

**RESOLUTION 21-23**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH,  
FLORIDA, APPROVING AN AGREEMENT WITH PCGV, LLC  
RELATED TO THAT ENTITY'S CONSTRUCTION AND  
RELOCATION OF A CITY STORMWATER POND.**

**BE IT RESOLVED** that the appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Agreement between the City and PCGV, LLC, relating to the construction and relocation of a City stormwater pond as part of the Long Beach Lagoon development, in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

**THIS RESOLUTION** shall be effective immediately upon passage.

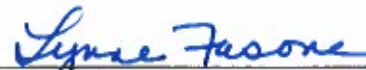
**PASSED** in regular session this 22<sup>nd</sup> day of October, 2020.

**CITY OF PANAMA CITY BEACH**

By: \_\_\_\_\_

  
Mark Sheldon, Mayor

**ATTEST:**

  
Lynne Fasone, City Clerk

## STORMWATER CONSTRUCTION AGREEMENT

THIS AGREEMENT (the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, between **PCGV, LLC**, a Florida limited liability company whose address is PO Box 4087, Gulf Shores, AL 36542 (hereinafter referred to as "Developer"), and **CITY OF PANAMA CITY BEACH**, a municipality created by the State of Florida, whose address is 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413 (hereinafter referred to as the "City").

WHEREAS, Developer is the fee simple owner of several parcels of real property described in Exhibit "A" attached hereto and incorporated by reference herein (hereinafter referred to as the "PCGV Parcels") upon which Developer desires to establish a multi-use development project called "Long Beach Lagoon" (the "Project") for which the City's Planning Board issued a Development Order approving the Project Master Plan on \_\_\_\_\_; and

WHEREAS, City is the fee simple owner of a parcel of real property described in Exhibit "B" attached hereto and incorporated by reference herein, which is contiguous to the PCGV Parcels, and upon which the City has constructed a stormwater management facility (the "City Stormwater Pond") to support its Front Beach Road Segment 2 ROW Improvement Project (the "City Stormwater Parcel"); and

WHEREAS, the placement of the City's Stormwater Parcel eliminates vehicular access across the PCGV Parcels from Front Beach Road to Churchwell Drive and Hutchison Boulevard; and

WHEREAS, the City and PCGV's predecessor in title agreed upon a joint use of the City Stormwater Pond, which inures to the benefit of Developer as the current fee simple owner of the PCGV Parcels; and

WHEREAS, Developer has proposed to relocate, in order to allow for access to the PCGV Parcels, and expand, for the purpose of providing sufficient capacity for the development of the PCGV Parcels and maintaining the City's current capacity, the City's Stormwater Pond (the "Expanded Stormwater Pond") for the mutual benefit of the parties, which the City finds will be in the best interests of the public if certain conditions are met; and

WHEREAS, in order to accomplish the mutual benefits for the City and the Developer, the parties desire that the City shall transfer in fee simple the City's Stormwater Parcel to the Developer and that the Developer shall have the sole responsibility and bear the cost of relocating and constructing the Expanded Stormwater Pond and the Developer shall in perpetuity maintain at no cost to the City the Expanded Stormwater Pond; and

WHEREAS, the parties desire to set out their mutual understanding of the necessary actions to construct and establish the Expanded Stormwater Pond in a manner that enables the development of the Project without disrupting the current operation of the City Stormwater Pond on which the City relies.

NOW THEREFORE, PCGV, LLC and City, for and in consideration of the sum of \$10.00, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual promises herein contained, and incorporating fully the above recitals herein, do hereby covenant and agree as follows:

1. **GRANT OF TEMPORARY EASEMENT TO DEVELOPER FOR CONSTRUCTION OF THE EXPANDED STORMWATER POND.**

During the construction of the Expanded Stormwater Pond and subject to the terms and conditions hereafter provided, City hereby grants to Developer, its successors and assigns, an easement (as more specifically contemplated in the Easement Agreement attached as Exhibit C attached hereto), which shall expire upon the transfer of fee title to the Developer of the City Stormwater Parcel, in the City Stormwater Parcel for the benefit of the PCGV Parcels (but no other) to permit relocation and expansion of the City's stormwater pond facilities from the City Stormwater Parcel to PCGV Parcels, but no other land, provided:

- (a) That during construction, the City's stormwater capacity and functioning stormwater facilities are not diminished in other than de minimis ways, to the reasonable satisfaction of the City; and
- (b) That during the construction, Developer demonstrates by engineering analysis, to the reasonable satisfaction of City, that neither the peak stages in the City Stormwater Pond nor the peak discharge rate of the City Stormwater Pond will be increased thereby. Developer acknowledges that increasing the peak stages of the City Stormwater Pond would cause public road flooding due to design grades and that increasing peak discharge could cause flooding problems downstream.
- (c) All requirements contained in this section are met.

2. **CONSTRUCTION OF THE EXPANDED STORMWATER POND**

The Expanded Stormwater Pond must be constructed to avoid increasing peak stages or peak discharges. The parties agree that the expansion shall be at the Developer's expense and subject to the City's standards as interpreted by the City Engineer or his or her designee. Specifically, the parties agree as follows:

- (a) The Expanded Stormwater Pond and its bank, berm, fencing, landscaping and any other related improvements (the "Expansion") shall be by design and construction methods and materials consistent with those used in the design and construction of the City Stormwater Pond; and
- (b) Developer shall demonstrate to the reasonable satisfaction of the City that the storage and attenuation capabilities of the Expanded Stormwater Pond will be increased by an amount required by the results of an engineering analysis of stormwater impacts due to development of the PCGV Parcel and in no event shall the City's capacity ever decrease below the current capacity of the City Stormwater Pond; and
- (c) The engineering analysis demonstrates no increase in the peak stages of the City Stormwater Pond system after the Expansion impacts are considered; and

- (d) The engineering analysis demonstrates no increase in the peak discharge rate of the Expanded Stormwater Pond system after the construction; and
- (e) Developer, at its expense, agrees to provide the City with (i) a legal description and a current boundary, as-built and topographical survey of the Expanded Stormwater Pond locating all improvements associated with the Expansion, sealed by a registered Florida surveyor who is reasonably acceptable to City, and (ii) evidence reasonable acceptable to City of marketable title to the entire Expanded Stormwater Pond Area in the entity signing this Agreement and joint use agreement, free and clear of all liens and encumbrances; and
- (f) Developer enters into with the City in form acceptable to all parties an easement to the City and perpetual joint-use agreement running with the affected lands providing for the use by the City and maintenance by the Developer of the Expanded Stormwater Pond and the necessary attendant facilities, superior in right and title to all other interests in the Expanded Stormwater Pond, including taxes. Each party shall bear their own attorney's fees incurred in preparing the instruments mentioned in this sub-section; and
- (g) The construction of the Expanded Stormwater Pond, the decommissioning and removal from service of the City Stormwater Parcel, and ultimate connection of the City and the PCGV Parcels to the Expanded Stormwater Pond must be permitted at no expense to City in final form by all regulatory agencies with jurisdiction over the City Stormwater Pond or related stormwater facilities. The City when required or determined necessary by the Developer shall act as a co-applicant and execute all necessary documents required for the permitting and construction of the Expanded Stormwater Pond. The construction and transfer to the Expanded Stormwater Pond must not affect any permit obtained by or on behalf of City which is associated with the City Stormwater Pond, or any permit so affected must be duly amended or revised in final form at no expense to City to permit the connection with no adverse effect upon and no material increase in the cost of operation or maintenance of the City Stormwater Pond and City's public stormwater system downstream of the City Stormwater Pond. All engineering analyses required or permitted by this section shall be at Developer's expense and utilize the same methodology and modeling techniques used by City to design the City Stormwater Pond. All peak stages and discharges shall be determined for 5 year, 25 year and 100 year storm events; and
- (h) Nothing in this section shall be construed to affect or modify any land development, building or other ordinance or regulation applicable to the Connection or the Expansion or any use or structure on the PCGV Parcels; and
- (i) Neither the construction of the Expanded Stormwater Pond or the decommissioning of the City Stormwater Pond shall be commenced without City's prior written approval which shall not be unreasonably or arbitrarily denied or delayed; and
- (j) Developer agrees to defend, indemnify and hold harmless the City, its agents and employees, of and from any claim or demand arising from or associated with the making or the existence of the Expanded Stormwater Pond, or the making of the connection, to the extent that a claim or demand arises in whole or in part from any act or omission of Developer, its agents or employees. Nothing herein is intended to nor should be interpreted to waive the City's sovereign immunity.

3. **TRANSFER OF THE CITY STORMWATER PARCEL, GRANT OF PERPETUAL EASEMENT TO EXPANDED STORMWATER PARCEL TO CITY, AND REQUIREMENT OF PERPETUAL MAINTENANCE BY THE DEVELOPER.**

Upon completion of the Expanded Stormwater Pond and receipt of all necessary approvals to place the Expanded Stormwater Pond into service, the City shall transfer to Developer in fee simple by warranty deed the City Stormwater Parcel. The Developer shall simultaneously transfer to City a perpetual easement for the Expanded Stormwater Pond (as more specifically contemplated in Exhibit C attached hereto). The Easement shall run with the land and shall require that the fee title owner to the Expanded Stormwater Pond parcel maintain the property in perpetuity at its expense to the requirements of law and the reasonable requirements of the City Engineer or his or her designee.

4. **COST OF CONSTRUCTION.**

All costs of construction of the Expanded Stormwater Pond and the removal from service of the City Stormwater Pond shall be the sole cost of the Developer.

5. **MAINTENANCE AND REPAIRS.**

As outlined in the easement, following the construction of the Expanded Stormwater Pond and the connection of the City and Developer facilities, the Developer, at its sole cost and expense, shall maintain, or cause to be maintained in good order and in a sightly and safe condition, the Expanded Stormwater Pond and any stormwater management drainage facilities on the PCGV property. Except as otherwise expressly provided in this Agreement, once constructed, in the event of any damage to or destruction of all or a portion of the drainage facilities on the PCGV property, the Developer shall, at its sole cost and expense, with due diligence, repair, restore and rebuild such drainage facilities to their condition prior to such damage or destruction. Further, any user of the drainage facilities shall be liable for any damages to such drainage facilities caused by such user's negligence or intentional misconduct.

6. **OBLIGATION TO COMPLY WITH ALL LAWS AND REGULATIONS.**

Developer and the City shall comply with all governmental or quasi-governmental laws, ordinances, rules, and regulations of every kind pertaining to the easements granted herein or to the use and occupancy thereof, including without limitation, any such law, ordinance, rule or regulation regarding or relating to environmental protection, pollution, sanitation or safety. No party hereto will commit or suffer any waste of any of the easements granted herein, nor will they use or permit any use of any of the easements granted herein for any illegal purpose or in any such way as to constitute a public nuisance or in any way so as to violate or breach any law, rule, regulation or ordinance to which any of the easements granted herein are subject.

7. **REMEDIES AND ENFORCEMENT.**

- a. In the event of a breach or threatened breach by any party or its permittees of any of the terms, covenants, restrictions or conditions hereof, the other party shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.
- b. In addition to all other remedies available at law or in equity, upon the failure of a defaulting party (the "Defaulting Party") to cure a breach of this Agreement within thirty (30) days following written notice thereof by a party (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the Defaulting Party commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), the non-defaulting party (the "Non-Defaulting Party") shall have the right to perform such obligation contained in this Agreement on behalf of the Defaulting Party and be reimbursed by the Defaulting Party upon demand for the reasonable costs thereof together with interest at the prime rate plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (i) an emergency, or (ii) blockage or material impairment of the easement rights, a party may immediately cure the same and be reimbursed by the other party upon demand for the reasonable cost thereof together with interest at the prime rate, plus two percent (2%), as above described.
- c. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.
- d. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any party to cancel, rescind, or otherwise terminate this Agreement.

**8. RUNNING OF BENEFITS AND BURDENS.**

All provisions of this instrument, including the benefits and burdens, run with the land and are binding upon and shall inure to the benefit of the heirs, successors and assigns of the parties hereto.

**9. ENFORCEMENT; ATTORNEY'S FEES.**

In the event of any default under this instrument, the party not in default shall be entitled to any and all remedies available at law or in equity, including but not limited to an injunction or specific performance. Any party which prevails in any such litigation to enforce the provisions hereof shall recover as part of his costs a reasonable attorney's fee, together with such other costs and expenses as the court deems appropriate.

**10. NOTICE.**

The addresses of Developer and the City are as set forth in the initial paragraph. Any party may give written notice of change of address with the others. Unless otherwise agreed by the parties, all notices shall be sent by U.S. mail to the addresses provided for in this paragraph or to the last known address and shall be deemed given when placed in the mail.

**11. ENTIRE AGREEMENT; AMENDMENT.**

The parties hereto agree that the entire agreement between the parties with respect to the easements is set forth in this instrument. This Agreement may be amended only by an instrument in writing and signed by the then owner of the PCGV Parcel and the City.

**12. WAIVER.**

No waiver of any of the provisions hereof shall be effective unless it is in writing and signed by the party against whom the waiver is asserted. Any such written waiver shall be applicable only to the specific instance to which it relates and shall not be deemed to be a continuing waiver or waiver of any future matter.

**13. GOVERNING LAW.**

This agreement shall be construed under the laws of Florida, and exclusive jurisdiction and venue to enforce this agreement shall lie in the 14<sup>th</sup> Circuit Court for Bay County, Florida, where all property is located.

Signed, sealed and delivered  
in the presence of:

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

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

**DEVELOPER:**

**PCGV, LLC.  
a Florida limited liability corporation**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF BAY

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ as \_\_\_\_\_ of PCGV, LLC., a Florida limited liability corporation, on behalf of the company. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

Debbie Ward  
Name: Debbie Ward

Kimberly J. Skibba  
Name: Kimberly J. Skibba

CITY:

**PANAMA CITY BEACH, FLORIDA,**  
a political subdivision of the State of Florida

By: Tony O'Rourke  
Name: Tony O'Rourke  
Title: City Manager

Approved us to legal form and sufficiency

\_\_\_\_\_

ATTEST:

By: Lynne Fasone  
City Clerk

STATE OF FLORIDA  
COUNTY OF BAY

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of  
Oct., 2019, by Tony O'Rourke as City Manager  
of City of PCB. He/she is personally known to me or has produced \_\_\_\_\_  
\_\_\_\_\_ as identification.

Carrie L. Jagers  
Notary Public

**CARRIE L. JAGERS**  
Notary Public State of Florida  
My Commission Expires Oct. 5, 2023  
Commission No. GG 911212

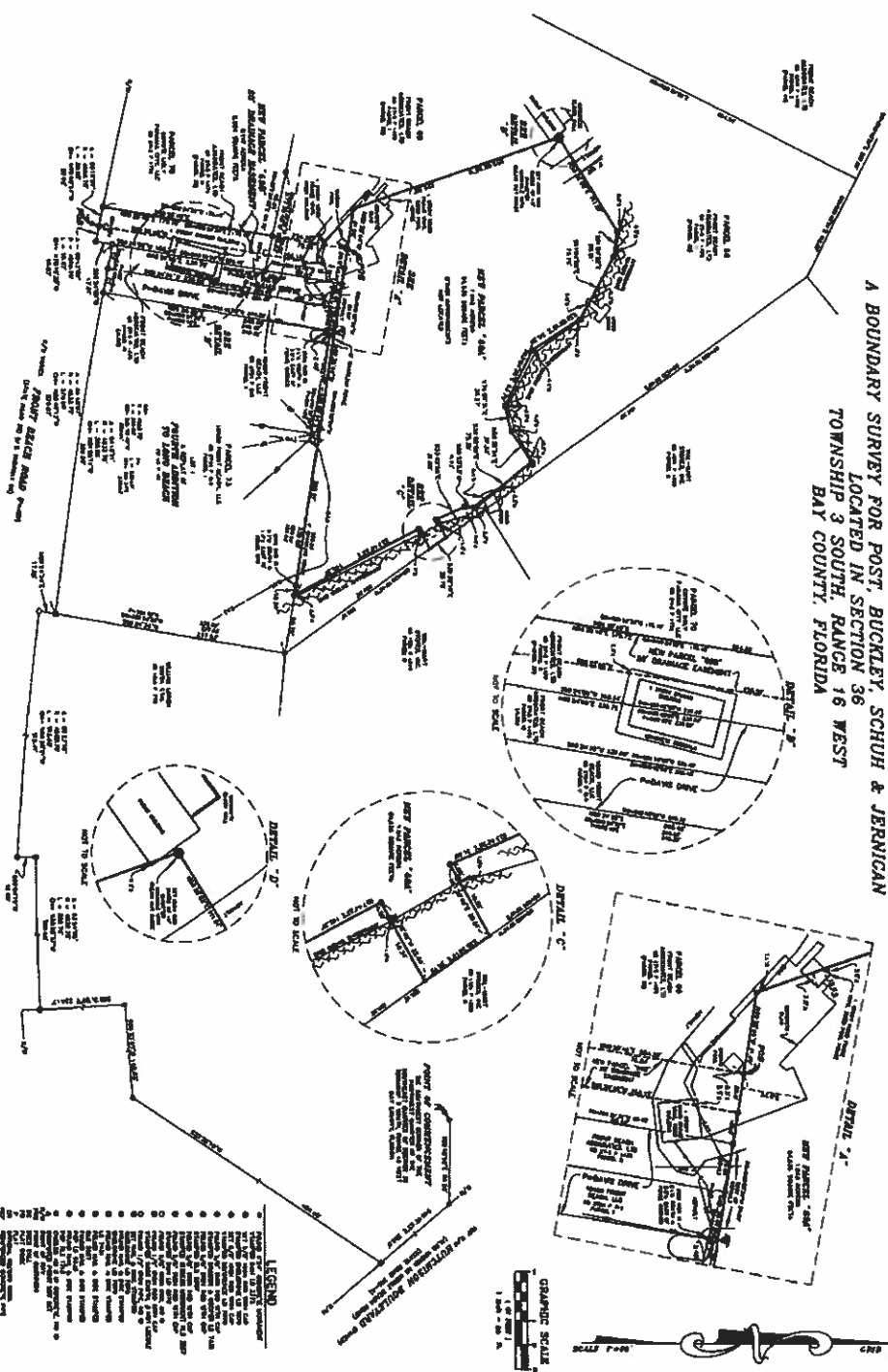


EXHIBIT A—Developer's Property

## EXHIBIT B—Description of City Stormwater Pond

Commence at the Southwest corner of the Northwest quarter of the Southeast quarter of Section 36, Township 3 South, Range 16 West, Bay County, Florida and thence run South 89 degrees 15 minutes 50 seconds East, along the South boundary line of said Northwest quarter of the Southeast quarter, 86.58 feet to a point on the Westerly right of way line of Hutchison Boulevard (also known as Middle Beach Road and State Road 392-A), thence run South 40 degrees 41 minutes 23 seconds East, along said Westerly right of way line, 350.0 feet to an iron rod, thence departing said Westerly right of way line run South 33 degrees 35 minutes 10 seconds West 404.49 feet to a concrete monument, thence run South 85 degrees 33 minutes 03 seconds West 142.03 feet to a concrete monument, thence run South 03 degrees 31 minutes 59 seconds East 224.17 feet to an iron rod on the Northerly right of way line of Front Beach Road (State Road 30), said iron rod being on a curve concave to the North, thence run in a Westerly direction along the Northerly right of way line of said Front Beach Road (State Road 30) as follows: Westerly along said curve having a radius of 4532.75 feet, through a central angle of 03 degrees 54 minutes 55 seconds for an arc length of 309.74 feet, chord of said arc being South 88 degrees 25 minutes 37 seconds West 309.68 feet to a nail and disc, thence run South 00 degrees 04 minutes 19 seconds West 18.00 feet to a nail and disc, said nail and disc being on a curve concave to the North, thence run in a Westerly direction along said curve having a radius of 4550.75 feet, through a central angle of 06 degrees 27 minutes 18 seconds for an arc length of 512.68 feet, chord of said arc being North 86 degrees 23 minutes 21 seconds West 512.41 feet to an iron rod, thence run North 09 degrees 24 minutes 34 seconds East 17.02 feet to a nail and disc, said nail and disc being on a curve concave to the North, thence run in a Westerly direction along said curve having a radius of 4533.75 feet, through a central angle of 04 degrees 48 minutes 07 seconds for an arc length of 379.98 feet, chord of said arc being North 80 degrees 46 minutes 13 seconds West 379.87 feet to an iron pipe, thence run South 09 degrees 24 minutes 06 seconds West 17.01 feet to an iron rod, said iron rod being on a curve concave to the North, thence run in a Westerly direction along said curve having a radius of 4550.75 feet, through a central angle of 00 degrees 27 minutes 16 seconds for an arc length of 36.09 feet, chord of said arc being North 78 degrees 09 minutes 02 seconds West 36.09 feet to a nail & disc, thence departing said Northerly right of way line run North 09 degrees 25 minutes 46 seconds East 254.26 feet to a nail and disc for the POINT OF BEGINNING, thence from said Point of Beginning run North 80 degrees 35 minutes 44 seconds West 41.66 feet to a chiseled X in concrete, thence run North 19 degrees 09 minutes 55 seconds West 222.25 feet to an iron rod, thence run North 58 degrees 22 minutes 52 seconds East 111.91 feet to an iron rod, thence run South 81 degrees 59 minutes 22 seconds East 25.51 feet to an iron rod, thence run South 61 degrees 04 minutes 00 seconds East 73.76 feet to an iron rod, thence run South 32 degrees 05 minutes 15 seconds East 58.38 feet to an iron rod, thence run South 63 degrees 04 minutes 26 seconds East 63.79 feet to an iron rod, thence run North 76 degrees 07 minutes 31 seconds East 26.27 feet to an iron rod, thence run North 55 degrees 36 minutes 54 seconds East 37.33 feet to an iron rod, thence run South 38 degrees 02 minutes 00 seconds East 75.35 feet to an iron rod, thence run South 00 degrees 23 minutes 53 seconds West 9.42 feet to an iron rod, thence run South 23 degrees 42 minutes 56 seconds East 31.09 feet to an iron rod, thence run North 61 degrees 26 minutes 46 seconds East 4.00 feet to an iron rod, thence continue North 61 degrees 26 minutes 46 seconds East 16.51 feet to a point, thence run South 35 degrees 30 minutes 19 seconds East 20.15 feet to a point, thence run South 61 degrees 26 minutes 46 seconds West 18.34 feet to an iron rod, thence continue South 61 degrees 26 minutes 46 seconds West 4.50 feet to an iron rod, thence run South 27 degrees 44 minutes 23 seconds East 145.37 feet to an iron rod, thence run North 80 degrees 35 minutes 44 seconds West 356.21 feet to the Point of Beginning.

**A BOUNDARY SURVEY FOR POST, BUCKLEY, SCHUH & JERNIGAN  
 LOCATED IN SECTION 36  
 TOWNSHIP 3 SOUTH, RANGE 16 WEST  
 BAY COUNTY, FLORIDA**



**DETAILED DESCRIPTION OF THE SURVEY**

The survey was conducted on the 15th day of February, 1950, by the undersigned, a duly qualified and licensed Surveyor in and for the State of Florida. The purpose of the survey was to determine the boundaries of the several parcels of land shown on the attached plan, and to show the location and extent of the easements thereon. The survey was conducted in accordance with the provisions of the Florida Statutes, and the results thereof are shown on the attached plan. The survey was conducted in accordance with the provisions of the Florida Statutes, and the results thereof are shown on the attached plan.

**LEGEND**

1. THE BOUNDARIES OF THE SEVERAL PARCELS OF LAND SHOWN ON THE ATTACHED PLAN ARE SHOWN BY SOLID LINES.

2. THE BOUNDARIES OF THE SEVERAL PARCELS OF LAND SHOWN ON THE ATTACHED PLAN ARE SHOWN BY DASHED LINES.

3. THE BOUNDARIES OF THE SEVERAL PARCELS OF LAND SHOWN ON THE ATTACHED PLAN ARE SHOWN BY DOTTED LINES.

4. THE BOUNDARIES OF THE SEVERAL PARCELS OF LAND SHOWN ON THE ATTACHED PLAN ARE SHOWN BY LONG DASHED LINES.

5. THE BOUNDARIES OF THE SEVERAL PARCELS OF LAND SHOWN ON THE ATTACHED PLAN ARE SHOWN BY SHORT DASHED LINES.

6. THE BOUNDARIES OF THE SEVERAL PARCELS OF LAND SHOWN ON THE ATTACHED PLAN ARE SHOWN BY Wavy LINES.

7. THE BOUNDARIES OF THE SEVERAL PARCELS OF LAND SHOWN ON THE ATTACHED PLAN ARE SHOWN BY Dotted LINES.

8. THE BOUNDARIES OF THE SEVERAL PARCELS OF LAND SHOWN ON THE ATTACHED PLAN ARE SHOWN BY Dotted LINES.

9. THE BOUNDARIES OF THE SEVERAL PARCELS OF LAND SHOWN ON THE ATTACHED PLAN ARE SHOWN BY Dotted LINES.

10. THE BOUNDARIES OF THE SEVERAL PARCELS OF LAND SHOWN ON THE ATTACHED PLAN ARE SHOWN BY Dotted LINES.

DATE	APPROVED	DESIGNED BY	DATE	PROJECT	DATE	ORDER NO.	SCALE
15 FEB 1950	15 FEB 1950	C. BUCKLEY	15 FEB 1950	CITY OF PANAMA CITY BEACH FRONT BEACH ROAD - SEGMENT 2 EAST POND SITE	15 FEB 1950	08-015-50	1 OF 1
DESIGNED BY	DESIGNED BY	DESIGNED BY	DESIGNED BY	DESIGNED BY	DESIGNED BY	DESIGNED BY	DESIGNED BY
C. BUCKLEY	C. BUCKLEY	C. BUCKLEY	C. BUCKLEY	C. BUCKLEY	C. BUCKLEY	C. BUCKLEY	C. BUCKLEY
DESIGNED BY	DESIGNED BY	DESIGNED BY	DESIGNED BY	DESIGNED BY	DESIGNED BY	DESIGNED BY	DESIGNED BY
C. BUCKLEY	C. BUCKLEY	C. BUCKLEY	C. BUCKLEY	C. BUCKLEY	C. BUCKLEY	C. BUCKLEY	C. BUCKLEY
DESIGNED BY	DESIGNED BY	DESIGNED BY	DESIGNED BY	DESIGNED BY	DESIGNED BY	DESIGNED BY	DESIGNED BY
C. BUCKLEY	C. BUCKLEY	C. BUCKLEY	C. BUCKLEY	C. BUCKLEY	C. BUCKLEY	C. BUCKLEY	C. BUCKLEY



**CITY OF PANAMA CITY BEACH  
 FRONT BEACH ROAD - SEGMENT 2  
 EAST POND SITE**

**POST, BUCKLEY,  
 SCHUH & JERNIGAN**

EXHIBIT C—Easement Agreement

PREPARED BY/RETURN TO:

City of Panama City Beach  
Attn: City Attorney  
17007 Panama City Beach Parkway  
Panama City Beach, Florida 32413

**EASEMENT AGREEMENT**

THIS AGREEMENT (the “Agreement”) is made this \_\_\_\_ day of August, 2019, between **PCGV, LLC**, a Florida limited liability company whose address is PO Box 4087, Gulf Shores, AL 36542 and its successors and assigns (hereinafter referred to as “Developer” ), and **CITY OF PANAMA CITY BEACH**, a municipality created by the State of Florida, whose address is 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413 (hereinafter referred to as the “City”).

**WITNESSETH:**

That for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Developer and City, do hereby agree as follows:

1. City grants unto Developer a temporary non-exclusive easement for the purpose of providing ingress and egress for construction crews, equipment and building supplies upon, over, under and across the area owned by City situated in Bay County, Florida and more particularly described in **Exhibit “A”**, attached hereto and made a part hereof (the “Construction Easement”). In addition, upon Final Acceptance of Public Infrastructure Area Improvements by the City, Developer grants to the City a perpetual easement on the tract of land more particularly described in **Exhibit “B”** attached hereto and made a part hereof for the purpose of the conveying, discharging, treating and disposing of stormwater runoff thereon in to Developer’s stormwater management system (“the “Public Infrastructure Easement”), described to include the infrastructure outlined in **Exhibit “C”** attached hereto and made a part hereof (the “Infrastructure Improvements”).

2. The Construction Easement shall be used for the sole purpose of Developer’s construction staging, ingress and egress to the City’s existing stormwater management facility as described in Exhibit “B” and eventual demolition. Demolition shall take place following City’s Final Acceptance of Public Infrastructure Easement Area improvements.

3. The Construction Easement and Public Infrastructure Easement herein granted are each subject to covenants, restrictions, easements, liens and encumbrances of record, and the following:

(a) City, its successors and assigns, reserves all rights of ownership including, without limitation, the right to use the Construction Easement area and Public Infrastructure Easement area for any and all purposes that do not unreasonably interfere with the rights of Grantee, including without limitation, the rights to: (i) use the area for stormwater conveyance, treatment and disposal to serve the property owned by Grantor adjacent or in close proximity to the area; and (ii) erect any structures or improvements within the area.

(b) Grantor reserves the absolute right to relocate or redesign the easement areas in any manner that Grantor, in Grantor's sole and absolute discretion, deems appropriate, provided that any relocation or redesign does not have a material adverse effect on the rights of Grantee.

(c) Grantee shall be required to abide by the terms and conditions of any and all applicable permits governing the easement areas

(d) Grantee shall exercise the easement rights conveyed herein in a manner which will not unreasonably interfere with use and occupancy of property adjacent or in close proximity to other property owned, leased, occupied or used by Grantor.

4. The Construction Easement shall terminate immediately and without requirement of further action upon the City's Final Acceptance of the Public Infrastructure Easement Area improvements as described in that certain STORMWATER CONSTRUCTION AGREEMENT by and between the City and Developer. The Construction Easement shall terminate and be of no further force or effect without requirement of further action immediately upon the Final Acceptance of the STORMWATER MANAGEMENT AREA. Upon such Expiration and without requirement of any further action, title to any and all improvements, fixtures, equipment, supplies, or materials located on in or around the Construction Easement Area shall vest in and to the Developer in fee simple. The City will execute a Special Warranty Deed and insured evidence of clear title to the Developer for the parcel described in Exhibit "A" within 15 days of Final Acceptance of the Public Infrastructure Easement Area improvements. Also, the City will provide Developer with a Bill of Sale for the fixtures and personalty, if any, situated on the parcel described in Exhibit "A".

5. **GRANT OF STORMWATER MANAGEMENT EASEMENT.** Upon Final Acceptance of the Public Infrastructure Easement Area improvements by the City, subject to the terms and conditions hereinafter provided, Developer hereby grants to City, its successors and assigns, as an easement appurtenant to Front Beach Road, a perpetual, non-exclusive easement on, over, along, through, across and under a portion of the Developer's Parcel more particularly described in Exhibit "C" attached hereto and incorporated by reference herein (hereinafter referred to as "Public Infrastructure Easement Area") for the purposes of conveying, draining, storing, treating and disposing stormwater into the Stormwater Management Easement Area which is to be constructed within the boundaries described on Exhibit C, and for the operation and maintenance of underground drainage pipes located within the Stormwater Management Easement Area (the "Stormwater Management Drainage Facilities") together with the right to allow the attachment of and also the right to install, maintain, alter, repair and use such control structure or other devices as may be necessary or convenient in connection therewith (the "Stormwater Management Easement"). Developer covenants and agrees that the Developer shall not block the Stormwater Management Easement Area so as to obstruct in any way the operations of the Stormwater

## Management Drainage Facilities.

6. **GRANT OF SUBSURFACE DRAINAGE EASEMENT**. Subject to the terms and conditions hereinafter provided and upon Final Acceptance of the Public Infrastructure Easement Area, Developer hereby further grants to City, its successors and assigns, as an easement appurtenant to Front Beach Road, as more clearly depicted on the Site Plan, a perpetual, non-exclusive easement under a portion of the Developer's Parcel more particularly described in Exhibit A attached hereto and incorporated by reference herein (hereinafter referred to as the "Subsurface Drainage Easement Area") for the purposes of accessing, repairing, operating and maintaining an underground outfall pipe (the "Subsurface Drainage Facilities") located within the Subsurface Drainage Easement Area (the Subsurface Drainage Easement). In connection with the exercise of the rights granted pursuant to this Drainage Easement, Developer covenants and agrees that the Developer shall not close or block or cause to be closed or blocked any of the conveyances from Front Beach Road to the Drainage Surface Area. In addition, if the Developer's exercise of its rights under this Subsurface Drainage Easement results in the damage of any portion of the improvements located within the Subsurface Drainage Easement Area, including, without limitation, pipes, inlets or conveyance features, Developer shall promptly replace and restore the damaged areas and improvements to the condition and in the location in which they were immediately prior to such damage.

7. City shall have no liability to Developer or its employees, licensees, guests, invitees, lessees, agents or independent contractors for loss of personal property, death or personal injury incurred by Developer or any such third parties on or about the Construction Easement Area, except to the extent caused by the gross negligence and/or willful misconduct of the City, its employees or agents. Developer indemnifies and agrees to defend and hold harmless City, its affiliates and each of their employees, agents, officers and directors (collectively the "Indemnified Parties"), from and against any actions, lawsuits, claims, liens, demands, fines, losses, liabilities, assertions of liability, judgments, attorney's fees, costs and expenses whatsoever which in any manner may arise or be alleged to have arisen or resulted or alleged to have resulted from Developer's exercise of the Easement granted herein, of Developer and its invitees including Developer's guests, agents, servants, tenants and employees, whether invited or uninvited including, without limitation, claims for bodily injury or death of any person, and claims for loss or damage to property, whether in law or in equity and whether brought against the Indemnified Parties now or in the future, except to the extent caused by the gross negligence and/or willful misconduct of the Indemnified Parties.

Developer, on behalf of its invitees, including its employees, tenants, agents, invited and uninvited guests (collectively, the "Releasors"), does hereby release, acquit and forever discharge the Indemnified Parties (the "Releasees"), of and from any and all known and unknown causes of action, damages, liabilities, costs, expenses and claims and demands of whatsoever kind or nature (except for the willful misconduct and/or gross negligence of the Releasees) which Releasors now have or may ever have against Releasees on account of any and all known and unknown present or future injuries, losses and damages sustained or received or which may be sustained by Releasors or the property of Releasors occurring on, at or about the Public Infrastructure Easement Area.

8. All rights and remedies under this Agreement and at law or in equity shall be

cumulative and not mutually exclusive. No delay or forbearance by any party in exercising any right or remedy under this Agreement shall constitute a waiver of any right or remedy. The invalidity or partial invalidity of any provision of this Agreement shall not affect or impair the remainder of any such provision or any other provision of this Agreement. This Agreement and the rights, obligations, and remedies of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Florida without regard to principles of choice or conflicts of laws. In the event either party institutes legal action under this Agreement, the prevailing party in such action shall be entitled to its reasonable attorneys' fees and court costs for pre-trial preparation, trial and appeal.

9. This Agreement may not be amended except in writing executed by both Developer and City in a recordable form and the amendment is recorded in the Public Records of Bay County, Florida.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

Signed, sealed and delivered  
in the presence of:

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

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

**DEVELOPER:**

**PCGV, LLC.**  
**a Florida limited liability corporation**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF BAY

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ as \_\_\_\_\_ of PCGV, LLC., a Florida limited liability corporation, on behalf of the company. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

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

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

**CITY:**

**PANAMA CITY BEACH, FLORIDA,  
a political subdivision of the State of Florida**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Approved us to legal form and sufficiency

\_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

City Clerk

STATE OF FLORIDA

COUNTY OF BAY

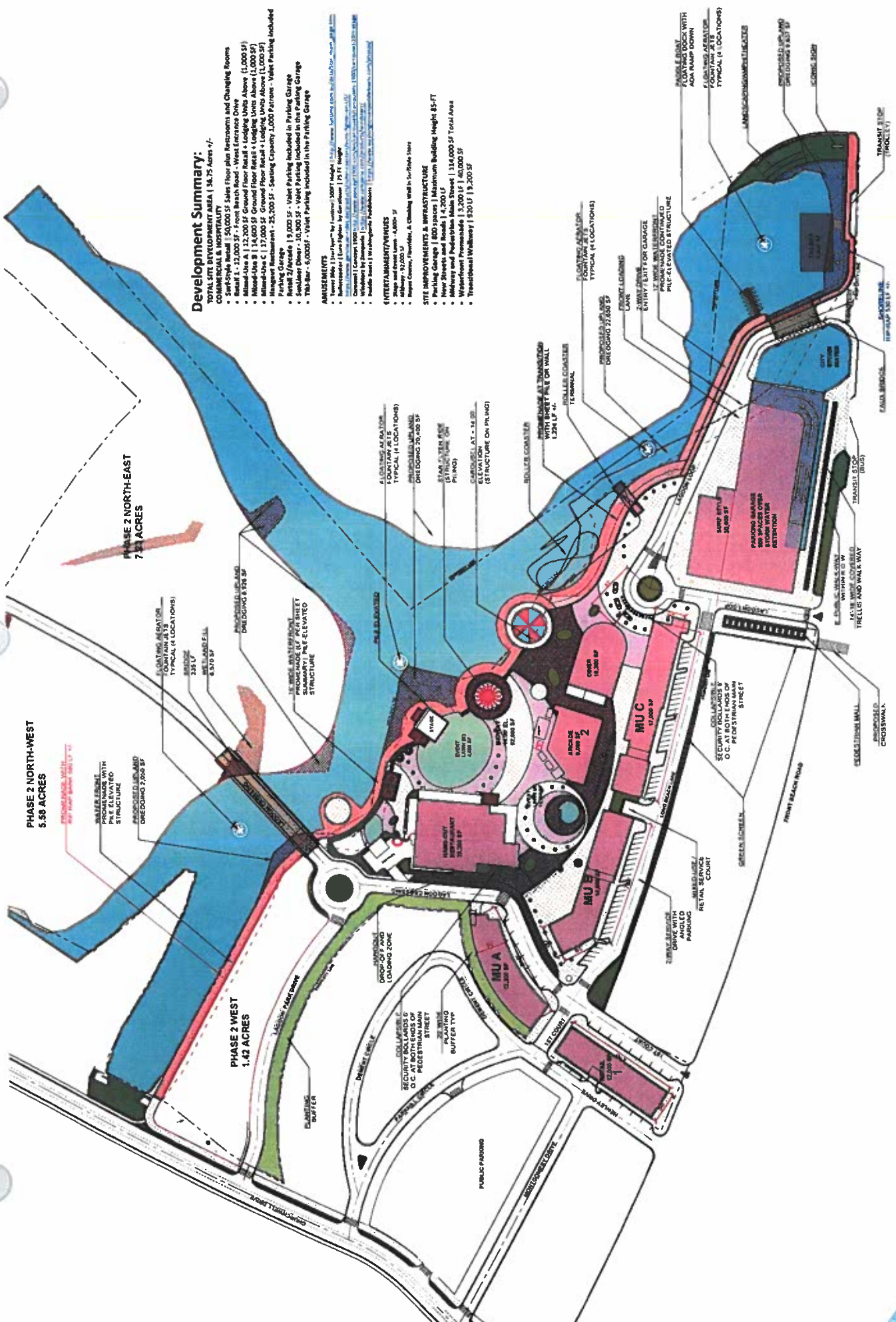
The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public



**EXHIBIT "A"**

**Construction Easement Area**



**Development Summary:**

- TOTAL SITE DEVELOPMENT AREA | 38.75 Acres +/-**
- Commercial & Institutional | 10,000 SF - Sales Floor plus Restrooms and Changing Rooms
  - Mixed-Use A | 12,200 SF - Front Beach Road - West Entrance Drive
  - Mixed-Use B | 14,000 SF - Ground Floor Retail + Lodging Units Above (1,000 SF)
  - Mixed-Use C | 17,000 SF - Ground Floor Retail + Lodging Units Above (1,000 SF)
  - Public Amenities - 25,200 SF - Existing Capacity 2,000 Patrons - Vail Parking Included
  - Small Business - 10,000 SF - Vail Parking Included in the Parking Garage
  - Public - 6,000 SF - Vail Parking Included in the Parking Garage
- AMUSEMENTS**
- Tower 100 | 100' High | 100' Diameter | 100' High | 100' Diameter | 100' High | 100' Diameter
  - Water Tower | 100' High | 100' Diameter | 100' High | 100' Diameter
  - Water Tower | 100' High | 100' Diameter | 100' High | 100' Diameter
  - Water Tower | 100' High | 100' Diameter | 100' High | 100' Diameter
  - Water Tower | 100' High | 100' Diameter | 100' High | 100' Diameter
- ENTERTAINMENT/VENUES**
- Stage and Event Lawn - 4,000 SF
  - Support Concessions, Restrooms, & Changing Booths - 2,000 SF
- SITE IMPROVEMENTS & INFRASTRUCTURE BUILDING 85-17**
- Parking Garage | 800 Spaces | Maximum Building Height 85-17
  - New Streets and Roads | 14,200 LF
  - Waterfront Promenade | 13,200 LF | 40,000 SF
  - Waterfront Promenade | 13,200 LF | 40,000 SF
  - Traditional Walkways | 920 LF | 9,200 SF

**CONCEPTUAL DEVELOPMENT PLAN**  
 OCTOBER 18, 2018

**LONG BEACH LAGOON**  
 FRONT BEACH ROAD  
 PANAMA CITY BEACH, FLORIDA

**SCALE: ONE INCH EQUALS 60 FEET**  
 NORTH

**WETLAND SCIENCE**  
 Wetland Science, Inc. | 1023 Barringer Road | Panama City, FL 32404 | (904) 451-1100 | www.wetland-science.com

**SURF STYLE**  
 Surf Style | 1023 Barringer Road | Panama City, FL 32404 | (904) 451-1100 | www.surfstyle.com

**D&D**  
 D&D | 1023 Barringer Road | Panama City, FL 32404 | (904) 451-1100 | www.dandd.com

**PREPARED BY:**  
 THE FISH CHUCKER STUDIO  
 11111 N. HIGHWAY 90, SUITE 200, PANAMA CITY BEACH, FLORIDA 32413  
 (904) 998-1111 | www.fishchucker.com

**EXHIBIT "B"**

**Public Infrastructure Easement Area**

**EXHIBIT "C"**

**Public Infrastructure Improvements**