

## **AMENDED, RESTATED AND UPDATED SETTLEMENT AGREEMENT**

This Amended, Restated and Updated Settlement Agreement (“**Agreement**”) is entered into as of the 1<sup>st</sup> day of January, 2022, between the Park Square Enterprises, LLC (“**Developer**”) and Save the Manatee Club, Inc. (“**Club**”), joined by the MiraBay Homeowners Association, Inc. (“**HOA**”) and the Harbor Bay Community Development District (“**District**,” collectively with Park Square, Club, and HOA, the “**Parties**”).

### **RECITALS**

**WHEREAS**, Terrabrook Apollo Beach, L.P. (“**Terrabrook**”) and the Club previously disputed the issuance of environmental and land use permits for Terrabrook’s Harbor Bay project (“**Project**”) located in southwestern Hillsborough County, as also identified in Southwest Florida Water Management District (“**SWFWMD**”) Environmental Resource Individual Construction Permit No. 4318838.004, dated May 23, 2000, which dispute resulted in litigation; and

**WHEREAS**, the above referenced dispute settled pursuant to that certain Settlement Agreement dated January 29, 2001, by and between Terrabrook and the Club (“**Initial Settlement Agreement**”); and

**WHEREAS**, as a result of the Initial Settlement Agreement, all pending litigation between Terrabrook and the Club was dismissed, SWFWMD Permit No. 4318838.004 was issued, the necessary Army Corps of Engineers’ Permit was issued, and the Project continued and is currently being developed; and

**WHEREAS**, the Initial Settlement Agreement was amended by a First Amendment to Settlement Agreement dated November 25, 2003, by and between Terrabrook, the Club, and the HOA (“**First Amendment**,” and together with the Initial Settlement Agreement, the “**Amended Settlement Agreement**”), recognizing the HOA as the Enforcing Authority (hereinafter defined) under such Amended Settlement Agreement; and

**WHEREAS**, the Amended Settlement Agreement was further modified to appoint the District as the Enforcing Authority under the Amended Settlement Agreement pursuant to both that certain Consent to Substitution of Enforcing Authority dated September 4, 2015, executed by the Club (the “**Consent to Substitution**” collectively with the Amended Settlement Agreement, the “**Prior Settlement Agreement**”) and that certain Transition Agreement dated September 19, 2016, by and between the District, Terrabrook, and the HOA (“**Transition Agreement**”); and

**WHEREAS**, in 2018, Developer acquired all of Terrabrook’s real estate within, and development rights to, the Project, including all interest and obligations in the Prior Settlement Agreement; and

**WHEREAS**, the Parties agree certain provisions of the Prior Settlement Agreement are outdated, moot, and/or create confusion; and

**WHEREAS**, the Parties intend to supersede, amend, replace and restate the Prior Settlement Agreement in its entirety in order to bring current and clearly define the Parties' responsibilities on a going forward basis.

**NOW, THEREFORE**, in consideration of the recitals, agreements and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

#### **I. Recitals**

All Recitals set forth above are hereby incorporated into this Agreement and made a part hereof.

#### **II. Power Boat Program**

The HOA, the District, or some other entity with appropriate enforcement authority (the "**Enforcing Authority**") will establish and maintain a program to regulate the number of Power Boats, as defined below, that may operate within the waterways of the Project pursuant to Section III. In order for a resident of the Project to operate a Power Boat within the waterways of the Project, such resident must obtain a certificate ("**Certificate**") from the Enforcing Authority permitting such use. All Certificates granted to residents must be posted on their respective Power Boats in a manner that will make the Certificates plainly visible.

#### **III. Power Boat Limitation**

The maximum number of outstanding Certificates to be issued by the Enforcing Authority at any one time shall not exceed four hundred fifty (450) for Power Boats operating within the canal system and three hundred (300) for Power Boats operating within the lagoon system. For the purposes of this Agreement, "**Power Boat**" shall mean any vessel as defined in Section 327.02(46), Florida Statutes, as may be revised or amended from time to time, that is equipped with machinery for propulsion having a rated horsepower in excess of 15 bhp, but shall not include any sailboat whose primary form of propulsion is wind.

#### **IV. Responsibilities of the Enforcing Authority**

The Enforcing Authority shall establish and maintain an "Evergreen Fund" ("**Fund**"). The Enforcing Authority shall collect assessments, user fees, or other funds sufficient to fund the activities set forth in this section. The Enforcing Authority shall have sole discretion whether to source the Fund from user fees, special assessments or other funds or funding sources.

Assessments, user fees, or other funds collected by the Enforcing Authority for the purpose of funding the activities set forth in this section, shall be deposited into the Fund. Assessments, user fees, and other monies paid into the Fund, along with investment income from the Fund, and any other contributions or receipts, will be managed exclusively by the Enforcing Authority, provided, however, that the Club shall have the right to review records relating to Fund sourcing, transactions, and balances upon request.



The Enforcing Authority shall have the sole responsibility for administering the Evergreen Fund, including for raising and disbursing Fund monies and for ensuring the activities required by this section are carried out.

Specifically, the enforcing authority shall ensure:

- A. Patrolling and on-water enforcement of laws by law enforcement in the canals and lagoon within the Project a minimum of twenty hours (20) hours each month;
- B. Collection of assessments, user fees, or other funds sufficient to fund these activities, and issue and require visible placement of Certificates, placards, or other notices to be kept on-board each power boat authorized under Section III when operating in the lagoon or canal systems;
- C. Manatee protection measures, including manatee warning and speed limit signage and annual manatee awareness activities; and
- D. Provision of reports on measures undertaken pursuant to items A-C to the Club on an annual basis.

During each fiscal year of the Enforcing Authority, the Enforcing Authority will fully fund expenses relating to these responsibilities as set forth in this section.

#### **V. Uses and Administration of the Evergreen Fund**

Fund monies shall be used and solely used for the operation and enforcement by the Enforcing Authority of the program required by this Agreement, which may include costs necessary to purchase and operate a Power Boat for on-water inspection of Certificates, required manatee warning and speed limit signage and poles not provided by other governments, costs associated with purchasing Certificate stickers or placards, manatee awareness education within the Project, and other necessary actual costs but expressly excluding salaries of individuals other than law enforcement officers. At the request of the Enforcing Authority, the Club shall provide materials necessary to carry out the annual manatee awareness education component at no cost to the Enforcing Authority.

The Enforcing Authority will make commercially reasonable efforts to enter into contract(s) with the Hillsborough County Sheriff's Office, the Florida Fish and Wildlife Conservation Commission, and/or other appropriate law enforcement agency capable of providing such patrolling and on-water enforcement. Under such contract(s), the Enforcing Authority will agree to pay for law enforcement officers to provide on-water law enforcement specified in Items A and B above in an "off-duty" capacity. Fund money under such contracts shall be used exclusively for salaries and related costs associated with the officers' employment, such as employment taxes and insurance. Regardless of which law enforcement agency the Enforcing Authority contracts with, on-water patrolling and enforcement shall be provided for a minimum of twenty (20) hours per month as required by Item (A), above.

The Enforcing Authority shall be required to transfer the assessments, user fees, and other monies received into the Fund no less often than once per calendar quarter.

The Enforcing Authority shall maintain the Fund as a specifically designated account, in which the Enforcing Authority will identify each source of income into and disbursement from the Fund.

In addition to fundraising and expenditures, the Enforcing Authority shall maintain records regarding actions taken pursuant to Section IV, including but not limited to enforcement actions, patrol hours and personnel, manatee awareness education, and boater safety measures. The Enforcing Authority will report to the Club on expenditures from the Fund as well as the additional Enforcement Authority records relating to Section IV of this Agreement on at least an annual basis and will make its Fund records available to the Club for inspection at any time, subject to reasonable notice.

## **VI. Appointment and Replacement of Enforcing Authority**

The District is the current Enforcing Authority and agrees to continue as the Enforcing Authority until such time as the District elects to resign as the Enforcing Authority, which it may choose to do at any time and for any reason. In addition, Developer may replace the District as Enforcing Authority, at any time and for any reason, subject to the same requirements and the terms of this Agreement.

Should the District choose to resign as the Enforcing Authority or should the Developer choose to replace the District as the Enforcing Authority, it shall provide ninety (90) days prior written notice to all Parties, in which case, District shall transfer all records and funds on held in the Fund to the HOA, to the extent permitted by Florida law. Upon replacement, HOA shall automatically become the successor Enforcing Authority to the District.

Immediately following the appointment of the HOA as the new Enforcing Authority, Developer and/or HOA, to the extent they retain the legal ability to do so, shall amend the Declarations of Covenants, Restrictions and Easements for MiraBay to reverse the changes made by that certain Amendment to the Declaration of Covenants, Restrictions and Easements for MiraBay bearing Hillsborough County Instrument #2016376231 and recorded in the Hillsborough County Official Records, Book 24400, Pages 551-565. In addition, District shall: (i) convey all Intangible and Personal Property that was conveyed by HOA to the District pursuant to the certain Quit-Claim Bill of Sale and Assignment, dated September 19, 2016, together with all other intangible and personal property acquired by District in connection with its role as Enforcing Authority; (ii) cooperate with HOA and Developer to return the HOA and District to their respective roles as they existed prior to the execution of the Transition Agreement; and (iii) upon request from Developer, consent to the immediate termination of that certain Temporary, Non-Exclusive Easement Agreement, dated September 19, 2016, as recorded in O.R. Book 24400, Page 566, of the Public Records of Hillsborough County, Florida. At such time as Developer ceases to own any property within the Project, Developer shall be released of any rights or responsibilities under this Agreement and the HOA will become the successor to those responsibilities. This Settlement Agreement shall thereby replace the Agreement referred to in the Official Records documents referenced herein.



## **VII. Effect on Prior Settlement Agreement**

This Agreement supersedes, amends, replaces, and restates the Prior Settlement Agreement in its entirety.

## **VIX. Amendments**

Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both Parties.

## **X. Limitations on Governmental Liability**

Nothing in this Agreement shall be deemed as a waiver of the District's sovereign immunity or the District's limits of liability as set forth in Section 768.28, Florida Statutes, or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under such limitations of liability or by operation of law.

## **XI. Successors**

This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and permitted assigns of the Parties to this Agreement, except as expressly limited in this Agreement.

## **XII. Headings for Convenience Only**

The descriptive headings in this Agreement are for convenience only and shall neither control nor affect the meaning or construction of any of the provisions of this Agreement.

## **XIII. Notices**

All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be hand-delivered, mailed by First Class Mail, postage prepaid, or sent by overnight delivery service, to the parties, as follows:

A. If to District: Harbor Bay Community  
Development District  
250 International Parkway, Suite 280  
Lake Mary, Florida 32746  
Attn: District Manager

With a copy to: Kutak Rock LLP  
P.O. Box 10230  
Tallahassee, Florida 32302  
Attn: District Counsel

B. If to Developer

Park Square Enterprises, LLC  
5200 Vineland Road, Suite 200  
Orlando, Florida 32811  
Attn: Suresh K. Gupta

With a copy to:

Shutts & Bowen LLP  
4301 W. Boy Scout Blvd., Suite 300  
Tampa, Florida 33607  
Attn: Tirso M. Carreja, Jr.

C. If to Club

Save the Manatee, Club, Inc.  
500 Maitland Avenue, Suite 210  
Maitland, Florida 32751  
Attn: Patrick Rose, Director

With a copy to:

The Law Offices of F. Bryan Brice, Jr.  
127 W. Hargett St. Ste, 600  
Raleigh, North Carolina 27601  
Attn: Anne Harvey

D. If to HOA

Mirabay Homeowners Association, Inc.  
9428 Camden Field Parkway  
Riverview, Florida 33578  
Attn: HOA Manager

With a copy to:

James R. De Furio, P.A.  
201 East Kennedy Boulevard, Suite 775  
Tampa, Florida 33602  
Attn: David J. Lopez

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for District and counsel for Contractor may deliver Notice on behalf of the District and Contractor. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days' written notice to the parties and addressees set forth in this Agreement.

#### **XIV. Third Party Beneficiaries**

This Agreement is solely for the benefit of the Parties hereto and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this

Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Parties hereto any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Parties hereto and their respective representatives, successors, and assigns.

#### **XV. Applicable Law and Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without reference to the principles of conflict of laws. Except for actions seeking injunctive relief (which may be brought in any appropriate jurisdiction), suits under this Agreement shall only be brought in a court of competent jurisdiction in the County of Hillsborough, State of Florida. This choice of venue is intended by the Parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the Parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this section. Each party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this section.

#### **XVI. Waiver of Jury Trial**

TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO.

#### **XVII. Severability**

The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

#### **XVIII. Arm's Length Transaction**

This Agreement has been negotiated fully between the Parties as an arm's length transaction. The Parties participated fully in the preparation of this Agreement with the assistance of their respective counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, the Parties are each deemed to have drafted, chosen, and selected the language, and any doubtful language will not be interpreted or construed against any party.



## **XIX. Authorization**

The execution of this Agreement has been duly authorized by the appropriate body or official of the Parties, the Parties have complied with all the requirements of law, and the Parties have full power and authority to comply with the terms and provisions of this Agreement.

## **XX. Counterparts**

This instrument may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and such counterparts together shall constitute one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

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**PARK SQUARE ENTERPRISES, LLC**

a Delaware limited liability company,

By: [Signature]  
Its: Manager

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**SAVE THE MANATEE CLUB, INC.**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**MIRABAY HOMEOWNERS ASSOCIATION, INC.**

By: Amanda Whitney  
Printed Name: Amanda Whitney  
Title: Board President  
Date: 2/7/22

**HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_

**PARK SQUARE ENTERPRISES, LLC**  
a Delaware limited liability company,

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

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**SAVE THE MANATEE CLUB, INC.**

By: Patrick M. Rose  
Printed Name: Patrick M. Rose  
Title: Exec. Dir.  
Date: 1-19-2022

**MIRABAY HOMEOWNERS ASSOCIATION, INC.**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_

**PARK SQUARE ENTERPRISES, LLC**

a Delaware limited liability company,

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

Its: \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

**SAVE THE MANATEE CLUB, INC.**

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

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

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

Date: \_\_\_\_\_

**MIRABAY HOMEOWNERS ASSOCIATION, INC.**

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

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

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

Date: \_\_\_\_\_

**HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT**

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

Printed Name: Dan Leventry

Title: Chairman

Date: \_\_\_\_\_

Attest: Jordan Lansford

Printed Name/Title: **Jordan Lansford/ District Manager**