

This Instrument Prepared by And Should Be Returned to:

Town of Lake Park
Office of the Town Manager
535 Park Avenue
Lake Park, FL 33403

RIGHT-OF-WAY IMPROVEMENT & MAINTENANCE AGREEMENT

THIS RIGHT-OF-WAY IMPROVEMENT & MAINTENANCE AGREEMENT (“**Agreement**”) is made by and between the **TOWN OF LAKE PARK**, a municipal corporation of the state of Florida (“**Town**”), having an address of 535 Park Avenue, Lake Park, Florida 33403, and **FOREST DEVELOPMENT, LLC**, a Florida limited liability company, its successors and assigns, having an address of 11231 US Highway 1 Suite 354, North Palm Beach, FL 33408 (“**Developer**”). (The term “parties” may be used herein to refer to the Developer and the Town, collectively)

WHEREAS, the Town Commission is the governing body of the Town and has authority over the Town’s roads, alleys and rights-of-way within the Town street system;

WHEREAS, the Town generally maintains the Town rights-of-way platted or dedicated to it for public use;

WHEREAS, Developer is developing a mixed-use condominium project known as “Nautilus 220”, located at 220 Lake Shore Drive, Lake Park, Florida 33403 (the “**Project**”);

WHEREAS, **NAUTILUS 220 CONDOMINIUM ASSOCIATION, INC.**, a Florida not for profit corporation, its successors and assigns, having an address of 11231 US Highway 1 Suite 354, North Palm Beach, FL 33408 (“**Association**”) is the association managing, operating, and maintaining the Project;

WHEREAS, the Project features specialized landscaping, hardscape, lighting, and streetscape furniture, some of which will encroach upon a public right-of-way as set forth in the applicable plans approved by the Town (the “**Approved Plans**”);

WHEREAS, the Developer is responsible for constructing the Project and all of the landscaping and improvements in accordance with the Approved Plan and further authorized herein;

WHEREAS, Developer, and not the Town, shall have the sole responsibility of maintaining any and all Streetscape Improvements within the Maintenance Area (as defined herein);

WHEREAS, the Town Commission has previously reviewed the Approved Plans and finds that the aesthetics and specialty features planned for the right-of-way will enhance the streetscape to the benefit of the public; and

WHEREAS, the Town and the Developer mutually recognize the need for entering into

this Agreement designating and setting forth the responsibilities of each party with respect to the improvements in the right of way, as defined below and more fully described herein.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated herein by reference.
2. **Encroachment and License.** The Town hereby consents to the encroachments of the those certain specialized landscaping, hardscape, lighting, and streetscape furniture described herein within the Town's public rights-of-way of Cypress Drive, Lake Shore Drive and Bayberry Drive. In order to perform its obligations under this Agreement, Town grants Developer, its successors and/or assigns, employees, contractors and agents, a non-exclusive license to access and use the Maintenance Area (as described below in Paragraph 4) for the purposes described in this Agreement.
3. **Installation and Maintenance Responsibilities.** Pursuant to the Approved Plans, Developer, at Developer's expense, shall install the following landscape and hardscape improvements in accordance with the Approved Plans as shown on Exhibit A: landscaping, street trees, ground cover and sod; irrigation for all landscaping within the rights-of-way; storm-drain structures; concrete sidewalks, roadways, asphalt, concrete curbs, concrete pavers along sidewalks and crosswalks, and streetscape furniture, including but not limited to, decorative street lighting, accent lighting, benches, bicycle racks, and trash receptacles (the "**Streetscape Improvements**"). After installation, Developer, at Developer's expense, shall be solely responsible for maintaining the Streetscape Improvements.
4. **Area to Be Maintained.** The area to be maintained by the Developer is: that area of the right-of-way along the building frontage, sidewalk and surrounding landscape areas of Cypress Drive, Lake Shore Drive, and Bayberry Drive as shown on Exhibit B (the "**Maintenance Area**"), attached hereto and incorporated herein, adjacent to the Developer's property (Exhibit C), legally described as follows:

Parcel "A" Legal Description:

A 60 FOOT WIDE PARCEL OF LAND BEING A PORTION OF CYPRESS DRIVE (PLATTED AVENUE C) LYING BETWEEN BLOCK 114 AND 115 AND ITS EASTERLY EXTENSION OF THE PLAT OF KELSEY CITY AS RECORDED IN PLAT BOOK 8, PAGE 23 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF BLOCK 114 OF SAID PLAT; THENCE N84°53'25"E A DISTANCE OF 20.00 FEET TO A POINT OF INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF CYPRESS DRIVE AND THE EASTERLY RIGHT-OF-WAY LINE OF FEDERAL HIGHWAY (U.S. 1), ACCORDING TO THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY LINE MAP SECTION 93040-2510, SAID POINT ALSO BEING THE POINT OF BEGINNING.

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF FEDERAL HIGHWAY (U.S. 1), N05°06'35"W, A DISTANCE OF 60.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF CYPRESS DRIVE; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, N84°53'25"E, A DISTANCE OF 423.52 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF LAKE SHORE DRIVE (60' RIGHT-OF-WAY) OF SAID PLAT; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE, S05°40'35"E, A DISTANCE OF 60.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF CYPRESS DRIVE; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, S84°53'25"W, A DISTANCE OF 424.11 FEET TO THE POINT OF BEGINNING.

CONTAINING 25,429 SQUARE FEET MORE OR LESS. (0.584 ACRES)

Parcel "B" Legal Description:

A 40 FOOT WIDE PARCEL OF LAND BEING A PORTION OF LAKE SHORE DRIVE (60 FOOT RIGHT-OF-WAY), LYING 20 FEET EASTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF BLOCK 114 OF THE PLAT OF KELSEY CITY AS RECORDED IN PLAT BOOK 8, PAGE 23 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF BLOCK 114 OF SAID PLAT; THENCE ALONG THE PROLONGATION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF CYPRESS DRIVE, N84°53'25"E, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

THENCE CONTINUING N84°53'25"E, A DISTANCE OF 40.00 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF LAKE SHORE DRIVE OF SAID PLAT; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE, S05°40'30"E, A DISTANCE OF 366.72 FEET TO POINT ON A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 322.04 FEET, THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 01°07'58", AN ARC DISTANCE OF 6.37 FEET TO A POINT OF NON-TANGENCY; THENCE S84°34'36"W, A DISTANCE OF 40.01 FEET TO A POINT 20.00 FEET EASTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF BLOCK 114 OF SAID PLAT, SAID POINT ALSO BEING ON A NON TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 282.04 FEET, AND WHOSE CENTER BEARS S85°34'58"W, THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 01°15'28", AN ARC DISTANCE OF 6.19 FEET TO A POINT OF TANGENCY; THENCE N05°40'30"W, A DISTANCE OF 367.11 FEET TO THE POINT OF BEGINNING.

CONTAINING 14,928 SQUARE FEET MORE OR LESS. (0.343 ACRES)

Parcel "C" Legal Description:

A 62 FOOT WIDE PARCEL OF LAND BEING A PORTION OF LOTS 16, 17, 18, 29, 30 AND 31, BLOCK 114 AND A PORTION OF LAKE SHORE DRIVE (60 FOOT RIGHT-OF-WAY) OF THE PLAT OF KELSEY CITY AS RECORDED IN PLAT BOOK 8, PAGE 23 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 16, BLOCK 114, OF SAID PLAT;

THENCE ALONG THE NORTHERLY LINE OF SAID LOT 16 N84°34'36"E, A DISTANCE OF 17.40 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF FEDERAL HIGHWAY (U.S. 1) (80' RIGHT-OF-WAY), ACCORDING TO THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP SECTION 93040-2510, SAID POINT ALSO BEING THE POINT OF BEGINNING.

THENCE CONTINUING ALONG THE NORTHERLY LINE OF LOT 16 AND LOT 31 AND ITS EASTERLY PROLONGATION, N84°34'36"E, A DISTANCE OF 428.67 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF LAKE SHORE DRIVE (60' RIGHT-OF-WAY) OF SAID PLAT, SAID POINT ALSO BEING A POINT ON A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 322.04 FEET AND WHOSE CENTER BEARS S85°27'28"W; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11°07'06", AN ARC DISTANCE OF 62.49 FEET TO A POINT OF NON-TANGENCY; THENCE LEAVING SAID EASTERLY RIGHT-OF-WAY LINE, S84°34'36"W, A DISTANCE OF 423.46 FEET TO A POINT ON SAID EASTERLY RIGHT-OF-WAY LINE OF FEDERAL HIGHWAY (U.S. 1) (80' RIGHT-OF-WAY), SAID POINT ALSO BEING ON A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 5759.65 FEET, AND WHOSE CENTER BEARS S86°32'16"W; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 00°37'01", AN ARC DISTANCE OF 62.03 FEET TO THE POINT OF BEGINNING.

CONTAINING 26,476 SQUARE FEET MORE OR LESS. (0.608 ACRES)

5. **Developer's Maintenance Responsibilities.** Developer shall maintain, or cause to be maintained by contractor(s) of Developer's choosing, the Streetscape Improvements within the Maintenance Area according to the standards set forth below:

5.1 **Landscaping.** The landscaping, planting beds, trees, turf areas and irrigation system within the Maintenance Area shall be maintained by Developer, regardless if the said improvement was made by the Town or Developer, by periodic mowing, fertilizing, weeding, curb and sidewalk edging, pruning, litter pickup, necessary replanting, and irrigation system repair, in compliance with the following requirements. Developer shall maintain Streetscape Improvements as necessary or reasonably appropriate to keep the Streetscape Improvements in substantially the same or better conditions as when originally installed.

a. **Watering Requirements.** Plant materials shall be watered to provide even and thorough water dispersal to wet the entire root zone, but not saturate the soil or overspray onto travel lanes. Irrigation systems shall be operated in accordance with Chapter 34, Article III of the Town Code.

b. **Integrated Plant Management Fertilization.** Developer shall perform an assessment of each planting area's soil periodically to determine the nutrient levels and need for fertilization. Palms, shrubs, trees and turf areas should be fertilized in such a manner and frequency to ensure that the plant material remains healthy and vigorously growing. All fertilizing of plant material shall comply with Chapter 32, Article IV of the Town Code.

c. Mulching. Developer shall mulch planting beds in such a manner as to: prevent weed growth; retain moisture to the plants; protect against soil erosion and nutrient loss; maintain a more uniform soil temperature; and improve the appearance of the planting beds. Developer shall avoid mulch mounded up on the trunks of trees, palms, and the base of shrubs to encourage air movement in this area which aids in lowering disease susceptibility. In accordance with Section 78-253 of the Town Code, Developer shall install in all tree and shrub beds at least two inches of mulch. Mulch shall be temporarily applied to areas not immediately covered by ground cover. Where mulch is intended to be installed permanently, it shall be renewed and maintained at three inches of depth. Mulch shall be thoroughly wet at the time of application to prevent wind displacement.

d. Pruning. All pruning and tree trimming shall be performed in accordance with Section 78-254 (d) of the Town Code and according to American National Standard Institute ANSI A300 standards, and shall be supervised by a certified arborist. Developer shall ensure that pruning is carried out with consideration for the health and natural growth of plant materials and to maintain clear visibility for motorist and bicyclist, vertical clearance for pedestrians, bicyclist, and truck traffic where applicable, and to prevent potential roadway hazards. Landscaping within a visibility triangle shall be pruned in compliance Sections 78-254 (d) (5) and Section 34-7 of the Town Code.

e. Staking and Guying. All staking materials, except for replacements, shall be removed by the earlier of the expiration of any applicable warranty period or one year from installation. Staking and guying attachment materials shall be securely fastened and closely monitored so that they do not create public hazards.

f. Turf Mowing. All grassed areas shall be mowed and trimmed with sufficient frequency to maintain a deep, healthy root system while providing a neat and clean appearance to the urban landscape.

g. Weeding/Herbicide. All planting areas shall be maintained as weed free as reasonably practicable, by maintaining proper mulch levels. Any damage resulting from chemical herbicide overspray onto plant materials shall be remedied by Developer by restoration of the plantings to the Approved Plans.

h. Plant Replacement. Plant replacement shall be substantially the same species, specification, size and quality, provided under the Approved Plans. Should it become necessary to change the species, then prior to any replacement, Developer shall submit the proposed species to be substituted to the Community Development Department. Any such change shall be subject to its reasonable approval.

5.2 Irrigation System. Irrigation systems shall be operated in accordance with Chapter 34, Article III of the Town Code. Developer shall use commercially reasonable efforts to ensure there is no roadway overspray from the irrigation system during high traffic period, shall operate the system in compliance with Chapter 34, Article III of the Town Code, and shall adhere to any mandated water restrictions. To ensure water conservation, the irrigation system shall be monitored for water leaks and the rain sensors regularly checked to ensure they are functioning properly so that the system shuts down when there is sufficient rainfall. All utility costs associated

with the irrigation systems, including the on-going cost of water, shall be the responsibility of the Developer.

5.3 **Utilities.** All costs associated with the utilities associated with the irrigation systems, including the on-going cost of water, are Developer's responsibility.

5.4 **Sidewalk and Hardscape.** The portion of the sidewalk, with specialty surfacing and/or pavers, and any hardscape and planters within the Maintenance Area shall be maintained and repaired as necessary so that such areas do not become a safety hazard. If the sidewalk/hardscape becomes damaged and requires replacement, it shall be replaced with substantially the same type and specifications as shown on the Approved Plans. Developer shall provide maintenance, and repair or replace any portion of the curb and sidewalk in the Maintenance Area which is lifted, cracked or damaged due to roots extending from the Streetscape Improvements as necessary to prevent a safety hazard and to maintain the aesthetics.

5.5 **Tree Grates.** If tree grates are required under the Approved Plans or are provided, the Developer shall maintain all tree grates in such a manner as to prevent any potential tripping hazards and protect damage to the tree grates and trees. If the tree grate(s) becomes damaged, grates shall be replaced with the same type and specifications as originally approved.

5.6 **Landscape Lighting.** Landscape accent lighting shall be maintained in such a manner as to prolong the life of the lighting fixture so the same shall not become a safety hazard. If the lighting fixtures and system become damaged and require replacement, they shall be replaced with substantially the same type and specification identified in the Approved Plans.

5.7 **Stormwater Infrastructure.** Developer shall inspect and maintain all stormwater infrastructure within the Maintenance Area, including but not limited to catch basins, exfiltration trenches, pipes, control structures, and connection points, ensuring that these components remain free of obstruction and perform as designed. The Developer shall perform such maintenance in accordance with Town and South Florida Water Management District (SFWMD) standards.

5.8 **Streetscape Furniture and Enhancements.** Developer shall maintain and repair, or if necessary, replace, any bike racks, garbage cans, or other street furniture or enhancements installed in the Maintenance Area by Town as of the date of this Agreement, or by Developer as part of the Streetscape Improvements, so the same shall not become a safety hazard and to maintain the aesthetics. Replacement items shall comply with the Approved Plans.

5.9 **Litter.** Developer shall keep the Maintenance Area reasonably free from litter, and shall be responsible for collecting the garbage from the garbage cans installed within the Maintenance Area.

5.10 **Standard of Maintenance.** The Developer shall provide maintenance and operation services in a diligent, careful and thorough manner consistent with good property management practice. Any of the foregoing standards requiring the prevention of a hazard shall refer to a hazard caused by the Developer's failure to properly maintain the applicable Streetscape Improvements in accordance with good property management practice.

5.11 **Compliance with Laws.** In performing its maintenance and repair obligations, the Developer shall promptly comply with the applicable statutes, ordinances, rules, orders, regulations and requirements of all local, state and federal agencies; however the Developer shall not be required to install any additional Streetscape Improvements within the Maintenance Area. Furthermore, Developer shall secure any applicable local, state, or federal permits necessary for the fulfillment of its obligations herein.

6. **Failure to Maintain.** If at any time it is determined by the Town that Developer is not reasonably maintaining the Maintenance Area pursuant to the terms of this Agreement, the Town may, at its option, issue a written notice to Developer of each deficient maintenance. If Developer does not correct and improve such deficient maintenance within thirty (30) calendar days of receipt of the Town's written notice (the “**Cure Period**”), the Town may declare Developer to be in breach of this Agreement and may cause such deficiencies to be corrected and, in addition to any other rights and remedies it may have, the Town may make any necessary corrections or improvements and bill Developer for the actual documented costs of such correction, plus a reasonable administrative fee, not to exceed 15% of the documented costs, and a reasonable attorney fee. Developer shall then remit to the Town the amount so billed within thirty (30) calendar days of Developer's receipt of such bill. However, if Developer has commenced the appropriate actions to cure the violation within the Cure Period and thereafter diligently and actively continues to cure of the violation, then the Town may extend the Cure Period for so long as the Town deems reasonably necessary to cure such violation given the nature or the violation and other factors not within Developer’s direct control. Notwithstanding the foregoing, Developer acknowledges that, in the event of a failure to cure the violation, or after more than one (1) uncured violation in a calendar year, or a series of uncured violations for failure to maintain the Streetscape Improvements over several years, the Town reserves the right, following the applicable notice and Cure Period, to remove the Streetscape Improvements within the right-of-way and charge the Developer the reasonable costs of such removal. As an alternative or additional remedy, the Town may pursue its remedies set forth in Chapter 162, Florida Statutes and the Town Code as a code violation against Developer’s property because of its failure to comply with the Approved Plans as incorporated into the Development Order for the Project.

7. **Future ROW Streetscape Improvements.** Developer acknowledges and agrees that the Town reserves authority over the roads and rights-of-way owned by the Town and that it has the right to make such changes to the configuration and traffic pattern of the roads and/or rights of way within the Maintenance Area as it deems appropriate. Developer understands and agrees that Streetscape Improvements covered by this Agreement may be removed, relocated or adjusted at any time in the future, as determined to be necessary by the Town. Developer shall be given not less than sixty (60) calendar days notice to remove any of the said Streetscape Improvements at the Developer's expense. In the event the Town makes changes to the configuration or traffic pattern of the rights of way within the Maintenance Area, or makes any improvements in the Maintenance Area, the Town shall have no liability to Developer for any damage that may occur to the Streetscape Improvements in the Maintenance Area.

8. **Developer's Additional Streetscape Improvements.** Developer shall not make any additional improvements in the Maintenance Area unless the plans for such additional improvements have been previously approved in writing by the Town.

9. **Town's Responsibilities.**

The Town shall have no obligation for the maintenance, repair, or replacement of any Streetscape Improvements or other elements within the Maintenance Area, as such responsibilities are solely those of the Developer. Notwithstanding the foregoing, the Town shall be responsible for, and shall promptly reimburse the Developer for, any damage to the Streetscape Improvements directly caused by the negligent or intentional acts or omissions of the Town, its employees, agents, or contractors while performing Town-related work or operations within or adjacent to the Maintenance Area.

9.1 For the purposes of this Agreement, “negligence” shall mean the failure to exercise the level of care that a reasonably prudent person or entity would exercise under similar circumstances, resulting in physical damage to the Streetscape Improvements or Maintenance Area. This provision shall not be construed to impose upon the Town any duty of maintenance, inspection, or operational control over the Maintenance Area or to create any liability for damage resulting from normal wear and tear, acts of third parties, weather events, or the Developer’s failure to maintain the area in accordance with this Agreement.

10. **Term.**

10.1 This term of this Agreement shall be in perpetuity and any subsequent amendments to this Agreement shall be in writing and executed by both parties, and shall only expire in the event that the Streetscape Improvements are removed. Should any portion of the Streetscape Improvements be removed, this Agreement, and the Developer’s obligations hereunder with respect to such portion, shall be deemed terminated as to the removed Streetscape Improvements but shall remain in full force and effect as to any remaining Streetscape Improvements unless otherwise terminated.

10.2 Notwithstanding anything to the contrary, the Town may unilaterally elect to terminate this Agreement for convenience by giving thirty (30) days' prior written notice to Developer. Upon such termination, the Developer shall be released from its obligations under this Agreement, and this Agreement shall be deemed terminated.

10.3 The termination of this Agreement shall not modify any approvals or other rights of the Developer unless (a) such approvals or rights were conditioned on the Developer's compliance with this Agreement and (b) this Agreement was terminated by the Town due to a breach of this Agreement which was not cured within the Cure Period.

11. **Insurance.**

11.1 Developer shall, upon the completion of the Streetscape Improvements and issuance of a Certificate of Occupancy from the Town for the Project, maintain from a company or companies lawfully authorized to do business in Florida, such insurance to protect the Town from claims which may arise out of the installation of Streetscape Improvements in the right-of-way and/or Developer's failure to maintain the Maintenance Area in accordance with this Agreement, or by a contractor, subcontractor, agents, or employees of Developer, or by anyone directly or indirectly employed by Developer or by anyone for whose acts Developer may be liable.

11.2 The insurance required shall be written for not less than the following limits of liability, adjusted every five (5) years to ensure coverages in the present-day equivalent coverages amounts shown below. Coverages shall be maintained without interruption from the effective date of this Agreement until the termination or expiration of this Agreement. Any liability coverage on claims made basis shall remain effective for five (5) years after final payment which may be attained through the annual renewal process.

11.3 Developer shall maintain the following minimum insurance coverages for the Maintenance Area.

a. Commercial General Liability: Commercial general liability insurance with limits not less than \$1,000,000.00 per each occurrence.

b. \$2,000,000.00 general aggregate. May not be subject to a self-insured retention or deductible exceeding \$50,000.00.

c. CGL coverage will include coverage for bodily injury, property damage and personal and advertising injury as defined in the current version of the ISO CG0001 form.

11.4 Additional Insured. The “Town of Lake Park” shall be covered as additional insureds on all insurance policies.

11.5 Certificate of Insurance. Developer shall annually furnish proof of the required insurance to the Town Manager. To be acceptable to the Town, each insurance certificate shall show the Town as an additional insured and should contain a clause substantially as follows:

“Should the above-described policies be canceled, not renewed, or materially modified before the expiration date, the issuing insurance company will mail thirty (30) days' written notice to the Town Manager of the Town of Lake Park, 535 Park Avenue, Lake Park, Florida 33403.”

11.6 The Town shall continue to maintain its current insurance policies unless the Town Commission should determine otherwise during the term of this Agreement.

12. Bonds.

12.1 Performance Bond. In the event any single contract for work within the Maintenance Area is \$200,000.00 or more, Developer shall cause its contractor(s) to provide, on forms acceptable to the Town, a one hundred percent (100%) performance bond(s) in an amount not less than the total contract price by a surety company acceptable to Town, and which names the Town as a co-obligee under the bond.

12.2 Payment Bond. In the event any single contract for work within the Maintenance Area is \$200,000.00 or more, Developer shall cause its contractor(s) to provide, on forms acceptable to the Town, a one hundred percent (100%) payment bond in an amount not less than the total contract price covering payments to all claimants, as defined in Section 255.05(1), Fla. Stat., supplying such contractor with labor, materials, or supplies, used directly or indirectly in the

work provided for in the contract, by a surety company acceptable to the Town, and which names the Town as a co-obligee under the bond.

12.3 **Recording of Bonds.** Developer shall cause its contractor(s) to record the required bonds in the public records of Palm Beach County and Developer shall provide certified copies of the recorded bonds to Town not more than ten (10) days from the date of recording and before the commencement of any work within the Maintenance Area with a contract value of \$200,000 or more.

12.4 **Bond Requirements.** Notwithstanding anything to the contrary contained herein, the bonding requirements set forth in this Section 12 shall not apply to any Streetscape Improvements being installed in connection with the Project; rather, these bonding requirements, if applicable, shall only apply to work within the Maintenance Area in the future, that is, after the Streetscape Improvements have been installed in connection with the Project and after the Town has issued a Certificate of Occupancy for the Project.

13. **Notice of Claims.** In the event Developer is notified in writing of any third-party claim for damages, or liens related to the Maintenance Area, Developer shall provide written notice of such claim or lien with all related facts and documents in Developer's knowledge or possession, to the Town, within ten (10) calendar days of Developer's receipt of written notice of such claim.

14. **Indemnification.** Developer shall indemnify and hold harmless the Town (the "Indemnified Parties") from all liabilities, damages, losses and costs, including but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of Developer, its contractors, employees and agents, and any other persons directly or indirectly employed or utilized by Developer in the performance of its maintenance obligations under this Agreement. Developer agrees to pay all such claims and losses and shall defend all such suits, in the name of the Indemnified Parties, including but not limited to appellate proceedings, and shall pay all costs, judgments and reasonable attorneys' fees which may issue thereon. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This section shall not be construed to require Developer to indemnify the Indemnified Parties against the consequences of their own negligence, or intentional acts or omissions. Developer and Town specifically agree that any contractual liability of Town to Developer under this Agreement shall be limited to the same amounts established in Section 768.28, Florida Statutes. Nothing in this Developer shall be deemed to be a waiver of the Town's sovereign immunity under Section 768.28, Florida Statutes. This clause shall survive the expiration or termination of this Agreement.

15. **Developer's Additional Responsibilities.**

15.1 **Claims.** In the event of any third-party claims for damages related to the Maintenance Area, Developer shall immediately provide written notice of such claim with all related facts and documents to the Town. Likewise, if the Town is served with any claim arising from the Maintenance Area which alleges circumstances triggering the indemnity in Article 14, the Town shall immediately notify Developer of same.

15.2 **Permits.** Developer shall secure any applicable permits necessary for the fulfillment of its obligations under the terms and conditions of this Agreement.

15.3 **Flow of Traffic.** Should Developer need to restrict the flow of traffic on the roadways near the Maintenance Area in order to perform its maintenance obligations, Developer shall provide written notice to the Community Development Department and specify the days and times necessary to restrict traffic and shall comply with all applicable governmental requirements related to restricting the normal flow of traffic.

15.4 **E-Verify.** Developer, and its contractors, shall utilize the U.S. Department of Homeland Security's E-verify system to verify the employment eligibility of all new employees hired by Developer to provide work in connection with the Maintenance Area during the term of this Agreement and to expressly require any contractors performing maintenance services pursuant to this Agreement to utilize the E-Verify system to verify the employment eligibility of new employees.

15.5 **Compliance with Law.** Developer shall promptly comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, state and federal agencies that are applicable to their obligations under the terms of this Agreement.

16. **No Interest or Estate.** Except for the right of access to conduct its responsibilities under this Agreement and/or the maintenance of the Maintenance Area, this Agreement does not create in Developer any claim of any interest or estate of any kind or extent whatsoever in the Maintenance Area by virtue of this Agreement.

17. **No Third Party Beneficiaries.** No person or entity other than the parties to this Agreement shall be deemed a beneficiary of this Agreement.

18. **Covenant Running with the Land; Recording.** Developer's responsibilities under this Agreement shall be a covenant running with the land, and shall be binding upon and inure to the benefit of Developer's successors and/or assigns in title to the Developer's property. Upon Developer's transfer of fee title to its property, such successor-in-title shall be deemed to have automatically assumed Developer's obligations under this Agreement and Developer shall be released from all further obligation and liability under this Agreement.

19. **Recording.** Developer shall record this Agreement in the Public Records of Palm Beach County indexed to the Developer's property. Upon its receipt of the Agreement with the recording information stamped thereon, Developer shall provide a copy of the Agreement which contains the recording information to the Town's Community Development Department for its file.

20. **Assignment.** This Agreement shall inure to the benefit of the parties' successors and assigns. Developer may assign this Agreement to the Association without the Town's approval. Upon such assignment, the Developer shall be fully released from all claims, obligations, and liability arising under this Agreement from and after the effective date of the assignment. Upon any assignment to the Association, the Association shall immediately become responsible for all of the Developer's obligations.

To the Town:

Town of Lake Park
Attn: Town Manager
Town Hall
535 Park Avenue
Lake Park, Florida 33403

With Copy to:

Town Attorney
Town of Lake Park
535 Park Avenue
Lake Park, Florida 33403

To Developer:

Forest Development, LLC
11231 US Highway 1 Suite 354
North Palm Beach, Florida 33408

With Copy to:

Saul Ewing LLP
701 Brickell Avenue, 17th Floor
Miami, FL 33131
Attn: Anthony Kang, Esq.

22. **Public Records.** The Developer shall keep and maintain all plans, drawings, construction documents, technical specifications, specifications, correspondence, computer files, emails, and/or reports prepared with respect to the maintenance of the Streetscape Improvements in the Maintenance Area. Any request to inspect or copy public records relating to the maintenance of the Maintenance Area shall be made directly to the Town. If the Town does not possess the requested records, the Town shall immediately notify the Developer of the request, and the Developer shall provide the records to the Town or allow the records to be copied within a reasonable time at the cost that would not exceed the cost allowed by law. All records stored electronically shall be provided to the Town, upon request, in a format that is compatible with the information technology systems of the Town. The Developer shall ensure that public records that the Town has previously informed the Developer are exempt or confidential and exempt from public records disclosure are not disclosed. Records that are exempt or confidential and exempt from public records requirements may include plans, drawings and records related to the physical security of Town facilities and systems and once so designated, shall not be disclosed by Developer, except as authorized by law and specifically authorized by Town. Upon expiration or termination of this Agreement, the Developer shall transfer, at no cost, to the Town all public records in possession of Developer related to the maintenance of the Streetscape Improvements in the Maintenance Area. Developer shall destroy any duplicate public records that the Town has designated as exempt or confidential and exempt from public records disclosure requirements. Failure of the Developer to provide public records to the Town within a reasonable time or allowable cost may be subject to penalties under Sec. 119.10, Fla. Stat., and may be cause for

termination of this Agreement by the Town, in addition to any other remedies available under this Agreement or by law.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE TOWN CLERK, WHO IS THE TOWN'S CUSTODIAN OF PUBLIC RECORDS, AT:

Office of the Town Clerk Town of Lake Park
535 Park Avenue
Lake Park, FL 33403
561-881-3311
TownClerk@lakeparkflorida.gov

23. **Non-discrimination.** Developer shall not discriminate against any person in performing its obligations under this Agreement because of race, color, religion, sex, gender identity or expressions, genetic information, national origin, age, disability, familial status, marital status or sexual orientation, or any other factor which cannot be lawfully used as a basis for treatment.

24. **Non-Binding Mediation.** Prior to the commencement of any court action arising out of this Agreement, the parties agree to attempt to resolve the dispute through non-binding mediation with a mediator mutually acceptable to both parties. The costs of such mediation shall be shared equally by the parties.

25. **Governing Law; Jurisdiction; Venue; Litigation.** This Agreement shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law without regard to conflicts of law provisions. The parties hereby irrevocably submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit concerning this Agreement shall be Palm Beach County, Florida, for state law claims, or the Southern District of Florida, for any federal claims. The Developer agrees to waive all defenses to any suit filed in Florida based upon improper venue or forum nonconveniens.

TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

26. **Severability.** Should any provision of this Agreement be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this Agreement as a whole or any part thereof, other than the provision declared to be invalid, and every other term and provision of this Agreement shall be deemed valid and enforceable to the maximum extent permitted by law.

27. **Waiver.** No delay or failure on the part of the Town to exercise any right or remedy occurring to the Town upon the occurrence of an event or violation of this Agreement shall affect any such right or remedy, held to be in abandonment thereof or preclude the Town from the exercise thereof at any time during the continuance of any event of violation. No waiver of a single event of violation by the Town shall be deemed to be a waiver of any subsequent event of violation. Furthermore, no waiver of any provision of this Agreement shall be effective unless it

is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates.

28. **Estoppel Certificate.** Town agrees, within fifteen (15) days after request by Developer, to execute, acknowledge and deliver to Developer or to any prospective purchaser, assignee or mortgagee designated by Developer, a certificate stating: (i) that this Agreement is unmodified and in full force and effect (or if there have been modifications, that this Agreement is in full force and effect as modified, and identifying the modification agreements); (ii) whether or not there is an existing default by Developer under this Agreement of which the Town has knowledge, and if there is any such default, specifying the nature and extent thereof; (iii) whether or not there are any defenses or counterclaims against enforcement of the obligations to be performed hereunder existing in favor of the Town; and (iv) such other matters concerning the status of this Agreement or the performance by Developer of its obligations hereunder as shall be reasonably requested.

29. **Entire Agreement.** This Agreement and any exhibits which are incorporated into this Agreement in their entirety, embody the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersede all prior and contemporaneous agreements and understandings, oral or written, relating to said subject matter.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have made and executed this Right-of-Way Improvement & Maintenance Agreement as of the date executed by the Town, which shall execute last.

Witness:

Forest Development, LLC, a limited liability company

By:_____

By:_____
Peter Baytarian, Manager

Print Name:_____

Date:_____

STATE OF FLORIDA)
) SS.
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged, sworn and subscribed before me by means of [] physical presence or [] online notarization, this ____ day of _____, 2025, by _____, who [] is personally known to me or [] has produced a _____ as identification.

[SEAL]

Notary Public

ATTEST:

By: _____

Name: _____

Title: _____

Date: _____

TOWN OF LAKE PARK

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
(APPROVED PLANS)

EXHIBIT B

(MAINTENANCE AREA)

Exhibit C

(DEVELOPER'S PROPERTY)

PARCEL 1:

LOTS 13, 14 AND 15, LESS COUNTY ROAD RIGHT-OF-WAY; AND THE WEST 70 FEET OF LOTS 32, 33 AND 34, ALL IN BLOCK 114, KELSEY CITY (NOW KNOWN AS LAKE PARK), ACCORDING TO THE PLAT THEREOF, ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT, IN AND FOR PALM BEACH COUNTY, FLORIDA, RECORDED IN PAGE BOOK 8, PAGE 15 AND 23.

PARCEL 2:

LOTS 9, 10, 11 AND 12, AND THE WEST 76.70 FEET OF LOTS 35, 36, 37 AND 38, ALL IN BLOCK 114, KELSEY CITY (N/K/A LAKE PARK), ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 8, PAGE 23, LESS THAT PORTION CONVEYED FOR ROAD RIGHT-OF-WAY DESCRIBED IN DEED BOOK 803, PAGE 223, AND DEED BOOK 803, PAGE 305, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

PARCEL 3:

THE EAST 210 FEET OF LOTS 35, 36, 37 & 38, BLOCK 114, LAKE PARK (FORMERLY KELSEY CITY), ACCORDING TO THE PLAT THEREOF, ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT, IN AND FOR PALM BEACH COUNTY, FLORIDA, RECORDED IN PLAT BOOK 8, PAGES 15 AND 23.

PARCEL 4:

LOTS 1 TO 8, BOTH INCLUSIVE, BLOCK 114, LESS THE WEST 20 FEET THEREOF FOR ROAD RIGHT-OF-WAY, AND THE WEST 108 FEET OF LOTS 39 TO 46, BOTH INCLUSIVE, BLOCK 114, KELSEY CITY (NOW KNOWN AS LAKE PARK), ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, RECORDED IN PLAT BOOK 8, PAGES 15 AND 23.

PARCEL 5:

LOTS 39, 40, 41, 42, 43, 44, 45 AND 46, BLOCK 114, LESS THE WEST 108 FEET THEREOF KELSEY CITY, ACCORDING TO THE PLAT THEREOF, ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT, IN AND FOR PALM BEACH COUNTY, FLORIDA, RECORDED IN PLAT BOOK 8, PAGE 23.

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