

After Recording Return to:  
City of Palm Bay  
Attn: City Clerk  
120 Malabar Road SE  
Palm Bay, Florida 32907

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## DEVELOPMENT AGREEMENT

THIS AGREEMENT ("Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2025 by and between the CITY OF PALM BAY, a Florida municipal corporation ("City"), and DIAZ TREASURES, LLC, a Florida limited liability company ("Developer").

### RECITALS

WHEREAS, Developer is the fee simple title holder of the property situated in Palm Bay, Brevard County, Florida, and more particularly described in Exhibit A attached hereto and made a part hereof ("Property");

WHEREAS, City is the fee simple title holder of the property situated in Palm Bay, Brevard County, Florida, and more particularly described in Exhibit B attached hereto and made apart hereof ("City Property");

WHEREAS, the City and Developer are sometimes collectively referred to here as the "Parties;" and

WHEREAS, Developer and the City desire to enter into this Agreement to facilitate the development of the Property; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

1. **Recitals.** The recitals set forth above are true and correct, form a material part of this Agreement, and are incorporated herein by reference.
2. **Land Exchange Agreement.** City and Developer are parties to a Land Exchange Agreement, more particularly described in Exhibit C attached hereto and made a part hereof, concerning the City Property and the Developer Property ("Land Exchange Agreement"). It is the intention of the Parties that, after the exchange of properties contemplated by the Land Exchange Agreement, Developer shall have the right to proceed with the development of the Property in accordance with the terms of this Agreement.

Pursuant to the terms of the Land Exchange Agreement, the City will be granted an easement for ingress and egress, utilities and drainage across Parcels C-2 and C-3, which easement is described therein as the "Access and Utility Easement." Notwithstanding anything contained in the Land Exchange Agreement to the contrary, the parties acknowledge and agree that the City will have the right to maintain and repair any public utilities located within said easement and that it will be the responsibility of Developer, its successors and assigns, to repair or replace any improvements

located within said easement which are damaged or removed as a result of City's maintenance and repair activities and the City will have no responsibility to repair or restore such improvements.

3. **Easement Agreement.** At the time of the Closing under the Land Exchange Agreement, City will grant Developer a permanent non-exclusive easement for ingress and egress from Malabar Road across Parcel C-1 in the approximate location shown on the Malabar Full Access Easement, attached hereto and incorporated herein as Exhibit D. The Malabar Full Access Easement shall be sixty (60) feet wide and shall intersect Malabar Road in the location directly south of the full access cut onto Malabar Road which is being constructed on the commercial property to be located on the north side of Malabar Road. The Malabar Full Access Easement will also grant to Developer the right, at Developer's sole cost and expense, to install a roadway providing access through Parcel C-1 to the full access curb cut on Malabar Road expressly for the sole purpose of providing access to Parcels C-2 and C-3. The Malabar Full Access Easement shall permit the City shared access and use of the future roadway, and any future tie-in to said roadway. The Malabar Full Access Easement shall be in a recordable form reasonably acceptable to both Developer and City. Developer will deliver the proposed form of the Malabar Full Access Easement to City within sixty (60) days after the date hereof and the parties will proceed in good faith thereafter to agree upon the final form of the instrument. Developer shall be responsible to obtain a driveway permit or any other permits required to access Malabar Road from the authorities having jurisdiction.
4. **Curb Cuts.** City hereby consents to the installation by Developer of two (2) curb cuts onto St. John's Heritage Parkway at the locations and upon the terms described below. Subsequent to Closing, at such time as Developer elects to develop Parcel C-2 or C-3 and upon satisfaction by Developer of all standard requirements for obtaining a permit for a curb cut onto a City-maintained road, City will issue Developer the necessary permits to install a full-access curb cut onto St. John's Heritage Parkway at the location where the Access and Utility Easement (as such term is defined in the Land Exchange Agreement) intersects with St. John's Heritage Parkway and shall further issue to Developer the necessary permits for the installation of a right-in, right-out access point onto St. John's Heritage Parkway at a location approximately midway between Malabar Road and the intersection of the Access and Utility Easement with St. John's Heritage Parkway. The approximate locations of the curb cuts are depicted on Exhibit D attached hereto. The agreement of the City described in this Paragraph 4 to allow these curb cuts is given in consideration for Developer to undertake the exchange of properties contemplated by the Land Exchange Agreement.
5. **Three Forks.** Pursuant to that Three Forks Regional Activity Center Development Agreement ("Three Forks Development Agreement"), between the City and West 80 Acres, LLC, and Parkside Common Center, LLC (collectively "Three Forks Developers"), the Three Forks Developers have agreed to construct and convey to the City an extension of St. John's Heritage Parkway south of Malabar Road as more particularly described in the Three Forks Development Agreement. In the event that the Three Forks Developers do not proceed with the construction and development of said extension, Developer shall have the right, but not the obligation, to undertake the construction of the above referenced extension as more particularly described in Paragraph 9.3 of the Three Forks Development Agreement. In consideration for constructing the above referenced extension, Developer may receive impact fee credits as contemplated under the Three Forks Development Agreement, provided, however, that Developer shall only be obligated to construct that extension of the St. John's Heritage Parkway commencing at Malabar Road and continuing to the southern boundary of the Developer Property. In the event Developer does not undertake the construction of the extension to the St. John's Heritage Parkway, Developer will not be obligated to make any capital contributions toward the construction of such roadway. The agreement of the City described in this Paragraph 5 to allow Developer to construct the road extension if necessary is given in consideration for Developer to undertake the exchange of properties contemplated by the Land

Exchange Agreement. The Parties agree that in the City shall have no obligation to construct the extension of St. Johns Heritage Parkway.

6. **Obligation to Adhere to Requirements.** The Parties, and their respective successors and assigns, agree to be bound by the provisions of this Agreement, as well as all applicable Federal, State, and local laws, as may be amended or created from time to time. No clause or provision of this Agreement shall be construed to excuse the observance of any requirement of any law by Developer or City. Failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve Developer or City of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.
7. **Covenants Running with the Land/Assignment.** The terms, provisions, covenants, conditions, and restrictions set forth in this Agreement and the rights, privileges, and benefits and duties, obligations, and burdens assigned, granted, imposed, and created pursuant to this Agreement shall and are hereby declared to be covenants running with the title to the Property. This Agreement shall legally benefit and bind Developer and City, and their respective successors and assigns.
8. **Legal Proceedings, Attorneys' Fees.** In the event that either Party shall institute litigation or other legal proceedings against the other to interpret or enforce any term, provision, warranty, covenant, or condition set forth in this Agreement, the prevailing party in such litigation or other legal proceedings following all appeals therefrom, if any, shall be entitled to recover from the non-prevailing party in such litigation or other legal proceedings reasonable attorneys', paralegals', and experts' fees and expenses and court costs incidental thereto, including those incurred on any bankruptcy proceeding or appeal of a lower court decision.
9. **Notices.** All notices provided for in this Agreement shall be in writing and delivered personally (including delivery by courier) or by registered or U.S. Certified Mail, return receipt requested, postage prepaid, or via facsimile to the parties, at the addresses and facsimile numbers set forth below, with a copy forwarded to their respective attorneys, at the addresses and facsimile numbers set forth below, or at such other addresses as the parties shall designate to each other in writing:

AS TO CITY:                      Growth Management Director  
   City of Palm Bay  
   120 Malabar Road SE  
   Palm Bay, Florida 32907

With a copy to:                City Attorney  
   City of Palm Bay  
   120 Malabar Road SE  
   Palm Bay, Florida 32907

AS TO DEVELOPER:        Diaz Treasures, LLC  
   366 Godfrey Road SE  
   Palm Bay, Florida 32909

AND

Alliant Partners Development, LLC  
2000 East 11<sup>th</sup> Avenue, First Floor  
Tampa, Florida 33605  
Attention: Mr. Burton Tuttle

With a copy to: Jonathan P. Jennewein, Esq.  
101 E. Kennedy Blvd., Suite 3700  
Tampa, Florida 333602

The Parties may from time to time notify the other of changes regarding where and to whom notices should be sent by sending notification of such changes pursuant to this Paragraph.

10. **Miscellaneous Provisions.**

- 10.1. *Entire Agreement.* This Agreement constitutes the complete and entire understanding and agreement between City and Developer concerning or with respect to the topics addressed in this Agreement and supersede any and all prior or contemporaneous covenants, agreements, undertakings, statements, representations or warranties, whether written or oral, of any party hereto concerning or with respect thereto.
- 10.2. *Relationship of the Parties.* This Agreement does not evidence the creation of, nor shall it be construed as creating a partnership or joint venture between City and Developer. Developer cannot create an obligation or responsibility on behalf of City or bind City in any manner. Each Party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each Party acknowledges that none of the other Parties hereto is acting as a fiduciary for or as an adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein.
- 10.3. *Agency.* Developer and City, and their agents, contractors and subcontractors, shall perform all activities described in this Agreement as independent entities and not as agents of one another.
- 10.4. *Sovereign Immunity.* Nothing contained in this Agreement shall be construed as a waiver of City's right to sovereign immunity for tort claims under and subject to Section 768.28, Florida Statutes.
- 10.5. *Captions and Paragraph Headings.* Captions and paragraph headings contained in this Agreement are for convenience of reference only and are in no way intended, and shall in no way be deemed, to define, describe, extend or limit the scope, content or intent of this Agreement or of any particular term, provision or paragraph hereof.
- 10.6. *Modification, Amendment, or Termination.* This Agreement may not be changed, modified, amended or terminated except as expressly set forth in a separate writing signed by both of the parties to this Agreement or their respective successors in interest or title.
- 10.7. *Recording in Public Records.* Developer shall ensure that this Agreement is recorded among the public records of Brevard County, Florida promptly after the execution of the Agreement and a copy provided to the City Clerk of the City of Palm Bay.
- 10.8. *Indemnification.* Developer hereby indemnifies and holds City and its elected and appointed officials, employees and agents harmless from and against any and all claims (at law or in equity), disputes, lawsuits, injuries, damages, attorneys' fees and all adverse

matters in any way arising out of or relating to the risks assumed by Developer under this Agreement.

- 10.9. *Default.* Failure by a Party to perform any of its obligations hereunder shall constitute default hereunder. Prior to termination of this Agreement, the non-defaulting Party exercising such right shall first provide the defaulting Party with written notice specifying such default and the actions needed to cure same, in reasonable detail. Upon receipt of said notice, the defaulting Party shall be provided thirty (30) day opportunity within which to cure such default.
- 10.10. *Bankruptcy.* In the event (i) an order or decree is entered appointing a receiver for Developer or its assets or (ii) a petition is filed by Developer for relief under federal bankruptcy laws or any other similar law or statute of the United States, which action is not dismissed, vacated or discharged within sixty (60) days after the filing thereof, then City shall have the right to terminate immediately this Agreement.
- 10.11. *No Liability or Monetary Remedy.* Notwithstanding anything herein to the contrary, Developer and City, on behalf of themselves, and their respective successors and assigns, hereby agree that neither Party shall be liable to the other for any direct, indirect, special, punitive or consequential damages, including but not limited to, damages based on loss of service, revenues, profits or business opportunities, and hereby waive any and all claims and causes of action for the recovery of such direct, indirect, special, punitive or consequential damages.
- 10.12. *Governing Law; Binding Effect and Third-Party Beneficiary.* This Agreement and the construction, interpretation and enforcement thereof shall be construed in accordance with and governed by the laws of the State of Florida and shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors in interest or title. Developer and City expressly acknowledge and agree that Alliant Partners Development, LLC (collectively with its affiliates, successors, and assigns, "Alliant") is a third party beneficiary of this Agreement, and upon Alliant's acquisition of the Developer Property from Developer, all of Developer's right, title, and interest in and to this Agreement shall be automatically assigned to and assumed by Alliant (such that from and after Alliant's acquisition of the Developer Property, Alliant shall be the "Developer" under this Agreement); provided, however, that Alliant shall have no liability or obligations under this Agreement unless and until Alliant acquires the Developer Property. Notwithstanding anything in Paragraph 10.6 or elsewhere in this Agreement to the contrary, (i) so long as Alliant is the contract purchaser of the Developer Property, Developer and the City shall not modify, amend, or terminate this Agreement without Alliant's prior written consent, and (ii) if the contract between Alliant and Developer for the purchase and sale of the Developer Property is terminated (and Alliant does not acquire the Developer Property), this Agreement shall automatically terminate and be null and void.
- 10.13. *Venue.* The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be Brevard County, Florida.
- 10.14. *Construction of Agreement.* The fact that any one of the parties to this Agreement shall have drafted or structured or shall be deemed to have drafted or structured this Agreement or any particular term or provision of this Agreement shall not be considered by any court

or other tribunal in the construction or interpretation of this Agreement or any particular term or provision of this Agreement, either in favor or to the disadvantage of such party.

- 10.15. *Severability.* If any of the terms, provisions, covenants or conditions set forth in this Agreement or the application thereof to any particular circumstance shall be held by any Court having jurisdiction to be illegal, invalid or unenforceable under applicable law, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent otherwise permitted by law.
- 10.16. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be and be taken to be an original and collectively but one instrument.
- 10.17. *Time of the Essence.* Time, and timely performance, is of the essence of this Agreement and of the covenants and provisions hereunder. When a date upon which a specified event shall occur or be performed falls upon a weekend or legal holiday, the time allowed for the event or performance to occur shall be extended to 5:00 p.m. on the next succeeding business day. For purposes of this Agreement, a "business day" shall mean any weekday that the banks in the county in which the Project is located are open for business (thereby excluding Saturdays, Sundays and legal holidays).
- 10.18. The City (i) is duly organized, qualified and an existing entity under the laws of the State of Florida, and (ii) all appropriate authority exists so as to duly authorize the person(s) executing this Agreement to so execute the same and fully bind the City on behalf of the City.
- 10.19. This Agreement is not a Development Agreement under the "Florida Local Government Development Agreement Act," Sections 163.3220 – 163.3243, Florida Statutes. The City is entering into this Agreement under the powers granted by the Municipal Home Rule Powers Act, Chapter 166, Florida Statutes

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on behalf of the respective entities, their successors and assigns.

ATTEST:

**CITY OF PALM BAY**, a Florida municipal corporation,

\_\_\_\_\_  
Terese Jones, City Clerk

\_\_\_\_\_  
J. Robert Medina, Mayor

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on behalf of the respective entities, their successors and assigns.

Witnesses:

  
Signature

Federico Miranda  
Print Name

1495 Dr Martin Luther King Jr Blvd.  
Address

Rebecca Bert  
Signature

Rebecca Bert  
Print Name

1495 DR MLK JR BLVD Melb FL 32901  
Address

STATE OF Florida

COUNTY OF Brevard

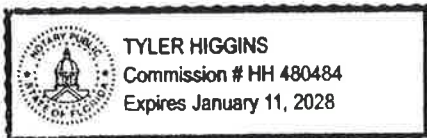
**DIAZ TREASURES, LLC**, a Florida limited liability company,

  
Signature

Ubaldo DIAZ  
Print Name

MANAGER  
Title

The foregoing instrument was acknowledged before me by means of ☐ physical presence OR ☐ online notarization, this 20 day of December, 2024, by Ubaldo Diaz, as owner of Diaz Treasures, LLC, on behalf of the company, who is ☐ personally known to me OR ☐ who has produced FLDL as identification.



  
Notary Public



**EXHIBIT A**  
**Developer Property**

A portion of land lying in the Northeast Quarter of Section 5, Township 29 South, Range 36 East, Brevard County, Florida being more particularly described as follows:

Commencing at the Northeast Corner of said Section 5, Township 29 South, Range 36 East; thence S00°00'50"E along the East line of said Section 5, 33.00 feet to a point on the South right-of-way line of Malabar Road; thence S89°43'55"W along said South right-of-way line of Malabar Road 60.00 feet to the Point of Beginning; thence continue along said South right-of-way line of Malabar Road, S89°43'55"W, 511.24 feet; thence S00°00'50"E parallel to the East line of said Section 5, 511.24 feet; thence N89°43'55"E, 511.24 feet to a point on the West right-of-way line of Canal No.7; thence N00°00'50"W, 511.24 feet along said West right-of-way line of Canal No. 7 back to the Point of Beginning.

Said parcel contains 6.00 acres more or less.

PARCEL ID NO.: 29-36-05-00-2

**EXHIBIT B**  
**City Property**

A portion of the Northeast one-quarter of Section 5, Township 29 South, Range 36 East, Brevard County, Florida and being more particularly described as follows:

Commence at the Northeast corner of said Section 5, Township 29 South, Range 36 East and run S 89°43'55" W along the North line of said Section 5, Township 29 South, Range 36 East a distance of 571.24 feet; thence run S 00°00'50" E, a distance of 33.00 feet to the Point of Beginning of the herein described parcel, said point also being on the South right of way line of Malabar Road (a 66 ft. wide right of way); thence continue S 00°00'50" E, a distance of 674.13 feet; thence S 89°43'55" W a distance of 843.25 feet; thence run N 00°00'50" W a distance of 674.13 feet to the said South right of way line of Malabar Road; thence run N 89°43'55" E along said South right of way line a distance of 843.25 feet to the Point of Beginning.

Containing 13.05 acres, more or less.

EXHIBIT C

**LAND EXCHANGE AGREEMENT**  
**BETWEEN DIAZ TREASURES, LLC AND THE CITY OF PALM BAY**

**THIS LAND EXCHANGE AGREEMENT** ("Agreement") is made and entered into by and between **DIAZ TREASURES, LLC**, a **Florida limited liability company**, whose mailing address is 366 Godfrey Road, SE, Palm Bay, FL, 32909, (hereinafter referred to as the "DIAZ") and **THE CITY OF PALM BAY, FLORIDA**, a Florida municipality, (hereinafter referred to as the "CITY"), whose mailing address is 120 Malabar Road SE, Palm Bay, FL 32907, (hereinafter referred to as the "CITY") (collectively, Diaz and City are the "Parties") with both Parties being Grantors and Grantees hereunder as to certain properties.

**RECITALS:**

WHEREAS, DIAZ owns six (6) acres more or less of a certain parcel of real property more particularly described in Exhibit "A" incorporated hereto (hereinafter referred to as the "Overall Diaz Property") (Brevard County Property Appraiser Tax Parcel Identification Number 29-36-05-00-2).

WHEREAS, CITY owns 13.05 acres more or less of a certain parcel of real property more particularly described in Exhibit "B" incorporated hereto (hereinafter referred to as the "Overall City Property") which is immediately adjacent to the Overall Diaz Property (Brevard County Property Appraiser Tax Parcel Identification Number: 29- 36-05-00-3).

WHEREAS, the CITY desires to acquire certain real property for the eventual widening of Malabar Road and the extension of the St. Johns Heritage Parkway. In connection therewith, the CITY desires to acquire an approximately 2.77 acre parcel of DIAZ's property designated as Parcels C-4 and C-5 – Diaz Exchange Property as depicted on Exhibit "C."

WHEREAS, in exchange for Parcels C-4 and C-5 – Diaz Exchange Property, the CITY desires to transfer to DIAZ an approximately 2.77 acre parcel of the CITY's property designated as Parcel C-2 – City Exchange Property as depicted on Exhibit "C."

WHEREAS, Parcels C-4 and C-5 – Diaz Exchange Property and Parcel C-2 – City Exchange Property shall collectively be referred to as "Exchange Properties."

WHEREAS, the Parties recognize that the value of each property, the benefits inuring to each party in terms of economic development, and other public benefits warrant and serve as adequate consideration for the transaction contemplated herein.

WHEREAS, the signatories to this Agreement represent that they have the authority to execute this Agreement and bind the respective parties. The City Council of the City of Palm Bay has delegated authority to the City Manager (or designee) of the City of Palm Bay to execute this Agreement and to implement the closing of the transaction provided for herein.

**WITNESSETH:**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**SECTION 1. RECITALS**

A. The Recitals set forth above have been relied upon by the Parties, are incorporated herein by reference and are hereby made a part of this Agreement.

B. The purpose of this Agreement is to provide for an exchange of Parcels C-4 and C-5 – Diaz Exchange Property and Parcel C-2 – City Exchange Property between the Parties.

**SECTION 2. PROPERTY TO BE EXCHANGED.**

Pursuant to the terms and conditions described in this Agreement, DIAZ agrees to convey to the CITY Parcels C-4 and C-5 – Diaz Exchange Property. In consideration of DIAZ's conveyance, CITY agrees to simultaneously convey to DIAZ Parcel C-2 – City Exchange Property. Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly acknowledge that Parcels C-4 and C-5 – Diaz Exchange Property is under the threat of eminent domain proceedings by CITY and is being conveyed in lieu of said proceedings. The Parties specifically intend that this Agreement and resulting transaction shall satisfy the requirements of an involuntary conversion pursuant to Internal Revenue Code § 1033.

**SECTION 3. VALUATION OF PARCELS.**

For purposes of this exchange, the parties agree that the value of Parcel C-2 – City Exchange Property is equal to or greater than the value of Parcels C-4 and C-5 – Diaz Exchange Property. Neither party shall pay the other any money to settle any difference in the valuation of Parcel C-2 – City Exchange Property and Parcels C-4 and C-5 – Diaz Exchange Property. The CITY has obtained and provided to DIAZ an appraisal of Parcel C-2 – City Exchange Property from W.H. Benson & Company, File No. 15133-B dated January 31, 2024. The Parties agree that the value of Parcel C-2 – City Exchange Property and Parcels C-4 and C-5 – Diaz Exchange Property is each Four Hundred Forty-five Thousand Seven Hundred Forty-Seven and 00/100 (\$445,747.00).

**SECTION 4. SURVEY**

During the Inspection Period (as defined in Section 8 below), CITY shall, at its expense, obtain boundary surveys of Parcel C-2 – City Exchange Property and Parcels C-4 and C-5 – Diaz Exchange Property. CITY shall provide to DIAZ the boundary surveys and other surveys obtained by the CITY. The surveys shall include the legal description of each of the Exchange Properties, show the square footage of each and shall contain a flood zone certification. The Parties agree that the legal descriptions on the surveys shall be the legal descriptions in the deeds to be exchanged at Closing.

## **SECTION 5. EVIDENCE OF TITLE/TITLE INSURANCE.**

A. Within thirty (30) days of the Effective Date, the CITY shall, at CITY's expense, obtain a title insurance commitment for an owner's policy of marketability title insurance (ALTA Owner's Policy-12/10 with Florida modifications) (the "Title Commitment") covering Parcel C-2 – City Exchange Property and all easements appurtenant thereto, in an amount of 445,747.00, having an effective date subsequent to the Effective Date, issued by a title insurance company authorized to do business in Florida (the "Title Company"). The Title Commitment shall set forth the state of title to Parcel C-2 – City Exchange Property together with all exceptions or conditions to such title, including, but not limited to, all easements, restrictions, rights-of-way, covenants, reservations and all other encumbrances affecting Parcel C-2 – City Exchange Property which would appear in an owner's policy of title insurance if issued. The Title Commitment shall include true, correct and legible copies of all instruments referred to in the Title Commitment as conditions or exceptions to title to Parcel C-2 – City Exchange Property, including liens. CITY shall pay the cost of the title search, lien search, and premium for the owner's policy of title insurance relative to Parcel C-2 – City Exchange Property.

B. Within thirty (30) days of the Effective Date, the CITY shall, at CITY's expense, obtain a title insurance commitment for an owner's policy of marketability title insurance (ALTA Owner's Policy-12/10 with Florida modifications) (the "Title Commitment") covering Parcels C-4 and C-5 – Diaz Exchange Property and all easements appurtenant thereto, in an amount of \$445,747.00, having an effective date subsequent to the Effective Date, issued by a title insurance company authorized to do business in Florida (the "Title Company"). The Title Commitment shall set forth the state of title to Parcels C-4 and C-5 – Diaz Exchange Property together with all exceptions or conditions to such title, including, but not limited to, all easements, restrictions, rights-of-way, covenants, reservations and all other encumbrances affecting Parcels C-4 and C-5 – Diaz Exchange Property which would appear in an owner's policy of title insurance if issued. The Title Commitment shall include true, correct and legible copies of all instruments referred to in the Title Commitment as conditions or exceptions to title to Parcels C-4 and C-5 – Diaz Exchange Property, including liens. CITY shall pay the cost of the title search, lien search and premium for the owner's policy of title insurance relative to the Parcels C-4 and C-5 – Diaz Exchange Property.

## **SECTION 6. DEFECTS IN TITLE**

A. DIAZ shall, within thirty (30) days from receipt of the Title Commitment for the Parcel C-2 – City Exchange Property, review the Title Commitment and notify CITY in writing of such reasonable objections as DIAZ may have to matters set forth in the Title Commitment and the surveys which materially affect the feasibility of the contemplated use. CITY shall, within thirty (30) days after notice from DIAZ, use diligent efforts to correct the defects in title to the Parcel C-2 – City Exchange Property within the time provided. If CITY is unsuccessful in removing the title defects within the time provided, DIAZ shall have the option to: (a) waive the title objections and close the transaction; or (b) terminate this Agreement, thereby releasing the Parties from all rights and obligations under this Agreement. DIAZ must exercise his right to terminate in

writing within five (5) business days of expiration of the CITY's time to cure. Failing to timely do so shall constitute an election to proceed with closing. Any exceptions on the Title Commitment not timely objected to by DIAZ, as provided above, and any so objected to, not cured and accepted as provided above, shall be Permitted Exceptions.

B. CITY shall, within thirty (30) days from receipt of the Title Commitment for Parcels C-4 and C-5 – Diaz Exchange Property, review the Title Commitment and notify DIAZ in writing of such reasonable objections as CITY may have to matters set forth in the Title Commitment and the surveys which materially affect the feasibility of the contemplated use. DIAZ shall, within thirty (30) days after notice from CITY, use diligent efforts to correct the defects in title to Parcels C-4 and C-5 – Diaz Exchange Property within the time provided. If DIAZ is unsuccessful in removing the title defects within the time provided, CITY shall have the option to: (a) waive the title objections and close the transaction; or (b) terminate this Agreement, thereby releasing the Parties from all rights and obligations under this Agreement. CITY must exercise its right to terminate in writing within five (5) business days of expiration of the CITY's time to cure. Failing to timely do so shall constitute an election to proceed with closing. Any exceptions on the Title Commitment not timely objected to by CITY, as provided above, and any so objected to, not cured and accepted as provided above, shall be Permitted Exceptions.

C. CITY shall pay for the cost and recording of any corrective title instruments to Parcel C-2 – City Exchange Property. CITY shall pay for the cost and recording of any corrective title instruments to Parcels C-4 and C-5 – Diaz Exchange Property, but the CITY shall have no obligation to pay any liens on Parcels C-4 and C-5 – Diaz Exchange Property or otherwise satisfy any monetary obligations of DIAZ.

D. Any instrument, assurance or deposit made or given in order to cure a defect in title shall be in such form, on such terms, under such conditions and in such amount as may be reasonably required by the title insurance company insuring title to satisfy said company sufficiently for it to ascertain and accept the facts and/or omit (or insure over) any exception to title not permitted under this Agreement.

#### **SECTION 7. INTEREST CONVEYED**

A. Title to Parcels C-4 and C-5 – Diaz Exchange Property and Parcel C-2 – City Exchange Property shall be conveyed by general statutory warranty deed free and clear of all liens, encumbrances and matters whatsoever and containing all common law covenants, to specifically include, but not be limited to, the covenant of further assurances, except the following:

1. Taxes for the year of Closing and subsequent years.
2. Zoning, restrictions, prohibitions, and other requirements imposed by governmental authority or as shown on the face of a plat.
3. Easements for utilities, drainage and ingress and egress.
4. Any Permitted Exceptions.

## **SECTION 8. INSPECTION PERIOD**

Each party shall have the right to terminate this Agreement at any time on or before midnight on the date that is ninety (90) days after the Effective Date (the "Inspection Period") if either party, in its sole discretion, determines that as a result of the surveys, tests, or inspections the property is unsuitable for its intended purpose. If the party makes such determination during the Inspection Period and gives the other party written notice of its election to terminate this Agreement, then all rights and obligations under this Agreement shall become null and void. Within sixty (60) days of the Effective Date of this Agreement, CITY shall, at its expense, provide to DIAZ a Phase I Environmental Study and a Wetland Delineation of Parcel C-2 – City Exchange Parcel. CITY shall be solely responsible for obtaining its own studies relative to Parcels C-4 and C-5 – Diaz Exchange Parcel.

## **SECTION 9. RIGHT TO ENTER**

Each party agrees that from the Effective Date, officers, attorneys and duly authorized agents of each party, shall be entitled to enter upon the Exchange Properties at any reasonable times for all lawful purposes in connection with this Agreement. Lawful purposes include entering to conduct boundary surveys, topographical surveys, or other surveys and to conduct such tests, evaluations, and studies for the purpose of determining usability and feasibility.

## **SECTION 10. WARRANTIES AND CONDITIONS PRECEDENT**

Except as expressly provide in this Agreement, each party hereto hereby represents and warrants to the party hereto that:

A. The conveying party has good and merchantable fee simple title to the property to be conveyed free and clear of all liens and leasehold interests (except Permitted Exceptions and those liens which respective grantor can and shall remove at Closing) and that respective grantor can convey the same without the joinder of any other persons or entities.

B. The conveying party has no notice or information of any litigation or administrative proceeding threatened or pending against the property to be conveyed or the respective grantor's interest in it.

C. The conveying party has no notice or information indicating the presence of hydrocarbons, hazardous wastes, toxic materials, asbestos, environmental contamination or environmental pollutants on the property to be conveyed and shall not cause or authorize any of the same to be introduced to the property to be conveyed while this Agreement is in force.

D. The Parties agree not to do, nor cause others to do, any act that may diminish or encumber the Exchange Properties.

E. Should any representation by a conveying party prove false as set forth in this Section 10, the respective grantee shall be entitled to terminate this Agreement in

which event all rights and obligations hereunder shall terminate. Each representation, warranty and agreement contained in this Section 10 shall survive Closing and delivery of the instruments transferring title to the Exchange Properties, but the respective grantor shall have no obligations relative to the condition of the property to be conveyed.

F. The respective grantee's obligation to close the sale is expressly conditioned upon:

1. all of the respective grantor's covenants and obligations being fully performed or performance waived by the respective grantee; and
2. all representations and warranties made by the respective grantor in this Agreement being true and correct as of the Closing.
3. If the sale contemplated hereby is not consummated due to a default or inability to perform on the part of the respective grantor, then neither party shall have any further liability to the other; provided, however, that, in the event of respective grantor wrongful refusal or wrongful failure to perform, the respective grantee shall also be entitled to specific performance and all other remedies available at law or in equity.

#### **SECTION 11. ACCESS**

A. At Closing, CITY will grant DIAZ a temporary license to use to the existing driveway and shed on the existing Parcels C-4 and C-5 – Diaz Exchange Property ("Shed") until such time as the use interferes with CITY'S planned use of Parcels C-4 and C-5 – Diaz Exchange Property (the "Temporary License"). The Temporary License shall be in a recordable form reasonably acceptable to both DIAZ and CITY. The CITY shall provide no less than sixty (60) days written notice to DIAZ before revoking the Temporary License ("Temporary Use Termination Date"). DIAZ shall bear the cost of recording the Temporary License. Notwithstanding anything to the contrary contained in this Agreement, DIAZ shall maintain ownership in the Shed after closing and may access, use, and remove the Shed until the Temporary Use Termination Date. In the event DIAZ has not removed the Shed from Parcels C-4 and C-5 – Diaz Exchange Property by the Temporary Use Termination Date, then in such instance, the Shed shall be deemed to be abandoned by DIAZ and CITY shall have the right to remove the Shed from Parcels C-4 and C-5 – Diaz Exchange Property.

B. At Closing CITY will grant DIAZ a permanent nonexclusive easement for ingress and egress and utilities from Malabar Road across Parcel C-6 on Exhibit C to Parcel C-2 – City Exchange Property and Parcel C-3 on Exhibit C (the "Malabar Access Easement"). The Malabar Access Easement shall be fifty (50) feet wide and located at the existing driveway accessing Parcel C-6 on Exhibit C. The Malabar Access Easement may be relocated within Parcels C-5 and C-6 upon DIAZ's written request and the CITY'S written consent which will not be unreasonably withheld. The Malabar Access Easement shall be in a recordable form reasonably acceptable to both DIAZ and CITY. The CITY will bear the cost for recording the Malabar Access Easement.



DIAZ shall responsible to obtain a driveway permit and/or any other permits required to access Malabar Road from the authorities having jurisdiction.

C. At Closing, DIAZ shall provide CITY a permanent nonexclusive easement for ingress and egress together with utilities and drainage across Parcel C-2 – City Exchange Property and Parcel C-3 on Exhibit C (the “Access and Utility Easement”). The Access and Utility Easement shall be fifty (50) feet wide and located adjacent to the southern boundary of the City Exchange Property and the remaining portion of the Overall Diaz Property. The Access and Utility Easement shall be in a recordable form reasonably acceptable to both DIAZ and CITY. The CITY will bear the cost for recording the Access and Utility Easement.

## **SECTION 12. CLOSING**

A. Each respective grantor shall deliver a general statutory warranty deed of the property to be conveyed to the respective grantee. The respective grantee shall pay any applicable and nonexempt transfer taxes and any other costs of recording the said deed to the extent allowed by law, unless otherwise exempt by law.

B. Possession of, and title to, the property to be conveyed shall be delivered to the respective grantee by the respective grantor subject only to the Permitted Exceptions and any other rights expressly provided in this Agreement.

C. The respective grantor shall furnish such typical affidavits as shall be reasonably required by the Closing Agent to remove from the Title Policy the standard printed exceptions, such affidavits to comply, among other things, with Section 1445 of the *Internal Revenue Code* (certifying that the respective grantee is not a foreign person) and such other typical documents reasonably required by the respective grantee or the Closing Agent.

D. *Ad valorem* taxes shall be prorated as set forth herein. Assessments shall be handled as described herein.

E. If all conditions precedent and requirements for closing are met and neither party is in default, the parties shall exchange the deeds for the Exchange Properties as set forth herein.

## **SECTION 13. NOTICES**

A. All required or permitted notices shall be in writing and deemed delivered:

1. when actually received in person if hand-delivered, or
2. on the next day after being deposited with a recognized overnight courier, or
3. on the third day after being deposited in the U.S. Mail, certified letter, postage prepaid, return receipt requested.

To the CITY:           City Manager  
                              120 Malabar Road SE  
                              Palm Bay, Florida 32907

and

City Attorney  
120 Malabar Road SE  
Palm Bay, Florida 32907

With a copy to:       David C. Willis Esq.  
                              Rumberger, Kirk & Caldwell, P.A.  
                              300 South Orange Ave, Suite 1400  
                              Orlando, FL 32801

To DIAZ:               Mr. Ubaldo Diaz  
                              366 Godfrey Road, SE  
                              Palm Bay, Florida 32909

With a copy to:

or such other address as delivered in writing to the other party.

B.     The parties designate the above-named persons as representatives who shall be authorized to act on behalf of the parties with respect to their communications with one another under the terms of this Agreement. The parties shall have the right to replace their representatives at any time without cause by delivering written notice of such replacement to the other party.

C.     E-mails to a party shall not constitute valid notice under the provisions of this Agreement.

#### **SECTION 14. EFFECTIVE DATE**

This Agreement shall become effective only upon its execution by both Parties, and the effective date of the Agreement shall be the date upon which the last of the subscribed parties signs the Agreement ("Effective Date").

#### **SECTION 15. DEFAULT AND REMEDIES**

If a party fails, neglects, or refuses to timely perform any of its obligations under this Agreement, the other party shall have either of the following remedies:

A.     Specific performance; or

B. To terminate this Agreement by written notice to the other party thereby releasing the parties from any obligations or liability under the Agreement.

#### **SECTION 16. BROKERS**

The Parties represent and warrant to one another that they have not dealt with any realtor, broker, or finder concerning the property to be conveyed. The Parties agree to indemnify, defend, and hold one another harmless with respect to any loss, cost, damage, or expense arising out of, or attributable to, any claim to a finder's fee or brokerage commission by any person or entity claiming a commission or finder's fee from the other party by reason of acts or agreements of the party or predicated upon any alleged Agreement between the party and any such broker or finder.

#### **SECTION 17. DATE AND PLACE OF CLOSING**

Provided all conditions precedent and requirements for closing are met and neither party is in default, this Agreement shall be closed by the Closing Agent, David C. Willis, Esq., Rumberger, Kirk & Caldwell, P.A. 300 South Orange Avenue, Suite 1400, Orlando, Florida 32801, on or before June 3, 2024 ("Closing Date"), unless the Closing Date is extended by mutual agreement of the Parties in writing. Closing will take place in Brevard County and may be conducted by mail or electronic means at the election of either Party.

#### **SECTION 18. DOCUMENTS FOR CLOSING**

At the closing, each party shall execute and deliver, or cause to be executed and delivered, the following instruments and documents:

A. A duly executed and acknowledged general statutory warranty deed, acceptable to the title insurance company insuring title to the property to be conveyed, conveying to the respective grantee title to the property to be conveyed, which deed, in addition to all other common law covenants of title, contains the covenant of further assurances.

B. Such Affidavit and other documents in forms reasonably satisfactory to the title insurance company necessary to establish record that the signatures on the deeds and other instruments conveying title to the property to be conveyed are sufficient to bind the respective grantor and convey the property to be conveyed to the respective grantee.

C. An Affidavit that all liabilities, claims, demands or expenses of any kind against the respective grantor arising on or before 12:01 A.M. on the Closing Date are either paid in full.

D. Payment of an amount sufficient to complete closing as to expenses incurred to implement the Closing as described in this Agreement.

#### **SECTION 19. EXPENSES**

Except as otherwise provided for herein, each party shall pay the cost of any tests, or evaluations that it may commission or incur, any environmental audit reports that it may commission or incur, and the cost for any inspections or testing. CITY shall be responsible for providing boundary surveys and legal descriptions to the Exchange Properties, the cost to record both of the general statutory warranty deeds, title search fees, municipal search fees, settlement fees and the premium for the owner's title insurance policy on the Exchange Properties to the extent permitted or not exempt by law at the CITY'S sole cost and expense.

#### **SECTION 20. TAXES AND ASSESSMENTS**

At closing, CITY shall satisfy all real estate taxes and assessments of record, if any, that are or may become a lien against the City Exchange Property. DIAZ shall satisfy all real estate taxes and assessments of record, if any, that are or may become a lien against Parcel C-4 – Diaz Exchange Property.

Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount and other applicable exemptions, if any, allowed for said year. If closing occurs at a date when the current year's millage is not fixed, and current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage.

#### **SECTION 21. RADON; FLOOD PRONE AREAS; ASBESTOS**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present a health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the Brevard County health unit. Likewise, the Exchange Properties may be subject to flooding, and it is the obligation of the respective grantee to ensure that they are satisfied with the condition of the property to be conveyed in all respects. Also, the Exchange Properties may contain asbestos and require remediation. Thus, it is incumbent upon the Parties to evaluate that matter in the context of this Agreement.

#### **SECTION 22. RECORDING**

This Agreement, or notice of it, may not be recorded by either party.

#### **SECTION 23. HEIRS AND ASSIGNS**

This Agreement shall bind and inure to the benefit of the Parties, their respective heirs, successors and assigns. This Agreement may not be assigned without the prior written consent of the other party.

#### **SECTION 24. GOVERNING/CONTROLLING LAW**

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

#### **SECTION 25. LITIGATION COSTS**

In connection with any litigation including, but not limited to, appellate proceedings, arising out of this Agreement, the prevailing party shall be responsible for the non-prevailing party's legal charges, expenses, costs, and reasonable attorney's fees.

#### **SECTION 26. SECTION HEADINGS/CAPTIONS**

The section headings are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement; they shall be ignored in construing this Agreement.

#### **SECTION 27. CONSTRUCTION OR INTERPRETATION OF AGREEMENT**

The fact that one of the parties may be deemed to have drafted or structured any provision shall not affect the interpretation of this Agreement and this Agreement is the result of *bona fide* arms-length negotiations by and between the Parties and, accordingly, the fact that one or another party drafted this Agreement, or any part of it, shall not be considered in construing the particular provision either in favor of or against such party. Both Parties have contributed substantially and materially to the drafting of this Agreement.

#### **SECTION 28. VENUE**

Venue for any dispute shall be in the Eighteenth Judicial Circuit Court in and for Brevard County, Florida.

#### **SECTION 29. TIME OF THE ESSENCE**

Time is of the essence in the performance of the Agreement. The Parties agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Agreement.

#### **SECTION 30. ENTIRE AGREEMENT**

A. This Agreement (including any exhibits) contains the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the Parties. No modification or amendment of this Agreement shall be valid and binding unless executed in writing by the Parties.

B. This Agreement may be executed in any number of counterparts with the same effect as if all Parties had signed the same document. In the event this Agreement is executed in counterparts, the Effective Date of this Agreement shall be determined with reference to the date of the last execution of any of the counterparts.

C. The commitments, obligations, promises, representations, and warranties contained in this Agreement shall survive the closing and delivery of the deeds.

**SECTION 31. AGREEMENT EFFECTIVE**

This Agreement or any modification, amendment, or alteration, shall not be effective or binding upon any of the parties until it has been approved by the City Council of the City of Palm Bay and executed by all Parties.

**IN WITNESS WHEREOF**, the persons signing below represent that they have legal authority to execute this Agreement.

**DIAZ TREASURES, LLC**  
A Florida limited liability company

  
\_\_\_\_\_  
**UBALDO DIAZ, Manager**

Date: 12-18-2024

**THE CITY OF PALM BAY, FLORIDA**

  
\_\_\_\_\_

**SUZANNE SHERMAN** *Scott Morgan, Interim City Manager*  
Date: December 20, 2024

APPROVED AS TO FORM AND LEGALITY  
for the use and reliance of The City of Palm  
Bay, only.

  
\_\_\_\_\_

Patricia D. Smith, Esquire  
City Attorney

Dated: 12/30/2024

**Exhibit "A"**  
**Legal Description of Overall Diaz property**

A portion of land lying in the Northeast Quarter of Section 5, Township 29 South, Range 36 East, Brevard County, Florida being more particularly described as follows:

Commencing at the Northeast Corner of said Section 5, Township 29 South, Range 36 East; thence S00°00'50"E along the East line of said Section 5, 33.00 feet to a point on the South right-of-way line of Malabar Road; thence S89°43'55"W along said South right-of-way line of Malabar Road 60.00 feet to the Point of Beginning; thence continue along said South right-of-way line of Malabar Road, S89°43'55"W, 511.24 feet; thence S00°00'50"E parallel to the East line of said Section 5, 511.24 feet; thence N89°43'55"E, 511.24 feet to a point on the West right-of-way line of Canal No.7; thence N00°00'50"W, 511.24 feet along said West right-of-way line of Canal No. 7 back to the Point of Beginning.

Said parcel contains 6.00 acres more or less.

PARCEL ID NO.: 29-36-05-00-2

**Exhibit "B"**  
**Legal Description of Overall City Property**

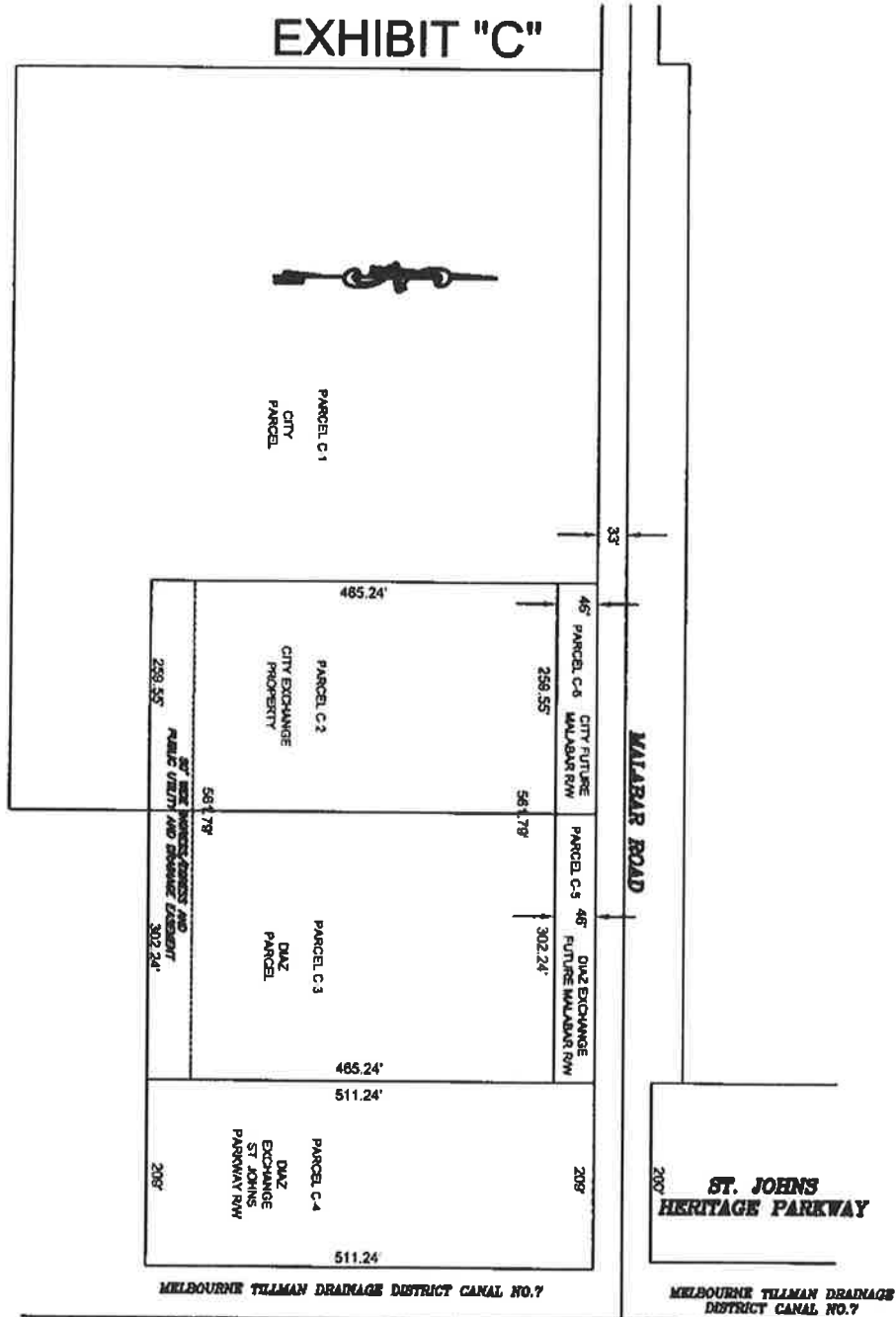
A portion of the Northeast one-quarter of Section 5, Township 29 South, Range 36 East, Brevard County, Florida and being more particularly described as follows:

Commence at the Northeast corner of said Section 5, Township 29 South, Range 36 East and run S 89°43'55" W along the North line of said Section 5, Township 29 South, Range 36 East a distance of 571.24 feet; thence run S 00°00'50" E, a distance of 33.00 feet to the Point of Beginning of the herein described parcel, said point also being on the South right of way line of Malabar Road (a 66 ft. wide right of way); thence continue S 00°00'50" E, a distance of 674.13 feet; thence S 89°43'55" W a distance of 843.25 feet; thence run N 00°00'50" W a distance of 674.13 feet to the said South right of way line of Malabar Road; thence run N 89°43'55" E along said South right of way line a distance of 843.25 feet to the Point of Beginning.

Containing 13.05 acres, more or less.



Exhibit "C"  
Proposed Land Swap Map





[illegible]