

THIS INSTRUMENT RETURN TO:
 City Clerk
 City of Melbourne
 900 East Strawbridge Avenue
 Melbourne, FL 32901

THIS INSTRUMENT PREPARED BY:
 City Attorney's Office
 City of Melbourne
 900 East Strawbridge Avenue
 Melbourne, Florida 32901

Tax Parcel ID#: **27-37-06-00-1**

**Fire Protection System Agreement
 FOR**

City Project Name: **Board of County Commissioners Brevard County,
 Florida Wickham Park Adaptive Recreation Center**
 City Project Number: **ENGR2023-0012**

THIS AGREEMENT is made this _____ day of _____, 20__, by
 Owner/Developer:

Name: **Brevard County, a Governmental Agency**
 Address: **2725 Judge Fran Jamieson Way Melbourne, FL 32940**
 and the **City of Melbourne**, a Florida municipal corporation, whose address is 900 East
 Strawbridge Avenue, Melbourne, Florida 32901.

RECITALS:

WHEREAS, the Owner is desirous of voluntarily entering into this Agreement: i)
 because it will provide for an improved plan of development for The Property and

WHEREAS, the City is desirous of entering into this Agreement, because it will
 promote the public health, safety, and welfare of the community; and

WHEREAS, the Owner warrants and guarantees unto the City that all Owners of
 The Property and all individuals or legal entities holding mortgages or other liens thereon
 have joined in and consented to this Agreement, and that said executed consents and
 joinders by all mortgage and security interest holders have been attached to this
 Agreement.

NOW, THEREFORE, in consideration of Ten and 00/100 DOLLARS (\$10.00) and certain other good and diverse considerations, each to the other paid in hand, the sufficiency and receipt all of which be and the same is hereby acknowledged, the parties desiring to be legally bound do hereby agree as follows:

ARTICLE I - ACKNOWLEDGEMENTS

Each and all of the foregoing recitals be and the same are hereby incorporated herein and acknowledged to be true and correct. Failure of any of the foregoing recitals to be true and correct shall not operate to invalidate this Agreement, but the Owners of The Property hereby authorize the City to withhold the issuance of a certificate of occupancy or building permit on The Property until such recital is made to be true and correct. Further, if any certificate of occupancy or building permit shall be withheld by the City as a result thereof, the Owner(s), their respective agents, contractors, subcontractors, assigns or successors waive any claim, objection, or manner of suit against the City for refusal to issue said certificate of occupancy or building permit.

ARTICLE II - DEFINITIONS

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings;

(a) "Agreement" means and refers to this Fire Protection System Agreement, as recorded in the Public Records of Brevard County, Florida, and as the same may be amended from time to time.

(b) "Assessment" means and refers to the funds required for payment of the expenses of the City, all in pursuit of the responsibilities set forth in the Agreement.

(c) "City" means and refers to the City of Melbourne, Florida, a Florida municipal corporation.

(d) "Common Areas" means and refers to a five-foot wide area bordering each side of the Fire Protection System, all upon The Property, together with all walkways and any other areas designated in or by this Agreement, all upon The Property.

(e) "Development" is defined as set forth in Section 380.04, Florida Statutes.

(f) "Fire Protection System" means and refers to potable water mains, together with all appurtenant structures, pipes, lines, tees, bends, meters, gauges, mechanical equipment, valves, and fire hydrants. Fire Sprinkler Systems are excluded from this agreement.

(g) "Operation," "Operate," or "Operated" when used in conjunction with the Fire Protection System means and refers to the repair, painting, management, improvement, inspection, maintenance, deactivation, construction, renovation, operation, insurance, and replacement of, as well as the disconnection from or connection to the Fire Protection System.

(h) "Owner" means and refers to the record owner, whether one or more person or entities, of the fee simple title to any portion of The Property.

(i) "Plans" means and refers to Fire Protection System plans, together with any attachments thereto, for The Property on file in the office of the City Clerk. The Fire Protection System plans are identified as follows:

Plan Title: **Board of County Commissioners Brevard County,
Florida Wickham Park Disabilities Center**

Prepared by: **Maryelen Samitas, P.E., PE**

Company: **Atkins**

Address: **2671 W. Eau Gallie Blvd. Melbourne, FL 32935**

Date Sealed: **6/22/23** Lic. Nbr: **72230**

Nbr of Pages: **22** Job Nbr: **SP-20-08**

Latest Revisions:

Sheets: **C-001, CD-100, CD-101, CS-100, CS-10, CS-500, CS-501,
CG-100, CG-300, CG-500, GU-100, CU-101, CU-102,
CU-103, CU-500, CU-501, C-502, CU-503, CK-501, CK-100,
and CK-500 on 6/22/20**

(j) "The Project" means and refers to a commercial use development consisting of the Property.

(k) "The Property" means and refers to all such existing real property as described in Article III of this Agreement.

(l) "Maintenance" and "Maintain" means and refers to the following standards, permits and specifications, and documents referenced in those permits, standards and specifications. The Fire Protection System shall be maintained in accordance with the following standards, specifications, and permits.

- A. NFPA 24 Standard For The Installation of Private Fire Service Mains and Their Appurtenances, 1992 Edition and any revisions and/or addenda issued thereafter.

- B. NFPA 25 Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 1992 Edition and any revisions and/or addenda issued thereafter.
- C. City of Melbourne Water Department Technical Provisions for Construction of Water Distribution System, issue date February 1998, and any revisions and/or addenda issued thereafter.
- D. Florida Department of Environmental Protection Water Distribution System Extension Permit Number **N/A**.

ARTICLE III - PROPERTY SUBJECT TO THIS DECLARATION

Section 1. The Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Agreement is located in Brevard County, Florida, and is more particularly described as including the real property described on the attached Exhibit "A", by this reference incorporated herein, all of which real property is herein referred to collectively as "The Property."

ARTICLE IV – OPERATION AND MAINTENANCE

Section 1. Maintenance. The Owner shall at all times maintain in good Operation and replace, as often as necessary, the Fire Protection System, all such work to be done as specified in this Agreement. Maintenance of any integral parts of the Fire Protection System shall include and extend to payment for all water consumed in the operation thereof. All work pursuant to this Agreement and all expenses incurred hereunder shall be paid for by the Owner.

Section 2. Owner to Maintain and Operate the Fire Protection System. The Common Areas, upon which the Fire Protection System is situated, shall be open spaces without any structures being permitted therein, except for structures which are a part of the Fire Protection System. The Fire Protection System shall be Maintained and Operated, all in accordance with the standards, conditions, and requirements set forth on the Plans, and in the City Code of Ordinances, and in particular although not limited to the requirements of the City Code, which are incorporated herein by this reference, and the City Comprehensive Plan, which standards, conditions, and requirements shall constitute minimum standards, for the Operation and Maintenance of the Fire Protection System. At all times the Fire Protection System shall be maintained in such a condition so that the Fire Protection System equals or exceeds the design performance standards as shown on the Plans.

Section 3. City Easements. Perpetual, nonexclusive easements are reserved over, under, and across the Common Areas to the City, as may be required for the ingress

to, egress from, entrance upon, for Operation of the Fire Protection System, as may be required to adequately serve The Property, it being expressly agreed that the City upon making the entry shall restore the Common Areas upon which the Fire Protection System is located to substantially the condition which existed prior to commencement of operation of such Fire Protection System by the City. City fire, police, health and sanitation, park maintenance, utility maintenance and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas and across The Property for the purpose of egress and ingress to the Common Areas.

Section 4. General. All easements, of whatever kind or character, whether heretofore or hereafter created, shall constitute a covenant running with the land and, notwithstanding any other provisions of this Agreement, may not be substantially amended or revoked in a way which would unreasonably interfere with its proper and intended use and purpose.

ARTICLE V - COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of the Assessments. Except as provided elsewhere herein, the Owner (and each party joining in this Agreement) hereby covenants and agrees, and each Owner of any portion of The Property by acceptance of a deed therefore, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to pay Assessments or charges for the Operation of the Fire Protection System and maintenance, repair, landscape maintenance and/or improvements to the Common Areas.

Section 2. Purpose of Assessments. The Assessments provided for herein and levied by the City shall be used exclusively for the Operation of the Fire Protection System and maintenance and improvements to the Common Areas, all as required herein.

Section 3. Fire Protection System. If the Owner has failed to maintain in good Operation, the Fire Protection System or failed to do so in compliance with the Plans or as otherwise required in Article IV hereof, then the City may but shall not be obligated to, after giving the Owner thirty (30) days' written notice sent to the Owner's last known address or registered agent, Operate that portion of the Fire Protection System in need of said Operation. Said determination by the City to operate temporarily or permanently, any part or all of the Fire Protection System shall be optional with the City, and the City shall be under no obligation to, either temporarily or permanently, Operate the Fire Protection System, nor shall the City be liable for failing to Operate the Fire Protection System. A determination by the City that the Fire Protection System, or any portion thereof, is not being Operated in compliance with the Plans and other standards set forth

in this Agreement shall be one subject to the reasonable judgment of the City. The costs and expenses of the City resulting from any Operation by the City of said portion of the Fire Protection System shall be chargeable as an Assessment and Assessed by the City to the Owner and against the Property; provided that in the event the City is compelled to Operate the Fire Protection System in accordance herewith, the Owner shall have thirty (30) days in which to pay the City's Assessment expenses and costs after the Owner has been billed therefore by the City. If the Owner shall fail to pay to the City within said thirty (30) day period for the cost of providing said services, the City has, and is hereby granted, a lien for the costs of said services. Said lien shall be a continuing lien upon The Property continuing from the date hereof and include interest to be assessed at the then highest lawful rate of interest and the costs and reasonable attorney's fees of collection thereof. The total cost of such services shall be applicable to The Property as a whole. Further, to assist in collection of the costs for such services, the City shall have the power of lien and Assessment and collection as set forth in Article V, Section 5 hereof.

Section 4. Effect of Non-Payment of Assessment; the Personal Obligation; the Lien; Remedies of the City. If the Assessments are not paid on the date(s) when due (being the date(s) specified herein), then such Assessments shall become delinquent and shall, together with late charges, interest and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on The Property which shall bind such property in the hands of the then Owner, his heirs, personal representatives, successors and assigns. Each Assessment against The Property shall also be the personal obligation of the Owner at the time the Assessment fell due. If any installment of an Assessment is not paid within fifteen (15) days after the due date, at the option of the City, and if such installment is not paid thereafter, it shall accrue interest at the highest rate of interest then permissible by law. Further, the City may bring an action at law against the Owner(s) personally obligated to pay the same or may record a claim of lien (as evidence of its lien rights as hereinabove provided for) against The Property on which the Assessments and late charges are unpaid or may foreclose the lien against The Property on which the Assessments and late charges are unpaid, or may pursue one or more of such remedies at the same time or successively, and attorneys' fees and costs of preparing and filing the claim of lien and the complaint, if any, in such action shall be added to the amount of such Assessments, and interest, and in the event a judgment is obtained, such judgment shall include all such sums as above provided and reasonable attorneys' fee to be fixed by the court, together with the costs of the action, and the City shall be entitled to attorneys' fees in connection with any appeal of any such action.

Section 5. Subordination of the Lien. No sale or transfer shall relieve The Property from liability for any Assessment thereafter becoming due or from the lien thereof. The lien rights provided for in Article V of this Agreement shall be subordinate to the lien of any first mortgage or other security interest which is hereafter placed upon the Property subject to Assessment.

ARTICLE VI - GENERAL PROVISIONS

Section 1. Duration. This Agreement and the provisions hereof shall run with and bind The Property, and shall inure to the benefit of and be enforceable by the City, the Owner or the fee simple owner of any land subject to this Agreement, and their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Agreement is recorded, after which time said Agreement shall be automatically extended for successive periods of five (5) years each unless an instrument signed by the City has been recorded, agreeing to revoke said Agreement in part or in whole. Provided, however, that no such agreement to revoke shall be effective unless made and recorded at least three (3) days prior to the commencement of the first five (5) year period for which this Agreement is being terminated, either in part or in whole.

Section 2. Notice. Any notice to be sent to the City under the provisions of this Agreement shall be deemed to have been properly sent when personally delivered or , mailed postage prepaid, first class U.S. mail, to the attention of the City Manager at the City. Any notice hereunder to be sent to the Owner under the provisions of this Agreement shall be deemed to have been properly sent when personally delivered or mailed, postage prepaid, first class U.S. mail, to the address of said Owner as displayed on the most currently compiled ad valorem tax roll for Brevard County.

Section 3. Enforcement. Enforcement of this Agreement may be by the Owner or the City and may be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any provision hereof, either to restrain a violation or to recover damages, and against The Property to enforce any lien created by this Agreement. Failure to enforce any covenant or provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. The City shall not be obligated or bound to enforce any of the covenants or provisions herein or be liable to or for any person or persons for non-enforcement.

Section 4. Severability. Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment, court order, or administrative hearing or order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

Section 5. Amendment. The covenants, easements, provisions, charges and liens of this Agreement may be amended, changed or added to at any time and from time to time upon the execution and recordation in the Public Records of Brevard County, Florida, of an instrument executed by the City and the Owner. No amendment to this Agreement may be made which places additional duties, obligations, or responsibilities on the Owner

without the consent and joinder of said Owner to the amendment. This Section 5 may not be amended.

Section 6. Effective Date. This Agreement shall become effective upon its recordation in the Public Records of Brevard County, Florida, and any amendment hereto shall become effective upon recordation in the Public Records of Brevard County, Florida.

Section 7. Conflict. This Agreement shall take precedence over conflicting provisions in any covenants and restrictions common to The Property.

Section 8. Standards for Consent, Approval, Completion, Other Action and Interpretation. In the event of any ambiguity or dispute as to the meaning of the wording of this Agreement, this Agreement shall be interpreted by the City Council and an opinion of counsel to the City rendered in good faith that a particular interpretation is not unreasonable shall establish the validity of such interpretation.

Section 9. Easements. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions

Section 10. Covenants Running with the Land. Anything to the contrary herein notwithstanding and without limiting the generality (and subject to the limitations) of Section 1 hereof, it is the intention of the Owner of The Property, and all other fee simple owners of portions of The Property who have joined in the execution of this Agreement, affected hereby that this Agreement shall constitute covenants running with the land and with title to The Property, or as equitable servitudes upon the land, as the case may be.

Section 11. Death or Dissolution of Owner. In the event of the death or a permanent dissolution of the Owner, if the Owner is a corporation, partnership, or other legal entity, the fee simple owners of The Property shall immediately thereupon hold title to the Common Areas as tenants in common and shall collectively provide for the continued maintenance and upkeep thereof in a manner or under a procedure acceptable to the City. In no event shall the City be obligated to accept any dedication offered to it by the Owner or the fee simple owners of The Property pursuant to this Section, but the City may in its sole and absolute discretion accept such a dedication, and any such acceptance must be made by resolution adopted by the City Council of the City. Any successor or assign or devisee of the Owner shall pursuant to this Agreement provide for the continued maintenance and upkeep of the Fire Protection System, if any, and the Common Areas. Anything to the contrary herein notwithstanding, this Section may not be amended without the written consent of the City.

Section 12. Insurance Requirement. The City is hereby granted the right and authority, but not the obligation, from time to time to require that the Owner post liability

insurance insuring the City as loss payee against suit or loss for injuries (including death) and property damage caused as a result of the City's providing services hereunder, said insurance to be in such reasonable amounts and with such standard insurance companies licensed and approved to do business in the State of Florida by the appropriate State agency regulating the insurance industry. Said insurance shall be upon such reasonable terms and in such reasonable amounts as the City may require. Failure of the Owner within thirty (30) days of notice to the Owner to provide to the City proof that such insurance has been obtained shall entitle the City to purchase said insurance. The Owner may be charged and shall pay said charge in the same manner as set forth in Article V of this Agreement. Failure of the Owner to pay said charges within thirty (30) days after receipt of a bill from the City shall entitle the City to Assess The Property and place a lien against The Property, all as provided in Article V.

Section 13. County Ownership of The Properties. Notwithstanding the other provisions of this Agreement, the City and Brevard County acknowledge and agree that, for as long as Brevard County owns and operates The Properties, the City shall not lien The Properties pursuant to Article V of this Agreement.

Additionally, the City and Brevard County acknowledge that each entity is an agency or subdivision of the State of Florida. As such, nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claims which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Brevard County's liability obligations hereunder shall be subject to Brevard County's right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing herein shall constitute a waiver of sovereign immunity by either the City or Brevard County as the Owner/Developer. The Parties acknowledge specific consideration has been exchanged for this provision. This section shall survive the termination of the Agreement.

Section 14. Recordation. The Owner hereby agrees to pay for any costs of recordation of this Agreement in the Public Records of Brevard County, Florida, and the recorded original hereof shall be returned to the City for filing in its records.

[SIGNATURE ON NEXT PAGE]

Executed as of the date first above written.

Signed, sealed and delivered
in the presence of:

OWNER:

Brevard County
a Governmental Agency

Signature of Witness #1

BY: _____

Name Printed/Typed

Frank Abbate, County Manager

AS: Approved by the Brevard County Board of County Commissioners on _____

Signature of Witness #2

(Corporate Seal)

Name Printed/Typed

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by () physical presence () or remote audio visual means, this _____ day of _____, 20____, by **Frank Abbate as County Manger, Brevard County Board of County Commissioners, a Governmental Agency**, who is personally known to me OR who has produced _____ as identification.

My commission expires:

Notary Public

Signed, sealed and delivered
in the presence of:

CITY OF MELBOURNE:
a Florida municipal corporation

Signature of Witness #1

BY: _____
Jenni Lamb, City Manager

Name Printed/Typed

Signature of Witness #2

Name Printed/Typed

(CITY SEAL)

ATTEST: _____
Kevin McKeown, City Clerk

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing Fire Protection System Agreement for **Brevard County**, a **Governmental Agency**, was acknowledged before me by () physical presence or () remote audio visual means, this ____ day of _____, 20__, by Jenni Lamb, City Manager of the City of Melbourne, a Florida municipal corporation, on behalf of the corporation. She is personally known to me.

My commission expires:

Notary Public

Exhibit A

PROJECT LOCATION



The property described in foregoing agreement is: ___ Mortgaged (skip Part II) **X NOT Mortgaged (skip Part I)**

PART I. CONSENT AND JOINDER OF MORTGAGEE

_____[Name of Company], a _____ [State] _____ banking corporation, being the owner and holder of that certain Mortgage and Security Agreement, Assignment of Leases, Rents, and Profits, and security interest created by a Uniform Commercial Code (UCC-1 Filing Statement) on the property referenced in the Fire Protection System Agreement for **Board of County Commissioners Brevard County, Florida Wickham Park Disabilities Center**, which Mortgage and Security Agreement were recorded on _____ [Date] in Official Records Book __, Page __, Public Records of Brevard County, Florida, and which UCC-1 Filing Statement was recorded on _____ [Date] in Official Records Book __, Page __, Public Records of Brevard County, Florida, and which Assignment of Leases, Rents, and Profits was recorded on _____ [Date], in Official Records Book __, Page __, Public Records of Brevard County, Florida, does hereby join in and consent to the foregoing Fire Protection System Agreement for **Board of County Commissioners Brevard County, Florida Wickham Park Disabilities Center** and agrees that the lien of said Mortgage and Security Agreement, Assignments of Leases, Rents, and Profits, and the UCC-1 Filing Statement shall be subject to the provisions of said agreement; provided, however, that nothing herein shall be deemed to constitute a waiver of any rights reserved or granted to the Mortgagee (or similarly situated parties) in said agreement.

Signed, sealed and delivered in the presence of:

BANKING CORPORATION:

_____ a _____ banking corporation

BY: _____

Signature of Witness #1

Name Printed/Typed

Name Printed/Typed & Title

(Corporate Seal)

Signature of Witness #2

Name Printed/Typed

PART II – CERTIFICATION OF FREE AND CLEAR OWNERSHIP

I hereby certify that the property described in the foregoing agreement is not mortgaged and is owned without debt.

Signed, sealed and delivered in the presence of:

OWNER: Brevard County,
a Governmental Agency

BY: _____

Signature of Witness #1

Frank Abbate, County Manager

Name Printed/Typed

Name Printed/Typed & Title

(Corporate Seal)

Signature of Witness #2

Name Printed/Typed

PART III – NOTARY FOR PART I AND II

STATE OF _____ COUNTY OF _____

The foregoing instrument was acknowledged before me by () physical presence or () or remote audio-visual

means this ____ day of _____, 2024, **Frank Abbate as County Manager of Brevard County, a governmental agency**, who is () personally known to me OR who has produced

_____ as identification.

My commission expires: _____ Notary Public: _____