

Prepared by and return to:
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PUBLIC DRAINAGE EASEMENT
Adamson Creek One-A

THIS PUBLIC DRAINAGE EASEMENT ("Easement") is made this _____ day of _____ 2020 by **ADAMSON CREEK HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, (hereinafter called "Grantor"), in favor of the **CITY OF COCOA, FLORIDA**, a Florida Municipal Corporation, having a mailing address of 65 Stone Street, Cocoa, Florida 32922("Grantee").

WITNESSETH

WHEREAS, Grantor is the sole owner and non-exclusive easement holder of certain real property located within the City of Cocoa; and

WHEREAS, Grantor desires to convey a public drainage easement over, under, across and through a portion of its real property, as legally described herein, for purposes of allowing Grantee to convey and discharge surface stormwater drainage and runoff through and into the privately owned and maintained stormwater improvements, facilities, ponds and other incidental appurtenances in the Adamson Creek One-A subdivision; and

WHEREAS, Grantor and Grantee agree that this Easement is necessary to provide the Grantee the easement rights described herein where the streets in the Adamson Creek One-A subdivision were dedicated to the public and drain into stormwater facilities and ponds that remain owned and maintained by the Grantor; and

WHEREAS, Grantor and Grantee believe that this public drainage easement is in the best interest of the public health, safety, and welfare of the citizens of Cocoa; and

NOW, THEREFORE, in consideration of the enumerated public purposes stated herein, and mutual covenants, terms and conditions and restrictions contained herein, together with other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Grantor provides as follows:

- 1) **Recitals.** The foregoing recitals are hereby incorporated herein by this reference.
- 2) **Grant of Easement.** Grantor hereby voluntarily grants to Grantee and its successors and assigns, subject to any previous duly recorded easements or grants

of record, a perpetual, non-exclusive public drainage easement over, under, across and through the real property legally described in **EXHIBIT "A"** (the "Property") for the conveyance, discharge, treatment and storage of stormwater drainage and runoff through and into the privately-owned and maintained stormwater improvements, facilities, ponds and other incidental appurtenances in the Adamson Creek One-A subdivision ("Private Stormwater Improvements"). Nothing in this Easement is intended to supersede or alter the obligations of Grantor to maintain Private Stormwater Improvements in the Adamson Creek One-A subdivision as described in the plat thereof, recorded in the Official Records of Brevard County, Plat Book 57, Page 49. Grantor and Grantee acknowledge and agree that the stormwater management tracts are owned and maintained by the Grantor and that the drainage easements for stormwater conveyance facilities and improvements are described and depicted on the plat as "private." Further, nothing herein is intended to terminate or release the previously dedicated emergency access easements for ingress and egress and maintenance over all private drainage easements and stormwater managements tracts in the Adamson Creek One-A plat, which shall continue in full force and effect.

- 3) **Purpose of Easement.** It is the express purpose of this easement to provide Grantee the unconditional right to convey and discharge stormwater from the public streets, thoroughfares, and other rights-of-way and public easements in the Adamson Creek One-A subdivision over, under and through the Property for the purposes stated herein.
- 4) **Rights of Grantee.** To accomplish the purposes stated above the following rights are granted to the Grantee by this Easement:
 - a. To use the Easement for conveyance, discharge, treatment and storage of stormwater drainage and runoff from the public streets, thoroughfares, and other rights-of-way and public easements in the Adamson Creek One-A subdivision over, under and through the Property; and
 - b. To prevent any activity on or use of the Easement that is inconsistent with the purpose of the Easement, and to require the restoration of areas or features of the Property that may be damaged by an inconsistent activity or use; and
 - c. To enforce the obligations of Grantor to maintain in good, working condition the Private Stormwater Improvements in the Adamson Creek One-A subdivision and, in the event of Grantor's failure to so maintain the Private Stormwater Improvements, Grantee shall be authorized to continue to exercise any and all previously-dedicated emergency access easements to maintain such Private Stormwater Improvements and to charge the costs of such maintenance to the Grantor; and

- d. To take any civil action deemed necessary, at the Grantee's sole and absolute discretion, to protect and preserve the Easement granted hereunder.
- 5) **Easements Run with the Land.** This Easement shall remain a charge against the Property. Therefore, this Easement shall "run with the land" and be automatically assigned by any deed or other conveyance conveying a portion of the Property relating to this easement, even though conveyance makes no reference to this Easement as such.
- 6) **Attorney's Fees.** In the event of any legal action arising under this Easement between the parties, the parties agree to incur their own attorney's fees, court costs, and expenses, through all appellate proceedings.
- 7) **Recordation.** Grantee shall record this instrument in a timely fashion in the Official Records of Brevard County, Florida and may re-record it at any time as may be required to preserve its rights in this Easement.
- 8) **Successors.** The covenants, terms, conditions, rights, and restrictions of this Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running with the Property.
- 9) **Grantors Representations and Warranties.** Grantor hereby agrees and makes the following representations and warranties to Grantee:
- a. Grantor is lawfully seized of said Property in fee simple or has a non-exclusive private drainage easement over the Property and has full and lawful authority to execute this Easement, convey the Easement to Grantee, and bind the Property as set forth herein.
 - b. The Property is free of any and all encumbrances, except zoning restrictions and prohibitions and other requirements imposed by government authority and other encumbrances which are recorded in the public records of Brevard County, Florida.
 - c. Grantor shall pay any and all taxes that are levied on the Property, from time to time, as said taxes and assessments come due.
 - d. Grantor hereby warrants the title to the Easement granted hereunder over, under, and across the Property and will defend the same against lawful claims of all persons whomever.
- 10) **Grantee's Right to Seek Equitable Relief.** Grantor agrees, acknowledges and recognizes that any breach of this easement by Grantor would result in irreparable harm to Grantee and the public, and accordingly, Grantor agrees that in addition

to and not in lieu of all legal and equitable remedies available to Grantee by reason of such breach, Grantee shall be entitled to equitable relief (including, without limitation, specific performance and injunctive relief) to enjoin the occurrence and continuation of the breach.

- 11) **Sovereign Immunity.** The Grantee intends to avail itself of the benefits of Section 768.28, Florida Statutes and any other statutes and common law governing sovereign immunity to the fullest extent possible. Neither this provision nor any other provision of this Easement shall be construed as a waiver of the Grantee's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the Grantee's potential liability under state or federal law. Grantor agrees that City shall not be liable under this Easement for punitive damages or interest for the period before judgment. Further, Grantee shall not be liable for any claim or judgment, or portion thereof, to any one person for over 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 three hundred thousand dollars (\$300,000.00). Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. This paragraph shall survive termination of this Easement.
- 12) **Modifications.** This Agreement shall only be modified by a written instrument executed by the parties hereto or any successor, assigns heirs, or representatives thereto.
- 13) **Grantors Duty of Noninterference.** Grantor agrees not to interfere or allow others to interfere with Grantee's rights to use the Property as specifically set forth herein. Grantor agrees to enforce its private drainage easement rights and not to permit or allow the construction or erection of any building or structure on the Property without prior written consent of the Grantor and Grantee.
- 14) **Termination.** The parties agree that this Easement is intended to be perpetual. However, in the event the Grantee determines, at its sole discretion, that it no longer requires the Property for the uses described herein, Grantee, at Grantor's written request, agrees to execute an appropriate written instrument to terminate this easement.
- 15) **Notice.** All notices, demands requests, consents, approvals or other communications (collectively, "Notices") required or permitted to be given hereunder or which are given with respect to this Easement shall be effective only if in writing and delivered by personal service, or delivered to an overnight courier service with guaranteed next day delivery or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as followed:

To GRANTOR:

Adamson Creek Homeowners Association, Inc.
Attn: President
1430 Culver Drive NE
Palm Bay, Florida 32907

TO GRANTEE:

City of Cocoa
Attn: City Manager
65 Stone Street
Cocoa, Florida 32922

Any Notice given as provided herein shall be deemed received as follows: if delivered by personal service, on the date so delivered; if delivered to an overnight courier service, on the business day immediately following delivery to such service; and if mailed, on the third business day after mailing.

IN WITNESS WHEREOF, Grantor and Grantee set their respective hands on the day and year above written.

WITNESSES:

ADAMSON CREEK HOMEOWNERS
ASSOCIATION, INC.
(GRANTOR)

by _____

Print Name _____

Print Name _____

Print Name _____

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged and sworn to before me by means of () physical presence or () online notarization, this _____ day of _____, 2020 by _____, the _____ of the Adamson Creek Homeowners Association, Inc., on behalf of the corporation, who is/is not personally known to me, or has produced _____ as identification.

NOTARY PUBLIC

(Print Name)
Notary Public, State of _____
Commission No.: _____
My Commission Expires: _

WITNESSES

CITY OF COCOA (GRANTEE)

Print Name _____

By: Matthew Fuhrer
Interim City Manager

Print Name _____

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged and sworn to before me by means of (____) physical presence or (____) online notarization this ____ day of _____, 2020 by Matthew Fuhrer, Interim City Manager of the City of Cocoa, Florida, on behalf of the municipal corporation, who is/is not personally known to me, or has produced _____ as identification.

NOTARY PUBLIC

(Print Name)
Notary Public, State of _____
Commission No.: _____
My Commission Expires: _