Road 528, or the actual location of the City utilities servicing the Brightline Trains Florida, LLC property is different than anticipated by the City at the Effective Date of this Agreement for any reason, the City will be required to establish a different point(s) of connection for said Utilities at the southern boundary of State Road 528 based on the location of the crossing permitted by FDOT and the actual location of the City utilities servicing the Brightline Trains Florida, LLC property. However, in the event that FDOT does not approve any crossing under State Road 528 for the extension of the Utilities, or the actual location of the City utilities servicing the Brightline Trains Florida, LLC property is different than anticipated by the City for any reason, the City will provide

a different point(s) of connection at the boundary of the Property as determined and deemed appropriate by the City, and Developer acknowledges that a modification to this Agreement and the Preliminary Site Plan may then be required to accommodate the new point(s) of connection determined by the City.

7.3 Upon FDOT's approval of the crossing under State Road 528 for the extension of the Utilities, Developer shall be solely responsible for obtaining, at its expense, a public utilities easement conveyed to the City from Brightline Trains Florida LLC, with a minimum width of 25' feet, extending in a southerly direction from the Point of Connection established by the City and located on the southern boundary of State Road 528 to the northern boundary of the Property depicted as the Developer's on-site Utilities Point of Connection on the Preliminary Site Plan (the "**Brightline Easement**"). The easement shall be in form approved by the City Attorney. The City shall assist Developer in attempting to obtain said easement to the extent reasonable and practicable, but in no case will the Developer hold the City responsible or liable in the event such easement cannot be obtained.

7.4 At the Effective Date of this Agreement, the Parties intend that the Brightline Easement will run along the eastern most portion of Parcel's 24-35-10-00-4 and 24-35-10-00-504 owned by Brightline Trains Florida LLC. However, in the event the approved crossing is not located at the southern boundary of State Road 528, approximately due north from the northeast corner of the Property as depicted on the Preliminary Site Plan, the location of the 25' foot easement required across Brightline Trains Florida LLC's property shall also be amended to extend in a southerly direction from the point(s) of connection established by the City based on the crossing location approved by FDOT to the northern boundary of the Property.

7.5 If the Brightline Easement runs along the eastern most portion of Parcel's 24-35-10-00-4 and 24-35-10-00-504 as anticipated in Section 7.4, Developer agrees to convey a 25' foot wide public utilities easement to the City, at no cost, along the eastern boundary of the Property, as depicted on the Preliminary Site Plan, for purposes of extending said public utilities easement area from the southern terminus of the Brightline Easement to the northern terminus of Friday Road. The easement shall be in form approved by the City Attorney. For purposes of clarification, the intent of Sections 7.4 and 7.5 is for Developer to provide a public utility easement to the City from the southern boundary of State Road 528 to the northern terminus of Friday Road.

7.6 The City will design, permit, construct and make the Utilities available to thePoint of Connection, as well as extending the Utilities from the Point of Connection to the northern terminus of Friday Road within the Brightline Easement and the public utilities easement provided by Developer no later than the date that the Developer has: (a) obtained the Brightline Easement required under Section 7.3 if the FDOT crossing has been approved; (b) conveyed to the City the public utilities easement required by Developer under Section 7.5 herein; (c) completed and received a final completion certificate (e.g., evidence of final written approval) from the City for all on-site infrastructure to support the first phase of the Project if phased or the entire Project if completed in a single phase including, but not limited to, streets, street lights, on-site utilities, sidewalks, and stormwater facilities; (d) been issued and received building permits for at least ten (10) building permits approved by the City for residential units; (e) the County has officially made

a final decision regarding the public road access required by Section 3(5) of the Settlement Agreement; and (f) commenced vertical construction of the ten residential homes on the Property ("**Utility Completion Date**"). No earlier than when the City has permitted and commenced construction of the Utilities, the City shall allow Developer to permit "dry-line" utility applications, at Developer's sole risk and expense, through the Florida Department of Environmental Protection as the Utilities will not be completed prior to permitting or commencement of construction of the Project. No earlier than ninety (90) days prior to commencing construction of the Utilities, the City shall provide the Developer a written estimate of: (1) the Point of Connection Utility Expenses described in Section 7.8 below; and (2) the Utility Easement Expenses as described in Section 7.7 below. Notwithstanding the aforesaid, the City may delay the Utility Completion Date in the event that the extension of utilities to the Brightline Trains Florida, LLC property is delayed because of circumstances outside of the City's control as more specifically set forth under Section 31 of this Agreement.

7.7 The Utility Easement Expenses shall mean the expenses incurred by the City to design, permit and construct the extension of the Utilities within the Brightline Easement and the public utility easement area conveyed by the Developer from the Point of Connection at the southern boundary of State Road 528 to the northern terminus of Friday Road. Within thirty (30) days of providing the written estimate of the Utility Easement Expenses, Developer shall pay the City the Utility Easement Expenses per Section 7.8 below in advance of the City commencing construction of the Utilities. Said expenses shall be utilized by the City solely for covering the costs incurred in designing, permitting and constructing the Utilities within the Brightline Easement and easement area conveyed to the City by the Developer. Should the actual Utility Easement Expenses exceed the amount of the estimate provided by the City, Developer shall be responsible for paying any such extra costs. If the actual Utility Easement Expenses are less than the estimate provided by the City, the City will refund to the Developer the amount of any overage paid in advance by the Developer.

7.8 Developer shall complete construction of all phases of the Project by obtaining all required certificates of occupancies within five (5) years from the Utility Completion Date ("**Project Completion Obligation**"). In furtherance of the Project Completion Obligation, within ninety (90) days from the date that the City completes the Utilities, the City will deliver written notice to the Developer documenting the actual expenses incurred by the City to design, permit and construct the extension of the water, sewer and reclaimed water utilities to the Point of Connection ("**Point of Connection Utility Expenses**"). Within sixty (60) days of receipt of said written notice, the Developer, at its expense, shall secure the reimbursement of the Point of Connection Utility Expenses in the form of cash escrow deposited with the City or an irrevocable stand-by letter of credit in the amount of such Expenses incurred by the City. The letter of credit shall be in favor of the City and shall be issued by a bank mutually agreed to by the Parties. The letter of credit shall be in a form acceptable to the City to effectuate the reimbursement, if required due to Developer's failure to make reimbursement pursuant to Section 7.9 below. The letter of credit shall be subject to being drawn upon by the City in the event that the Developer fails to fully satisfy the Project Completion Obligation. The letter of credit shall remain in effect until such time the City provides written notice to the Developer that they have fully satisfied the Project

Completion Obligation or the City receives reimbursement pursuant to Section 7.9 below, whichever occurs sooner. However, the City agrees that Developer may proportionately reduce the value of the letter of credit by the number of certificates of occupancies granted by the City for the homes constructed in the Project. Said reduction shall occur only at twenty percent (20%) intervals of construction. The letter of credit may also be reduced on an annual basis by the amount of any home rule special assessment collected on the Property pursuant to Section 7.10 below. Any reduction of the letter of credit shall require prior written notice to the City and confirmation by the City the reduction amount is accurate.

7.9 Upon failure to fully satisfy the Project Completion Obligation, the City may provide Developer written notice declaring Developer in default under this Agreement and demanding full reimbursement, within thirty (30) days, of the Point of Connection Utility Expenses, less any credits as a result of any home rule assessments paid pursuant to Section 7.10 below, if any. If Developer fails to timely make such payment, the City shall have the right to draw upon the letter of credit required by Section 7.8 above.

7.10 The City shall have the right at any time to adopt and impose a home rule special assessment on the Property, and the lots created thereon, to recover the Point of Connection Utility Expenses and Easement Utility Expenses. In furtherance of said right, the Developer hereby voluntarily and irrevocably consents to said assessment and that the extension of utilities required hereunder constitutes a special benefit to the Property. Developer further agrees not to directly or indirectly contest or challenge such special assessment. The assessment, if imposed by the City, will be collected and enforced in accordance with the Uniform Method of Collection and Enforcement of Non-Ad Valorem Special Assessments under Florida law. In the event that a special assessment is imposed and the City collects the full amount of the Point of Connection Utility Expenses by assessment, the City agrees to release the letter of credit obligation in full if still in effect pursuant to Section 7.8 above.

7.11 Except for the Utilities to be constructed by the City on the Property within the public utility easement area required by Section 7.6 herein, the Developer shall be responsible for the design, permitting and construction of all other on-site utility infrastructure required to serve the Property including, but not limited to water, sewer, reclaimed stormwater pipes, sewer lift stations and pumps, electric lines and equipment, cable lines and equipment, phone lines and equipment, gas lines and equipment and other utility pipes, lines and equipment. Should City utility policy require that certain on-site water, sewer, reclaimed or stormwater utility infrastructure be conveyed to the City upon completion by the Developer, said conveyance of any such infrastructure shall be by written bill of sale along with any warranties and maintenance bonds or letters of credit.

7.12 In the event the Developer fails to obtain and convey the public utility easements required by Sections 7.3 and 7.5 above, or obtain approval of the Final Plans required by Section 6.1 of this Agreement within the time schedule set forth in Section 6.3, the City's commitment to design, permit and construct the water, sewer and reclaimed water utilities as required by this Agreement shall terminate and thereafter, the Developer, at Developer's sole expense, shall be

fully responsible for the design, permitting and construction of the water, sewer and reclaimed water utilities to the Property in accordance with City technical specifications and standards.

8.0 Other Project Recreational Amenities and Enhancements. As a condition of approval of the Final Plans, Developer shall design, permit and construct, at its own expense, the following minimum schedule of Project amenities and enhancements in scope and scale to adequately support the number of residential lots required for the Project:

(1) Community clubhouse with a feature pool, open space area with a community pavilion (picnic tables and grills) along with a state-of-the-art modern tot-lot and playground. The City prefers that the tot-lot and playground be adequately covered from sun exposure by a playground UV rated canopy and shade trees and that the Developer shall seriously evaluate and consider providing such covering when the amenities schedule is approved during Final Plans approval.

(2) Dog park with deluxe dog park amenities including dog play equipment, leash post, clean-up waste station, trash receptacle, pet drinking fountain, and benches.

(3) Park area with passive park amenities and benches including open play areas, children's play apparatus, group picnic areas, covered pavilions and barbecue stations. The City prefers that the playground and bench areas be adequately covered from sun exposure by a UV rated playground or other canopy and shade trees and that the Developer shall seriously evaluate and consider providing such covering when the amenities program and schedule is approved during Final Plans approval.

(5) Connected multipurpose walking path/nature trail throughout the community that connects to all recreational common open spaces including the park area, dog park and community clubhouse area.

(6) A streetscape design deemed acceptable by the City, which emphasizes sidewalks, connectivity within the community, tree-lined streets, and decorative street lights to add appeal and security and decorative signage.

(7) Decorative and landscaped entrance features to the Project deemed acceptable to the City which may include a restricted gated entry feature.

(8) The City prefers that the residential driveways shall be constructed of stone or brick pavers, or stamped and stained concrete. The Developer shall seriously evaluate and consider providing such driveways during the approval of Final Plans.

(9) All utilities constructed on the Property including, but not limited to, electric, water, sewer, reclaimed water, cable, phone, fiber optics, natural gas and other similar kinds of utilities to service the Property shall be constructed underground unless otherwise necessary to be above ground and approved by the City. Each lot and all common landscaped areas shall be equipped with in-ground reclaimed water irrigation systems to maximize the use of the City's reclaimed water service.

(10) The Project shall incorporate the use of energy efficient lighting systems, insulation and ENERGY STAR rated windows, low-flow water fixtures, modern heat pumps, energy efficient HVAC systems, and the ability for roof top solar panels.

Developer may also propose additional amenities for the City's consideration and approval. All Project amenities and enhancements shall be completed and finally accepted by the City in accordance with the written amenities construction schedule approved by the City in conjunction with the approval of the Final Plans. Upon approval, the written amenities construction schedule shall automatically be deemed incorporated within and made a part of this Agreement. All Project amenities and enhancements shall be maintained in perpetuity by the homeowner's association required to be created by this Agreement.

9.0 Building Elevations and Floor Plans. As condition of approval of the Final Plans, the Developer shall submit to the City for final approval building elevations and related floor plans for the proposed homes and community clubhouse to be constructed on the Property. Upon approval by the City, the building elevations and related floor plans shall be deemed incorporated herein by this reference and said buildings shall be constructed substantially in accordance with the approved building elevations and floor plans. Further, other aspects of the building façade and roof lines, color scheme, and architectural features depicted on the building may have to be adjusted during the City's final review and administrative approval procedures to issue a building permit. The design of the homes and community clubhouse shall create one aesthetically pleasing and unified Project.

10.0 Homeowner's Association. In conjunction with the approval of the final subdivision for the Project, the Developer shall create a mandatory homeowner's association ("**HOA**") to govern the Project in accordance with Chapter 720, Florida Statutes. The association shall also be governed by the covenants and restrictions created and recorded against the Property by the Developer as required by this Agreement. A copy of the association's articles of incorporation, by-laws and recorded covenants and restrictions shall be provided to the City prior to the approval of the final subdivision. The homeowner's association shall be responsible for the perpetual maintenance and operation of all common areas and amenities constructed for the Project, shall govern the Project in accordance with the requirements of Florida law including the recorded covenants and restrictions and by-laws of the association, have the power to levy assessments and collect HOA fees or assessments, which are used to pay for the maintenance of the community common areas and any other designated areas that are detailed in the covenants and deeds applicable to the Project.

11.0 Model Homes. The City agrees to allow the Developer or Developer's chosen homebuilder(s) (hereinafter referred to in this Section as "**Builder**") for the Project to construct both a sales office and up to four (4) model homes to be used for the customary temporary marketing and sales activities of the Builder. The Builder shall have the right to utilize two garages in two model home units as the temporary sales office. The City represents that such marketing and sales activities shall be permitted through buildout of the Project. The City agrees to permit early construction of the model homes prior to or after plat approval, provided that, prior to construction of the model homes, stabilized access to the model home lots and adequate means of fire protection from a City-approved source of water are completed and the following conditions, which are deemed acceptable to Builder, are adhered to:

(a) The model homes shall remain under Builder's ownership and control until such time as a final certificate of occupancy for each model home unit is issued under the conditions set forth below. In other words, the Builder shall not contract for sale, sell, or lease any of the individual model home units until such time as the City issues a final certification of occupancy for each model home unit.

(b) The model homes shall be constructed on existing or proposed lots approved by the City, and any associated parking, pedestrian activity and other activities conducted by sales staff or the general public shall be adequately segregated from construction activities to ensure safety. Parking for the model homes shall be provided in a temporary parking lot to be located in an area approved by the City, which may consist of a mulch surface. Prior to a final certificate of occupancy being issued on the last remaining model home, the mulch surface shall be removed and the area shall either be prepared for home construction, open space or recreational amenity or seeded.

(c) The model sales office shall comply with all applicable state and city regulations regarding accessibility. In addition, Builder shall provide a minimal level of access to all model homes for potential homebuyers with disabilities by providing physical access (via ramp or lift) to the primary level each model home and making photographs of other levels within each home available to the customer.

(d) Prior to construction, the model homes shall be duly permitted by the City in accordance with the City's Code. As part of the building permit application, the Builder shall submit, along with all construction plans for the units, a duly certified boundary survey which shall depict the location and legal description of each individual model lot. The Builder acknowledges and agrees that this legal description is intended to coincide with the eventual location of the lots as depicted and legally described on the final plat. The Builder shall assume full and complete responsibility in the event that said legal descriptions do not conform to the lot lines required by the City in the final plat. The Builder fully understands the construction of model homes before final plat is approved by the City may pose a risk to the Builder if the approved plat is not consistent with the layout of model home on the subject property, and that such risk may require modification or removal of the model home based on the approved plat before a final certificate of occupancy can be issued for the model home. The Builder agrees to defend, indemnify, and hold harmless the City from and against any and all damages, losses or claims arising from the layout and construction of the model home under this Agreement prior to preliminary and final plat approval as provided further in Section 11.0 of this Agreement.

(e) At such time as the City Building Official completes and approves a final inspection of the model homes, the City will issue a temporary certificate of occupancy. Said temporary certificate of occupancy shall be issued for each model home as a whole. Occupancy of the model home units shall be limited to the sales and marketing efforts for the Project until a final certificate of occupancy is issued for such model home units. It is intended that the model homes can be shown by sales staff to prospective buyers as long as the Building Official has issued the temporary certificate of occupancy and the model is not staffed continuously.

(f) Following completion of all required plat improvements, at the request of the Builder or at such time as the Project development is completed, whichever occurs sooner, the model home units shall be converted into permanent residential units and the City shall issue final certificates of occupancy for each model home unit, provided, that the City Building Official determines that such units are suitable for permanent residential occupancy and in compliance with the City Codes.

Nothing in this Section shall cause to limit the number of inventory homes (pre-sale, spec homes) that may be constructed on the Property. Violation of this Section will also constitute a violation of the City Code of Ordinances, and the provisions of this Section may also be enforced as provided therein. Any Builder desiring to construct a model home pursuant to this Section, other than Developer, shall be provided a copy of this Section by the Developer if Builder is not the owner of the subject property on which the model home will be constructed and shall automatically be deemed to have agreed to the terms and conditions herein as a condition of the issuance of a building permit by the City even if they are not the owner or have not consented, in writing, to the term and conditions of this Section.

12.0 Representations of the Parties. The City and Developer hereby each represent and warrant to the other that it has the power and authority to execute, deliver and perform the terms and provisions of this Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement. This Agreement will, when duly executed and delivered by the City and Developer, constitute a legal, valid and binding obligation enforceable against the parties hereto. Upon acquisition of the Property by the Developer and the recording of this Agreement in the Public Records of Brevard County, Florida, the Agreement shall be a binding obligation upon the Property in accordance with the terms and conditions of this Agreement. Developer represents that it has voluntarily and willfully executed this Agreement for purposes of binding himself and the Property to the terms and conditions set forth in this Agreement.

13.0 Successors and Assigns. This Agreement shall automatically be binding upon and shall inure to the benefit of the City and Developer and their respective successors and assigns. The terms and conditions of this Agreement similarly shall be binding upon the Property and shall run with title to the same upon being duly recorded against the Property by the City.

14.0 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

15.0 Amendments. This Agreement shall not be modified or amended except by written agreement duly executed by both parties hereto (or their successors or assigns) and approved by the City Council.

16.0 Entire Agreement; Exhibits; Conflicts. This Agreement, the Preceding Agreement and Stipulated Settlement Agreement and all attached exhibits thereto supersede any other agreement, oral or written, regarding the development of the Property and contain the entire

agreement between the City and Developer as to the subject matter hereof. The Exhibits attached hereto and referenced herein are hereby fully incorporated herein by this reference. To the extent that a conflict exists between provisions of this Agreement and the Preceding Agreement, the conflicting provisions of this Agreement shall apply. However, to the extent a conflict exists between the provisions of this Agreement and the Stipulated Settlement Agreement, the conflicting provisions of the Stipulated Settlement Agreement shall apply.

17.0 Severability. If any provision of this Agreement shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect the validity or enforceability of the remainder of this Agreement.

18.0 Effective Date. This Agreement shall become effective upon approval by the City Council and as of the date first above written upon execution and delivery hereof by all the parties hereto.

19.0 Recordation. Upon full execution by the Parties, this Agreement shall be recorded in the Public Records of Brevard County, Florida by the City.

20.0 Relationship of the Parties. The relationship of the Parties to this Agreement is contractual and Developer and any Builder described in Section 11.0 are independent contractors and not an agent of the City. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties or any such Builder, and neither party nor Builder is authorized to, nor shall either party act toward third persons or the public in any manner, which would indicate any such relationship with the other.

21.0 Sovereign Immunity. Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of the City's right to sovereign immunity under section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law. As such, the City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, the City shall not be liable for any claim or judgment, or portion thereof, to any one person for more than two hundred thousand dollars ($200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds the sum of three hundred thousand dollars ($300,000.00).

22.0 City's Police Power. Developer agrees and acknowledges that the City hereby reserves all police powers granted to the City by law. In no way shall this Agreement be construed as the City bargaining away or surrendering its police powers.

23.0 Interpretation. The parties hereby agree and acknowledge that they have both participated equally in the drafting of this Agreement and no party shall be favored or disfavored regarding the interpretation to this Agreement in the event of a dispute between the parties.

24.0 Third-Party Rights. This Agreement is not a third-party beneficiary contract and shall not in any way whatsoever create any rights on behalf of any third party.

25.0 Specific Performance. Strict compliance shall be required with each and every provision of this Agreement. The Parties agree that failure to perform the obligations provided by this Agreement shall result in irreparable damage and that specific performance of these obligations may be obtained by a suit in equity.

26.0 Attorney's Fees. In connection with any arbitration or litigation arising out of this Agreement, each party shall be responsible for their own attorney's fees and costs.

27.0 Development Permits. Nothing herein shall limit the City's authority to grant or deny any development permit applications or requests subsequent to the Effective Date of this Agreement. The failure of this Agreement to address any particular City, County, State and/or Federal permit, condition, term or restriction shall not relieve Developer or the City of the necessity of complying with the law governing said permitting requirement, condition, term or restriction. Without imposing any limitation on the City's police powers, the City reserves the right to withhold, suspend or terminate any and all certificates of occupancy for any building, trailer, structure or unit if Developer is in breach of any term and condition of this Agreement.

28.0 Default. Failure by either party to perform each and every one of its obligations hereunder shall constitute a default, entitling the non-defaulting party to pursue whatever remedies are available to it under Florida law or equity including, without limitation, termination of this Agreement, an action for specific performance and/or injunctive relief. Prior to any party filing any action or exercising any remedy or right expressly provided in this Agreement as a result of a default under this Agreement, the non-defaulting party shall first provide the defaulting party with written notice of said default. Upon receipt of said notice, the defaulting party shall be provided a forty-five (45) day (or such other time mutually agreed to in writing by the Parties) opportunity in which to cure the default to the reasonable satisfaction of the non-defaulting party prior to filing said action.

29.0 Termination. The City shall have the unconditional right, but not obligation, to terminate this Agreement, without notice or penalty, if Developer fails to receive building permits and substantially commence vertical construction of buildings, which shall at minimum include building foundations, for the Project within two and one-half (2 ½) years of the Effective Date of this Agreement. The Developer may apply to the City Council for an extension of this Agreement, which may be granted upon good cause shown. In addition, the City shall have the right, but not obligation, to terminate the Agreement if Developer permanently abandons construction of the Project, provided, however, the City shall first deliver written notice and an opportunity to cure to the defaulting party as set forth in Section 28.0 above. If the City terminates this Agreement, the City shall record a notice of termination against the Property in the public records of Brevard County, Florida.

30.0 Indemnification and Hold Harmless. Developer shall be solely responsible for designing, permitting, constructing, operating and maintaining this Project. As such, in

consideration of the rights and benefits afforded to and accepted by the Developer hereunder, Developer hereby agrees to indemnify, release, and hold harmless the City and its councilmembers, employees and attorneys from and against all claims, losses, damages, personal injuries (including, but not limited to, death), or liability (including reasonable attorney's fees and costs through all appellate proceedings), directly or indirectly arising from, out of, or caused by Developer and Developer's contractor's and subcontractor's performance of design, permit and construction activities in furtherance of constructing the Project under this Agreement and the operation and maintenance of the Project thereafter. This indemnification shall survive the termination of this Agreement.

31.0 Force Majeure. The Parties agree that in the event that the failure by either party to accomplish any action required hereunder within a specified time period ("**Time Period**") constitutes a default under the terms of this Agreement and, if any such failure is due to any unforeseeable or unpredictable event or condition beyond the control of such party, including, but not limited to, acts of God, acts of government authority (other than the City's own acts), acts of public enemy or war, riots, civil disturbances, power failure, shortages of labor or materials, injunction or other court proceedings beyond the control of such party, severe adverse weather conditions or a United States economic recession declared by the National Bureau of Economic Research that temporarily makes it commercially impractical for Developer to complete the construction of the Project and sell the required residential homes ("**Uncontrollable Event**"), then, notwithstanding any provision of this Agreement to the contrary except as expressly provided below, that failure shall not constitute a default under this Agreement and any Time Period proscribed hereunder shall be extended by the amount of time that such party was unable to perform solely due to the Uncontrollable Event. The impacted party shall give notice to the other party, stating the period of time the occurrence is expected to continue, and he extended time period shall be agreed to in writing by the Parties and said agreement shall not be unreasonably withheld by either party. The impacted party shall use diligent efforts to end the failure or delay and ensure the effects of such force majeure event are minimized. The impacted party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. A force majeure event shall not excuse the Developer's requirement to provide and maintain in effect a letter of credit under Section 7.8 of this Agreement or a performance and maintenance bond required by City Code. In addition, a United States economic recession force majeure event shall not excuse Developer from completing the Final Plans in accordance with the time periods required by Section 6.0 of this Agreement. The Parties agree that the provisions of Section 252.363, Florida Statutes do not apply to this Agreement or are hereby waived to the extent that such provisions are deemed to apply. Notwithstanding the aforesaid, the Parties may extend any Time Period as expressly provided elsewhere in this Agreement or as otherwise mutually agreed to in writing.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal on the date first above written.

CITY OF COCOA

By: _____
Michael C. Blake, Mayor

ATTEST:

By: _____
Carie Shealy, MMC, City Clerk

APPROVED AS TO FORM AND LEGALITY
For the use and reliance of the City of Cocoa, Florida only.

CITY SEAL

Date: _____
By: _____
Anthony A. Garganese, City Attorney for the City of Cocoa, Florida

Signed, sealed and delivered in the presence of the following witnesses:

BEACHLINE PARTNERS, LLC

_____
Signature of Witness

_____
Printed Name of Witness

Print name and title: _____

Date: _____

_____
Signature of Witness

_____
Printed Name of Witness

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ___ day of _____, 2021, by _____, Manager of Beachline Partners, LLC, a Florida limited liability company, on behalf of the company.

Personally Known ☐ OR Produced Identification ☐
Type of Identification Produced:

(Signature of Notary Public)

(Print, Type, or Stamp Commissioned Name of Notary Public)
My Commission expires:
Affix Notary SEAL
Online Notary: ☐ (Check Box if acknowledgment done by Online Notarization)

DEVELOPER IS HEREBY ADVISED THAT SHOULD DEVELOPER FAIL TO FULLY EXECUTE, AND DELIVER TO THE CITY, THIS AGREEMENT WITHIN THIRTY (30) DAYS FROM THE DATE THAT THE CITY COUNCIL APPROVES THIS AGREEMENT, THIS AGREEMENT SHALL AUTOMATICALLY BE DEEMED NULL AND VOID.

Exhibits:

A – Legal Description
B – Preliminary Site Plan