

Prepared by and return to:

**Utilities Commission,  
City of New Smyrna Beach  
P.O. Box 100 - 200 Canal Street  
New Smyrna Beach, FL. 32170-0100  
(386) 427-1361**

## UTILITY EASEMENT

THIS UTILITY EASEMENT (the "Easement") is made this \_\_\_\_ of \_\_\_\_\_ 2017, by and among \_\_\_\_\_ (the "Grantor"), having a mailing address of \_\_\_\_\_, and the **UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH** (the "Grantee"), having a mailing address of 200 Canal Street, New Smyrna Beach, FL 32168.

WHEREAS, Grantor is the fee simple owner of that certain real estate parcel located in Volusia County, Florida, as more particularly described in Exhibit A attached hereto (the "Grantor's Property"); and,

WHEREAS, Grantor desires to convey to Grantee a perpetual non-exclusive easement, the right of ingress and egress and right-of-way over a portion of Grantor's Property as more particularly described in Exhibit B attached hereto ("Easement Lands"), for the purposes of installing, constructing, operating, operation and inspection, relocating, replacing, maintaining and repairing, from time to time, cables, conduits, transformers, pipes and all necessary utility facilities and fixtures, which easement shall run with the land for the benefit of the Grantee, its respective successors and assigns. Grantee, by acceptance of this Easement, has agreed to be bound by all terms and conditions set forth herein.

NOW THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

**1. GRANT OF UTILITY EASEMENT; MAINTENANCE OF UTILITIES.** Grantor hereby grants to Grantee, its successors, assigns, and grantees, a non-exclusive perpetual easement across, over, upon and under the Easement Lands for the purposes of installing, constructing, operating, operation and inspection, relocating, replacing, maintaining and repairing, from time to time, cables, conduits, transformers, pipes and all necessary utility facilities and fixtures (collectively, the "Utility Facilities") for use in connection therewith, together with the right of ingress and egress to and from the Utility Facilities over and along the Easement Lands (together, the "Utility Easement").

**2. REPRESENTATION AND WARRANTY.** Grantor hereby represents and warrants to Grantee that (i) Grantor is lawfully seized of the Easement Land, (ii) the same is either (a) unencumbered by a mortgage or other lien (excluding lien(s) for ad valorem taxes not yet due and payable), or (b) encumbered only by a mortgage, as to which the mortgagee has executed a joinder and consent to this Easement and the rights granted hereunder, and (iii) Grantor has the right, power and authority to enter into this Easement and grant the Utility Easement herein.

**3. RESERVATION BY GRANTOR/NONEXCLUSIVE USE.** Notwithstanding the rights and easements granted by Grantor under this Easement, Grantor specifically reserves the right to use the Easement Lands for any lawful purposes, however, Grantor shall not build, construct, install or permit to be built, constructed or installed, any improvements, structures, fences, foliage or vegetation, or other

improvements of any nature or description on, upon, over or across the Easement Lands which would materially inhibit or impair the use of the Easement Lands by Grantee for utility purposes. However, Grantor, its successors and/or assigns, may install any structure or object, including, but not limited to, fences, gates, signs, trees or poles, foliage or vegetation, which will not materially inhibit or impair the use of the Easement Lands by Grantee for utility purposes within the Easement Lands after Grantor shall obtain written approval from Grantee of such encroachment. In consideration of Grantee's consent to an encroachment, Grantor, its successors and/or assigns, shall agree to indemnify and hold Grantee harmless from and against all liabilities or damages which may be imposed upon or asserted against Grantee as a result of or in any way connected to an encroachment approved by Grantee. In the case of an emergency needed repair, removal or replacement, in the event Grantee determines that it is necessary to construct, maintain, repair, remove or replace any of its Utility Facilities located under, over or upon the Easement Lands, the Grantor, its successors and/or assigns, of the portion of the Property affected shall immediately remove the encroachment from the Easement Lands upon the request of Grantee at Grantor, its successors and/or assigns' sole cost and expense. If Grantor, its successors and/or assigns fail to remove the encroachment, Grantee shall have the right to remove the encroachment from the Easement Lands, Grantor, its successors and/or assigns shall pay all costs incurred by Grantee related to removing the encroachment from the Easement Lands. The Grantee, and its contractors, agents, and employees, shall have the right to trim or cut trees, shrubbery or vegetation, and roots that may endanger or interfere with the Utility Facilities and shall have free access to the Utility Facilities and every part of it at all times, for the purpose of exercising the rights herein granted.

**4. ENFORCEMENT; ATTORNEYS FEES.** In the event of a failure of any party or parties to perform any of its obligations contained in this Easement, any party or parties affected by this instrument shall be entitled to institute proceedings for full and adequate relief from the consequences of such default, including but not limited to injunctive relief. In the event an action is instituted pursuant to Paragraph 3, the non-prevailing party or parties shall pay the reasonable attorney's fees and expenses of the prevailing party or parties.

**5. BINDING EFFECT; MODIFICATION.** This Easement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. This Easement and the terms and provisions hereof shall be deemed covenants running with the land for all purposes and may be amended or modified only by an instrument in recordable form, executed by all of the parties hereto. Without limiting the foregoing, Grantor acknowledge that Grantee's rights under this Easement are assignable; that Grantee may enter into agreements to sell or otherwise may transfer Grantee's Property, either to affiliates of Grantee or to third parties, and that Grantor hereby consent to Grantee's assignment of all of its right, title and interest and its delegation of all of its obligations created under this Easement upon any such the sale or transfer and, upon any such assignment, Grantee shall be forever released and discharged from any and all claims, demands and damages which Grantor may have, make or suffer as a result of anything done or occurring after the date of such assignment. The term "Grantee" shall also mean any successors, assigns, employees or contractors of Grantee.

**6. NO DEDICATION.** Nothing contained in this Easement shall be deemed to create a gift or be deemed a dedication of any portion of the Easement Land to the general public or for any public use or purpose whatsoever, it being the intention of the parties that nothing in this Easement, expressed or implied, shall confer upon any person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Easement.

**7. SEVERABILITY.** If any term or provision of this Easement or the application thereof to any person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Easement or the application of such terms or provision to persons or circumstances other than those as to which it is

invalid or unenforceable shall not be affected thereby, and each term or provision of this Easement shall be valid and shall be enforced to the fullest extent permitted by law.

**8. INDEMNIFICATION OF THE PARTIES.** The parties shall indemnify and hold each other harmless from and against any and all claims, liens, demands, losses, liabilities, costs (including attorney's fees), or expenses of any kind arising from the parties, their members, tenants, agents, employees, and invitees use of the Easement Lands in connection with the parties' exercise of their rights under this Easement.

(Signatures to follow)

IN WITNESS WHEREOF, the Grantor and Grantee have set their hands and seals as of the day and year first above written.

Signed, Sealed and Delivered in Our Presence:

Grantor: \_\_\_\_\_

Witnesses:

\_\_\_\_\_  
(Sign on this line)

\_\_\_\_\_  
(Sign on this line)

\_\_\_\_\_  
(Print name legibly on this line)

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

\_\_\_\_\_  
(Sign on this line)

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

\_\_\_\_\_  
(Print name legibly on this line)

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, to me personally known or who has provided the following identification, \_\_\_\_\_, who did take an oath.

\_\_\_\_\_  
Notary Public, State of  
My Commission Expires: \_\_\_\_\_

Signed, Sealed and Delivered in Our Presence:

Grantee: UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FL

Witnesses:

\_\_\_\_\_  
(Sign on this line)

\_\_\_\_\_  
(Sign on this line)

\_\_\_\_\_  
(Print name legibly on this line)

By: Derek M. Wainscott

\_\_\_\_\_  
(Sign on this line)

Its: Director of Engineering

\_\_\_\_\_  
(Print name legibly on this line)

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, to me personally known or who has provided the following identification, \_\_\_\_\_, who did take an oath.

\_\_\_\_\_  
Notary Public, State of  
My Commission Expires: \_\_\_\_\_

EXHIBIT A  
(GRANTOR'S PROPERTY)

EXHIBIT B  
(EASEMENT LANDS)

