

THIS INSTRUMENT RETURN TO:
Office of the County Attorney
2725 Judge Fran Jamieson Way
Building C, Viera, Florida 32940

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (hereinafter, this "Declaration") is made this 28th day of August, 2023 by and between the following Parties: BREVARD COUNTY, Florida, a political subdivision of the State of Florida (hereinafter, the "County") and NAP COMMERCE A LLC, an Ohio limited liability company, with a principal place of business at 212 East Third Street, Suite 300, Cincinnati Ohio 45202 (hereinafter, "Developer").

Recitals

WHEREAS, Developer and the County, entered into that certain Option Contract for Sale and Purchase dated April 20, 2021, for the purchase by Developer of the property more particularly described on Exhibit "A", attached hereto and made a part hereof (hereinafter, the "Property"), and said contract was amended by that certain Amendment 1 to Option Contract for Sale and Purchase dated April 18, 2023 (hereinafter collectively, the "Contract"); and

WHEREAS, pursuant to the Contract, and as part of the consideration for it, this Declaration is filed simultaneously with conveyance of fee simple ownership of the Property from County to Developer.

WHEREAS, pursuant to the Contract, the Parties agreed to the placement these certain restrictions on the Property.

NOW, THEREFORE, the Parties hereby place the following restrictions and declare that the Property is and shall be hereafter held, transferred, sold, conveyed, used and occupied subject to the provisions set forth in this Declaration.

1. Recitals. Each and all of the foregoing recitals are acknowledged to be true and correct and the same are hereby incorporated herein.

2. Restrictions on Future Sale, Leasing or Assignment of the Property.

(a) Developer may not sell, lease or assign the Property prior to completing a minimum 25,000 square foot pad-ready site on the Property pursuant to the definition of a pad-ready site set forth below in Section 3(a).

(b) Developer may only sell or lease the pad-ready Property to a future buyer or lessee under the following circumstances:

(i) Any such future buyer or lessee must fill out an application with the North Brevard Economic Development Zone;

(ii) Any such future buyer's or lessee's use of the Property must comply with the restrictive covenants recorded in the Official Records Book of Brevard County, Florida including but not limited to those at ORB 2460, page 2995-3008; ORB 2508, Page 2917-2919; ORB 6395, Page 2380-2398, and Plat Book 32, Page 74. Developer must place these restrictions in any deed to or lease with said future buyer or lessee.

(iii) As a condition prior to entering into a contract for sale or lease, Developer and any such future buyer or lessee must demonstrate to the reasonable satisfaction the Executive Director of the North Economic Development District that such future buyer or lessee has committed in writing to creating a minimum of 50 new to Brevard County high-wage jobs, defined as jobs with an average project wage of at least \$50,000.00 per job. "Job" shall mean permanent or full-time equivalent employees working at the property. Each person or combination of persons who works at least thirty-five (35) hours a week at the Property, under the control and supervision of the future buyer or lessee, shall be counted as one full-time equivalent Job. The percentage of full-time equivalent employees will not exceed thirty-five percent (35%) of the combined total number of permanent full-time employees and full-time equivalent employees as measured on an annual basis. The "average project wage" shall mean the annualized average of all wages and salaries paid to employees who hold Jobs at the Project. Such payments may include wages, salaries, commissions, bonuses, drawing accounts, vacation and sick pay, but exclude employee benefit packages.

(iv) Prior to any such future sale or lease of the Property, any such future buyer or lessee must demonstrate to the reasonable satisfaction of the North Brevard Economic Development District that it has an appropriate financial and risk management plan.

3. Certain Development Obligations and County Re-Purchase Rights.

(a) Developer agrees to complete the construction of a pad-ready site upon the Property that is a minimum of 25,000 square feet within five (5) years of the County's transfer of title to the Developer. Failure to proceed with the construction of the 25,000 square foot pad-ready site, as evidenced by receipt of a building permit from the City of Titusville and the completion of the pad-ready site, within the five (5) year period shall entitle the County to the right to reacquire the Property at the Developer's actual costs. Actual costs do not include overhead or interest expenses, and will be based on invoices provided to the North Brevard Economic Development District (NBEDZ) during the construction of the pad-ready site, that can be verified and reviewed by the County as reasonable and actual

costs. The definition of a pad ready site means that the Developer will accomplish the following development requirements: (1) Utilities (water, sewer, and electric) shall be available on the Property to the right-of-way property line, (2) the Property shall be mitigated with all applicable agencies having jurisdiction, (3) the Property shall be up to grade, (4) the Property shall be cleared, and (5) the Property shall be permitted for site work.

(b) If Developer fails to convey or lease the Property, or a portion of it, to a future buyer or lessee meeting the requirements of Section 2(b) above within five (5) years of the date the County conveyed title of the Property to Developer, the County shall have the right to repurchase the Property at Developer's actual costs, or provide a third-party to purchase the Property at Developer's actual costs. Actual costs do not include overhead or interest expenses, and will be based on invoices provided to the NBEDZ during the construction of the pad-ready site, that can be verified and reviewed by the County as reasonable and actual costs.

4. Termination of Declaration. Upon completion of the 25,000 square foot pad-ready site, upon Developer request, the County shall expeditiously record a certification of completion releasing the restrictive covenant preventing further conveyance, leasing or assignment under Section (2)(a) above, confirming satisfaction of the requirements set forth in Section 3(a) above, and releasing or terminating the County's repurchase rights provided for in Section 3(a) above. Upon Developer, or Developer's assignor's, completion of Section (2)(b), upon request, the County shall expeditiously record a certification of completion releasing the obligations in Section (2)(b) above, confirming satisfaction of the requirements set forth in Section 3(b) above, and releasing or terminating the County's repurchase rights provided for in Section 3(b) above. Upon the County's recordation of both of the certifications of completion set forth above, this Declaration shall automatically terminate and be of no further force or effect. Notwithstanding the foregoing provisions providing for automatic termination and extinguishment once the certifications of completion are recorded, the parties agree that they will cooperate with each other to execute and record, such instrument or instruments in recordable form as may be requested to evidence, of record, the termination and extinguishment of this Declaration.

5. Modification of Declaration of Restrictions. This Declaration may not be modified unless it is done in writing and agreed to by both County and Developer.

6. Covenants Running With the Land in Favor of the County. The Parties agree that these restrictions on the Property shall be deemed a covenant running with the land in favor of the County, and shall remain in full force and effect, and be binding upon the undersigned and its successors and assigns until the restrictions are released by the County.

[remainder of page intentionally blank]

[signatures to follow]

IN WITNESS WHEREOF, the Developer and the County have caused this Declaration to be duly executed in their respective names by their officer thereunto duly authorized as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

NAP COMMERCE A LLC,
an Ohio limited liability company

Rachel W. W. W.
Print Name: RACHEL WHITAM

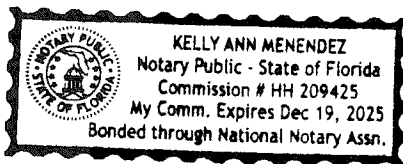
By: NAP Management LLC, an Ohio limited
liability company, Its Manager

Walter S. S.
Print Name: WALTER S. S.

By: Kat Butler
Name: Kat Butler
Title: Authorized Signer

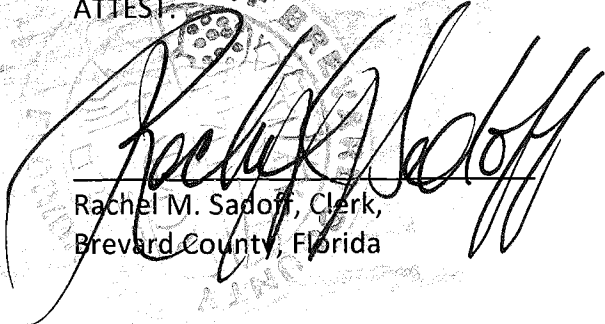
STATE OF Florida]
COUNTY OF Brevard]

The foregoing instrument was acknowledged before me by means of physical
presence or online notarization, this 23 day of August, 2023, by Kat Butler, as
Authorized Signer of NAP Management LLC, an Ohio limited liability company, as a manager,
and on behalf, of NAP COMMERCE A LLC, an Ohio limited liability company. Said person (check
one) ☒ is personally known to me, ☐ produced a driver's license (issued by a state of the United
States within the last five (5) years) as identification, or ☐ produced other identification, to wit:
_____.



Kelly Ann Menendez
Print Name: Kelly Ann Menendez
Notary Public, State of FL
Commission No.: HH 209425
My Commission Expires: December 19, 2025

ATTEST:


Rachel M. Sadoff, Clerk,
Brevard County, Florida

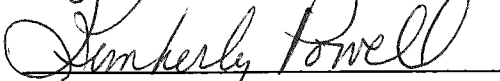
BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 

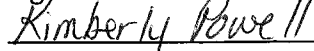
Rita Pritchett, Chair

As approved by the Board on April 18, 2023

Signed and sealed in the presence of:



Signature Witness



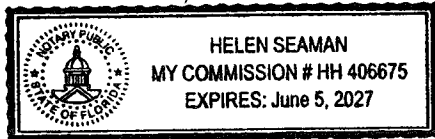
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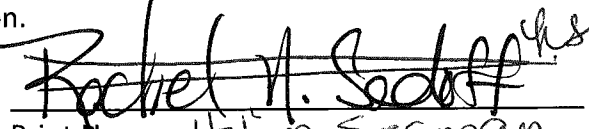
STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of X physical appearance, or on-line notarization this 24th day of August, 2023, by Rita Pritchett, as Chair of the Board of County Commissioners of Brevard County, Florida. Said person (check one) (X) is personally known to me or () produced a driver's license (issued by a state of the United States within the last five (5) years) as identification.







Print Name: Helen Seaman

Notary Public, State of Florida

Commission No.: 406675

My Commission Expires: June 5, 2027

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

A PORTION OF PARCEL "D", ENTERPRISE PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 32, PAGE 74 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE WEST RIGHT-OF-WAY OF ARMSTRONG DRIVE WITH THE SOUTH RIGHT-OF-WAY LINE OF SHEPARD DRIVE AS SHOWN ON SAID PLAT OF ENTERPRISE PARK; THENCE RUN N 89° 44' 48" W ALONG SAID SOUTH LINE FOR A DISTANCE OF 870.00 FEET TO THE POINT OF BEGINNING; THENCE S 00° 15' 12" W, ALONG THE WEST LINE OF A PARCEL OF LAND AS RECORDED IN OFFICIAL RECORD BOOK 9018, PAGE 2012 OF SAID PUBLIC RECORDS, FOR A DISTANCE OF 404.31 FEET TO A POINT ON THE SOUTH LINE OF SAID PLAT; THENCE N 89° 50' 04" W, ALONG THE SOUTH LINE OF SAID PLAT, FOR A DISTANCE OF 891.10 FEET; THENCE N 00° 06' 37" W, ALONG THE WEST LINE OF SAID PLAT, FOR A DISTANCE OF 466.12 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF STATE ROAD 407; THENCE N 31° 02' 09" E, ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 320.31 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SHEPARD DRIVE; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) COURSES: THENCE S 58° 57' 51" E FOR A DISTANCE OF 380.49 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST; THENCE ALONG SAID CURVE TURNING TO THE LEFT THROUGH AN ANGLE OF 19° 29' 44", HAVING A RADIUS OF 100.00 FEET, AND WHOSE LONG CHORD BEARS S 68° 42' 43" E FOR A DISTANCE OF 338.62 FEET TO THE BEGINNING OF A NON-TANGENTIAL CURVE CONCAVE TO THE NORTHEAST; THENCE ALONG SAID CURVE TURNING TO THE LEFT THROUGH AN ANGLE OF 36° 14' 43", HAVING A RADIUS OF 100.00 FEET, AND WHOSE LONG CHORD BEARS S 71° 37' 27" E FOR A DISTANCE OF 62.21 FEET; THENCE S 89° 44' 48" E A DISTANCE OF 28.06 FEET TO THE POINT OF BEGINNING.