City of Cocoa
65 Stone St
Cocoa FL 32922

21/17

THIS INSTRUMENT WAS PREPARED BY
AND SHOULD BE RETURNED TO:

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CFN 2019226469, OR BK 8564 PAGE 2243,
Recorded 10/16/2019 at 03:17 PM, Scott Ellis, Clerk of
Courts, Brevard County
Pgs:21

FOR RECORDING DEPARTMENT USE ONLY

SETTLEMENT IMPLEMENTATION AGREEMENT

(Residential Subdivision and Lake Amenity Excavation)

THIS SETTLEMENT IMPLEMENTATION AGREEMENT ("Agreement") is made and executed this 10th day of July, 2019, by and between the **CITY OF COCOA,** a Florida Municipal Corporation ("City"), whose address is 65 Stone Street, Cocoa, Florida 32922, and **VIRGIN TRAINS USA FLORIDA, LLC**, a foreign limited liability company organized in the State of Delaware ("Developer"), whose address is 161 NW 6th Street, Suite 900 Miami, FL 33136.

WITNESSETH:

WHEREAS, Developer has entered into a contract to purchase approximately 246 acres, more or less, of real property located north of State Road 528 and east of Highway I-95, Cocoa, Florida, more particularly described in Section 3 and depicted in Section 8 of this Agreement ("Property"); and

WHEREAS, the Property is subject to that certain City of Cocoa/Florida Space Needle, LLC Preceding Development Agreement, dated August 24, 2004 ("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 ("Stipulated Settlement Agreement"); and

WHEREAS, Developer desires to proceed with the acquisition of the Property and permit and construct a low-density residential subdivision (approx. 320 units) on the Property consistent with the terms and conditions of the Preceding Development Agreement and 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. The real property subject to this Agreement has tax parcel identification numbers of 24-35-10-00-3 and is legally described in **EXHIBIT "A"**, attached hereto and fully incorporated herein by this reference ("Property").

4.0 Condition Precedent - Acquisition of Property by Developer. Developer represents and warrants to the City that they have entered into a binding written contract to purchase the Property ("Purchase Agreement") and that the Developer intends to expeditiously pursue the completion of the closing on the Property upon the Effective Date of this Agreement. Based on this representation and warranty to the City, Developer further represents and warrants to the City that it is empowered to negotiate and enter into this Agreement. However, the acquisition of fee title to the Property by the Developer shall be a condition precedent to the Parties commitments and obligations set forth under this Agreement. As such, Developer shall keep the City fully apprised of the status of said closing and shall faithfully and expeditiously complete the closing within ninety (90) days of the Effective Date of this Agreement ('Closing Date"). At least ten (10) days prior to the Closing Date, the Developer shall provide the City Manager and City Attorney a complete copy of the title commitment (with copies of all supporting documents) for closing on the Property so the Parties can determine whether the title commitment including the items listed on Schedule B II Exceptions causes any impediment to the completion of the subdivision of the property as depicted on the Concept Plan described in Section 8.0 of this Agreement or the excavation of the lake amenity described in the Section 10.0 of this Agreement. The City in its reasonable and sole discretion may declare any such impediment as a default and Developer shall be afforded an opportunity to cure said default under Section 29.0 of this Agreement. If Developer fails to cure said default, the City Manager, in his sole discretion and by written notice, shall have the right to terminate this Agreement. Further, if Developer fails to complete the closing by the Closing Date, the City Manager shall have the right, in his sole discretion and by written notice, to either extend the Closing Date for a reasonable time period not to exceed one (1) year to allow Developer to complete the closing, or terminate this Agreement.

5.0 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 shall be created and constructed in a single phase and consist of approximately

320 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, private streets, ample private recreational common area green space and amenities, including a private Amenity Center and a proposed 38-acre, more or less, amenity lake (the "Project"). The Developer may construct the homes in accordance with a phasing plan 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 constructed in accordance with the requirements set forth in this Agreement.

6.0 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 RU-1-7, Single-Family Residential District, which is consistent with the very low-density residential Future Land Use Map designation. Within thirty (30) days of the Closing 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 RU-1-7 zoning designation. The City and Developer will process the application through completion within one hundred eighty (180) days of the date that a complete application has been submitted to the City, unless an extension is required and granted by the City Council. The City agrees to process said application 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 application. The City Council will consider and act upon said application at its discretion at appropriate public hearings pursuant to the requirements of law. If the RU-1-7 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.

7.0 Location of Ingress/Egress Points – North and Southeast Corner of Project. Pursuant to the Stipulated Settlement Agreement, the Project shall have two public road access points. The northern access point shall be at the existing southern terminus of Bahia Street. However, Brevard County is required to choose between two options for public road access at the southeastern corner of the Project: (1) Osage/Angelica Street or (2) south along the 100-foot wide drainage canal right-of-way connecting to Grissom Road. The Parties acknowledge that the County's choice will result in a small variation to the subdivision layout of several of the residential lots proposed within the southeast corner of the Project. To account for this variation, the Parties have agreed to two alternative Conceptual Development Plans for the Project, taking into account both options as more specifically set forth in Section 8.0 of this Agreement. Upon the Effective Date of this Agreement, the Parties agree to submit the two alternative Conceptual Development Plans to the County and formally request, in writing, that

the County choose one of the public road access options for the southeastern corner of the Project as required by the Stipulated Settlement Agreement. The Parties also agree to cooperate with each other in promptly obtaining the County's decision on the chosen public road access option at the southeastern corner of the Project. In addition, until the selection is made by the County, the Parties cannot estimate with reasonable certainty the potential cost to the Developer of the public road access to the Property, including the cost of any required land (especially if the drainage canal route is selected), road improvements, drainage, signalization at the Grissom Parkway, lighting or other special roadway requirement. As such, upon selection by the County, the Developer shall work with the County to promptly ascertain, in writing, the estimated cost of public road access, and provide a written copy of the same to the City, no later than six (6) months from the date of the County's selection. If the County's selected option results in unreasonably excessive estimated roadway costs on the Developer that are not economically feasible for the Project to financially support, using reasonable and customary home building industry standards relative to the density of the Project, the Developer may request, in writing, to meet with the City Manager to discuss and negotiate an alternative Concept Plan and any necessary amendments to this Agreement that make the Project economically feasible by reasonable and customary home building industry standards. Any alternative Concept Plan and amendments to this Agreement shall require City Council approval.

8.0 Two Alternative Conceptual Development Plans; Subdivision and Site Plan Approval.

8.1 Depending on the public road access point chosen by the County at the southeastern corner of the Project, the Project shall be substantially developed in accordance with one of the applicable alternative conceptual development plans which are attached hereto as **EXHIBIT "B"** and incorporated herein by this reference (**"Concept Plan"**). The Concept Plan is intended to be the general blueprint which details key aspects of the future physical development of the Property. The Concept 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 final subdivision plat, final site plan and final engineering plans (**"Final Plans"**) consistent with the Concept Plan in all material respects and in compliance with the City Code and the amenities schedule required by Section 11.0 of this Agreement. Developer acknowledges and agrees that the Concept 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 Concept 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, parking and other site improvements may vary slightly between Concept Plan approval and approval of the Final Plans. Further, additional lots greater than the number of lots depicted on the Concept 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 depicted on the Concept Plan. These changes shall be allowed as long as the changes are consistent with the development standards noted in this Agreement and preserve the

general character of the development shown on the Concept Plan. The City will not unreasonably withhold approval of the Final Plans and amenities schedule.

8.2 The Parties agree that time is of the essence to complete the Project. Therefore, if the County selects public road access on Osage/Angelica Street under the Stipulated Settlement Agreement, Developer shall have eighteen (18) months after said selection to obtain Final approval of the Final Plans unless otherwise agreed by the City Council. However, if the County selects public road access south along the 100 foot-wide drainage canal right-of-way, Developer shall have eighteen (18) months from the date that the County confirms to the Parties that it has received an order of taking or otherwise acquired the necessary lands or interests to allow the public road access to obtain Final approval of the Final Plans unless otherwise agreed to by the City Council.

9.0 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 up to the point(s) of connection at the boundary of the Property as determined and deemed appropriate by the City, subject to the following terms and conditions:

(1) The City will design, permit, construct and make the Utilities available to the Property no later than the date that the Developer has: (a) 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 Project including, but not limited to, streets, street lights, on-site utilities, sidewalks, and stormwater facilities; (b) been issued and received building permits for at least ten (10) building permits approved by the City for residential units; and (c) commenced vertical construction of the ten residential homes on the Property ("Utility Completion Date"). Prior to commencing construction of the Utilities, the City shall provide the Developer a written estimate of the Total City Utility Expenses described in Subsection (2) below.

(2) Developer shall complete construction 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 expenses incurred by the City to design, permit and construct the extension of the Utilities to the Property ("Total City Utility Expenses"). Within sixty (60) days of receipt of said written notice, the Developer, at its expense, shall secure the reimbursement of the Total City Utility Expenses in the event the Developer fails to fully satisfy the Project Completion Obligation by providing the City with 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 Subsection (3) 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 Subsection (3) 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 Subsection (4) 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.

(3) 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 Total City Utility Expenses, less any credits as a result of any home rule assessments paid pursuant to Subsection (4) 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 Subsection (2) above.

(4) 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 Total City Utility Expenses. In furtherance of said right, the Developer hereby voluntarily and irrevocably consents to said assessment and that the extension of Utilities 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 Total City Utility Expenses by assessment, the City agrees to release the letter of credit obligation in full if still in effect pursuant to Subsection (2) above.

(5) Within one hundred eighty (180) days of the County's selection of the preferred public road access described in Section 7.0, the Developer shall convey a perpetual public utilities easement upon, over and under the Property that allows the City to connect the future public utilities constructed on the Property with the Barrera Property (approx. 267 acres) located south of State Road 528. It is anticipated that the easement will be a minimum of forty (40) feet and a maximum of sixty (60) feet in width and be located generally around the area where the Developer intends to construct the conveyance system under and over State Road 528 to support the excavation of the proposed lake pursuant to Section 10.0 of this Agreement. In conjunction with the Developer's construction of the conveyance system, Developer shall fully cooperate with the City to coordinate and assist the City's plans and efforts to permit, construct and install future public utilities under State Road 528 including the installation of one or more casings, conduits or culverts to support future water, sewer and reclaimed utilities. The Parties agree that the Developer's coordination, cooperation and assistance does not constitute permission, or the requirement to gain permission, for the City to place the casing, conduit or culverts in the said area which is not owned by the Developer. The Parties acknowledge that the property is not owned by the Developer and that the City must gain the necessary permissions and permits from

the property owner (Florida Department of Transportation) and any other required regulatory entity to perform the required utility work. However, the final location and required width of the easement area shall be required to satisfy the City's reasonable and necessary future utilities needs which shall be determined by the City's Utilities Director. The easement shall be in form approved by the City Attorney. During the construction of the required utility work by the City, the City agrees to coordinate its utility activities in a manner that does not interfere with the excavation operation or the construction and operation of the proposed future Brightline rail line.

(6) The Developer shall be responsible for the design, permitting and construction of all 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) In the event the Developer fails to convey the utility easement required by Subsection (5) above, or obtain approval of the Final Plans required by Section 8.0 of this Agreement within the time schedule set forth in Section 8.2, or if the City declares, in writing, that Developer failed to complete the lake amenity as required by Section 10.0 either upon completion of the excavation or abandonment, the City's commitment to design, permit and construct the Utilities to the Property shall terminate and thereafter, the Developer, at Developer's sole expense, shall be fully responsible for the design, permitting and construction of the Utilities to the Property in accordance with City technical specifications and standards.

10.0 Permitting and Construction of Lake Amenity. Upon the Effective Date of this Agreement, the Developer shall be allowed to submit an application with the City for an excavation permit for purposes of constructing the proposed 38-acre, more or less, lake amenity as depicted on the Conceptual Plans. The excavation permit shall be subject to Chapter 12.5 of the City Code and shall be in the form of an Excavation Permit Agreement executed by the Parties. The Excavation Permit Agreement shall be subject to the terms and conditions of this Agreement, and any other applicable state and federal laws. The commencement of excavation shall be contingent upon the Developer closing on the Property and the City's determination that the title commitment does not identify any impediment to the completion of the subdivision of the Property or the excavation of the lake amenity as provided by Section 4.0 of this Agreement. The excavation site and Property shall be maintained and secured by the Developer in a safe and sanitary condition at all times in compliance with applicable laws, administrative rules, or City Code. Notwithstanding any other terms and conditions in this Agreement and the Excavation Permit Agreement, Developer, upon completion of the excavation, shall be required to complete the lake amenity in anticipation of, or in conjunction with, the residential subdivision required by this Agreement. Should the excavation be completed before the Final Plans are approved by the City, Developer shall be required to submit, for the City's approval, plans and specifications necessary for the Developer to complete the lake amenity including, but not limited to, bank

stabilization, seeding and final contouring and shaping of the lake to support the future subdivision and accommodate the future amenities required by amenity schedule approved by the City during Final Plans approval, including landscaping, walking trails, usable open space and other pedestrian friendly recreational and beautification features. The Excavation Permit Agreement shall be in a form approved by the City Manager and City Attorney, and the City Manager is authorized to execute the Excavation Permit Agreement on behalf of the City. In order to reduce and mitigate against any potential negative impacts of the excavation on surrounding properties, the Developer agrees to employ an excavation strategy that requires the excavation materials to be removed from the Property via a conveyance system running above or underneath State Road 528 for use by the future proposed Brightline railroad route along the State Road 528 corridor. Developer has represented to the City that they are pursuing a permit from the Florida Department of Transportation to employ this excavation strategy subject to the City permitting the excavation. However, during the excavation, access to and from the Property by excavation workers and to receive delivery of equipment and materials for the excavation shall be allowed via the existing public road network as specified in the excavation permit agreement. Notwithstanding the foregoing, should Developer choose to forego or substantially reduce the scope and size of the excavation, Developer acknowledges that a modification to this Agreement may be required by the City to at least modify the Concept Plan to incorporate more upland buildable areas and recreational space.

11.0 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) Central Amenity Center (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) Multi-use sports field.

(3) Multipurpose courts (convertible for volleyball, basketball, pickleball and/or tennis).

(4) Smaller common open space lots and areas throughout the community that include small playgrounds and areas with benches. 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 schedule is approved during Final Plans approval.

(5) Connected multipurpose trail throughout the community that connects to all recreational common open spaces including the existing lakes and lake amenity.

(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 optional 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.

12.0 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 Central Amenity Center (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 Central Amenity Center (community clubhouse) shall create one aesthetically pleasing and unified Project.

13.0 Homeowner's Association. In conjunction with the approval of the final subdivision for the Project, the Developer shall create a mandatory homeowner's association 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, 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.

14.0 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 32.0 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.

15.0 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.

16.0 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.

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

18.0 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.

19.0 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.

20.0 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.

21.0 Effective Date. This Agreement shall become effective upon approval by the City Council and execution of this Agreement by both parties hereto.

22.0 Recordation. Upon full execution by the Parties and the closing required by Section 4.0 of this Agreement, this Agreement shall be recorded in the Public Records of Brevard County, Florida by the City.

23.0 Relationship of the Parties. The relationship of the Parties to this Agreement is contractual and Developer and any Builder described in Section 13.0 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.

24.0 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).

25.0 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.

26.0 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.

27.0 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.

28.0 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.

29.0 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.

30.0 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.

31.0 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, 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.

32.0 Termination. Except as expressly provided in this Agreement, this Agreement may only be terminated by mutual written consent of the Parties. If the Parties terminate this Agreement and the Agreement was recorded in the Official Records of Brevard County, the City shall record a notice of termination against the Property in the Official Records of Brevard County, Florida.

33.0 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.

34.0 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 9.0 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 8.0 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: _____
Jake Williams Jr., 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.

Date: 7.10.2019
By: _____
Anthony A. Garganese, City Attorney for the City of Cocoa, Florida

CITY SEAL

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

Signature of Witness

Samantha Johnson
Printed Name of Witness

Signature of Witness

Janice Cremarosa
Printed Name of Witness

VIRGIN TRAINS USA FLORIDA, LLC

Print name and title: Patrick Goddard
President
Virgin Trains USA

Date: 6/14/19

STATE OF Florida
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 14th day of June, 2019, by Patrick Goddard the President of Virgin Trains USA a Florida LLC. He is personally known to me or produced _____ as identification.

(NOTARY SEAL)

JANICE LEON
MY COMMISSION # GG 263937
EXPIRES: February 1, 2023
Bonded Thru Notary Public Underwriters

(Notary Public Signature)

Janice Leon
(Print Name)

Notary Public, State of Florida
Commission No.: GG263937
My Commission Expires: 02/01/23

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 – Two Alternative Concept Plans

EXHIBIT "A"

Legal Description

PARCEL 1

A parcel of land lying in the North Half of Section 10, Township 24 South, Range 35 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Northwest corner of Section 10, Township 24 South, Range 35 East, Brevard County, Florida, run thence South 89 degrees 57 minutes 44 seconds East, along the North line of said Section 10, a distance of 329.44 feet to the POINT OF BEGINNING; thence continue South 89 degrees 57 minutes 44 seconds East, along said North line a distance of 2266.28 feet; thence departing said North line of Section 10, South 00 degrees 32 minutes 12 seconds East, a distance of 2235.09 feet to a point on the existing Northerly right of way line of State Road No. 528 (also known as the "Bee Line Expressway", formerly known as State Road No. 524); thence South 88 degrees 36 minutes 31 seconds West (Calculated measurement) South 88 degrees 40 minutes 54 seconds West (Deed), along said existing North right of way line a distance of 454.64 feet; thence North 87 degrees 19 minutes 06 seconds West, a distance of 638.49 feet, to a point of curvature of a curve concave to the Northeast, having a radius of 900.00 feet a central angle of 31 degrees 18 minutes 50 seconds (Calculated measurement) 31 degrees 18 minutes 48 seconds (Deed), thence Northwesterly along the arc of said curve a distance of 491.88 (calculated measurement) 491.87 (Deed) feet; thence North 56 degrees 04 minutes 39 seconds West (Calculated measurement) North 56 degrees 00 minutes 19 seconds West (Deed), a distance of 398.70 (Calculated measurement) 398.75 (Deed) feet to a point of curvature of a non-tangent curve concave to the North having a radius of 969.79 feet, a central angle of 37 degrees 46 minutes 38 seconds, thence Northwesterly along the arc of said curve a distance of 639.42 feet, to a point on the East right of way line of State Road No. 9 (Interstate 95); thence North 00 degrees 11 minutes 53 seconds West, along said East right of way line of State Road No. 9 (Interstate 95), a distance of 566.36 feet; thence North 01 degrees 55 minutes 04 seconds West, a distance of 300.93; thence North 01 degrees 20 minutes 38 seconds West, a distance of 476.50 feet to the POINT OF BEGINNING.

LESS AND EXCEPT THE AREA FOR BORROW PIT NO. 19 AND HAUL ROAD AS SET FORTH IN CIRCUIT COURT MINUTE BOOK 57, PAGE 479, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, OTHER THAN THE REVERSIONARY INTEREST, DESCRIBED AS FOLLOWS:

BORROW PIT NO. 19

A parcel of land in the Northwest Quarter of Northwest Quarter of Section 10, Township 24 South, Range 35 East, described as follows:

Commence on the North boundary of said Section 10, at a point 150 feet East from the Northwest corner thereof, run thence South 00 degrees 12 minutes 38 seconds East 50 feet; thence North 89 degrees 59 minutes 22 seconds East, 499.83 feet to the Northwest corner of Borrow Pit No. 19 and the POINT OF BEGINNING; continue thence North 89 degrees 59 minutes 22 seconds East 600 feet; thence South 00 degrees 00 minutes 38 seconds East 550 feet; thence South 89 degrees 59 minutes 22 seconds West 600 feet; thence North 00 degrees 00 minutes 38 seconds West 550 feet to the POINT OF BEGINNING.

AND

HAUL ROUTE FOR BORROW PIT NO. 19

That part of the Northwest Quarter of Northwest Quarter of Section 10, Township 24 South, Range 35 East, lying South and within 50 feet of a line described as follows:

Begin at the Northwest corner of Borrow Pit No. 19 as described above, run thence South 89 degrees 59 minutes 22 seconds West 499.83 feet to the end of said line as herein described.

PARCEL 2

A parcel of land lying in the North Half of Section 10, Township 24 South, Range 35 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Northwest corner of Section 10, Township 24 South, Range 35 East, Brevard County, Florida, run thence South 89 degrees 57 minutes 44 seconds East, along the North line of said Section 10, a distance of 2595.72 feet to the POINT OF BEGINNING; thence continue South 89 degrees 57 minutes 44 seconds East, along said North line of Section 10 a distance of 70.51 feet, to the North Quarter corner of Section 10; thence South 89 degrees 57 minutes 56 seconds East, along said North line of Section 10, a distance of 1926.93 feet; thence departing said North line South 00 degrees 32 minutes 12 seconds East, a distance of 2404.54 feet, to a point on a curve on the existing Northerly right of way line of State Road No. 528 (also known as the "Bee Line Expressway", formerly known as State Road No. 524); thence along said existing North right of way line and along said curve that is concave to the South, having a radius of 5879.58 feet, a central angle of 15 degrees 41 minutes 33 seconds; thence Westerly, along the arc of said curve, a distance of 1610.32 feet; thence South 88 degrees 36 minutes 31 seconds West (Calculated measurement) South 88 degrees 40 minutes 54 seconds West (Deed), a distance of 404.03 feet; thence departing said North right of way line North 00 degrees 32 minutes 12 seconds West, a distance of 2235.09 feet, to the POINT OF BEGINNING.

PARCEL 3

A parcel of land lying in the North Half Section 10, Township 24 South, Range 35 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Northwest corner of Section 10, Township 24 South, Range 35 East, Brevard County, Florida, run thence South 89 degrees 57 minutes 44 seconds East, along the North line of said Section 10, a distance of 2666.23 feet to the North Quarter corner of Section 10; thence South 89 degrees 57 minutes 56 seconds East, along said North line of Section 10, a distance of 1926.93 feet, to the POINT OF BEGINNING; thence continue South 89 degrees 57 minutes 56 seconds East, along said North line of said Section 10, a distance of 738.58 feet to the Northeast corner of Section 10; thence South 00 degrees 32 minutes 12 seconds East, along the East line of said Section 10, a distance of 2602.18 feet, to a point on the existing Northerly right of way line of State Road No. 528 (also known as the "Bee Line Expressway", formerly known as State Road No. 524); thence North 74 degrees 59 minutes 21 seconds West, along said existing North right of way line, a distance of 693.63 feet, to a point of curvature of a curve concave to the South, having a radius of 5879.58 feet, a central angle of 00 degrees 42 minutes 35 seconds, thence Westerly, along the arc of said curve, a distance of 72.84 feet; thence departing said North right of way line North 00 degrees 32 minutes 12 seconds West, a distance of 2404.54 feet, to the POINT OF BEGINNING.

PARCEL 4

A parcel of land being the North 290 feet of the Southwest One Quarter of Section 12, Township 24 South, Range 35 East, Tallahassee Base Meridian, Brevard County, Florida, lying West of the Westerly right of way of Grissom Parkway, being part of the lands described in Official Records Book 549, Page 354 and being more particularly described by meets and bounds as follows:

Commence at a concrete monument occupying the Northwest corner of the Southwest One-Quarter of aforesaid Section 12; thence South 00 degrees 15 minutes 49 seconds East, along the West line of the Southwest One Quarter, a distance of 290.01 feet; thence South 89 degrees 54 minutes 34 seconds East, parallel to and 290.00 feet South of the North line of the Southwest One-quarter, a distance of 501.02 feet to a point on the Westerly right of way line of Grissom Parkway, said point lying on a radial circular curve, concave to the Northwest, having a radius of 1705.02 feet and a central angle of 11 degrees 38 minutes 02 seconds; thence Northwesterly, along said Westerly right of way line and the arc of said curve a distance of 346.20 feet (chord bearing North 32 degrees 51 minutes 07 seconds West) to the North line of the Southwest One-Quarter; thence North 89 degrees 54 minutes 34 seconds West, along said North line, a distance of 314.89 feet to the POINT OF BEGINNING.

LESS AND EXCEPT that portion conveyed to Brevard County Board of County Commissioners recorded in Official Records Book 2923, Page 1070; and in Official Records Book 2923, Page 1073, all of the Public Records of Brevard County, Florida.

PARCEL 5

The West 318 feet of the South Half of the South Half of the South Half of the North Half, LESS the North 30 feet for road and LESS the South 100 feet and the West 100 feet for canal, Section 11, Township 24 South, Range 35 East, Brevard County, Florida. Also known as Tract 6, Block 16, CANAVERAL GROVES SUBDIVISION, according to the Map thereof, as recorded in Survey Book 2, Page 621, Brevard County, Florida.

EXHIBIT
B
Page 1 of 2

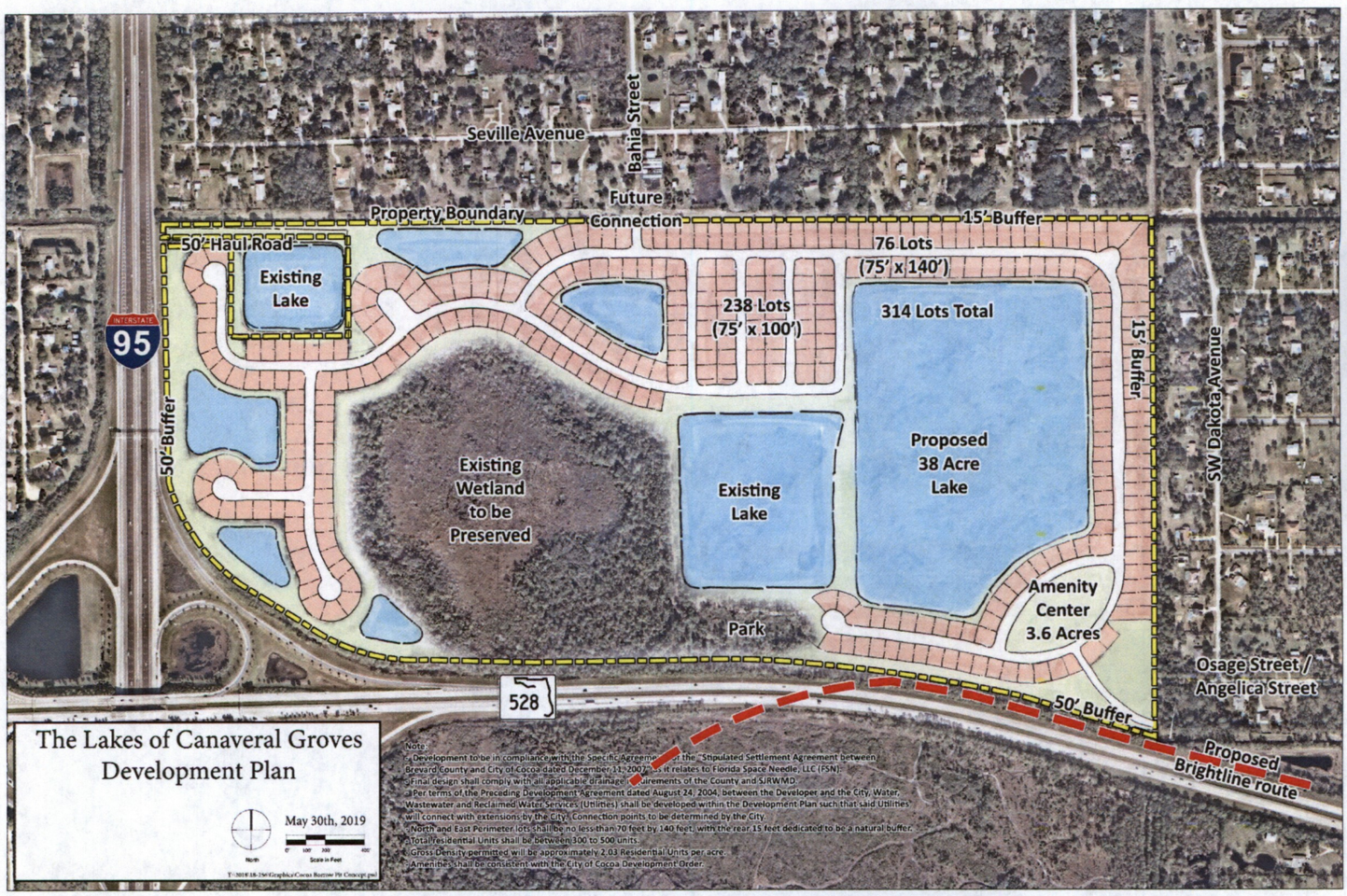
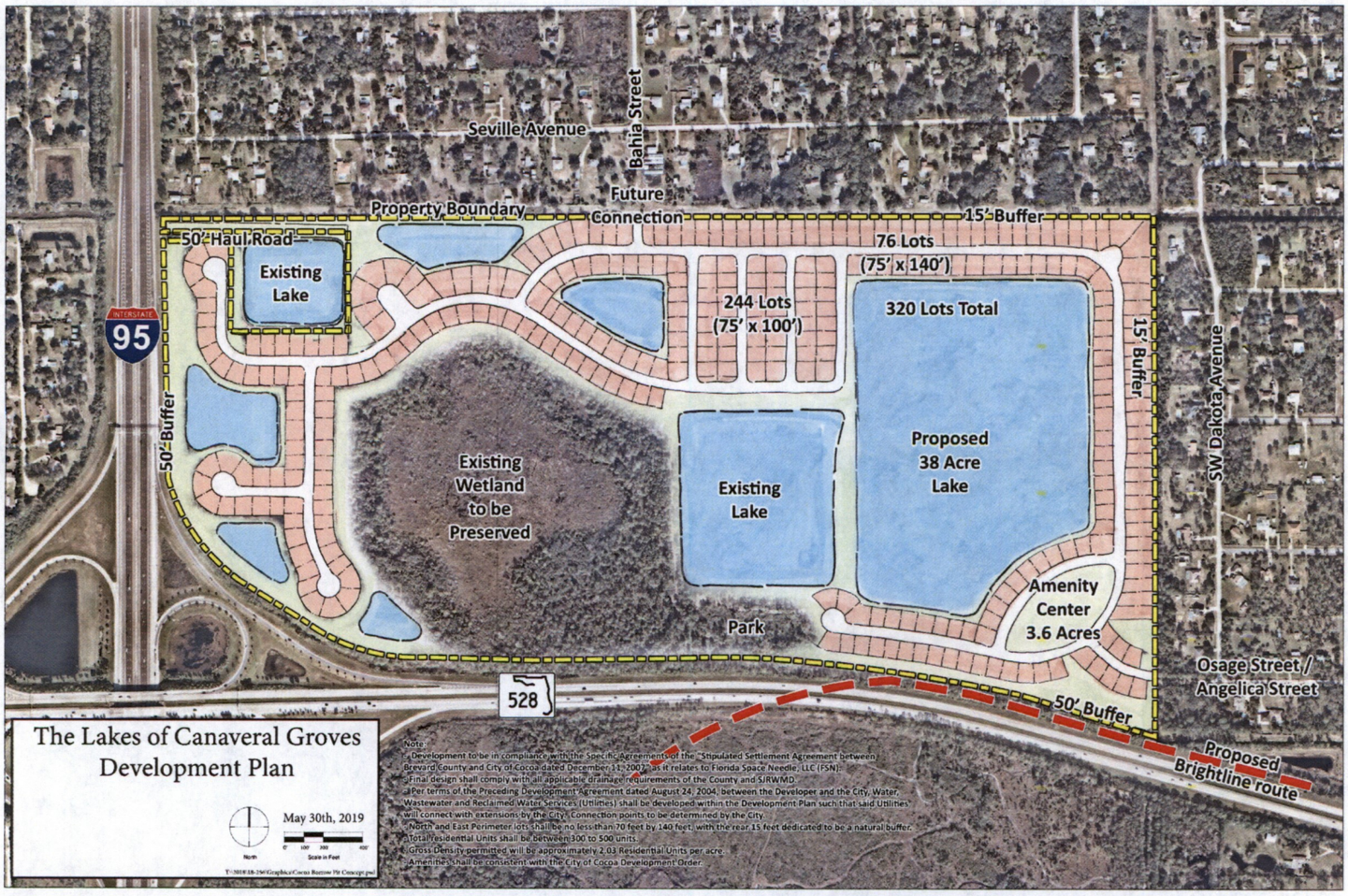


EXHIBIT
B
Page 2 of 2



The Lakes of Canaveral Groves Development Plan

May 30th, 2019

North

Scale in Feet

T:\2018\18-256\Graphics\Cocoa Burrow Plt Concept.psd

Note:

- Development to be in compliance with the Specific Agreement of the "Stipulated Settlement Agreement between Brevard County and City of Cocoa dated December 11, 2002, as it relates to Florida Space Needle, LLC (FSN)."
- Final design shall comply with all applicable drainage requirements of the County and SJRWMD.
- Per terms of the Preceding Development Agreement dated August 24, 2004, between the Developer and the City, Water, Wastewater and Reclaimed Water Services (Utilities) shall be developed within the Development Plan such that said Utilities will connect with extensions by the City. Connection points to be determined by the City.
- North and East Perimeter lots shall be no less than 70 feet by 140 feet, with the rear 15 feet dedicated to be a natural buffer.
- Total residential Units shall be between 300 to 500 units.
- Gross Density permitted will be approximately 2.03 Residential Units per acre.
- Amenities shall be consistent with the City of Cocoa Development Order.