

## AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 13<sup>th</sup> day of June 2024 by and between the City of LaBelle, hereinafter referred to as the "City" or Grantee, and Wheeler Properties, LLC and Town Grove, LLC, hereinafter referred to as the "Grantors", collectively the "Parties".

WHEREAS, the Grantors are the owners of real property, located south of State Road 80/West Hickpochee Avenue and East of Dr. Martin Luther King Jr. Blvd., within the City of LaBelle, hereinafter referred to as the "Property" and further described in Exhibit "A", attached hereto; and

WHEREAS, in 2020 the Grantors were granted by the City a comprehensive plan amendment and planned unit development rezoning, Ordinances 2020-06 and 2020-07, respectively, to develop a maximum of 335 dwelling units upon the Property known as the Wheeler Grove Planned Unit Development ("Entitlements"); and

WHEREAS, the Entitlements are limited to a Master Concept Plan which is set to expire on October 8, 2025; and

WHEREAS, a portion of the Property is also subject to a Florida Department of Transportation drainage easement granted by the City to the State of Florida upon which a drainage conveyance exists; and

WHEREAS, over a period of decades the City has installed and maintained multiple potable water and wastewater forcemains which connect to the City's utility plant east of the Property both within and proximate to the existing drainage conveyance; and

WHEREAS, on April 14, 2022, the City entered into a development agreement with SWJR LAND DEVELOPMENT, LLC, to construct certain public improvements relating to the extension of central water and wastewater utility facilities ("New Improvements") to serve development in western Hendry County; and

WHEREAS, during the planning and construction of the New Improvements, the City was unable to produce evidence of sufficient rights to place either its existing facilities or the New Improvements across the Property; and

WHEREAS, the City has an interest in obtaining a clean easement to preserve its interests in any existing utility facilities on the Property as well as for the New Improvements; and

WHEREAS, time is of the essence and the Parties have been unable to come to an appropriate valuation for the City's needs given the title history and impacts upon the Grantors' Entitlements.

NOW, THEREFORE, in consideration of their respective undertakings hereunder, the Parties agree as follows:

### **Renewal of Concept Plan**

1. The City shall, at its own cost, submit an application to re-institute Master Concept Plan ("MCP") (Ord. 2020-06), which shall be amended to reflect the applicable provisions of the City's effective Comprehensive Plan and land development regulations, as well as to reflect any changes necessitated by the City's existing utility facilities and the New Improvements traversing the Property ("Amended MCP"). It is understood by Grantors and the City that the land use entitlements granted to Grantors in terms of density and intensity would be consistent and proportionate under City's current land development regime to those enjoyed by Grantors prior to the expiration of the previously approved Ordinance 2020-06 and accompanying MCP (but in no event fewer than 335 dwelling units), any subsequently enacted City Land Development Code provisions to the contrary notwithstanding. Upon satisfactory completion by the City of an expedited review of the Amended MCP, the City will consider at a public hearing the Amended MCP.

### **Conveyance of Easement**

2. Upon acceptance of this Agreement by the Grantors and upon the consideration of the City's processing of but prior to the adoption of the Amended MCP, the Grantors will convey to the City, at no additional cost to the City, other than as set forth herein, temporary construction and permanent utility easements in a form similar to those attached hereto as Exhibits "B-1" and "B-2" respectively.

### **Valuation of Easements**

3. Grantors and the City shall, within 150 days following the City's approval of Amended MCP simultaneously exchange their respective appraisals of the full compensation due to Grantor for the City's proposed utility extension through Grantors' property.

a. Appraisals by both Parties shall be in accordance with Section 73.071(3), Florida Statutes, Article X, Section 6, Florida Constitution, and relevant case law.

b. The appraisals shall value full compensation for the easement interest to be acquired for the easement area described in Exhibits B-1 and B-2, hereafter "Utility Easements", plus any severance damages to the remainder property suffered as a result of that acquisition and the use of the property acquired.

c. The date of valuation for the appraisals shall be the date of appraisal submittal, per paragraph 3 of this Agreement, as both parties shall move forward promptly to complete this task once the City approves the Amended MCP. Notwithstanding, if the City initiates condemnation proceedings pursuant to paragraph 5(c)(3) the appraisals shall be updated to reflect the actual date of taking under Section 74.061, Florida Statutes.

d. Interest shall be allowed on full compensation at the same rate as provided in all circuit court judgments from the date of conveyance of the Utility Easements.

e. The City shall pay the Grantors' reasonable appraisal fees.

4. Upon receipt of the appraisals, the Parties shall have 10 days to review the opposing Party's appraisal to verify compliance with the agreed upon conditions as set out in paragraph 3, above. In the event of a timely objection in writing, the Parties shall work together in good faith to resolve such objections; but if such objections cannot be resolved within 30 days of the receipt of the written objection, either Party may present such objections for consideration by any Arbitrator appointed pursuant to paragraph 5(b) or (c) below, or by any judge hearing the eminent domain matter contemplated by paragraph 5(c)(3), as the case may be.

**Determination of Full Compensation to be Paid**

5. The Parties have agreed to alternate methods of determining the amount of full compensation, depending upon the value differences, if any, in the appraisals. In the event the Parties ultimately resolve to a value for the Utility Easements to be conveyed to the City, the Parties agree said conveyance will be "in lieu of condemnation."

a. If the appraisals reflect a difference in estimated full compensation due Grantors, which differential is less than 5% of the lower appraisal value, then the Parties agree to split that differential evenly with any necessary rounding in favor of Grantors. Said payment shall be made by the City to Grantors within 60 days.

b. If the estimated compensation difference between the appraisals is greater than 5%, but less than 50% of the lower appraisal estimate, then the issue of full compensation due Grantors shall be submitted to binding arbitration by an independent Arbitrator agreed upon by both Parties. Said arbitration process, including the Arbitrator's determination of award, shall be completed within 60 days of submittal to the Arbitrator, unless the Arbitrator seeks an extension of time for determination which extension shall be no greater than an additional 30 days. The arbitration award shall be paid by the City to Grantors no later than 60 days from the date of the Arbitrator's decision.

c. If the Parties' appraisals reflect a difference in estimated full compensation due Grantors which is greater than 50% of the lower appraisal, neither party shall have any remaining obligations under this Agreement unless both parties agree to submit the valuation issue to arbitration.

(1) In the event both Parties agree to submit the issue of valuation of full compensation for the acquisition of the Utility Easements to non-binding arbitration under this subsection c, then, upon the Arbitrator's determination of the award, each Party shall have 45 days from said determination to advise one another and the Arbitrator whether that Party will accept the Arbitrator's compensation decision.

(2) If both Parties agree to accept the Arbitrator's determination of full compensation due Grantors under this subsection c, then the City shall pay the full amount of that award to Grantors no later than 60 days from the date of the arbitration award.

(3) If either Party opts to reject an Arbitrator's determination under this subsection c, then the City shall initiate an action in circuit court to determine the value for the Utility Easements as though the conveyance had occurred pursuant to eminent domain proceeding, pursuant to Chapters 73 and 74, Fla. Stat. (2023), no later than 12 months from the date for the arbitration award. In that event, Grantors agree to not contest the Utility Easements' conveyance only the appropriate valuation as provided herein.

(4) The Parties agree that any arbitration as provided herein shall be conducted by a single arbitrator who shall be an attorney or retired judge and shall be mutually selected by the Parties from the list of court approved arbitrators for the 20<sup>th</sup> Judicial Circuit of Florida and subject to the ethics rules of their arbitration organization and the applicable provisions of The Florida Rules for Court-Appointed Arbitrators. The City shall be responsible for the cost of arbitration and all expenses related thereto.

#### **Procedural Provisions**

6. The attorneys for the Parties will draft such additional documents necessary to effectuate this Agreement.

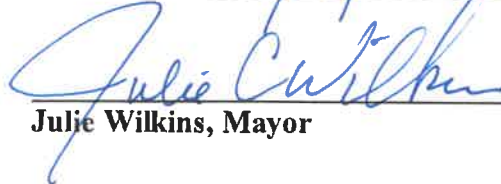
7. Except as otherwise stated herein, the Parties will each bear their own fees and costs for the Arbitration proceedings or any litigation arising out of this Agreement. Notwithstanding the foregoing, attorney's fees and costs for any eminent domain proceeding shall be as provided under Chapters 73 and 74, Florida Statutes and Article X, Section 6, Florida Constitution.

8. The Parties concur that this Agreement, all discussions concerning this Agreement, and all work product (attorney, appraisal, engineer or otherwise) generated pursuant to this Agreement constitute settlement discussions. In that regard, neither this Agreement, nor the existence of this Agreement, nor any documents or opinions generated pursuant to this Agreement shall be admissible or subject to discovery in any proceeding, civil action, administrative adjudication or other noncriminal proceeding, other than the arbitration contemplated herein. However, Grantors shall be permitted to disclose this Agreement if necessary to comply with any applicable law, rule, regulation or a valid order issued by a court or governmental agency of competent jurisdiction or pursuant to any other request or process of any legal, regulatory, governmental or supervisory authority.

IN WITNESS WHEREOF, the City and the Grantors have executed this Agreement effective on the date the last party hereto executes below.

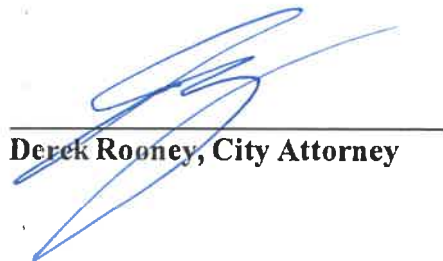
CITY OF LABELLE:

Date Signed: 6/13/24

  
Julie Wilkins, Mayor

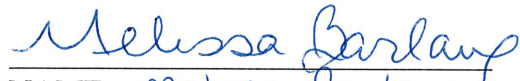
ATTEST:

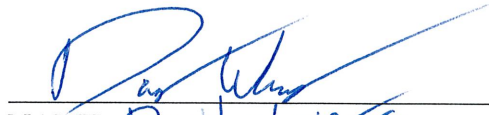
  
Tijauna Warner, City Clerk

  
Derek Rooney, City Attorney


**"GRANTORS":**

**WITNESSES:**

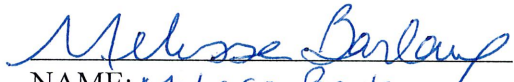
  
NAME: Melissa Barlaug  
[PRINT/TYPE]


  
NAME: David Wheeler Sr.  
[PRINT/TYPE]

**WHEELER PROPERTIES, LLC**

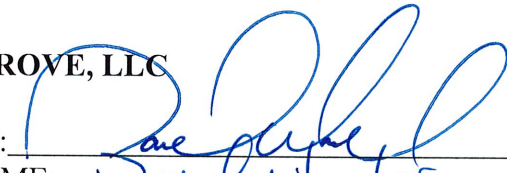
BY:   
NAME: David Wheeler  
[PRINT/TYPE]  
TITLE: Manager

**WITNESSES:**

  
NAME: Melissa Barlaug  
[PRINT/TYPE]

  
NAME: David Wheeler Sr.  
[PRINT/TYPE]

**TOWN GROVE, LLC**

BY:   
NAME: David Wheeler  
[PRINT/TYPE]  
TITLE: Manager

This Instrument Prepared By:  
Matthew L. Grabinski, Esq.  
COLEMAN, YOVANOVICH  
& KOESTER, P.A.  
4001 Tamiami Trail N., #300  
Naples, Florida 34103  
239-435-3535

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GRANT OF TEMPORARY CONSTRUCTION EASEMENT #4 TO THE CITY OF LABELLE

THIS INDENTURE (this “Easement”) is made and entered into this \_\_\_\_ day of June, 2024, by and between, Town Grove, LLC, a Florida limited liability company, Owner, whose address is 206 Dal Hall Boulevard, Lake Placid, FL 33852, hereinafter referred to as GRANTOR, and THE CITY OF LABELLE, a municipal corporation of the State of Florida, whose address is 481 West Hickpochee Avenue, LaBelle, FL 33935, hereinafter referred to as the CITY, and is joined by SWJR Land Development, LLC, a Florida limited liability company (“Developer”).

WITNESSETH:

1. For and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged and accepted, GRANTOR hereby grants, bargains, sells and transfers to the CITY, its successors and assigns, a non-exclusive temporary construction easement situated in Hendry County, Florida, located and described as set forth in Exhibit "A", attached hereto and made a part hereof (the “Temporary Easement Area”).

2. The CITY, its successors, appointees and assigns, are granted the right, privilege, and authority to use the Temporary Easement Area for access and construction staging for the purpose of effectuating the construction and installation of utility lines on lands lying adjacent to the Temporary Easement Area. The CITY, as the holder of this temporary Easement, shall have the right to delegate (on a non-exclusive basis) its rights hereunder to SWJR Land Development, LLC, a Florida limited liability company (and its contractors) or any public agency or other private party(ies), for the purpose of effectuating the construction and installation of utility facilities on lands adjacent to the Temporary Easement Area.

3. **The Easement granted hereby is temporary in nature, and shall automatically terminate and be of no further force or effect on the date that twelve (12) months after the date this Easement is first recorded in the public records of Hendry County, Florida.**

4. Subject to any pre-existing easements and other recorded instruments covering the Easement Area described, GRANTOR covenants that it is lawfully seized and possessed of the Easement Area, has good and lawful right and power to grant this Easement.

5. The CITY will be liable for money damages in tort for any injury to or loss of property, personal injury, or death caused by the negligent or wrongful act(s) or omission(s) of any official or employee of the CITY while acting within the scope of the official's or employee's office or employment under circumstances in which a private person would be found to be liable in accordance with the general laws of the State of Florida, and subject to the limitations as set out in Section 768.28, Florida Statutes, as it may be revised, amended or renumbered from time to time.

6. The CITY shall be responsible for the removal and satisfaction of any and all liens that may be filed against the Easement Area as a result of actions by or on behalf of the CITY.

7. Any contractors utilized by the CITY in connection with activities undertaken in connection with this Easement shall be obligated under their respective contracts to: (1) obtain and provide to GRANTOR evidence of comprehensive general liability insurance and auto liability insurance with minimum limits of coverage in the amount of TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, bodily and property damage combined; (2) list GRANTOR as additional insured under such contractor's liability insurance; (3) provide certificates of the required insurance prior to conducting any activities within the Temporary Easement Area and maintain the required insurance at all times while conducting activities within the Temporary Easement Area or the Access Road and (4) repair any damage to the Temporary Easement Area caused by the contractors, or any of their subcontractors, removal of vegetation excepted (unless the same was previously covered with grass and/or citrus trees, in which event grass and/or citrus trees whichever was disturbed shall be planted in the damaged or disturbed areas).

8. Developer agrees that if any live citrus trees located on GRANTOR's property are damaged (or destroyed) as a result of the work contemplated hereunder, then (without waiving the Developer's right to seek recovery from the applicable contractor that actually caused the damage) Developer shall either replace such tree(s) or shall reimburse GRANTOR for the value of such destroyed trees (the "Restoration Obligation"). Developer shall complete the Restoration Obligation by no later than thirty (30) days after the work contemplated by Section 3, above, is completed and accepted by the CITY.

9. Developer and CITY acknowledge that GRANTOR'S use of the property within the vicinity of the Temporary Easement Area necessitates that from time to time (consistent with customary agricultural practices), GRANTOR will have agricultural herbicides, fertilizers and/or pesticides applied to GRANTOR's citrus trees utilizing a spray-application process (in each instance, "Spraying"). Provided GRANTOR provides the Developer and CITY with a least seven (7) days prior written notice (which notice may be provided to the CITY via an email to Derek Rooney at [derek.rooney7@gray-robinson.com](mailto:derek.rooney7@gray-robinson.com) and which notice may be provided to Developer via an email to the following email addresses: [ba@lotusnaples.com](mailto:ba@lotusnaples.com); [nicdiorio@lotusnaples.com](mailto:nicdiorio@lotusnaples.com); [jon@lotusnaples.com](mailto:jon@lotusnaples.com) and [mgrabinski@cyklawfirm.com](mailto:mgrabinski@cyklawfirm.com)), the the CITY and Developer agree that any field work to be performed under this Temporary Easement shall be suspended on the date that such Spraying occurs and for a period of two (2) days thereafter (unless the supplier of the



particularly product applied by such Spraying recommends a longer wait-period). The Developer agrees to indemnify, defend and hold GRANTOR harmless from and against any loss, claim or damage incurred by or asserted against GRANTOR by any natural person that accesses GRANTOR's property pursuant to this Temporary Easement and is injured as a result of exposure to chemicals existing at the GRANTOR's property as a result of Spraying.

10. This Temporary Easement shall run until termination as set forth in paragraph 3 above and for its duration shall be binding upon the parties hereto, their successors in interest and any assigns, all purchasers of the land described in Exhibit "A", and persons or entities acquiring any right, title or interest in the land described in Exhibit "A".

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the GRANTOR has caused this document to be signed on the date and year first above written.

Town Grove, LLC,  
a Florida limited liability company

\_\_\_\_\_  
[1st Witness' Signature]

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Type or Print Name]  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
[2nd Witness' Signature]

\_\_\_\_\_  
[Type or Print Name]  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was signed and acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2024, by David P. Wheeler as Authorized Member of Town Grove, LLC, a Florida limited liability company, on behalf of the company, who \_\_\_\_ is personally known to me or \_\_\_\_ has produced \_\_\_\_\_ as identification.

[notary stamp or seal]

\_\_\_\_\_  
[Signature of Notary]

\_\_\_\_\_  
[Typed or Printed Name]

Approved, agreed to and accepted for and on behalf of the City of Labelle, Florida this \_\_\_\_\_ day of June, 2024.

ATTEST

**CITY OF LABELLE**

\_\_\_\_\_  
Jessi Zubaty, Deputy City Clerk

\_\_\_\_\_  
Julie Wilkins, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Derek Rooney, City Attorney

\_\_\_\_\_  
Signature of Witness #1

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**SWJR LAND DEVELOPMENT, LLC,**  
a Florida limited liability company

By: **R3 DEVELOPERS, LLC**  
a Florida limited liability company  
Its: Manager

By: \_\_\_\_\_  
Jon Rubinton, Manager

\_\_\_\_\_  
Signature of Witness #2

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

**I HEREBY CERTIFY** that the foregoing instrument was acknowledged and executed before me \_\_\_\_ in person or \_\_\_\_ by online notarization on this \_\_\_\_ day of June, 2024, by Jon Rubinton, as Manager of **R3 DEVELOPERS, LLC**, a Florida limited liability company, as Manager of **SWJR LAND DEVELOPMENT, LLC**, a Florida limited liability company, on behalf of the company. Who is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

# Exhibit "A" to TCE

**BBLs**

**SURVEYORS, INC.**

9001 HIGHLAND WOOD BLVD., STE. 6,  
BONITA SPRINGS, FLORIDA, 34135

TELEPHONE: (239) 597-1315

FAX: (239) 597-5207

**LEGAL DESCRIPTION  
OLD FLORIDA MOTORCOACH RESORT  
(OFFSITE)**

**TEMPORARY EASEMENT-4**

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 43 SOUTH, RANGE 29 EAST, HENDRY COUNTY, FLORIDA BEING A PORTION OF THAT PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 800, PAGE 326 OF THE PUBLIC RECORDS, HENDRY COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCE** AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 43 SOUTH, RANGE 29 EAST, HENDRY COUNTY, FLORIDA; THENCE RUN S89°41'58"E, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, FOR A DISTANCE OF 1332.56 FEET TO THE WEST LINE OF THE EAST HALF OF SAID SOUTHWEST QUARTER; THENCE RUN N00°51'59"W, ALONG SAID WEST LINE, FOR A DISTANCE OF 1996.77 FEET; THENCE LEAVING SAID WEST LINE, RUN N89°08'02"E, FOR A DISTANCE OF 33.00 FEET TO THE EASTERLY RIGHT OF WAY LINE OF DR. MARTIN LUTHER KING JR. BOULEVARD (A 58 FOOT RIGHT OF WAY), THE SAME BEING A POINT ON THE WESTERLY LINE OF SAID PARCEL OF LAND AND THE **POINT OF BEGINNING** OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE RUN N89°07'15"E, FOR A DISTANCE OF 67.00 FEET; THENCE RUN S00°52'45"E, FOR A DISTANCE OF 15.00 FEET; THENCE RUN S89°07'15"W, FOR A DISTANCE OF 67.00 FEET TO SAID EASTERLY RIGHT OF WAY LINE; THENCE RUN N00°52'45"W, ALONG SAID EASTERLY RIGHT OF WAY LINE, FOR A DISTANCE OF 15.00 FEET TO THE **POINT OF BEGINNING**.

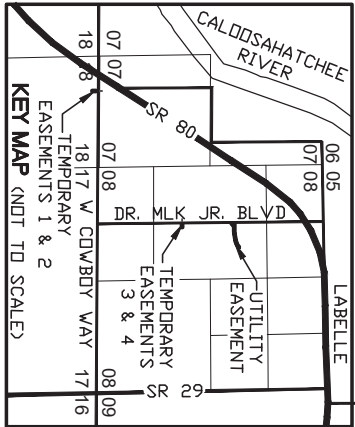
BEARINGS SHOWN HEREON REFER TO THE SOUTH OF SECTION 8, TOWNSHIP 43 SOUTH, RANGE 29 EAST, HENDRY COUNTY, FLORIDA, AS BEING S.89°41'58"E.

THIS PROPERTY IS SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

07/21/2023

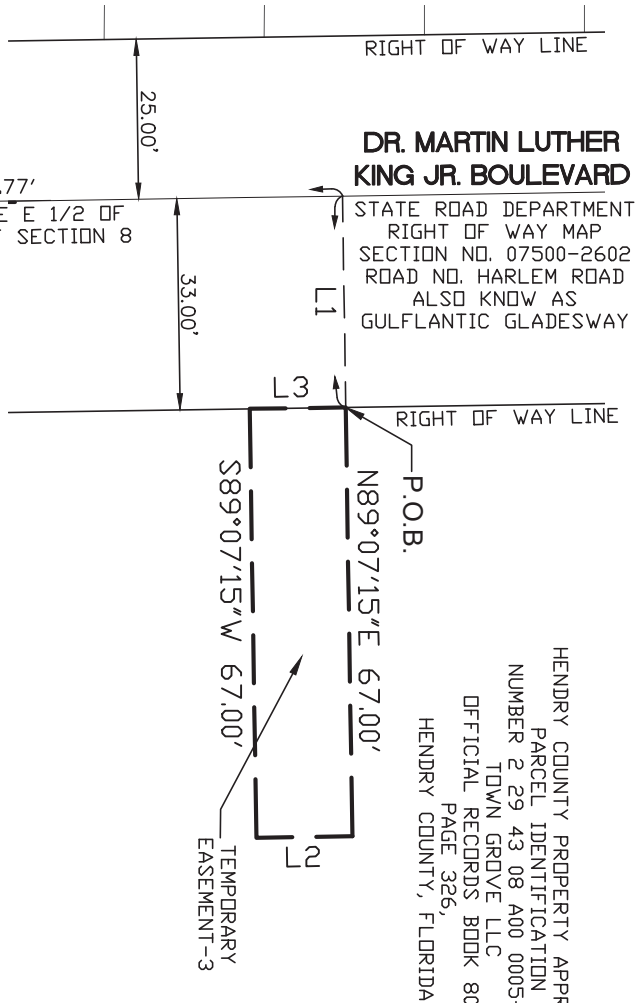
STEPHEN E. BERRY, STATE OF FLORIDA, (PLS #5296)  
BBLs SURVEYORS, INC., (LB #8033)



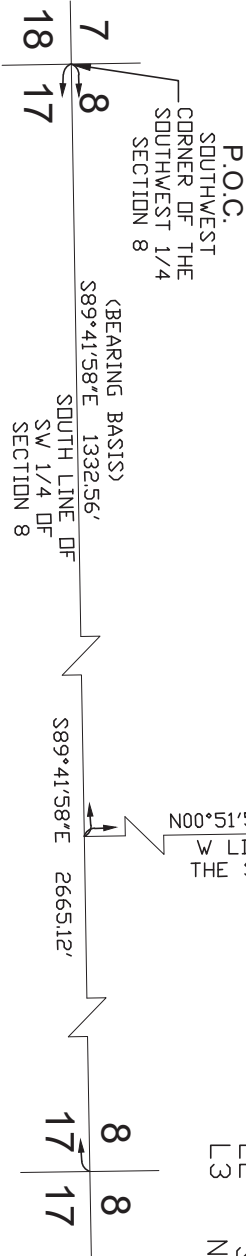


**LEGEND**

P.O.C. POINT OF COMMENCEMENT  
P.O.B. POINT OF BEGINNING  
SR STATE ROAD  
MLK MARTIN LUTHER KING  
SR STATE ROAD  
BLVD BOULEVARD  
DR. DOCTOR  
JR. JUNIOR

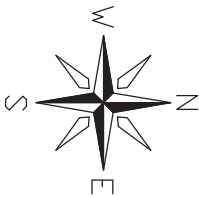
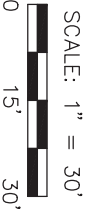


LINE	BEARING	DISTANCE
L1	N89°08'02\"E	33.00'
L2	S00°52'45\"E	15.00'
L3	N00°52'45\"W	15.00'



**NOTES:**

- 1.) BEARINGS SHOWN HEREON REFER TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 43 SOUTH, RANGE 29 EAST, HAVING A BEARING OF S.89°41'58\"E.
- 2.) THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS AND RESTRICTIONS OF RECORD.
- 3.) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.



THIS IS NOT A SURVEY

REVISED BEARING TYPD 09/13/23  
DATE: 07/20/2023  
FIELD BOOK: SEE FILE  
PAGE: SEE FILE  
DRAWN BY: MAC  
APPROVED: SEB  
FILE: SEE DAYSTAMP  
SCALE: 1\" = 30'

**SKETCH TO ACCOMPANY LEGAL DESCRIPTION**

TEMPORARY EASEMENT-4  
A PORTION OF SECTION 8, TOWNSHIP 43 SOUTH,  
RANGE 29 EAST, HENDRY COUNTY, FLORIDA

BBL'S SURVEYORS, INC.  
9001 HIGHLAND WOODS BLVD.,  
SUITE 6, BONITA SPRINGS,  
FLORIDA, 34135  
(239) 597-1315

This Instrument Prepared By:  
Matthew L. Grabinski, Esq.  
COLEMAN, YOVANOVICH  
& KOESTER, P.A.  
4001 Tamiami Trail N., #300  
Naples, Florida 34103  
239-435-3535

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GRANT OF PERPETUAL PUBLIC UTILITY EASEMENT TO THE CITY OF LABELLE

THIS INDENTURE (this “Easement”) is made and entered into this \_\_\_\_ day June of 2024, by and between, Town Grove, LLC, a Florida limited liability company, Owner, whose address is 206 Dal Hall Boulevard, Lake Placid, FL 33852, hereinafter referred to as GRANTOR, and THE CITY OF LABELLE, a municipal corporation of the State of Florida, whose address is 481 West Hickpochee Avenue, LaBelle, FL 33935, hereinafter referred to as the CITY.

WITNESSETH:

1. For and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged and accepted, GRANTOR hereby grants, bargains, sells and transfers to the CITY, its successors and assigns, a non-exclusive perpetual public utility easement situated in Hendry County, Florida, located and described as set forth in Exhibit "A", attached hereto and made a part hereof (the “Easement Area”).

2. The CITY, its successors, appointees and assigns, are granted the right, privilege, and authority to construct, replace, renew, extend and maintain a wastewater transmission/collection system and/or a water distribution system having underground pipes, together with, but not limited to, all necessary service connections, manholes, valves, fire hydrants, lift stations and appurtenances, to be located on, under, across and through the Easement Area (collectively, the “Utility Facilities”), with the additional right, privilege and authority to remove, replace, repair and enlarge said system within the Easement Area, and to trim and remove roots, trees, shrubs, bushes and plants, and remove improvements (with the exception of fences, addressed below) which may unreasonably affect the operation of conduit, lines, mains and/or utility facilities. Without limiting the generality of the foregoing, the CITY, as the holder of this perpetual easement, shall have the right to delegate (on a non-exclusive basis) its rights hereunder to any public agency or private party(ies), for the purpose of effectuating the construction and installation of utility facilities within the Easement Area. If a fence impedes the CITY’s access for construction or maintenance and there is no reasonably accessible alternative access and the

fence is not gated at the point of access, the CITY shall have the right to remove the fence, provided that it immediately notifies Grantor and restores the fence or installs an appropriate gate in place of the removed section of fence. It is understood and agreed that the pipelines to be installed as part of the Utility Facilities within the Easement Area shall be installed underground, provided, however, that this Easement shall not prohibit the installation of ancillary Utility Facilities, such as pump stations and air release valves, that are typically installed above ground to support the operation of an underground pipeline.

3. The Utility Facilities will not be limited to any particular diameter size or type and/or number of connections to other conduit or water/sewer mains for providing water/sewer service to this and any adjacent properties. The Easement Area is non-exclusively reserved for the Utility Facilities and for any landscaping (excluding trees), crops, walkways, roadways (including, paving and curbing), drainage ways, or similar uses. Houses, buildings, carports, garages, storage sheds, overhangs, or any other vertical structures or portions of vertical structures may not be constructed on or placed within, or overhang into, the Easement Area at any time, present or future, by GRANTOR, or its heirs, successors or assigns. Fences necessary to secure GRANTOR's property may remain or be installed by GRANTOR, and GRANTOR shall provide the CITY with keys or combinations to any locks on gates necessary for the CITY to access and utilize the Easement Area pursuant to the terms of this Easement.

4. Title to all utilities constructed and/or placed hereunder by the CITY or its agents will remain in the CITY, or its successors, appointees, and/or assigns.

5. Subject to any pre-existing easements and other recorded instruments covering the Easement Area described, GRANTOR covenants that it is lawfully seized and possessed of the Easement Area, has good and lawful right and power to grant this Easement.

6. GRANTOR, its heirs, successors or assigns, agree to assume all liability for any consequential damages to any houses, buildings, carports, garages, storage sheds, overhangs, or any other structures or portions of structures subsequently constructed by GRANTOR in violation of Paragraph 3 within the Easement Area, which result from the required activities of the CITY for the construction, maintenance or repairs to the utilities located within the above-described easement.

7. The CITY will be liable for money damages in tort for any injury to or loss of property, personal injury, or death caused by the negligent or wrongful act(s) or omission(s) of any official or employee of the CITY while acting within the scope of the official's or employee's office or employment under circumstances in which a private person would be found to be liable in accordance with the general laws of the State of Florida, and subject to the limitations as set out in Section 768.28, Florida Statutes, as it may be revised, amended or renumbered from time to time.

8. The CITY shall be responsible for the removal and satisfaction of any and all liens that may be filed against the Easement Area as a result of the installation, maintenance and operation of the Utility Facilities by or on behalf of the CITY.

9. Any contractors utilized by the CITY in connection with activities undertaken in



connection with this Easement shall be obligated under their respective contracts to: (1) indemnify GRANTOR for all loss, damage, liability, causes of action, claims, and costs, including but not limited to reasonable attorney's fees and costs, incurred by GRANTOR as a result of the negligent, willful or intentional acts or omissions of the contractor and its subcontractors in connection with any activities undertaken on the Easement Area; (2) obtain and provide to GRANTOR evidence of comprehensive general liability insurance and auto liability insurance with minimum limits of coverage in the amount of TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, bodily and property damage combined; (3) list GRANTOR as additional insured under such contractor's liability insurance; (4) provide certificates of the required insurance prior to conducting any activities within the Easement Area and maintain the required insurance at all times while conducting activities within the Easement Area or the Access Road and (5) repair any damage to the Easement Area caused by the contractors, or any of their subcontractors, removal of vegetation excepted (unless the same was previously covered with grass, in which event grass shall be planted in the damaged or disturbed areas).

10. Intentionally Deleted.

11. The CITY will allow the GRANTOR the right to connect at the GRANTOR's expense to the wastewater collection system in the future so long as the connection meets the then-current specifications of the CITY and the GRANTOR pays the applicable connection fees.

12. By acceptance of this Easement, the CITY assumes no responsibility for ownership or maintenance of any associated roads, except to the extent that the CITY causes any damage thereto during its use thereof. The CITY agrees to install and maintain the Utility Facilities in good working order and in accordance with all applicable laws, rules and regulations. This easement is strictly for utility purposes.

13. This Easement shall run with the land and shall be binding upon the parties hereto, their successors in interest and any assigns, all purchasers of the land described in Exhibit "A", and persons or entities acquiring any right, title or interest in the land described in Exhibit "A".

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the GRANTOR has caused this document to be signed on the date and year first above written.

Town Grove, LLC

\_\_\_\_\_  
[1st Witness' Signature]

By: \_\_\_\_\_  
Irving W. Wheeler, Authorized Member

\_\_\_\_\_  
Type or Print Name]

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
[2nd Witness' Signature]

\_\_\_\_\_  
[Type or Print Name]

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF HENDRY

The foregoing instrument was signed and acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of June, 2024, by Irving W. Wheeler as Authorized Member of Town Grove, LLC, a Florida limited liability company, on behalf of the company, who \_\_\_\_ is personally known to me or \_\_\_\_ has produced \_\_\_\_\_ as identification.

[notary stamp or seal]

\_\_\_\_\_  
[Signature of Notary]

\_\_\_\_\_  
[Typed or Printed Name]

\_\_\_\_ Approved, agreed to and accepted for and on behalf of the City of Labelle, Florida this  
\_\_\_\_ day of June, 2024.

ATTEST

**CITY OF LABELLE**

\_\_\_\_\_  
Jessi Zubaty, Deputy City Clerk

\_\_\_\_\_  
Julie Wilkins, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Derek Rooney, City Attorney

Exhibit "A"

Legal Description and Sketch of Easement Area

[See Attached]