

15. Consideration of appropriating funds from Utilities Impact Fee Undesignated Fund Balance for upgrades to the water main improvements by CHM Palm Bay, LLC (owner of the Shoppes at Cypress Bay) (\$245,639).



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Gabriel Bowden, Utilities Director

DATE: November 7, 2024

RE: Consideration of appropriating funds from Utilities Impact Fee Undesignated Fund Balance for upgrades to the water main improvements by CHM Palm Bay, LLC (owner of Shoppes at Cypress Bay) (\$245,639).

SUMMARY:

The Utilities Department requests Council's approval to appropriate funds from Utilities Impact Fee Undesignated Fund Balance for the oversizing of a water main by the owner of the Shoppes at Cypress Bay.

The developer's project required an 8-inch water main; however, the Utilities Department requested the developer to design and install a 16-inch water main, upsizing to accommodate future projected growth in the southeast quadrant of Palm Bay. The developer prepared certified cost estimates to demonstrate the cost of the project with and without oversizing the infrastructure. The difference in cost, \$245,639, was approved as an oversizing credit to the developer's impact fees due.

As part of the water and wastewater system agreement (also known as the Utility Agreement), the owner was given credit towards utilities-related impact fees for the oversizing improvements in the amount of \$245,639. This credit must be capitalized.

REQUESTING DEPARTMENTS:

Utilities
Finance

FISCAL IMPACT:

A total amount of \$245,639 originating from 32909 Impact Fee Undesignated Fund Balance (423-0000-392-3006) will be allocated to Project #25WS25, Account 423-8021-533-6324 (Transmission/Distribution). Once capitalized, this fund will be reduced by \$245,639.

Honorable Mayor and Members of the City Council

Legislative Memorandum

Page | 2

STAFF RECOMMENDATION:

Motion to approve the appropriation of funds on the next scheduled budget amendment for the oversizing of a water main associated with the Shoppes at Cypress Bay, amount \$245,639.

ATTACHMENT:

1. Water and Wastewater System Agreement with CHM Palm Bay, LLC

27/20

Utilities Control Number:

UT-0121-00

**THIS INSTRUMENT PREPARED UNDER
THE DIRECTION OF AND SHOULD BE
RETURNED TO:**

Palm Bay Utilities Director
City of Palm Bay
↗ 250 Osmosis Drive SE
Palm Bay, FL 32909
321-952-3410

CFN 2024137860, OR BK 10104 PAGE
1377, Recorded 07/05/2024 at 02:34 PM, Rachel M.
Sadoff, Clerk of Courts, Brevard County
Pgs:27

For Recording Purposes Only

CITY OF PALM BAY WATER AND WASTEWATER SYSTEM AGREEMENT

THIS AGREEMENT made and entered into this 21 day of June, 2024,
by and between **CHM PALM BAY, LLC**, FEI/EIN# **87-4749909**, authorized to do business
in the State of Florida (hereafter "OWNER" and **CITY OF PALM BAY, FLORIDA**, a
municipal corporation created under the laws of the State of Florida (hereafter the "CITY").

Project: Shoppes at Cypress Bay

Parcel Location IDs or Physical Address: 30-37-03-52-*-C3, 30-37-03-52-*-C6,
30-37-03-52-*-C7, and 30-37-03-52-*-C8

RECITALS

WHEREAS, the OWNER has or is about to develop real property more particularly
described in Exhibit "A" attached to and incorporated herein by reference (hereinafter "the
Property").

WHEREAS, The OWNER is desirous of prompting the modification, replacement,
construction and/or maintenance of central water, wastewater, and reclaimed water
facilities so as to receive adequate service.

WHEREAS, The CITY is willing to provide, in accordance with the provisions and
stipulations hereinafter set out and in accordance with all applicable laws, water and

Owner Initials: MEL

City Initials: F

wastewater service through central water and wastewater facilities, to accept and operate water distribution and wastewater collection systems, and to thereafter operate such facilities so the occupants of the improvements constructed on the Property will receive adequate retail water, wastewater and reclaimed water service from the CITY.

ACCORDINGLY, for and in consideration of the Recitals, the mutual undertakings and agreements herein contained and assumed, and for other good and valuable consideration the receipt and sufficiency of which are acknowledged by the parties, the OWNER and the CITY hereby covenant and agree as follows:

SECTION 1. RECITALS. The above Recitals are true and correct, and form a material part of this Agreement.

SECTION 2. DEFINITIONS. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

2.1 "Service" - the readiness and ability on the part of the CITY to furnish water and wastewater service to the Property.

2.2 "Point of Delivery or Distribution" - the point where the pipes of utility are connected with the pipes of the customer. Unless otherwise indicated, the point of delivery shall be at a point on the customer's lot line.

2.3 "Contribution-in-aid-of-Construction" - The sum of money and/or property represented by the value of the water distribution and wastewater collection systems constructed by OWNER, which OWNER covenants and agrees to pay and/or transfer to the CITY, as a contribution-in-aid-of-construction, to induce the CITY to continuously provide water and wastewater service to the Property.

SECTION 3. EASEMENT AND RIGHT OF ACCESS.

3.1 OWNER hereby grants and gives the CITY the exclusive right or privilege to construct, own, maintain, and operate the water, wastewater and reclaimed water facilities in, under, over and across the present and future streets, roads, easements, reserved utility sites and public places on the Property as provided and dedicated to public use in the record plats, or as provided for in agreements, dedications or grants made otherwise and independent of said record plats.

3.2 OWNER agrees that the foregoing grants include the necessary right of ingress and egress to any part of the Property and that the foregoing grants shall be perpetual.

Owner Initials: MEC

City Initials: 7

3.3 OWNER agrees to dedicate to the CITY an easement, as to be determined by the CITY, so as to allow the CITY to enter the Property and make such alterations, repairs, or other work, as CITY shall deem necessary to achieve efficient service in the water, wastewater and reclaimed water system.

3.4 Any easement shall be dedicated to the CITY and recorded in the Public Records of Brevard County, Florida prior to the Certificate of Occupancy, at OWNER's expense.

3.5 The CITY covenants that it will use due diligence in ascertaining all easement locations; however, should the CITY install any of its facilities outside a dedicated easement area, OWNER, its successors and assigns covenant and agree that the CITY will not be required to move or relocate any facilities lying outside a dedicated easement area so long as the facilities do not interfere with the then or proposed use of the area in which the facilities have been installed. The CITY hereby agrees that all easement grants will be utilized in accordance with the established and generally accepted practices of the Utility industry with respect to the installation of all its water, wastewater and reclaimed water facilities in any of the easement areas.

3.6 OWNER in granting easement herein, or pursuant to the terms of this instrument, shall have the right to grant exclusive or non-exclusive rights, privileges and easement to other entities to provide to the Property any utility services other than water, wastewater and reclaimed water service. The route of the lines from the OWNER's Property to the CITY's Facilities shall be as determined by the CITY, and the OWNER shall obtain, at its own expense, upon direction by the CITY, any and all easements necessary which easements shall be in favor of the City of Palm Bay.

SECTION 4. CONDITIONS TO AND PROVISION OF SERVICE; PAYMENT OF RATES; BILLINGS.

4.1 Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by the OWNER, the CITY covenants and agrees that it will allow the connection of the water distribution, wastewater collection and reclaimed water distribution facilities installed by OWNER to the central water, wastewater and reclaimed water facilities of the CITY in accordance with the terms and intent of this Agreement. Such connection shall be in accordance with rules and regulations of the Department of Health and Rehabilitative Services and the Florida Department of Environmental Protection. The CITY agrees that once it provides water, wastewater, and reclaimed water service to the Property and the OWNER, its successors, and assigns have connected customer installations to its system, that thereafter, the CITY will continuously provide, in accordance with the other provisions of this Agreement, and of applicable laws, including rules and regulations and rate schedules, water, wastewater, and reclaimed water service to the Property in a manner to conform with all requirements of all governmental agencies having jurisdiction over the water and wastewater systems

Owner Initials: 

City Initials: 

of the CITY. The OWNER, its successors, and assigns agree to timely and fully pay all applicable monthly rates, fees, and charges to the CITY and otherwise fully comply with the CITY's rules, regulations, and ordinances applicable to the provision of water, wastewater and reclaimed water service.

4.2 The OWNER, its successors, and assigns agree to pay to the CITY for monthly service within thirty (30) days after statement is rendered by the CITY all sums due and payable as set forth in such statement. Upon failure or refusal to pay the amounts due on statements as rendered, the CITY may, in its sole discretion, terminate service.

4.3 OWNER warrants and represents that it is either the owner of the Property or has the complete authority to act on behalf of the owner in executing this Agreement and that the capacity purchased pursuant to Section 6 shall run with the land. It is acknowledged that this Agreement is for the purpose of providing a volume and rate of service to the property described and that charges to be paid to the CITY for use of the system shall be charged to the ultimate user. Any increase in volume or rate of flow shall make this Agreement void or voidable in the discretion of the CITY, after providing OWNER notice pursuant to this Agreement. The CITY reserves the right to collect additional fees if the volume or rate of flow increases.

4.4 For the use of the CITY's Facilities, the Customer shall pay a user rate established by the City Council of the City of Palm Bay, the billing to be issued by the CITY and paid by the OWNER on a basis as the CITY customarily bills. The Customer shall, immediately upon demand, pay to the CITY a non-interest bearing deposit as determined by the CITY. Upon failure of the Customer to pay the periodic charges for service, the deposit shall immediately forfeit to the CITY. The CITY shall have a right to adjust its service rates to reflect current or future costs, and the Customer agrees to pay all such lawfully imposed rates. The CITY reserves all rights it may have pursuant to Chapter 193, Florida Statutes. In addition to the user rate, a surcharge may be imposed in accordance with Chapter 180, Florida Statutes, if the Property is located outside the incorporated boundaries of the CITY.

4.5 If sewer service is covered by this Agreement, the OWNER agrees to follow the CITY's Code of Ordinances, Chapter 201 (Sewer Use), and that it shall not discharge or cause to be discharged into the sewer lines any of the following described waters or waste:

(a) General Prohibitions. No User shall introduce or cause to be introduced into the Publicly Owned Treatment Works (POTW) any pollutant or wastewater which causes Pass Through or Interference. These general prohibitions apply to all Users of the POTW whether or not they are subject to categorical Pretreatment Standards or any other national, state, or local pretreatment standards or requirements.

Owner Initials:

City Initials:

(b) Specific Prohibitions. No User shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

(1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than one hundred forty degrees Fahrenheit (140°F) (sixty degrees Centigrade (60°C)) using the test methods specified in 40 CFR 261.21;

(2) Wastewater having a pH less than 5.0 or more than 9.0, or otherwise causing corrosive structural damage to the POTW or equipment;

(3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in Interference but in no case solids greater than one-half inch (1/2") or 1.27 centimeters in any dimension;

(4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause Interference with the POTW;

(5) Wastewater having a temperature greater than one hundred fifty degrees Fahrenheit (150°F) (fifty-five degrees Centigrade (55°C)), or which will inhibit biological activity in the treatment plant resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed one hundred four degrees Fahrenheit (104°F) (forty degrees Centigrade (40°C));

(6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause Interference or Pass Through;

(7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

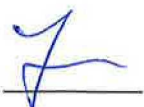
(8) Trucked or hauled pollutants, except at discharge points designated by the Utilities Director in accordance with Chapter 201 of the City's Code of Ordinances;

(9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;

Owner Initials:



City Initials:



(10) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the City's NPDES permit;

(11) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations;

(12) Storm Water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, Noncontact Cooling Water, and unpolluted wastewater, unless specifically authorized by the Utilities Director;

(13) Sludges, Screenings, or other residues from the pretreatment of industrial waste;

(14) Medical Wastes, except as specifically authorized by the Utilities Director in an individual wastewater discharge permit;

(15) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail toxicity test;

(16) Detergents, surface-active agents, or other substances which that might cause excessive foaming in the POTW;

(17) Fats, oils, or greases of animal or vegetable origin in concentrations greater than one hundred (100) mg/l;

(18) Wastewater causing two readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than five percent (5%) or any single reading over ten percent (10%) of the Lower Explosive Limit of the meter.

(c) Pollutants, substances, or wastewater prohibited by Chapter 201 of the CITY's Code of Ordinances shall not be processed or stored in such a manner that they could be discharged to the POTW.


4.6 Pretreatment Facilities

(a) The OWNER shall provide wastewater treatment as necessary to comply with the CITY's Code of Ordinance, Chapter 201 (Sewer Use) and comply with all categorical Pretreatment Standards, Local Limits, and the prohibitions within the time limitations specified by EPA, the State, or the Utilities Director, whichever is more stringent.

Owner Initials:



City Initials:



(b) Any facilities necessary for compliance shall be provided, operated, and maintained at the OWNER's expense.

(c) Detailed plans describing such facilities and operating procedures shall be submitted to the Utilities Director for review and shall be acceptable to the Utilities Director before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the OWNER from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the CITY under the provisions of Chapter 201 of the Code of Ordinances.

4.7 ADDITIONAL MEASURES

(a) The CITY may require the OWNER to implement additional pretreatment measures whenever deemed necessary in accordance with the CITY's Code of Ordinances.

SECTION 5. DESIGN, REVIEW, CONSTRUCTION, INSPECTION, AND CONVEYANCE OF FACILITIES.

5.1 To induce the CITY to provide water and wastewater service, and to continuously provide customers located on the Property with water and wastewater services, OWNER hereby covenants and agrees to pay for the construction, and to transfer ownership and control to the CITY as a contribution-in-aid-of-construction, the on-site and off-site water distribution, wastewater collection and reclaimed water facilities referred to herein. All design and construction shall be in accordance with CITY rules, regulations, and utility standards.

5.2 OWNER shall pay a reasonable fee to the CITY as outlined in its rate resolutions and ordinances, as amended from time to time, to review engineering plans and specifications of the type and in the form as prescribed by the CITY, showing the on-site and off-site water distribution, wastewater collection and reclaimed water facilities proposed to be installed to provide service to the subject Property. The CITY will advise OWNER's engineer of any sizing requirements as mandated by the CITY's system extension policy and utility standards for the preparation of plans and specifications for facilities within the Property. If applicable, such detailed plans may be limited to a phase of the Property, and subsequent phases may be furnished from time to time. However, each such phase, if applicable, shall conform to a master plan for the development of the Property and such master plan shall be submitted to the CITY concurrent with or prior to submission of plans for the first phase. All such plans and specifications shall be submitted to the CITY and no construction shall commence until CITY has approved such plans and specifications in writing. The complete plans and specifications, as to be approved by the CITY's Utilities Director or designee, for Improvements to Facilities for Utility Service to service the Property and the connection to the CITY's system shall be prepared by the OWNER's Professional Engineer, who shall be registered in the State of

Owner Initials:

City Initials:

Florida. All construction shall be in strict conformity with the final plans and specifications as approved by the CITY. The CITY, its Utilities Director, or other representative, shall have the right to inspect any and all portions of the Improvements to Facilities whether in public rights-of-way or on private property and upon notification of any deviation from the approved plans and specifications, the OWNER shall immediately make modifications as directed by the CITY. No construction shall be commenced without final approval of the plans and specifications by the CITY's Utilities Department Director. After approval, OWNER shall cause to be constructed, at OWNER's expense, the water distribution, wastewater collection and reclaimed water facilities as shown on all plans and specifications.

5.3 During the construction of the water distribution, wastewater collection and reclaimed water facilities by OWNER, the CITY shall have the right to inspect such installation to determine compliance with the plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for pressure, filtration, line and grade, and all other normal engineering tests required by specifications and/or good engineering practices. Complete as-built plans shall be submitted to the CITY upon completion of construction. CITY inspections of the off-site and on-site facilities will not delay the construction schedule.

5.4 Fees will be levied by the CITY to cover the cost of plan review and inspection as set forth in rate resolutions and ordinances, as amended from time to time.

5.5 By these presents, upon completion and approval by the CITY, the OWNER shall transfer to the CITY, all right, title, and interest, free and clear of any encumbrances whatsoever, to the on-site and off-site water distribution, wastewater collection and reclaimed water facilities installed by OWNER's contractor, pursuant to the provisions of this Agreement. Such conveyance is to take effect without further action upon the acceptance by the CITY of said installation. As further evidence of said transfer to title, and upon the completion of the installation and prior to the rendering of service by the CITY, OWNER shall convey to the CITY, by bill of sale, or other appropriate documents, in form satisfactory to the CITY's counsel, the complete on-site and off-site water distribution, wastewater collection and reclaimed water facilities as constructed by OWNER and approved by the CITY. OWNER shall further cause to be conveyed to the CITY, all easements and/or rights-of-way covering areas in which off-site water distribution, wastewater collection and reclaimed water facilities are installed by recordable document in form satisfactory to the CITY's counsel. All conveyance of easements and/or rights-of-way shall be accompanied by a title policy or other evidence of title (including letter from attorney), satisfactory to the CITY, establishing OWNER's rights to convey such continuous enjoyment of such easements or rights-of-way for those purposes set forth in this Agreement to the exclusion of any other person in interest. The use of easements granted by OWNER shall include the use by other utilities so long as such uses by electric, telephone, or gas utilities, or cable television, etc., that do not interfere with use by the CITY. The CITY agrees that the acceptance of the water

Owner Initials: MEC

City Initials: J

distribution wastewater collection and reclaimed water facilities installed by OWNER, for service, or by acceptance of the bill of sale, shall constitute that assumption of responsibility by the CITY for the continuous operation and maintenance of such systems from that date forward.

5.6 All installations by OWNER or its contractors shall be warranted for one (1) year from the date of acceptance by the CITY. Mortgagee(s), if any, holding prior liens on such properties shall be required to release such liens, subordinate their position and join in the grant or dedication of the easements or rights-of-way. The water distribution, wastewater collection and reclaimed water facilities shall be covered by easements if not located within platted or dedicated rights-of-way. CITY will allow OWNER to assign warranty to CITY with written approval from OWNER's contractors that such assignment meets their approval and they will fulfill the terms and conditions of the warranty.

5.7 Payment of the contributions-in-aid-of-construction does not and will not result in the CITY waiving any of its rates, rate schedules or rules and regulations, and their enforcement shall not be affected in any manner whatsoever by OWNER making the contribution. The CITY shall not be obligated for any reason whatsoever nor shall the CITY pay any interest or rate of interest upon the contribution. Neither OWNER nor any person or other entity holding any of the Property by, through or under OWNER, or otherwise, shall have any present or future right, title, claim or interest in and to the contributions or to any of the water, wastewater and reclaimed water facilities and properties of the CITY, and all prohibitions applicable to OWNER with respect to refund of contributions, interest payment on said contributions and otherwise, are applicable to all persons or entities. No user or customer of water, wastewater and reclaimed water service shall be entitled to offset any bill or bills rendered by the CITY for such service or services against the contributions. OWNER shall not be entitled to offset the contributions against any claim(s) of the CITY.

5.8 OWNER specifically assumes all liability in any way arising from this Agreement and will defend, indemnify and hold the CITY harmless from any judgment, decree, order, demand, or claim (including costs or attorney's fees), which in any way arise from this Agreement including the design and construction of the system or from the act or omission of any OWNER or its agents. Should the OWNER fail for any reason to indemnify, defend and hold harmless the CITY, the CITY shall have the right to enforce the terms of this Agreement by placing a lien against the Property upon which this Agreement runs. The CITY shall be entitled to: (1) foreclose upon said lien and recover any and all costs incurred, attorney's fees expended and both pre-judgment and post-judgment interest on this lien pursuant to Chapter 55, Florida Statutes at the highest lawful rate as then established by the Chief Financial Officer of the Florida Department of Financial Services or (2) enforce this Agreement in any other manner allowed by law, including termination of service, said election being wholly within the discretion of the CITY. The parties hereto acknowledge receipt of other and additional good and valuable consideration for this provision.

Owner Initials: MEL

City Initials: 7

5.9 All costs relating to the Improvements to Facilities including but not limited to labor, overhead, taxes, licenses, application fees, easement acquisitions, lift stations, pumps, pipes, materials, and any other direct or indirect costs related to installation of the Improvements to Facilities shall be borne by the OWNER and shall be fully paid by the OWNER. All of the CITY's costs in connection with the Improvements to Facilities including but not limited to charges by the CITY's Utilities Director, inspections, maintenance, administrative expenses, and any other costs incurred by the CITY in connection with this matter shall be paid by the OWNER. In addition to such costs, the OWNER shall pay to the CITY fees described in Section 6. The CITY's fees and costs shall be paid by the OWNER within three (3) days of the effective date of this Agreement unless other payment arrangements have been established in Section 6 of this Agreement. Any such billing by the CITY to the OWNER shall be for items specified in Section 6 and may not necessarily cover all of the CITY's expenses, which shall be billed to the OWNER separately. It is agreed that no reservation of capacity will be made by the CITY until all fees, set forth in Section 6, have been paid. Payment of these fees shall in no way be construed as to relieve the OWNER of its obligation to pay any further sums due in accordance with this Agreement that are charged subsequent to the completion of such connection. The OWNER shall install, at the OWNER's own expense, a backflow control device in accordance with the CITY's specifications.

SECTION 6. PROJECT SPECIFIC CONDITIONS. Notwithstanding any other section in this Agreement, the following conditions are mutually agreed between OWNER and the CITY. In the event of a conflict between Section 6 and the rest of the Agreement, Section 6 shall prevail.

6.1 The OWNER is requesting the following Equivalent Residential Connections (ERCs) to serve the project:

(a) Water plant capacity of **50** Equivalent Residential Connections (ERC) at 225 Gallons Per Day (GPD) per ERC with a stipulated flow rate of **11,250** gallons per day for potable water.

(b) Water plant capacity of **N/A** Equivalent Residential Connections (ERC) at 225 Gallons Per Day (GPD) per ERC with a stipulated flow rate of **N/A** gallons per day for potable water used for irrigation purposes.

(c) Wastewater plant capacity of **50** Equivalent Residential Connection (ERC) at 210 Gallons Per Day (GPD) per ERC with a stipulated flow rate of **10,500** gallons per day.

(d) Reclaimed water capacity of **N/A** Equivalent Irrigation Connections (EIC) at 500 Gallons Per Day (GPD) per EIC with a stipulated flow rate of **N/A** gallons per day.

Owner Initials: MLC

City Initials: J

6.2 Fees and charges in the amount of **\$293,328.99** for this project are itemized as follows:

(a) A water capital (plant capacity) charge of **\$102,450.00**, based on the agreed-upon **50** ERCs for potable water, at a rate of **\$2,049.00** per ERC.

(b) A water capital (plant capacity) charge of **N/A**, based on the agreed-upon **N/A** ERCs for potable water for irrigation uses, at a rate of **\$2,049.00** per ERC.

(c) A water main extension charge of **N/A** based upon **N/A** feet at a rate of **\$18.80** per front foot.

(d) A wastewater capital (plant capacity) charge of **\$165,000.00**, based on the agreed-upon **50** ERCs, at a rate of **\$3,300.00** per ERC.

(e) A sewer main extension charge of **\$14,177.96** based upon **478.50** feet at a rate of **\$29.63** per front foot.

(f) Recording Fee of **\$153.00**.

(g) Utilities Plan Review and Inspection Fee of **\$8,298.03**.

(h) Water Meter Charges: **N/A – to be provided by OWNER**

QUANTITY	METER SIZE	UNIT COST	TOTAL COST
0	3/4"	\$ 332.06	\$ 000.00
0	1"	\$ 402.42	\$ 000.00
0	1 1/2"	\$ 655.46	\$ 000.00
0	2"	\$ 819.64	\$ 000.00

(i) Deposits:

SERVICE	DEPOSIT AMOUNT
Water	\$ 1,350.00
Sewer	\$ 1,900.00

6.3 Off-Site Water Main Extension

(a) The OWNER'S Engineer of Record certifies that the proposed development's hydraulic share of the proposed extension is an **8-inch** water main. The City is requiring the **8-inch** water main be increased to a **16-inch** water main

Owner Initials: MEL

City Initials: [Signature]

to accommodate future growth. Therefore, the Owner is requesting reimbursement for the oversizing of the water main.

(b) The OWNER's Engineer of Record certifies that the total construction cost for the **8-inch** water main is **\$246,650.56** and that the total construction cost for the **16-inch** water main is **\$492,288.90** (see Exhibit "B").

(c) The CITY and OWNER agree that the additional cost of oversizing of the water main equates to **\$245,638.34 ("Water Oversize Cost")**.

(d) **\$102,450.00** shall be applied to the water capital (plant capacity) charge as described in Section 6.2(a).

(e) **\$143,188.24**, in lieu of being returned to the OWNER as a cash payment, shall be applied against the wastewater capacity (plant capacity) charge as described in Section 6.2(d).

6.4 After applying the hydraulic share credit to this Agreement, the remaining balance owed by the OWNER is **\$47,690.75**. This balance must be paid within three (3) days of the Effective Date of this Agreement.

6.5 The OWNER will pay an Annual Guaranteed Revenue / Reserve Capacity charge equal to twelve (12) times the monthly residential base facility charge per equivalent residential connection. The OWNER will be billed, in arrears, on an annual basis twelve (12) months after the effective date of this Agreement for the previous twelve (12) months and continuing until the reserved facilities are utilized. If connection is made prior to twelve (12) months after the effective date of this Agreement, the charge will be prorated and billed at the time of connection. This charge is subject to change from time to time as approved by the City Council.

6.6 The Owner will be required to pay annual fire protection service charges for **one (8) inch fire line** servicing the property; rates are established in the City's Code of Ordinances.

6.7 The above charges are based upon the actual current approved connection charges. OWNER agrees that if charges change or if new charges are approved and in effect at the time of connection, OWNER will pay the difference between the current charges and those in effect at the time of connection as well as any new charges required at the time of connection.

6.8 The charges contained in this Agreement are based upon the estimated gallons of usage to be supplied to OWNER. The CITY reserves the right to revise such figures to conform to the actual usage, which figures may be computed at any time by averaging any consecutive three (3) month period during any calendar year, during the

Owner Initials:



City Initials:



life of this Agreement. OWNER agrees to pay additional capital charges for usage exceeding the allotted gallons per day.

6.9 Any line extensions or other facilities required to be installed by the CITY to supply the services set forth above may be constructed by the CITY prior to the dates when payments may be due from OWNER, and OWNER shall still be obligated for such payments as are required in this Agreement.

6.10 The CITY is not obligated to provide plant capacity or service in excess of the amounts estimated to be supplied in this Agreement, and only as permitted by the appropriate federal, state and local regulatory agencies. All charges have been based upon estimated usage supplied by the OWNER, but OWNER acknowledges, understands and agrees that the CITY may require OWNER to curtail use that exceeds such estimated requirements.

6.11 All rates and charges made by the CITY to OWNER, and to the future customers who will be serviced by the CITY, shall be made in accordance with rules and regulations as may from time to time be amended, adopted and approved by the City of Palm Bay in accordance with its regulatory authority contained in applicable statutes, ordinances, rules and regulations.

6.12 The OWNER will notify the CITY in writing not less than sixty (60) days prior to estimated date of completion of construction of facilities requiring water and sewer service, and the date on which OWNER will require initial connection to water and sewer mains.

6.13 The provisions of this Agreement shall not be construed as establishing a precedent as to the amount or basis of contributions to be made by OWNER or other customers, or the acceptance thereof on the part of the CITY, for other CITY system extensions that may be required hereafter by OWNER and which are not presently covered by this Agreement.

6.14 The OWNER agrees to pay all sums due and payable to the CITY for the Guaranteed Revenue / Reserve Capacity within fifteen (15) days after the billing statement has been mailed or presented by the CITY to the OWNER as set forth in such statement. Upon failure or refusal to pay the amounts due on statements as rendered, the CITY may, after ten (10) days advance written notice, in its sole discretion, discontinue service. A discontinuance of service will mean that all previous fees paid by the OWNER as stated in this Agreement will be forfeited. Service may be continued again upon payment of all unpaid Guaranteed Revenue / Reserve Capacity Charges and payment of current or new and additional connection charges. A credit of previous fees paid for connection charges will be applied.

Owner Initials: MZC

City Initials: [Signature]

6.15 The OWNER shall be responsible to operate and maintain any onsite infrastructure and related appurtenances in accordance with all regulatory requirements and local ordinances.

SECTION 7. EVIDENCE OF TITLE. At least thirty (30) days prior to the CITY's acceptance of the water distribution and wastewater collection facilities, at the expense of the OWNER, OWNER agrees to either deliver to the CITY an Abstract of Title, brought up to date, which abstract shall be retained by the CITY, and remain the property of the CITY, or to furnish the CITY with respect to the Property, an opinion of title from a qualified attorney at law or a title commitment from a qualified title insurance company, which opinion or commitment shall include a current report on the status of the title, setting out the name of the legal title holders, the outstanding mortgages, taxes, liens, and covenants. The provisions of this Section are for the exclusive rights of service contained in this Agreement. Any mortgage or lien holder having an interest in the Property shall be required to join in the grant of exclusive service rights set forth in this Agreement. Title standards shall be the same as those applicable to real estate generally adopted by the Florida Bar and in accordance with Florida law.

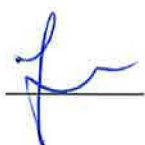
SECTION 8. OWNERSHIP OF FACILITIES. OWNER agrees with the CITY that the water distribution , wastewater collection and reclaimed water facilities conveyed to the CITY for use in connection with providing water , wastewater and reclaimed water services to the Property, shall at all times remain in the complete and exclusive ownership of the CITY, and any entity owning any part of the Property or any residence or building constructed or located thereon, shall not have the right, title, claim or interest in and to such facilities, or any part of them, for any purpose, including the furnishing of water, wastewater and reclaimed water services to other persons or entities located within or beyond the limits of the Property. Such parts of the Facilities that are on the Customer's property shall at all times be maintained and repaired by the Customer; however, the CITY shall have the right, at any time and without notice to the Customer, to inspect such Facilities and the Customer, upon the CITY's direction, shall make such repairs and maintenance as the CITY directs.

SECTION 9. APPLICATION OF RULES, REGULATIONS, AND RATES. The CITY may establish, revise, modify and enforce rules, regulations and rates covering the provision of water, wastewater and reclaimed water service to the property owners on the Property. Such rules, regulations and rates are subject to the approval of the City Council of the City of Palm Bay, Florida. Such rules and regulations shall at all times be reasonable and subject to regulation as may be provided by law or under contract. Rates charged to OWNER or customers located upon the Property shall be identical to rates charged for the same classification of service. All rules, regulations, and rates in effect, or placed into effect in accordance with the preceding, shall be binding upon OWNER, upon any other entity holding by, through or under OWNER and upon any customer of the water, wastewater, and reclaimed water service provided to the Property by the CITY.

Owner Initials:



City Initials:



SECTION 10. PERMISSION TO CONNECT REQUIRED. OWNER, or any owner of any parcel of the Property, or any occupant of any residences or buildings located thereon, shall not have the right to, and shall not connect to, any customer installation to the water, wastewater and reclaimed water facilities of the CITY until payment is received for such connection and approval for such connection has been granted by the CITY, such approval not to be unreasonably withheld.

SECTION 11. BINDING AGREEMENT; ASSIGNMENTS BY OWNER. This Agreement shall be binding upon and shall inure to the benefit of OWNER, the CITY and their respective assigns and successors by merger, consolidation or conveyance. This Agreement shall not be sold, conveyed, assigned or otherwise disposed of by OWNER without the written consent of the CITY first having been obtained. The CITY agrees not to unreasonably withhold such consent.

SECTION 12. NOTICES; PROPER FORM. Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger or by mail to:

CITY: City of Palm Bay
120 Malabar Road SE
Palm Bay, FL 32907
Attention: CITY MANAGER

OWNER: CHM Palm Bay, LLC
6312 Kingston Pike, Suite C
Knoxville, TN 37919

SECTION 13. SURVIVAL OF COVENANTS. The rights, privileges, obligations and covenants of OWNER and the CITY shall survive the completion of the work of OWNER with respect to completing the water, wastewater and reclaimed water facilities and services to any phase area and to the Property as a whole.

SECTION 14. ENTIRE AGREEMENT; AMENDMENTS; APPLICABLE LAW; ATTORNEY'S FEES. This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between OWNER and the CITY, made with respect to the matters herein contained. Upon execution, this Agreement shall constitute the entire agreement between OWNER and the CITY. Any additions, alterations or variations of the terms of this Agreement shall be void *ab-initio*, and no provisions of this Agreement may be waived by either party, unless such additions, alterations, variations or waivers are set forth expressly in writing and duly signed by both OWNER and the CITY. This Agreement shall be governed by the laws of the State of Florida, as well as all ordinances of the CITY and it shall be and become effective immediately upon execution by both parties hereto.

Owner Initials: 

City Initials: 

SECTION 15. DISCLAIMERS; LIMITATIONS ON LIABILITY.

15.1 STATUS. The parties deem each other to be independent contractors, and not agents of the other.

15.2 INDEMNIFICATION. Up until the date of conveyance to the CITY of all on-site water , wastewater and reclaimed water facilities, OWNER will indemnify, save and hold harmless the CITY against all liability, losses, damage or other expenses, including reasonable attorney's fees which may be imposed upon, incurred by or asserted against the CITY by reason of any negligence on the part of the OWNER or its employees, agents, contractors, licensees or invitees; any personal injury or property damage occurring on or about the property or any part thereof; or any failure on the part of the OWNER to perform or comply with any covenant required to be performed or complied with against the CITY by reason of any such occurrences, OWNER will, at OWNER's expense, resist or defend any such action or proceeding. Provided further, however, OWNER shall have no obligation with respect to claims arising out of the intentional or negligent conduct of the CITY or its employees, agents, contractors, licensees or invitees or of third parties not included in the definitions above. The liability and immunity of the CITY is governed by the provisions of §768.28, Florida Statutes, and nothing in this agreement is intended to extend the liability of CITY or to waive any immunity enjoyed by CITY under that statute. Any provisions of this Agreement determined to be contrary to §768.28, or to create any liability or waive any immunity except as specifically provided in §768.28, shall be considered void *ab initio*.

15.3 FORCE MAJEURE. If the performance by a party obligated under this Agreement is limited, delayed or prevented in whole or in part by applicable law or action adopted or taken by any federal, state or local governmental authority and not attributable to an act or omission of said Party, or by any Acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics, war, civil disorders, terrorism, strikes or other labor difficulties, shortages or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, or by any other cause not reasonably within said Party's control, whether or not specifically mentioned here, said Party shall be excused, discharged and released of performance to the extent such performance or obligation is so limited, delayed or prevented by such occurrence without liability or any kind.

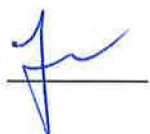
15.4 DISCLAIMER OF THIRD-PARTY BENEFICIARIES. This agreement is solely for the benefit of and shall be binding upon the formal parties hereto and their respective authorized successors and assigns, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third-party not a party to this agreement or an authorized successor or assignee thereof.

15.5 DISCLAIMER OF SECURITY. Notwithstanding any other provision of this agreement, the OWNER expressly acknowledges (1) that it has no pledge of or lien upon any real property (including, specifically, the CITY's system), any personal property, or any existing or future revenue source of the CITY (including, specifically, any revenues

Owner Initials:



City Initials:



or rates, fees, or charges collected by the CITY in connection with the CITY's system) as security for any amounts of money payable by the CITY under this agreement; and (2) that its rights to any payments or credits under this agreement are subordinate to the rights of all holders of any stocks, bonds, or notes of the CITY, whether currently outstanding or hereafter issued.

15.6 LIMITATION OF CITY LIABILITY. Nothing contained in this paragraph or elsewhere in this agreement is in any way intended either to be a waiver of the limitation placed upon the CITY's liability as set forth in section 768.28, Florida Statutes, or to extend the CITY's liability beyond the limits established in said section 768.28; and no claim or award against the CITY shall include attorney's fees, investigative costs, expert fees, suit costs, or pre-judgment interest.

SECTION 16. COVENANT NOT TO ENGAGE IN UTILITY BUSINESS. The OWNER, as a further consideration for this Agreement, agrees that it shall not engage in the business of providing water, wastewater and reclaimed water service to the Property during the period of time the CITY, its successors and assigns, provide water, wastewater and reclaimed water service to the Property, it being the intention of the parties hereto that the foregoing provision shall be a covenant running with the land and under said provision and also under other provisions of this Agreement the CITY shall have the sole and exclusive right and privilege to provide water service, wastewater and reclaimed water service to the Property and to the occupants of each residence, building or unit constructed thereon.

SECTION 17. RECORDATION. The parties hereto agree that an executed copy of this Agreement and Exhibits attached hereto shall be recorded in the Public Records of Brevard County, Florida at the expense of the OWNER.

SECTION 18. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced, and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared severable.

SECTION 19. AUTHORITY TO EXECUTE AGREEMENT. The signature by any person to this Agreement shall be deemed a personal warranty by that person that he has the full power and authority to bind the entity for which that person is signing.

SECTION 20. ARMS LENGTH TRANSACTION. Both parties have contributed to the preparation, drafting and negotiation of this document and neither has had undue influence or control thereof. Both parties agree that in construing this Agreement, it shall not be construed in favor of either party by virtue of the preparation, drafting, or negotiation of this Agreement.

Owner Initials:

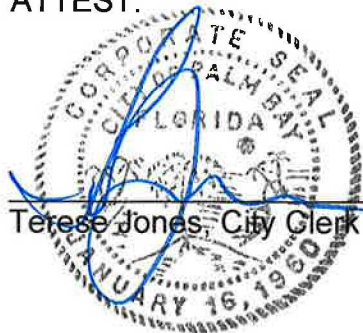


City Initials:



IN WITNESS WHEREOF, OWNER and the CITY have executed or have caused this Agreement, with the named Exhibits attached, if any, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ATTEST:



Terese Jones, City Clerk

**CITY OF PALM BAY, FLORIDA, a
municipal corporation created under
the laws of the State of Florida**

By: _____
Suzanne Sherman
City Manager

Date: 6-21-2021

FOR THE USE AND RELIANCE
OF PALM BAY ONLY.
APPROVED AS TO FORM.

Thomas Marinelli
Interim Utilities Director

Date: 6/18/21

Owner Initials: MSC

City Initials: JS

OWNER:

CHM Palm Bay, LLC

Signature: _____

Print Name: _____

Title: _____

Date: _____

[CORPORATE SEAL]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 4th day of JUNE, 2024, by Miles E. Cullom, Jr. / President of CHM Palm Bay, LLC, which is authorized to do business in the State of Florida on behalf of the LLC.

He/she is personally known to me or has produced N/A as identification and did (~~did not~~) take an oath.

NOTARY PUBLIC SEAL OR STAMP:



SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC, STATE OF Tennessee

MY COMMISSION EXPIRES ON: 8/29/2026

Owner Initials: _____

City Initials: _____

EXHIBIT "A"

Lots C3, C6, C7, & C8 of Cypress Bay Commercial Center Phase 1, according to the plat thereof, as recorded in Plat Book 74, Page 84 through 88, Public Records of Brevard County, Florida.

Owner Initials:

MGC

City Initials:

J

Shoppes at Cypress Bay
Offsite Water Main
January 31, 2024



16" Water Main Contracted with TRC

Item	Quantity	Unit
Mobilization	1	LS
Layout	1	LS
A-Built	1	LS
Maintenance of Traffic	1	LS
16" Water Main	2340	LF
12" Water Main	20	LF
16" Bell Restraints	16	Each
12" Bell Restraints	2	Each
16" 90 Degree Bend	1	Each
16" 45 Degree Bend	2	Each
16" WM Cap	1	Each
16"x12" Reducer	1	Each
16" Gate Valve	3	Each
16"x16"x8" Tee	5	Each
8" Water Main	80	LF
8" Gate Valve	5	Each
8"x2" Tap Plug	5	Each
Total General Conditions & Paving:		

Total cost difference for upsizing the offsite water main:

\$245,638.24

8" Water Main Construction Cost Estimate

Item	Quantity	Unit
Mobilization	1	LS
Layout	1	LS
A-Built	1	LS
Maintenance of Traffic	1	LS
8" Water Main	2420	LF
12" Water Main	20	LF
8" Bell Restraints	16	Each
12" Bell Restraints	2	Each
8" 90 Degree Bend	1	Each
8" 45 Degree Bend	2	Each
8" WM Cap	1	Each
8"x12" Reducer	1	Each
8" Gate Valve	8	Each
16"x16"x8" Tee	5	Each
8"x2" Tap Plug	5	Each
Total General Conditions & Paving:		

Total General Conditions & Paving:

\$246,650.56

ms

Prepared by and return to:

John B. Waters III
Long, Ragsdale & Waters. PC
1111 N. Northshore Drive. Suite S-700
Knoxville, TN 37919

JOINDER

The undersigned, **LAUNCH CREDIT UNION**, a Florida state chartered credit union with offices located at 300 South Plumosa Street, Merritt Island, Florida 32952 (the "Lot Owner") is the fee simple owner of the property described as Lot C-2 (the "Lot Owner") on the plat titled Cypress Bay Commercial Center Phase 1 ("Plat"), of record in Brevard County, Florida Public Records Book 74, Page 84.

The Lot Owner hereby joins in the City of Palm Bay Water and Wastewater System Agreement (the "Utility Agreement") between the **CITY OF PALM BAY, FLORIDA** (the "City") and **CHM PALM BAY, LLC** ("CHM") and agrees that the Utility Agreement is and shall be an encumbrance upon Lot C-2 as if the same had been executed and recorded prior to the Lot Owner's acquisition of Lot C-2. The Lot Owner does hereby join in, consent to and subordinate its interest in Lot C-2 to said Utility Agreement, including without limitation all dedications, reservations, easements, restrictions and other matters shown or stated in the Utility Agreement pertaining to Lot C-2, for the uses and purposes therein expressed.

Notwithstanding, the joinder and subordination set forth above, the Lot Owner does not agree to undertake any of the covenants, obligations or liabilities of CHM under the Utility Agreement with regard to the construction of the facilities and any financial obligations of the City related to same as set out in the Utility Agreement, and CHM shall remain liable and obligated therefore.

In order to apply for Service under the Utility Agreement, the Lot Owner will make an appropriate application to the City and provide the required plans and other information for its development of Lot C-2. The City, the Lot Owner and CHM will enter into an Addendum to the Utility Agreement providing for such Service and providing that the Lot Owner will pay for such Service. In said Addendum, the Lot Owner will be allocated a portion of the ERCs as described in Section 6 of the Utility Agreement in accordance with the calculations and procedures of the City. The Lot Owner will be required to pay standard City fees, including but not limited to impact fees relating to such ERCs and/or other water/sewer charges; provided, however, if CHM has previously paid the City such fees for such ERCs being allocated to Lot C-2, then such payment by the Lot Owner shall be made to CHM as reimbursement therefore.

[Signatures on next page]

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed on the date set forth below.

WITNESS #1:

[Signature]

Joseph Mirachi

Print Name

300 S Plumosa St Merritt Island FL

Address

WITNESS #2:

[Signature]

Jane Schropp

Print Name

300 S Plumosa St Merritt Island FL

Address

LAUNCH CREDIT UNION,

a State chartered credit union

By: [Signature]
Kevin LeBeau, Chief Financial Officer

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me a duly authorized agent for Grantor, and by means of ☒ physical presence or ☐ online notarization, this 10 day of June, 2024, by Kevin LeBeau, as Chief Financial Officer of **LAUNCH CREDIT UNION**, a Florida state chartered credit union, for and on its behalf. S/He ☒ is personally known to me or ☐ has produced _____ as identification.

[Signature]

Notary Public

Printed Name: Mark D. Brewer

My commission expires: July 7, 2025

[Notary Seal]



MARK D. BREWER
Commission # HH 149617
Expires July 7, 2025
Bonded Thru Budget Notary Services

Prepared by and return to:

John B. Waters III
Long, Ragsdale & Waters, PC
1111 N. Northshore Drive, Suite S-700
Knoxville, TN 37919

JOINDER

The undersigned, **PORT VILLAGE, LLC.**, a Florida limited liability company, whose address is 402A High Point Drive, Suite 101, Cocoa, Florida 32926, is the fee simple owner of the property described as Lot C-4 (the "Lot Owner") on the plat titled Cypress Bay Commercial Center Phase 1 ("Plat"), of record in Brevard County, Florida Public Records Book 74, Page 84.

The undersigned does hereby join in the City of Palm Bay Water and Wastewater System Agreement (the "Utility Agreement") between the **CITY OF PALM BAY, FLORIDA** (the "City") and **CHM PALM BAY, LLC** ("CHM"), and agrees that the City Utility Agreement is and shall be an encumbrance upon Lot C-4 as if the same had been executed and recorded prior to undersigned's acquisition of Lot C-4. The undersigned does hereby join in consent to and subordinate its interest in Lot C-4 to said City Utility Agreement, including without limitation all dedications, reservations, easements, restrictions and other matters shown or stated in the City Utility Agreement, pertaining to Lot C-4, for the uses and purposes therein expressed.

Notwithstanding the joinder and subordination set forth above, the Lot Owner does not agree to undertake any of the covenants, obligations or liabilities of CHM under the Utility Agreement with regard to the construction of the facilities and any financial obligations to the City related to same set out in the Utility Agreement, and CHM shall remain liable and obligated therefore.

In order to apply for Service under the Utility Agreement, the Lot Owner will make an appropriate application to the City and provide the required plans and other information for its development of Lot C-4. The City, the Lot Owner and CHM will enter into an Addendum to the Utility Agreement providing for such Service and providing that the Lot Owner will pay for such Service. In said Addendum, the Lot Owner will be allocated a portion of the ERCs as described in Section 6 of the Utility Agreement in accordance with the calculations and procedures of the City. The Lot Owner will be required to pay standard City fees, including but not limited to impact fees relating to such ERCs and/or other water/sewer charges; provided, however, if CHM has previously paid the City such fees for such ERCs being allocated to Lot C-4, then such payment by the Lot Owner shall be made to CHM as reimbursement therefore.

[Signatures on next page]

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed on the date set forth below.

PORT VILLAGE, INC., a Florida limited liability company

WITNESS #1:

Virginia Respess
VIRGINIA RESPASS
Print Name

402 High Point Dr Cocoa Fl
Address 32926

By: [Signature]

Summit M. Shah, Manager

WITNESS #2:

[Signature]
Dinesh Pokkala
Print Name

402 High Point Dr. Cocoa, FL 32926
Address

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me a duly authorized agent for Grantor, and by means of ☒ physical presence or ☐ online notarization, this 5 day of JUNE, 2024, by Summit M. Shah, as Manager of **Port Village, Inc.**, a Florida limited liability company, for and on its behalf. S/He ☒ is personally known to me or ☐ has produced Personally Known as identification.



[Notary Seal]

[Signature]
Notary Public

Printed Name: Lauren Smedley

My commission expires: 08.02.2025

Prepared by and return to:

John B. Waters III
Long, Ragsdale & Waters, PC
1111 N. Northshore Drive, Suite S-700
Knoxville, TN 37919

JOINDER

The undersigned, **PROFESSIONAL RESOURCE DEVELOPMENT, INC.**, an Illinois corporation, c/o WMG Acquisitions, LLC, a Delaware limited liability company, whose address is 270 West Plant Street, Winter Green, Florida 34787 (the "Lot Owner") is the fee simple owner of the property described as Lot C-5 on the plat titled Cypress Bay Commercial Center Phase 1 ("Plat"), of record in Brevard County, Florida Public Records Book 74, Page 84.

The Lot Owner hereby joins in the City of Palm Bay Water and Wastewater System Agreement (the "Utility Agreement") between the **CITY OF PALM BAY, FLORIDA** (the "City") and **CHM PALM BAY, LLC** ("CHM") and agrees that the Utility Agreement is and shall be an encumbrance upon Lot C-5 as if the same had been executed and recorded prior to the Lot Owner's acquisition of Lot C-5. The Lot Owner does hereby join in, consent to and subordinate its interest in Lot C-5 to said Utility Agreement, including without limitation all dedications, reservations, easements, restrictions and other matters shown or stated in the Utility Agreement pertaining to Lot C-5, for the uses and purposes therein expressed.

Notwithstanding anything contained herein of the Utility Agreement to the contrary, the Lot Owner does not undertake the covenants of CHM under the Utility Agreement with regard to the construction of the facilities or any related fees or costs associated therewith as set out in Section 5 thereof, and CHM shall remain liable and obligated therefore. In addition to the foregoing, CHM shall be responsible for the payment of all water main and/or sewer extension charges related to the development of Lot C-5 pursuant to a separate agreement with Lot Owner.

In order to apply for Service under the Utility Agreement, the Lot Owner will make an appropriate application to the City and provide the required plans and other information for its development of Lot C-5. The City, the Lot Owner and CHM will enter into an Addendum to the Utility Agreement providing for such Service and providing that the Lot Owner will pay for such Service. In said Addendum, the Lot Owner will be allocated a portion of the ERCs as described in Section 6 of the Utility Agreement in accordance with the calculations and procedures of the City. The Lot Owner will be required to pay standard City fees, including but not limited to impact fees relating to such ERCs as set forth in Section 6.2(a) and 6.2(d) of the Utility Agreement; provided, however, if CHM has previously paid the City such fees, then such payment by the Lot Owner shall be made to CHM as reimbursement.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed on the date set forth below.

[Signatures on next page]

WITNESS #1:

[Signature]

Kristen Johnson

Print Name

270 W Plant St
Winter Garden FL 34787

Address

WITNESS #2:

[Signature]

Brett Moreau

Print Name

270 W Plant St
Winter Garden FL 34787

Address

**PROFESSIONAL RESOURCE
DEVELOPMENT, INC.,** an Illinois
corporation

By: [Signature]

Curtis Frost Chief Executive Officer

STATE OF Florida

COUNTY OF Orange

The foregoing instrument was acknowledged before me a duly authorized agent for Grantor, and by means of ☒ physical presence or ☐ online notarization, this 3rd day of June, 2024, by Curtis Frost, as Chief Executive Officer of **Professional Resource Development, Inc.**, an Illinois corporation, for and on its behalf. She/He ☒ is personally known to me or ☐ has produced _____ as identification.



[Notary Seal]

[Signature]
Notary Public

Printed Name: Jennifer L. Nadeau

My commission expires: 3/6/2028