

RAILROAD CROSSING AGREEMENT (NORTH-SOUTH ROAD “A”)

THIS RAILROAD CROSSING AGREEMENT (“Agreement”) is entered into on this 8th day of January, 2024, between the CITY OF PORT ST. LUCIE, a municipal corporation (“City”) and VERANO DEVELOPMENT, LLC, a Delaware limited liability company (hereinafter, the “Developer”).

RECITALS

WHEREAS, City Resolution No. 21-R01 authorizes and contains the development order for the Verano DRI (“Verano DO”) for the “Verano” real estate development. The “Verano” real estate development is shown on the boundary map attached as **Exhibit “A”**.

WHEREAS, Condition No. 45 of the Verano DO provides as follows:

Developer shall dedicate right-of-way for a two-lane public access roadway (North-South Road A) (80 feet wide) through the Verano DRI. The right-of-way shall be located west of the Florida Power and Light (FPL) power transmission line and extend northerly from the southern boundary of Verano to Glades Cut-Off Road. This right-of-way shall be dedicated on or before the commencement of any proposed residential development or PUD approval located west of the FPL easement. Prior to the first residential Certificate of Occupancy west of North-South Road A, the developer shall construct a 2-lane roadway from Crosstown Parkway to the southernmost residential access. (“DRI Condition No.45”)

WHEREAS, in accordance with DRI Condition No. 45, Developer has conveyed to the City, the right-of-way through the Verano DRI for North-South Road “A” by virtue of a certain warranty deed recorded in Official Records Book 4817, Page 2829, of the public records of St. Lucie County, Florida (the “Road Deed”).

WHEREAS, a portion of the right-of-way for North-South Road “A” was subsequently dedicated and platted by virtue of that certain North-South “A” Roadway Plat recorded in Plat Book 117, Page 21, of the Public Records of St. Lucie County, Florida (the “Roadway Plat”).

WHEREAS, the remainder of the right-of-way for North-South Road “A” that was conveyed pursuant to the Road Deed remains to be platted.

WHEREAS, the boundary of the Verano DRI ends at the railroad right-of-way owned by Florida East Coast Railway (“FEC”) which separates Verano from Glades Cut-Off Road.

WHEREAS, Developer and City do not agree on the interpretation of DRI Condition No. 45 with respect to the portion of the right-of-way for North-South Road “A” that is located outside of Verano and is within the FEC’s railroad right-of-way; and

WHEREAS, in an effort to work together as partners and resolve their difference in interpretation of DRI Condition No. 45, the City has requested that the Developer convey certain easement rights to the City and assist the City with seeking approval for an at-grade crossing for North-South Road “A” from FDOT across FEC’s railroad right-of-way.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and for Ten and no/100ths (\$10.00) Dollars and other good and valuable consideration between the parties, the receipt and sufficiency of which are hereby acknowledged by the parties, and subject to the terms and conditions hereof, the parties agree as follows:

1. INCORPORATION OF RECITALS. The recitals stated above are true and correct and, by this reference, are incorporated into this Agreement.

2. DRI CONDITION NO. 45. City acknowledges that by virtue of the delivery and acceptance of the Road Deed, Developer has conveyed all the right-of-way with respect to the North-South Road "A" that is located within the Verano DRI. City further acknowledges that the Developer cannot convey, plat, or dedicate any portion of North-South Road "A" that is outside of the "Verano" development and part of FEC's railroad right-of-way because Developer does not own it. However, Developer has agreed to take the following actions to assist the City with a proposed Railroad Crossing for North South Road "A": (i) Developer will plat North-South Road "A" up to the boundary of Verano (*i.e.*: the FEC right of way), as further provided in Section 3 below; (ii) Developer will assist the City in applying to FDOT for railroad crossing for North South Road "A", as further provided in Section 4.1 below; and (iii) Developer will execute and deliver one or more Quit Claim Deeds substantially in the form attached hereto as **Exhibit "B"** with respect to the railroad crossing easements described in that certain deed recorded in Official Records Book 122, Page 333, Public Records of St. Lucie County, Florida, as further provided in Section 4.3 below.

3. PLATTING OF NORTH-SOUTH ROAD "A". Developer shall file a plat for the balance of North-South Road "A" up to the FEC railroad right-of-way within three (3) months after the POD H PUD approval is approved by the City and becomes final and non-appealable. In recognition of the fact that the City (and not the Developer) will construct this portion of North-South Road "A", the City will seek a waiver from all surety requirements typically associated with a final plat of a right-of-way within the City from the City Council, however, if the waiver is not granted, then Developer shall not be responsible for posting the surety. Developer shall prepare and deliver to the City conceptual 30% design and engineering plans for North-South Road "A", including the railroad crossing and intersection improvements at Glades Cut-Off Road, in conjunction with the proposed plat for North-South Road "A".

4. JOINT COOPERATION REGARDING FDOT APPLICATION FOR A RAILROAD RIGHT OF WAY CROSSING. City acknowledges and agrees that North-South Road "A" is a public road, and that City is solely responsible for finalizing the design, construction and permitting of North-South Road "A" from the terminus point of the two-lane road described on the Roadway Plat to Glades Cut-Off Road. Notwithstanding the foregoing, Developer and the City have agreed to cooperate in connection with applying for railroad crossing for North-South Road "A" as follows:

4.1. Developer's Obligations. In connection with the FDOT application for a railroad crossing for North-South Road "A", Developer, at Developer's sole cost and expense shall:

- (a) Prepare, file, and process a Railroad Grade Crossing (Opening a Highway-Rail Grade Crossing) Application, with City as applicant, for submittal to FDOT and FEC for purposes of seeking preliminary approval for an extension of North-South Road "A" to Glades Cut-Off Road. In connection with this FDOT application Developer shall:
 - i. Prepare (or cause to be prepared) 30% conceptual engineering plans for the proposed extension of North-South Road "A" to an intersection with Glades Cut-Off Road including associated left, right turn lanes, future through lanes, signalization and appropriate FDOT standard details for railroad crossings;
 - ii. Prepare (or cause to be prepared) the required traffic impact analysis to assist FDOT in review of the FDOT application;
 - iii. Coordinate between the City, FDOT, FEC and any other affected railroads with respect to the review and processing of the FDOT application;
 - iv. Attend all meetings with representatives of the City, FDOT, FEC or any other affected railroads;
 - v. Make any required plan/application revisions as are necessary for FDOT to complete its review of the FDOT application;

- vi. Pay any required application and review fees payable to FDOT, FEC or any affected railroad for preliminary plan approval and preparation of a Stipulation of the Parties or Final Order, as applicable; and
 - vii. Provide the City with all CAD files for the conceptual road engineering plans to aid in the final design of North-South Road "A".
- (b) If necessary, prepare, process, and file a Railroad Grade Crossing (closing) Application, with City as applicant, for submittal to FDOT, FEC and South Florida Central Express Railroad ("SFCE") for closure of the existing railroad crossing known as Railroad Crossing ID 272260T in order to facilitate obtaining a railroad crossing for North-South Road "A".
- (c) Prepare, file, and process Railroad Grade Crossing (improvement) Applications, with City and/or St. Lucie County as applicant for submittal to FDOT and FEC for lane widening and safety improvements for the following intersection improvements and railroad crossing:
- i. Glades Cut-Off Road and Range Line Road. Application to include full construction plans and required information necessary for issuance of final permits and construction plan approvals. Developer shall pay all application fees and final engineering and construction review costs associated with work within the FEC right-of-way.
 - ii. Glades Cut-Off Road and North Commerce Center Drive. Application to include full construction plans and required information necessary for issuance of final permits and construction plan approvals. Developer shall pay all application fees and final engineering and construction review costs associated with work within the FEC right-of-way.
 - iii. Developer shall construct the intersection and railroad crossing improvements described in sub-paragraphs (i) and (ii) above in advance of, or together with, the City's construction of the railroad crossing and intersection improvements for North-South Road "A" at Glades Cut-Off Road at Developer's sole cost and expense.
- (d) Developer will submit all required applications to FDOT within three (3) months after the POD H PUD approval is approved by the City and becomes final and non-appealable. The three (3) month deadline will be extended, day-for-day, if City does not provide any requested information to Developer within fourteen (14) days after written or email request therefor.
- (e) Developer will cooperate with the City in connection with any challenge to a Final Order from FDOT with respect to the railroad crossing for North-South Road "A".

4.2 City's Obligations. In connection with the FDOT application for a railroad crossing for North-South Road "A", the City shall:

- (a) Sign all necessary applications and supporting documents within fourteen (14) days of written request by Developer with respect to railroad crossing applications for:
 - i. North-South Road "A" and Glades Cut-Off Road (Opening a Highway Rail-Grade Crossing application);
 - ii. North Commerce Center Drive (crossing improvement application); and
 - iii. Glades Cut-Off Road and Range Line Road (crossing improvement application).
- (b) In City's sole discretion, sign, as applicant, any Stipulation of Parties between the City, FDOT, FEC and SFCE setting forth the requirements of preliminary crossing approval and agreeing to such conditions as are reasonably required to obtain preliminary approval by FDOT of a railroad crossing allowing for the extension of North-South Road "A" to a future intersection with Glades Cut-Off Road. City shall not be required to sign a Stipulation of Parties by virtue of entering into this Agreement.

- (c) Finalize engineering construction plans, prepare, submit, and process applications with FDOT and FEC for final permits and construction plan approval for the extension of North-South Road “A” and the associated intersection improvements with Glades Cut-Off Road, including any required FEC crossing requirements.
- (d) Construct the final permitted roadway extension of North-South Road “A” and the associated intersection improvements with Glades Cut-Off Road, including FDOT or FEC railroad crossing requirements, and including a minimum of a two-lane road through the “Verano” development.
- (e) Pay all application fees for final permit approval costs for a railroad crossing for North-South Road “A”.
- (f) Pay all FDOT or FEC engineering and construction costs associated with final design, permitting or construction work within the FEC right-of-way as required for a North-South Road “A” railroad crossing.
- (g) If necessary, in connection with the FDOT application, the City, at its sole cost and expense shall agree to close the railroad crossing known as Railroad Crossing ID 272260T in order to facilitate obtaining the approval of a railroad crossing at North-South Road “A”. City will prepare, sign, and deliver to Developer all required application(s) to close Railroad Crossing ID 272260T upon request by Developer.
- (h) Provide all information required to facilitate any FDOT applications, or applications or actions required by any affected railroad within fourteen (14) business days of Developer’s written request.
- (i) Pay all costs in obtaining, defending, or challenging a Final Order from FDOT with respect to a railroad crossing with respect to North South Road “A”, if such actions are taken by City.

4.3 Conveyance of Easement Rights, Alternative if Railroad Crossing Cannot be Obtained. In the event a favorable Final Order is issued, or if the City, FDOT and FEC enter into a Stipulation of Parties, Developer will execute and deliver one or more Quit Claim Deeds in substantially the form attached hereto as **Exhibit “B”** conveying: (i) the crossing rights required for North-South Road “A” to the City; and (ii) all other crossing rights held by Developer to FEC. So long as Developer has otherwise complied with this Agreement, in the event that (i) an unfavorable Final Order is issued, or (ii) an unfavorable Stipulation of Parties is presented to the City and the City chooses not to execute same, or (iii) City decides not to pursue a Final Order, resulting in the railroad crossing at North-South Road “A” not being approved by FDOT, the City, in its sole discretion, may request that Developer convey by Quit Claim Deed (in the form attached) all of its right, title and interest in and to all crossing rights in Official Record Book 122, Page 333, to the City, which conveyance shall be in full satisfaction of all obligations of Developer under DRI Condition No. 45 and under this Agreement, except for Developer’s cooperation obligation set forth in Section 4.1(e) of this Agreement. Under either circumstance, the Developer shall execute the Quit Claim Deeds and deliver same to the City within forty-five (45) days after City’s written request.

5. P.U.D. CONDITION IN POD-H APPROVAL. City and Developer agree that the following condition, in substantially the same form, will be included in the P.U.D. approval presented to the City Council for POD H:

Within three (3) months after the date of this approval for POD H, applicant/developer shall cause to be filed all necessary applications in the name of the City, with FDOT for a railroad crossing for North-South Road “A” in

accordance with the terms of that certain Railroad Crossing Agreement between the City and Verano Development, LLC dated January 8, 2024. City will continue to timely process all site plan approvals and other development applications so long as applicant/developer remains in compliance with this condition. However, applicant/developer's failure to comply with this condition will result in development approvals and permits being stayed until compliance is achieved.

6. INTENT AND EFFECT OF AGREEMENT. It is the intent of the parties to this Agreement that DRI Condition No. 45 be fully complied with, and the City acknowledges and agrees that Developer's commitments as expressed in this Agreement, if completed, satisfy DRI Condition No. 45. The foregoing notwithstanding, if Developer defaults under this Agreement, subject to all applicable notice and cure periods, then each of Developer and City shall each retain all rights, and interests regarding DRI Condition No. 45, including their differing interpretation(s) of DRI Condition No 45.

7. ENTIRE AGREEMENT; AMENDMENT; WAIVER. This Agreement is the entire agreement with respect to the railroad crossing and North-South Road "A" and supersedes all prior agreements or understandings with respect to same. This Agreement may be amended only by a written instrument signed by both parties. If any party fails to enforce their respective rights under this Agreement or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights as stated in this Agreement.

8. NOTICES. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand-delivered by prepaid express overnight courier or messenger service, emailed, telecommunicated, or mailed (airmail if international) by registered or certified (postage prepaid), return receipt requested, to the following addresses:

City: City of Port St. Lucie
121 SW Port St. Lucie Boulevard, Building A
Port St. Lucie, Florida 34984
Attention: City Manager – Jesus Merejo
cmo@cityofpsl.com

With a copy to: City of Port St. Lucie
121 SW Port St. Lucie Boulevard, Building A
Port St. Lucie, Florida 34984
Attention: City Attorney – Elizabeth Hertz
chertz@cityofpsl.com

Developer: Verano Development LLC
105 NE 1st Street
Delray Beach, Florida 33444
Attention: John Csapo and Scott Morton
jesapo@kolter.com
smorton@kolter.com

With a copy to: Gunster Law Firm
777 South Flagler Drive, Suite 500 East
West Palm Beach, FL 33401
Attention: Hugh W. Perry, Esq.
hperry@gunster.com

Except as otherwise provided in this Agreement, any notice shall be deemed received only upon actual delivery at the address or email address set forth above. Notices delivered after 5:00 PM (at the place of delivery) or on a non-business day shall be deemed received the next business day. If any time for giving notice contained in this Agreement would otherwise expire on a non-business day, the notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Any party or other person to whom notices are to be sent or copied may notify the other parties and addressees of any changes in name or address to which notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

9. SEVERABILITY. The parties agree that if any part, term or provision of this Agreement is held to be illegal or in conflict with any law of the State of Florida or with any federal law or regulation, such provision shall be severable, with all other provisions remaining valid and enforceable.

10. AUTHORITY. The execution of this Agreement has been duly authorized by the appropriate body or official of all parties hereto, each party has complied with all the requirements of law, and each party has full power and authority to comply with the terms and provisions of this Agreement.

11. ASSIGNMENT. This Agreement may not be assigned without the written consent of the City. The City shall not unreasonably withhold its consent to such assignment.

12. COUNTERPARTS AND EXECUTION. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and acknowledgment pages, if any, may be executed by facsimile, which shall be good as an original, and may be detached from the counterparts and attached to a single copy of this document to physically form one document.

13. NO THIRD-PARTY BENEFICIARY. None of the provisions of this Agreement shall be for the benefit of or enforceable by any third party. This Agreement has been entered into for the sole benefit and protection of the City and Developer and is not intended to confer upon any other person or entity any rights or remedies hereunder. This Agreement shall not provide any third-party with any right, remedy, claim, liability, reimbursement, or other cause of action.

14. INTERPRETATION; VENUE; JURY WAIVER. All interpretations shall be governed by the laws of the State of Florida. In the event it is necessary for any Party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida, for claims under state law, and in the Southern District of Florida for claims justiciable in federal court. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, ALL PARTIES HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT. This clause shall survive the expiration or termination of this Agreement.

15. EXHIBITS. The following exhibits are attached to this Agreement and incorporated herein by this reference:

EXHIBIT "A" – Verano Boundary Map

EXHIBIT "B" – Quit Claim Deed from Developer to City with respect to Railroad Crossing Easements

IN WITNESS WHEREOF, the parties hereto execute this Railroad Crossing Agreement for Developer and further agree that it shall take effect as of the Effective Date first above written.

WITNESSES

CITY OF PORT ST. LUCIE,
a Florida municipal corporation

Signature

Print Name: _____

Signature

Print Name: _____

By: _____

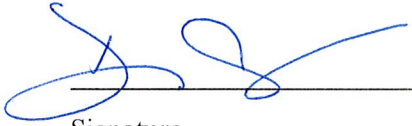
Shannon M. Martin, Mayor

VERANO DEVELOPMENT, LLC,
a Delaware limited liability company



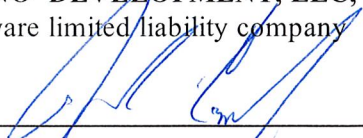
Signature

Print Name: Timothy Smith



Signature

Print Name: Donat H Alper

By: 

Its: Authorized Secretary

EXHIBIT "A"

Verano Boundary Map

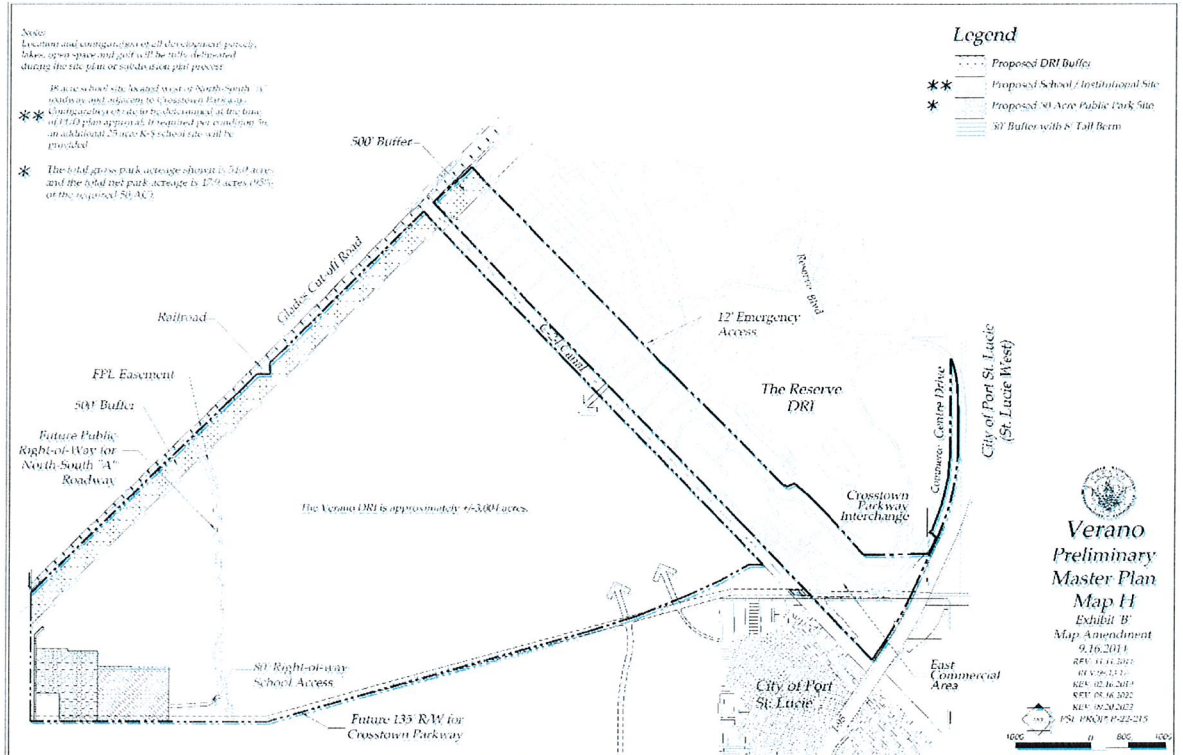


EXHIBIT "B"

Quit Claim Deed for Railroad Crossing Easements

This instrument prepared by, and after recording, return to:

H. William Perry, Esq.
Günster, Yoakley & Stewart, P.A.
777 S. Flagler Drive, Suite 500
West Palm Beach, FL 33401

(Space Reserved for Clerk of Court)

**QUIT-CLAIM DEED
[CROSSING RIGHTS]**

THIS QUIT-CLAIM DEED is made and given as of the _____ day of _____, 2023, by VERANO DEVELOPMENT LLC, a Delaware limited liability company, ASTOR CREEK DEVELOPMENT LLC, a Florida limited liability company, and PSL LAND INVESTMENTS LLC, a Florida limited liability company, each having an address of 105 NE 1st Street, Delray Beach, Florida 33444 (individually a "Grantor" and collectively, the "Grantors"), to and in favor of THE CITY OF PORT ST. LUCIE, a Florida municipal corporation, having an address of 121 SW Port St. Lucie Boulevard, Port St. Lucie, Florida 34984-5099 (the "City").

[Whenever used herein the terms "Grantors" and "City" include the parties to this instrument, together with their respective successors and assigns.]

RECITALS:

- A. Verano Development LLC, a Delaware limited liability company, conveyed certain property in St. Lucie County, Florida to the City for use as a road right-of-way (the "North/South "A" Road") pursuant to that certain Special Warranty Deed recorded May 3, 2022 in Book 4817, Page 2829 of the Public Records of St. Lucie, County, Florida.
- B. The North/South "A" Road is also shown as Tract "A" in that certain [PLAT] recorded [_____] 2023 in Plat Book [____], Page [____] of the Public Records of St. Lucie, County, Florida.
- C. W. H. Boyd, and Barbara E. Boyd, his wife, previously conveyed a certain 100 foot wide railroad right-of-way (the "Railroad ROW") to the predecessors of Florida East Coast Railway Company, pursuant to that certain Indenture recorded January 27, 1946 in Book 122, Page 333 of the Public Records of St. Lucie, County, Florida, (the "Boyd Indenture").
- D. The northern terminus of North/South "A" Road is contiguous to the Railroad ROW.
- E. The Boyd Indenture specifically reserved certain crossing easements which allow for "at grade" crossings over the Railroad ROW (the "Crossing Rights").
- F. Grantors collectively constitute all of the successors-in-interest to the Crossing Rights contained in the Boyd Indenture.
- G. Grantors desire to convey all of their right, title and interest in the Crossing Rights to the City.

WITNESSETH:

That the Grantors, for and in consideration of Ten and No/100 (\$10.00) Dollars and other good and valuable consideration paid by the City, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release and quit-claim unto the said City forever, all the right, title, interest, claim and demand which the said Grantors have in and to the "Crossing Rights", being all retained crossing easements reserved in that certain Indenture recorded January 27, 1946 in Book 122, Page 333 of the

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Public Records of St. Lucie, County, Florida,

TO HAVE AND TO HOLD THE SAME TOGETHER WITH all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien equity and claim whatsoever of the Grantors, either in law or equity, to the only proper use and benefit of the said City forever.

IN WITNESS WHEREOF, Grantors have signed these presents the day and year first above written.

WITNESSES

GRANTOR

VERANO DEVELOPMENT LLC, a Delaware limited liability company

Witness signature

By: _____

Print Name

Name: _____

Title: _____

Witness signature

Print Name

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2023, by _____, as _____ of VERANO DEVELOPMENT LLC, a Delaware limited liability company, on behalf of said company, who is personally known to me, or has produced _____ as identification.

Notary Public - State of Florida

Print Name: _____

(Seal)

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WITNESSES

Witness signature

Print Name

Witness signature

Print Name

GRANTOR

ASTOR CREEK DEVELOPMENT LLC, a Florida limited liability company

By: _____

Name: _____

Title: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2023, by _____, as _____ of ASTOR CREEK DEVELOPMENT LLC, a Florida limited liability company, on behalf of said company, who is personally known to me, or has produced _____ as identification.

Notary Public - State of Florida

Print Name: _____

(Seal)

ACTIVE:18707767.1

WITNESSES

Witness signature

Print Name

Witness signature

Print Name

GRANTOR

PSL LAND INVESTMENTS LLC, a Florida limited liability company

By: _____

Name: _____

Title: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2023, by _____, as _____ of PSL LAND INVESTMENTS LLC, a Florida limited liability company, on behalf of said company, who is personally known to me, or has produced _____ as identification.

Notary Public - State of Florida

Print Name: _____

(Seal)

ACTIVE:18707767.1