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Return recorded document to:
City of Daytona Beach Records Clerk
P.O. Box 2451
Daytona Beach, FL 32115-2451

PROJECT BETA PLANNED DISTRICT AGREEMENT

The CITY OF DAYTONA BEACH, FLORIDA, a Florida municipal corporation located in Volusia County, Florida ("City"), **CONSOLIDATED-TOMOKA LAND CO.**, a Florida corporation ("CTLC"), **INDIGO DEVELOPMENT LLC**, a Florida limited liability company ("Indigo"), **GATEWAY CENTER OF DAYTONA BEACH OWNERS ASSOCIATION, INC.**, a Florida not for profit corporation the record title property owner (collectively the "Owners"), and **VAN TRUST REAL ESTATE, LLC**, a Florida limited liability company (the "Developer") hereby agree and covenant, and bind their heirs, successors, and assigns, as follows. A portion of the property is part of an expired Planned District, this Agreement revokes and supersedes the agreement to the extent that it affects the property included in this Agreement.

1. PROPERTY DESCRIPTION AND OWNERSHIP.

A. The property subject to this Agreement consists of approximately 47.03 +/- acres of real property ("Property") and is described in Exhibit "A", attached hereto and by reference made a part hereof.

B. The Property is under the sole ownership of Owners

C. The Property is divided into 4 parcels and, for ease of reference will be referred to by the following and as indicated in Exhibit B:

- (1) Lot 1;
- (2) Lot 2;
- (3) Lot 3; and
- (4) Lot 4

Lot 1 and Lot 2 are under contract for sale to the Developer.

2. EXHIBITS.

The Exhibits listed below are by reference made a part hereof, and copies or reduced size copies are attached hereto. Full-sized copies of the Exhibits shall be retained by the City Clerk and shall be controlling in case of any ambiguity in the Exhibits. In the event of a conflict between the graphic illustrations of any Exhibit and the textual provisions of this Agreement, the textual provisions shall

control.

Exhibit A: Property legal description.

Exhibit B: Planned Development Plan prepared by Parker Mynchenberg and Associates.

3. DEVELOPMENT PLAN.

A. Owners have designated the Property as “**Project Beta Planned District**”.

B. The Property will be developed as a **Planned Development – General (PD-G)** pursuant to the City’s Land Development Code (LDC). Development shall be controlled by the LDC and the terms and provisions of this Agreement. In the event of a conflict between this Agreement and the LDC or other ordinances, this Agreement shall control. If this Agreement fails to address a particular subject or requirement, the applicable M-4 Industrial Park zoning district requirements of the LDC or other City ordinance in effect at the time of site plan approval shall control.

C. Exhibit B (Planned Development Plan) generally depicts a potential layout of buildings, parking areas, driveways, access points and other potential features or improvements to the Property. To the extent actual buildings, features, improvements and uses are shown on the PD Plan, they are shown only for illustrative purposes. Layout and quantity/scale of improvements may change based on the needs of a particular end user of the Property. Owner or Developer shall be permitted to relocate such buildings and uses as the market dictates, or as desired, so long as the relocation is otherwise consistent with this Agreement. All changes shall be subject to the Architectural and Design standards in Section 8 of this Agreement.

D. **LOT DEVELOPMENT CRITERIA.** The following lot development criteria shall apply to the Property:

- (1) Maximum building height 50 feet;
- (2) Maximum FAR 0.35¹;
- (3) Minimum setbacks: side 10 ft.; front 50 ft.; rear 10 ft.
- (4) 45% Maximum building coverage;
- (5) 20’ Minimum building separation;
- (6) 20% Minimum open space;
- (7) 80% Maximum impervious surface area;
- (8) Slopes within any dry retention and wet detention pond(s) shall be 4:1 without a fence;
- (9) Dry retention pond(s) shall count toward open space requirements; and
- (10) Landscape requirements shall achieve an average width of 50 feet but at no point shall the required Scenic Thoroughfare Overlay (“STO”) landscape yard be less

¹ This shall apply to the entire PD Property and not on a per lot basis.
{045260-002 : RMERR/RPRIN : 02190574.DOCX; 5}

than 25 feet, along Dunn Avenue and Mason Avenue. Landscape material shall be addressed during the Site Plan process.

E. SUBDIVISION/PLATTING. Owners or Developer may cause the Property to be subdivided in accordance with the requirements of the LDC, except as provided herein. Platting for the Property will be determined by the timing of project development. Irregularly shaped lots shall be permitted and are not subject to the intensity and density standards of the LDC as long as (i) all applicable requirements of Section 3.D. are met, and the lot meets minimum lot frontage requirements applicable to the M-4 industrial zoning district; or (ii) the lot is a common area or common facility as described in Section 7. The Developer shall be permitted to process the division of the Property as a minor subdivision consistent with the requirements of the LDC, subject to review by Development Services Department. No curb cuts or driveways are approved to parcels at this time.

F. SITE PLAN REVIEW. All site plans shall be reviewed in accordance with the procedures established by the LDC, and be generally consistent with this Agreement and the PD Plan. To the extent that one or more parcels is under contract for purchase by a Developer, where said Developer does not close on the parcel the Owner may alter the PD Plan for that parcel without amending this Agreement.

G. PHASING. Development of the Property may occur in multiple phases, but it is not required. The order, size and configuration of phases may be modified, and each proposed phase shall be required to install all necessary infrastructure, including all necessary easements and dedications, in order to stand alone, with the support of previously built phases. Each phase shall be built so as to be consistent with applicable City standards and this Agreement. In the event of a conflict between this Agreement and other City standards, this Agreement shall control. Permits for development of phases or sub-phases shall be submitted for approval through the City's Site Plan process. Temporary staging of construction equipment and material shall be permitted on parcels in undeveloped phases during construction.

4. CONFORMANCE WITH COMPREHENSIVE PLAN; CONCURRENCY; PERMITS.

A. The City has determined that the Property is suitable in size, location, and character for the uses proposed, and that the uses proposed are consistent with the City's comprehensive plan.

B. Owners or Developer shall be responsible for obtaining all development permits required by the LDC and applicable federal and state laws. Owners or Developer specifically acknowledges that approval of this Agreement does not constitute a Concurrency Certificate as required by the LDC, and that Owners or Developer will be required to separately obtain a Concurrency Certificate or, where applicable, to enter into proportionate fair share agreement. Approval of this agreement and exhibits is not a permit to begin clearing, to begin site work, or to begin construction without necessary permits.

C. The City agrees to issue the required permits for development of the Property in the manner set forth in this Agreement and the LDC.

5. PERMITTED USES.

The following uses are permitted within the Property, subject to compliance with the Use Specific Standards set forth in the LDC²:

Building, heating, plumbing or electrical contractor's storage yard
Educational scientific, or industrial research and development
Electric motor repair, machine shop, or tool repair shop
General industrial services
Heavy equipment sales, rental, or storage
Leather-working or upholstery establishment
Motion Picture studio
Printing of other similar reproduction facility
Repair or scientific or professional instruments
Bakery
Bottling plant
Brewery, winery, or distillery
Business services offices
Cabinet or furniture manufacturing
Contractor's office
Craft distillery
Fish hatchery
Food processing (without slaughtering)
Hydroponic garden facility
Industrial Services
Manufacturing, assembly, or fabrication, heavy
Manufacturing, assembly, or fabrication, light
Moving and storage facility
Other office facility
Professional services offices
Showroom wholesale
Truck or freight terminal
Vegetable or fruit packing
Warehouse, distribution
Warehouse, storage

The following accessory uses are permitted on the Property, subject to LDC use specific standards:

Business and Professional Services (offered in support of the permitted uses above, limited to no more than 30% of total building square footage.)

Retail Sales (offered as accessory to manufacturing uses.)

² Where any of the permitted uses abut an inconsistent use, the Owner shall ensure that a proper buffer is provided, consistent with the requirements of the LDC. Such buffer shall be determined at site plan.

Food Preparation, Cooking, Processing and Assembly

Fleet fueling station and truck maintenance and support facility, including outside parking of tractor trailers

Fuel/oil/bottled gas distribution

Liquid or compressed natural gas or propane fueling facility for fleet use only

6. INFRASTRUCTURE.

A. **STORMWATER.** An on-site stormwater retention/detention facilities will be constructed in conjunction with the development. The stormwater retention/detention facilities will be maintained at a level consistent with the standards of the St. Johns River Water Management District and the City of Daytona Beach. Collection and transmission facilities shall be located pursuant to an approved site plan, or site plans approved for individual lots or structures.

B. **UTILITIES.** Water and sewer service shall be provided by the City of Daytona Beach. All utilities shall be constructed underground. Owner or Developer will also provide easements and grants for the installation, maintenance and upkeep of the public utilities including water, sewer, reclaim water, electrical and telephone, as well as cable television and fiber, if available. Water, sewer, reclaim water infrastructure must be constructed to current City standards and consistent with this Agreement. Offsite extensions for water, sewer and reuse shall be provided as required and will be determined at the time of site plan.

Owner acknowledges that flows of sewer from the Property into the City's public sewer system will be limited based on the capacity of City Lift Station 105 and the 6" sewer force main (the "Force Main Segment") that connects the Lift Station to another sewer force main on Williamson Boulevard. Collectively, Lift Station 105 and the Force Main Segment are referred to as the "Regional City Sewer Facilities". Whenever the City determines that a proposed development of a lot or parcel within the Planned Development may cause the existing capacity of the Regional City Sewer Facilities to be exceeded, the City may require the project developer/property owner to do either of the following as a condition of site plan approval:

- (i) Provide the required upgrades to the Regional City Sewer Facilities, at the developer/property owner's sole cost;
- (ii) Where the City determines that the nature of the impact from the proposed development project is such that it would not otherwise be feasible (from a cost or technical standpoint) to construct an upgrade, the City may instead require the developer/property owner to pay the City a sum sufficient to pay for a portion of the cost of the smallest upgrade in capacity that would, in the City's determination, be feasible. The portion to be paid will be the proposed development's pro rata share of the excess capacity created by the upgrade determined by the City to be feasible. For example, where the proposed development would cause existing flows to exceed capacity of Lift Station 105 by 10%, and the City determines that an upgrade would need to increase the capacity of the Lift Station by 50% in order to be feasible, the City will require the owner or developer to pay 20% of the projected cost of such upgrade. In

such instance, the City will retain the payment made and apply it toward the cost of the upgrade when it is made.

In either instance, the term, “cost,” includes permitting, design, and construction; and the upgrade will be made to City standards.

C. ROADS. Roadways shall be generally consistent with Exhibit B. However, the Owner or Developer shall be permitted to modify the location and configuration of access driveways and internal roads and walkways so long as the modifications are otherwise consistent with this Agreement and the LDC.

D. PARKING. Parking areas shall be generally consistent with Exhibit B. However, the number of off-street parking spaces required shall be calculated consistent with the end use of the building and sufficient to support the maximum number of employees and guests anticipated to be present at the site at any given time. Where the building area for the end use is proposed at less than 70% industrial, the parking shall be calculated consistent with the requirements of the LDC. However, where the building area for the end use is proposed at 70% or more industrial, the parking shall be calculated consistent with the needs of the industrial use, but no less than 0.5 spaces per 1,000 square feet of building area.

E. LANDSCAPING REQUIREMENTS. Landscaping shall be provided consistent with the LDC unless otherwise provided herein. Clustering of typical landscape requirements shall be permitted so long as the net total landscape material as required herein is still met, including requirements related to interior parking lot and parking lot islands. Additionally, building perimeter landscape materials may be relocated to the perimeter of the Property so long as the net total landscape materials do not materially decrease from the LDC Requirements. Coordination of landscaping shall be addressed at Site Plan; however, the following landscape buffers shall be required for the Property’s overall periphery:

(1) Minimum Perimeter Landscape Buffers:

a) Dunn Avenue.: The total buffer shall achieve an average width of 50 feet but at no point shall the buffer be less than 25 feet. The buffer shall include the landscape material required for a full 50-foot buffer.

b) Mason Avenue: The total buffer shall achieve an average width of 50 feet but at no point shall the buffer be less than 25 feet. The buffer shall include the landscape material required for a full 50 foot buffer.

c) All other Perimeters: 10 ft.

7. COMMON AREA MAINTENANCE.

As used in this section, “common areas” and “common facilities” refer to all lands and all facilities that are intended to be set aside for common ownership, use, or benefit, whether or not identified as common areas on Exhibit B, such as conservation easements and retention ponds. The term excludes property and facilities accepted by the City for public ownership and maintenance. If the Owner

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or Developer seeks to create one or more common areas or common facilities, the following conditions will apply:

A. The Owner or Developer may, but is not required to, form and incorporate a property owners' association prior to recordation of the plat. The association shall be responsible for operation, maintenance, and control of all common areas and common facilities. The association shall have authority to establish and assess dues and fees upon its members in order to recoup the cost of maintenance, and the power to impose and enforce liens against those members who fail to pay such assessments. All owners of the property within the project shall be members of the property owners' association, except for property conveyed or dedicated to the City or other governmental agency for a public purpose. Owner or Developer may from time to time add additional covenants and restrictions or make changes in association by-laws as may be required to guarantee that the project will be developed in accordance with the policies outlined in this Agreement. The final plat shall convey a sufficient property interest to the association to enable the association to perform its responsibilities for common areas and common facilities and shall include such language as the City may deem necessary to reflect the association's responsibilities.

B. In the event that the property is platted, and development is able to stand alone the Owner or Developer shall not be required to form a property owners' association but shall record deed covenants as necessary to ensure the platted parcel owner maintains the common area or feature consistent with City requirements. If the development is not able to stand alone, a property owners' association shall be created consistent with Subparagraph A. above.

C. If the Owners or Developer elects to cause a single division as referenced in Section 3, as an alternative to complying with Subsection 7.A. above, with the City's approval the Owners or Developer may create and record one or more deed covenants requiring the owner of the divided lot to maintain the common area or feature in perpetuity, and acknowledging that the City shall have no obligation to maintain such common area or feature. The deed covenant shall be recorded prior to or simultaneously with the division (e.g. prior to or simultaneously with the recordation of the deed of the property created through such division).

D. Except as provided herein., Owners or Developer shall complete construction and installation of all common areas and common facilities prior to the issuance of the first certificate of occupancy for the Property or any portion thereof; or, for those common areas or common facilities serving only a phase of development, prior to the issuance of the first certificate of occupancy for that phase.

E. The City may allow postponement of construction of those common facilities that may be susceptible to damage due to remaining construction, subject to Owners or Developer's provision of adequate assurances that the work will be done. For example, the City may require the Owner or Developer to provide sufficient easements or restrictive covenants and require the posting of a bond sufficient to cover 120% of the cost of such facilities according to certified estimates. Any bond shall be in a form approved by the City Attorney.

8. ARCHITECTURAL AND DESIGN STANDARDS.

A. All buildings and accessory structures constructed within the Property shall be developed in compliance with the requirements of this section, and with the applicable provision of the LDC relating to architectural standards, where they do not conflict with the provisions of this section.

B. All of the following requirements shall be met within the Property:

(1) All buildings and accessory structures shall be consistent with a common architectural theme. The theme shall be established by harmoniously coordinating the general appearance of all buildings and accessory structures, including but not limited to: exterior wall finishes or materials; roof styles, slopes, and materials; colors; and architectural details and ornamentation.

(2) All structures shall complement one another and shall convey a sense of quality and permanence.

(3) Corporate prototype design and materials shall be permitted provided they comply with the provisions of this section.

(4) False or real windows shall be provided on all elevations visible from public right of way in sufficient size and number to complement the proportions of the building.

(5) Construction of buildings shall not be required to comply with the provisions of section 6.12.C. of the LDC as specifically modified herein:

(6) Reveal/paint wall design patterns will be provided to break up long walls.

(a) Glazing or similar treatments will be provided at proportional spacing to be consistent with the wall design patterns.

(b) Roof wall lines will be staggered at various locations to provide interest.

(c) Any roof mounted equipment visible from the street shall be painted the same color as the exterior walls.

(d) Truck courts shall be screened to the greatest extent reasonably possible taking advantage of the main thoroughfare street frontage landscape buffers.

(7) Fencing constructed on the Property shall be a maximum of nine (9) feet in height. Any fencing constructed along a Major City Thoroughfare shall be constructed behind the landscape buffer.

(8) Consistent with the provisions of the LDC, uses requiring loading docks, garage doors, or mini-storage buildings along a Major City Thoroughfare shall be screened using landscaping or architectural features.

(9) Through the LDC site plan review process, the City reserves the right to review the proposed construction of all buildings and structures, to recommend the substitution or inclusion of colors, materials, architectural details, and ornamentation, and to require or prohibit the use of the same to ensure compliance with the requirements of this section.

(10) All buildings and accessory structures shall generally be consistent with this Agreement unless, prior to issuance of the initial building permit, Owner or Developer submits and the City approves a different conceptual elevation. The City shall have the right to reject any proposed elevation which does not meet the requirements herein, or which involves the use of fewer architectural details and ornamentation than are set forth in this Agreement.

(10) No permanent outside display or storage shall be permitted unless adequately screened and approved by City staff.

(11) No vending machines shall be permitted on outside walkways or other outdoor pedestrian areas.

(12) The physical appearance of all parking lot lighting fixtures shall be consistent.

9. ENVIRONMENTAL CONSIDERATIONS.

A. Development of the Property shall comply with the LDC tree preservation requirements. Owner or Developer shall comply with all rules, statutes, and regulations pertaining to protected wildlife species, including but not limited to the rules and permitting requirements of the Florida Game and Freshwater Fish Commission concerning gopher tortoises.

B. To the extent that any wetlands existing on the Property will be impacted, they will only be impacted as permitted by the St. John's River Water Management District and any other agency with jurisdiction over the same. The City shall defer to the determinations made by such agencies regarding wetland impact.

10. SIGNAGE.

The amount and type of signage on the Property shall be permitted as provided herein. Owner or Developer shall be permitted to relocate such signage, so long as the relocation is otherwise consistent with this Agreement. The dimensions of the signs shall be substantially as described herein. Actual copy area and sign shape may be revised so long as the sizes of the signs and the total sign copy area are not increased. Signage shall be permitted during the Site Plan approval process and shall be approved provided that it is substantially consistent with the description herein or meets applicable LDC requirements for Industrial Districts to the extent not addressed herein.

Permitted = Currently Permitted in Industrial Districts
 Staff = Staff Recommended Signage in PD Agreement

Sign Type	Max Number of Signs per Parcel		Total Maximum SF Sign Area per Parcel		Maximum Sign Height	
	Permitted	Staff	Permitted	Staff	Permitted	Staff
Ground Sign (Monument)	1	2	1 SF per 1 linear ft. of lot frontage, up to 120 SF	No Change	8 Feet	No Change
Wall	n/a	n/a	2 SF per 1 linear ft. of lot frontage, up to 200 SF	2 SF per 1 linear ft. of lot frontage, up to 300 SF	n/a	n/a
Roof (per M3)	n/a	n/a	2 SF per 1 linear ft. of lot frontage, up to 200 SF	No Change	n/a	n/a
Projecting (per M3)	1	1	1 SF per 2 linear ft. of lot frontage	No Change	n/a	n/a

11. EFFECTIVE DATE; COMPLETION SCHEDULE.

A. This Agreement shall be effective upon execution by all parties. The restrictions on use and development imposed by this Agreement shall be binding upon all successors in interest in the Property, unless and until the City alters or eliminates such restrictions in the course of its actions as zoning authority.

B. Application shall be submitted for construction permits for the initial development of the Property, within five (5) years of the approval of this Agreement by the City Commission. The filing of an appeal of the land development order by any person shall toll the time for permitting until final resolution of the appeal. If development is phased, application for construction permits for subsequent phases shall be submitted within ten (10) years from the date of initial approval.

C. Construction of initial development shall be substantially complete within eight (8) years of the approval of this Agreement. Construction of any subsequent phase shall be substantially complete within fifteen (15) years of the initial approval of this Agreement.

D. One 12-month extension of the scheduled application dates may be permitted as a minor modification to this Agreement.

E. Failure to comply with the schedule set out above shall cause the development rights granted pursuant to this Agreement to lapse.

12. MINOR MODIFICATIONS.

(1) The following may be administratively authorized as minor modifications to this Agreement:

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(2) Amendments to an Exhibit that are necessary for compliance with the provisions of this Agreement, the LDC, or extra-jurisdictional permitting requirements, and address technical considerations that could not reasonably be anticipated during the Planned Development approval process;

(3) Have no material effect on the character of the approved PD district, the basic concept and terms of the PD Plan/Agreement. These may include, but are not limited to, the following:

a) Structural alterations that do not significantly affect the basic size, form, style, and appearance of principal structures;

b) Minor changes in the location and configuration of streets and driveways that do not adversely affect vehicular access and circulation on or off the site;

c) Minor changes in the location or configuration of buildings, parking areas, landscaping, or other site features;

d) Minor changes in the location and configuration of public infrastructure facilities that do not have a significant impact on the City's utility and stormwater management systems;

e) Increases of five (5) percent or less in the total number of parking spaces.

(4) Modifications of up to 20% to any of the dimensional requirements and associated Exhibit revisions, where such modifications are necessary to address minor Exhibit errors or unanticipated conditions that reasonably need to be addressed to ensure the development plan can be implemented, EXCEPT:

a) Modifications, such as to floor area ratios, that increase intensity or density of the entire project or any phase by more than 2%;

b) Modifications that increase building height or decrease setbacks, yards, or landscaping along the perimeter of the Property by more than 10%;

c) Modifications that, when combined with previously approved minor and substantial modifications, would result in a cumulative change of more than 20% of the original requirement for the area in question; and

d) Modifications that would unduly impact City-owned public utilities.

B. Requests for minor modifications shall be submitted in writing on forms provided by the City. Requests shall be reviewed pursuant to the general technical review process described in the LDC.

C. Denial of a requested minor modification shall be issued in writing to the applicant. Upon denial, or if more than 60 days elapses after the submittal of a completed application without a decision by the City, the applicant may apply for an amendment to the agreement.

D. Approved modifications shall be noted on the official plan documents.

13. AMENDMENTS.

Any revision to this Agreement other than a minor modification as described above shall require an amendment approved by the City Commission after review and recommendation by the Planning Board. Requests for an amendment must be submitted in writing and, except as otherwise provided herein, shall be processed in accordance with the LDC. Notice of public hearings shall be provided as if the application is one to rezone property.

A. In recognition of the City's general authority to rezone and legislate land uses and zoning requirements, all signatories to this Agreement and all individual lot owners, fee titleholders, mortgagees, or lien holders who now or hereafter own property subject to the this Agreement, agree as follows:

(1) The property owners association in the event that it is established pursuant to Section 7 above shall be authorized to represent and execute amendments to the Agreement on behalf of all lot owners other than the owners of lots directly impacted by the amendment.

(2) If the property owners association fails to retain its corporate status, then all directly impacted owners shall be authorized to represent and execute an amendment on behalf of all owners not directly impacted who have received notice of the proposed amendment as required by this Agreement or applicable law.

(3) For purposes of this section, a lot is "directly impacted" by an amendment to this Agreement only where the amendment would revise the listed uses, dimensional requirements, architectural requirements, or sign requirements for that lot.

B. No property owner other than one who actually executes an amendment shall be deemed to have waived his or her right to challenge a proposed or executed amendment in the same manner that an affected property owner may challenge zoning or related lot specific changes for property which is not subject to a planned development agreement. Such challenges include: (i) objections to a proposed amendment before the City Planning Board or City Commission, (ii) seeking certiorari review or injunctive action in relation to the adoption of such amendment as provided by law, or (iii) consistency challenges as provided for in Section 163.3215, Fla. Stat., or any successor provision.

14. VARIANCES.

This Agreement shall not be deemed to prohibit any owner of property within the planned development from seeking or obtaining one or more variances from the requirements of this Agreement pursuant to the LDC. In addition to those entitled to notice pursuant to the LDC, notice of any public hearing to consider a proposed variance shall be provided to all persons owning property within the planned development. No such variance shall be deemed to require formal amendment to this Agreement.

15. POLICE POWER AND SOVEREIGN IMMUNITY NOT WAIVED.

Nothing contained in this Agreement shall be construed as a waiver of or contract with respect to the regulatory and permitting authority of the City as it now or hereafter exists under applicable laws, rules, and regulations. Further, nothing contained in this Agreement shall be construed as a waiver of or attempted waiver by the City of its sovereign immunity under the constitution and laws of the State of Florida.

16. COMPLETE AGREEMENT; AGREEMENT TO BE RECORDED.

A. This Agreement represents the complete understanding by and between the parties with respect to the development and use of the Property. Any and all prior agreements between the parties with respect to any subject comprehended by this Agreement is hereby voided and superseded by this Agreement.

B. This Agreement shall be recorded in the Public Records of Volusia County, Florida, at Owners or Developer’s expense. The restrictions on use and development imposed by this Agreement shall be binding upon all successors in interest in the Property.

17. VENUE AND SEVERABILITY.

A. In the event of any claim, action, litigation, or proceeding under this Agreement, venue shall be in Volusia County, Florida.

B. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, such holding shall not affect the validity or enforceability of any other provision of this Agreement unless the holding so states.

IN WITNESS WHEREOF, the parties hereto attached their hands and seals on the dates set forth below.

Signed, sealed and delivered in the presence of:

**THE CITY OF DAYTONA BEACH,
FLORIDA, a Florida municipal corporation**

Witness 1

By: _____
Derrick L. Henry, Mayor

Print Name of Witness 1

Attest:

Witness 2

By: _____
Letitia LaMagna, City Clerk

Print Name of Witness 2

Date: _____

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STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by Derrick L. Henry and Letitia LaMagna, Mayor and City Clerk, respectively, of The City of Daytona Beach, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public

Commission No: _____

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Signed, sealed and delivered in the presence of:

**CONSOLIDATED-TOMOKA LAND CO., a
Florida corporation**

Witness 1

Print Name of Witness 1

**By: _____
John P. Albright, President and CEO**

Witness 2

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by John P. Albright as President and CEO of Consolidated-Tomoka Land Co., Florida corporation, referred to in this agreement as "Owner." He or she is personally known to me or produced _____ as identification and did not take an oath.

Notary Public
Commission No. _____

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Signed, sealed and delivered in the presence of:

**INDIGO DEVELOPMENT LLC, a Florida
limited liability company [OWNER]**

Witness 1

By: Consolidated-Tomoka Land Co., a Florida
corporation, its Managing Member

Print Name of Witness 1

Witness 2

By: _____
Name: John P. Albright
Title: President and CEO

Print Name of Witness 2

Date: _____

[Corporate Seal]

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, John P. Albright as President and CEO of Consolidated-Tomoka Land Co., a Florida corporation, Managing Member of INDIGO DEVELOPMENT LLC, a Florida limited liability company, referred to in this agreement as "Owner". He is personally known to me or produced as identification and did not take an oath.

Notary Public
Commission No. _____

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Signed, sealed and delivered in the presence of:

**VAN TRUST REAL ESTATE, LLC, a Florida
limited liability company**

Witness 1

Print Name of Witness 1

By: _____
Marc Munago

Witness 2

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Marc Munago as _____ of Van Trust Real Estate, LLC, a Florida limited liability company, referred to in this agreement as the "Developer." He or she is personally known to me or produced _____ as identification and did not take an oath.

Notary Public
Commission No. _____

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Signed, sealed and delivered in the presence of:

GATEWAY CENTER OF DAYTONA BEACH OWNERS ASSOCIATION, INC., a Florida not for profit corporation

Witness 1

By: _____

Print Name of Witness 1

Name: mark E. Patten

Title: President

Witness 2

Date: _____

Print Name of Witness 2

[Corporate Seal]

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, Mark E. Patten as President of Gateway Center of Daytona Beach Owners Association, Inc., a Florida not for profit corporation, referred to in this agreement as "Owner". He is personally known to me or produced as identification and did not take an oath.

Notary Public
Commission No. _____

Approved as to legal form:

By: _____
Robert Jagger, City Attorney

EXHIBIT A

Legal Description of the Property

Mason Industrial – Lot 1

LEGAL DESCRIPTION: (BY SLIGER & ASSOCIATES, INC.)

A PORTION OF SECTION 9, 10, 15 AND 16, TOWNSHIP 15 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, DAYTONA BEACH, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF LOT 2, DISTRIBUTION CENTER, AS RECORDED IN MAP BOOK 56, PAGES 177 THRU 179 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, SAID POINT BEING ON THE SOUTHERLY LINE OF TRACT F, TOMOKA TOWN CENTER, AS RECORDED IN MAP BOOK 57, PAGES 127-135, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG THE SOUTH LINE OF SAID TRACT F, N89°30'48"E, 2.55 FEET TO THE SOUTHEAST CORNER OF SAID TRACT F, TOMOKA TOWN CENTER; THENCE ALONG THE EAST LINE OF SAID TRACT F, N00°00'05"W, 70.00 FEET TO THE SOUTH LINE OF THAT CERTAIN PARCEL RECORDED IN OFFICIAL RECORDS BOOK 5737, PAGE 3520, SAID PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG SAID SOUTH LINE, N89°30'48"E, 429.64 FEET TO THE WESTERLY RIGHT OF WAY LINE OF MASON AVENUE, AN 80.00 FOOT RIGHT OF WAY AS RECORDED IN OFFICIAL RECORDS BOOK 5963, PAGE 1243 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, AND THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1568.00 FEET AND CENTRAL ANGLE OF 11°44'15" WITH A CHORD BEARING S18°33'23"E; THENCE IN A SOUTHEASTERLY DIRECTION ALONG THE ARC OF SAID CURVE, 321.21 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 2, DISTRIBUTION CENTER, SAID POINT ALSO BEING THE BEGINNING OF CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 35.00 FEET AND CENTRAL ANGLE OF 86°48'15"; THENCE IN A SOUTHERLY DIRECTION ALONG THE ARC OF SAID CURVE, 53.03 FEET; THENCE CONTINUING ALONG THE BOUNDARY OF SAID LOT 2, S62°22'45"W, 425.91 FEET; THENCE CONTINUING ALONG THE BOUNDARY OF SAID LOT 2, N16°36'43"W, 493.87 FEET TO THE POINT OF BEGINNING.

CONTAINING 200,136 SQ. FT. OR 4.59 ACRES, MORE OR LESS.

Mason Industrial – Lot 2

LEGAL DESCRIPTION: (BY SLIGER & ASSOCIATES, INC.)

A PORTION OF SECTION 15, TOWNSHIP 15 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, DAYTONA BEACH, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT 2, DISTRIBUTION CENTER, AS RECORDED IN MAP BOOK 56, PAGES 177 THRU 179 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, SAID POINT BEING ON THE SOUTHERLY LINE OF TRACT F, TOMOKA TOWN CENTER, AS RECORDED IN MAP BOOK 57, PAGES 127-135, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG THE SOUTH LINE OF SAID TRACT F, N89°30'48"E, 2.55 FEET TO THE SOUTHEAST

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CORNER OF SAID TRACT F, TOMOKA TOWN CENTER; THENCE ALONG THE EAST LINE OF SAID TRACT F, N00°00'05"W, 70.00 FEET TO THE SOUTH LINE OF THAT CERTAIN PARCEL RECORDED IN OFFICIAL RECORDS BOOK 5737, PAGE 3520, SAID PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG SAID SOUTH LINE, N89°30'48"E, 429.64 FEET TO THE WESTERLY RIGHT OF WAY LINE OF MASON AVENUE, AN 80.00 FOOT RIGHT OF WAY AS RECORDED IN OFFICIAL RECORDS BOOK 5963, PAGE 1243 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, AND THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1568.00 FEET AND CENTRAL ANGLE OF 16°44'36" WITH A CHORD BEARING S21°03'33"E; THENCE IN A SOUTHEASTERLY DIRECTION ALONG THE ARC OF SAID CURVE, 458.21 FEET TO THE POINT OF BEGINNING AND THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1568.00 FEET AND CENTRAL ANGLE OF 08°59'28"; THENCE IN A SOUTHERLY DIRECTION ALONG THE ARC OF SAID CURVE AND SAID WESTERLY RIGHT OF WAY LINE, 246.05 FEET; THENCE S38°25'19"E, 254.75 FEET TO THE BEGINNING OF A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 1488.00 FEET AND CENTRAL ANGLE OF 30°25'12"; THENCE IN A SOUTHERLY DIRECTION ALONG THE ARC OF SAID CURVE AND SAID WESTERLY RIGHT OF WAY LINE, 790.02 FEET; THENCE S08°00'07"E, 347.61 FEET TO THE SOUTHERLY LINE OF A 305 FOOT FLORIDA POWER & LIGHT COMPANY EASEMENT, AS RECORDED IN OFFICIAL RECORDS BOOK 170, PAGE 347, OFFICIAL RECORDS BOOK 507, PAGE 369, AND OFFICIAL RECORDS BOOK 511, PG 86, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG SAID SOUTHERLY LINE S36°52'44"W, 841.15 FEET TO A POINT ON THE EASTERLY LINE OF LOT 1, DISTRIBUTION CENTER, AS RECORDED IN MAP BOOK 56, PAGES 177 THRU 179 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG SAID EAST LINE, AND THE EAST LINE OF LOT 2, SAID DISTRIBUTION CENTER N16°36'43"W, 2033.89 FEET TO A POINT ON THE SOUTH LINE OF LOT 2, DISTRIBUTION CENTER, AS RECORDED IN MAP BOOK 56, PAGES 177 THRU 179 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA;; THENCE ALONG SAID SOUTH LINE N62°22'45"E, 437.84 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 35.00 FEET AND CENTRAL ANGLE OF 88°11'24"; THENCE IN A SOUTHEASTERLY DIRECTION ALONG THE ARC OF SAID CURVE, 53.87 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,166,673 SQ. FT. OR 26.78 ACRES, MORE OR LESS.

Mason Industrial – Lot 3

LEGAL DESCRIPTION: (BY SLIGER & ASSOCIATES, INC.)

A PORTION OF SECTION 15, TOWNSHIP 15 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, DAYTONA BEACH, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT 2, DISTRIBUTION CENTER, AS RECORDED IN MAP BOOK 56, PAGES 177 THRU 179 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, SAID POINT BEING ON THE SOUTHERLY LINE OF TRACT F, TOMOKA TOWN CENTER, AS RECORDED IN MAP BOOK 57, PAGES 127-135, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG THE SOUTH LINE OF SAID TRACT F, N89°30'48"E, 2.55 FEET TO THE SOUTHEAST CORNER OF SAID TRACT F, TOMOKA TOWN CENTER; THENCE ALONG THE EAST LINE OF SAID TRACT F, N00°00'05"W, 70.00 FEET TO THE SOUTH LINE OF THAT CERTAIN PARCEL RECORDED IN OFFICIAL RECORDS BOOK 5737, PAGE 3520, SAID PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG SAID SOUTH LINE, N89°30'48"E, 429.64 FEET TO THE WESTERLY RIGHT OF WAY LINE OF MASON AVENUE, AN 80.00 FOOT RIGHT OF WAY AS RECORDED IN OFFICIAL RECORDS BOOK 5963, PAGE 1243 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, AND THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1568.00 FEET AND CENTRAL ANGLE OF 16°44'36" WITH A CHORD BEARING S21°03'33"E; THENCE IN A SOUTHEASTERLY

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DIRECTION ALONG THE ARC OF SAID CURVE, 458.21 FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1568.00 FEET AND CENTRAL ANGLE OF 08°59'28"; THENCE IN A SOUTHERLY DIRECTION ALONG THE ARC OF SAID CURVE AND SAID WESTERLY RIGHT OF WAY LINE, 246.05 FEET; THENCE S38°25'19"E, 254.75 FEET TO THE BEGINNING OF A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 1488.00 FEET AND CENTRAL ANGLE OF 30°25'12"; THENCE IN A SOUTHERLY DIRECTION ALONG THE ARC OF SAID CURVE AND SAID WESTERLY RIGHT OF WAY LINE, 790.02 FEET; THENCE S08°00'07"E, 347.61' FEET TO THE POINT OF BEGINNING; SAID POINT ALSO BEING ON THE SOUTHERLY LINE OF A 305 FOOT FLORIDA POWER & LIGHT COMPANY EASEMENT, AS RECORDED IN OFFICIAL RECORDS BOOK 170, PAGE 347, OFFICIAL RECORDS BOOK 507, PAGE 369, AND OFFICIAL RECORDS BOOK 511, PG 86, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE CONTINUING ALONG SAID WESTERLY RIGHT OF WAY LINE, S08°00'07"E, 492.08" FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1568.00 FEET AND CENTRAL ANGLE OF 05°14'31"; THENCE IN A SOUTHERLY DIRECTION ALONG THE ARC OF SAID CURVE AND SAID WESTERLY RIGHT OF WAY LINE, 143.46 FEET; THENCE S13°14'39"E, 228.35 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF DUNN AVENUE, A VARIABLE WIDTH RIGHT OF WAY, PER OFFICIAL RECORDS BOOK 7089, PAGE 1497 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE THE FOLLOWING 6 CALLS, S82°32'28"W, 223.56 FEET; THENCE N07°27'32"W, 10.00 FEET; THENCE S82°32'28"W, 24.22 FEET; THENCE S07°27'32"E, 10.00 FEET; THENCE S82°32'28"W, 58.59 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 1285.50 FEET AND CENTRAL ANGLE OF 12°06'00"; THENCE IN A WESTERLY DIRECTION ALONG THE ARC OF SAID CURVE, 271.48 FEET TO THE EAST BOUNDARY LINE OF AFORESAID DISTRIBUTION CENTER AND THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 35.00 FEET AND CENTRAL ANGLE OF 13°43'15" WITH A CHORD BEARING N23°28'21"W; THENCE DEPARTING SAID NORTHERLY RIGHT OF WAY OF DUNN AVENUE AND IN A NORTHWESTERLY DIRECTION ALONG THE ARC OF SAID CURVE AND SAID EAST LINE OF DISTRIBUTION CENTER, 8.38 FEET; THENCE CONTINUING ALONG SAID EAST LINE, N16°36'43"W, 284.96 FEET TO A POINT ON THE SOUTHERLY LINE OF A 305 FOOT FLORIDA POWER & LIGHT COMPANY EASEMENT, AS RECORDED IN OFFICIAL RECORDS BOOK 170, PAGE 347, OFFICIAL RECORDS BOOK 507, PAGE 369, AND OFFICIAL RECORDS BOOK 511, PG 86, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG SAID SOUTHERLY LINE N36°52'44"E, 841.15 FEET TO THE POINT OF BEGINNING.

CONTAINING 334,935.296248 SQ. FT. OR 7.69 ACRES, MORE OR LESS.

Mason Industrial – Lot 4

LEGAL DESCRIPTION: (BY SLIGER & ASSOCIATES, INC.)

A PORTION OF SECTION 15, TOWNSHIP 15 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, DAYTONA BEACH, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF DUNN AVENUE, AS RECORDED IN OFFICIAL RECORDS BOOK 7089, PAGE 1497 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA WITH THE EAST RIGHT OF WAY LINE OF MASON AVENUE AS RECORDED IN OFFICIAL RECORDS BOOK 5963, PAGE 1245 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG SAID EAST RIGHT OF WAY LINE, N13°14'39"W, 236.45 FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1488 FEET AND CENTRAL ANGLE OF 05°14'31"; THENCE CONTINUING ALONG SAID EAST RIGHT OF WAY LINE AND THE ARC OF SAID CURVE, 136.14 FEET; THENCE ALONG SAID EAST RIGHT OF WAY LINE, N08°00'07"W, 572.41 FEET TO THE INTERSECTION OF SAID EAST RIGHT OF WAY

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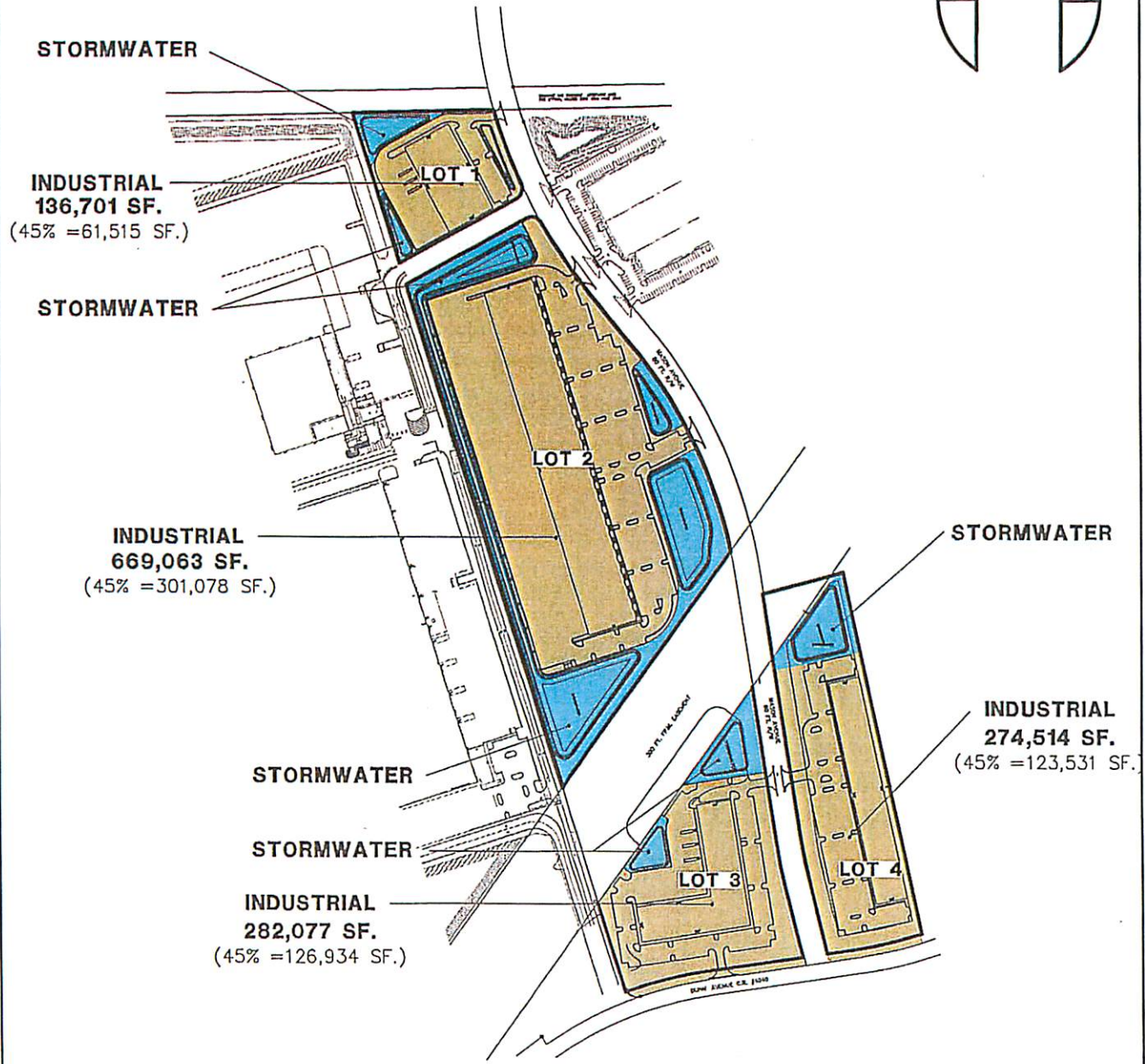
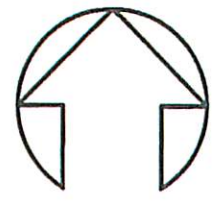
LINE WITH THE SOUTH LINE OF A 305.00 FOOT WIDE FLORIDA POWER AND LIGHT COMPANY EASEMENT, AS DESCRIBED IN OFFICIAL RECORDS BOOK 170, PAGE 347, OFFICIAL RECORDS BOOK 507, PAGE 369 AND OFFICIAL RECORDS BOOK 511, PAGE 86 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG SAID SOUTH LINE N36°52'44"E, 325.35 FEET; THENCE ALONG THE SOUTH LINE OF THAT CERTAIN PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 3335, PAGE 0717 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, N76°23'42"E, 3.44 FEET TO THE WEST LINE OF THAT CERTAIN PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 4851, PAGE 1446 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG SAID WEST LINE, S13°02'37"E, 1164.63 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF AFORESAID DUNN AVENUE AND THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 1114.50 FEET AND CENTRAL ANGLE OF 10°09'39" WITH A CHORD BEARING S77°27'39"W; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE AND THE ARC OF SAID CURVE 197.64 FEET; THENCE S82°32'28"W, 110.77 FEET TO THE POINT OF BEGINNING.

CONTAINING 303,041 SQ. FT. OR 6.96 ACRES, MORE OR LESS.

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EXHIBIT B

Planned Development Site Plan



BETA PD

PARKER MYNCHENBERG & ASSOCIATES, INC.

PROFESSIONAL ENGINEERS • LANDSCAPE ARCHITECTS
1729 RIDGEWOOD AVENUE HOLLY HILL, FLORIDA 32117
(386) 877-6891 FAX (386) 877-2114 E-MAIL: info@parkermynchenberg.com
CERTIFICATE OF AUTHORIZATION NUMBER 06003910

	STORMWATER = 10.22 AC.
	INDUSTRIAL = 31.96 AC.

EXHIBIT "B"