

**AGREEMENT TO TRANSFER OWNERSHIP, OPERATION AND MAINTENANCE OF
A PORTION OF THE T&T WATER MANAGEMENT SYSTEM AND FOR
DEDICATION AND CONVEYANCE OF ROADS**

This Agreement is made effective this 26th day of July, 2023 (the Effective Date) between T&T Umbrella Association, Inc., a Florida not-for-profit corporation (“T&T”), and the Village of Estero, a Florida municipality (the “Village”), and KTB Florida Sports Arena, LLC (“KTB”), referred to collectively as the “Parties”.

RECITALS

WHEREAS, pursuant to the Second Consolidated, Amended and Restated Declaration of Covenants, Conditions and Restrictions recorded as Instrument Number 2014000054787 of the Official Records of Lee County and all amendments thereto (the “T&T Declaration”), T&T is the legal entity created for the purpose of owning, operating, and maintaining the Surface Water Management System and Conservation Area as defined in the T&T Declaration; and

WHEREAS, pursuant to Section 4.4 of the T&T Declaration, the Surface Water Management System was developed as two (2) “stand alone” water management systems referred to as the Sports Complex System and the Tidewater System, respectively; and

WHEREAS, the Surface Water Management System and Conservation Area includes real property which is part of the Timberland and Tiburon Development of Regional Impact pursuant to Lee County DRI Order No. 7-8384-46 (the “DRI”) within the Village’s municipal boundaries; and

WHEREAS, the Sports Complex System is located within the DRI; and

WHEREAS, a goal of the Village’s storm water plan is to consolidate major private surface water systems with various unrelated contributors and to transfer the ownership, operation, and maintenance obligations of said systems to the Village through the transfer of storm water permits issued by the South Florida Water Management District (the “District”); and

WHEREAS, T&T and the Village have been in discussions regarding the Village assuming ownership and operation of the Sports Complex System, which serves and/or accepts outflow from the following sources: (i) the sports and event arena known as “Hertz Arena” , more specifically identified as Lee County Property Appraiser STRAP No. 26-46-25-E3-U2236.2466 owned by KTB; (ii) several adjacent parcels to the south and east of Hertz Arena; (iii) the Grandezza Master Property Owners Association, Inc.; and (iv) an additional 24 acres of commercial land east of Ben Hill Griffin Parkway which is part of the DRI, but which is not encumbered by the T&T Declaration; and

WHEREAS, the Parties agree it would be in the best interest of the Village and the property owners using the Sports Complex System to have the Village assume ownership, operation and maintenance and repair of the Sports Complex System and its related pipes, drains, culverts, outfalls and all other infrastructure easements, maintenance access easements and all agreements related to operation, use and maintenance of the system; which would allow property owners that currently pay private storm water maintenance and repair assessments to be relieved

of that obligation; and

WHEREAS, KTB owns of a portion of the Sports Complex System lake and has agreed to convey its interest in the land that includes part of the lake in the Sports Complex System to the Village under the terms of this Agreement and a separate agreement with the Village; and

WHEREAS, the Village has agreed that the Sports Complex System shall be used only in accordance with all applicable State laws and the permits issued by the District, and has agreed that its operation of the system, whether or not a replacement water storage facility becomes available, shall never result in less capacity to deliver the design flows from the properties presently area served by the Sports Complex system as it exists today, including the land east of Ben Hill Griffin Parkway; and

WHEREAS, it is the intent of the Tidewater by Del Web Homeowners Association, Inc. to (i) accept a transfer of the ownership and operation of the Tidewater System, including all retention ponds and lakes within the Tidewater community, and the associated pipes, drains, culverts and other drainage infrastructure connected thereto, and maintenance easements from T&T; and (ii) a transfer of the ownership and operation of a portion of Tiburon Way being Tract R-1 as shown on the plat of Tidewater, recorded at Official Records Instrument No. 2015000254670, as affected by the plats of Tidewater Phase 2, recorded at Official Records Instrument No. 2015000254670, and Tidewater Phase 3, recorded at Official Records Instrument No. 2018000016172, all of the Public Records of Lee County, Florida, identified as Lee County STRAP No. 26-46-25-E2-3500R.01CE; and

WHEREAS, as a condition precedent to this Agreement, the Village agrees to accept a dedication and conveyance from T&T of a portion of Tiburon Way, the Everblades Parkway loop road (Everblades Parkway North, Everblades Parkway South and Everblades Parkway), Highland Oaks Drive, and a portion of Miromar Outlets Boulevard, each to be dedicated as public roads and more specifically described herein.

NOW, THEREFORE, the Parties, in consideration of the mutual covenants set forth herein, agree as follows:

1. **Recitals.** The foregoing recitals are incorporated herein by reference as true and correct and as operative covenants.

2. **Conveyance of the Sports Complex System.** T&T agrees to convey and assign, and the Village agrees to accept ownership, operation, maintenance and repair responsibilities of, the Sports Complex System together with all its supporting structures including, but not limited to, pipes, drains, and culverts. It is expressly understood and agreed upon by the Parties that by virtue of this conveyance, the Village shall assume the role as the Operation and Maintenance Entity of the Sports Complex System as that term is defined by § 62-330.10, F.A.C., and shall absolve T&T of said responsibility. Furthermore, the Village, as assignee of T&T, agrees to accept and assume all responsibilities and obligations imposed by drainage or maintenance easements to which T&T is a party, and to indemnify and hold T&T harmless from and against any and all claims, expenses, costs, obligations or other liabilities directly or indirectly arising out of or related to the foregoing easements and agreements. Such agreements include but are not

limited to those agreements related to operation and maintenance of the system, including Tract L (lake) and the lake access easements (L.M.E.) and drainage easements (D.E.) for surface water management, maintenance and drainage as shown on the plat of "University Highland," recorded at Official Records Instrument No. 2014000100081, Public Records of Lee County, Florida, and the following easements and agreements:

(i) Shared Cost and Maintenance Agreement by and among T&T and Grande Oak Master Association n/k/a Grandezza Master Property Owners Association, Inc. dated December 14, 2000, recorded at Official Records Book 3340, Page 4691, Public Records of Lee County, Florida;

(ii) Grant of Easement dated May 29, 1997, between Minola, Inc. and T&T recorded at Official Records Book 2829, Page 1610, Public Records of Lee County, Florida;

(iii) Agreement for Operation and Maintenance of a Portion of an Integrated Water Management System and Grant of Easement between T&T and Minola, Inc. dated May 29, 1997, recorded at Official Records Book 2829, Page 1617, Public Records of Lee County, Florida; and

(iv) Grant of Drainage Easement between Tiburon Limited and T&T dated May 29, 1997, recorded at Official Records Book 2829, Page 1628, Public Records of Lee County, Florida.

3. **Dedication and Conveyance of Real Property and Easements.** T&T shall dedicate and convey, and the Village shall accept and perpetually maintain as public areas, the following improved roads (collectively the "Roads") and property (including any and all improvements such as sidewalks and street lighting thereon) presently owned by and maintained by T&T:

(i) As depicted on University Highland Tract "3" replat recorded at Official Records Instrument No. 2015000267130, Public Records of Lee County, Florida, the following property:

- a. Highland Oaks Drive (being Tract B on said Plat), more specifically identified as Lee County STRAP No. 26-46-25-E3-3600B.00CE;
- b. Portion of Miromar Outlet Drive (being Tract C on said Plat), more specifically identified as Lee County STRAP No. 26-46-25-E3-3600C.00CE, and in accordance with Reciprocal Roadway and Utility Easement Agreement dated May 29, 1997, recorded at Official Records Book 2829, Page 1594, Public Records of Lee County, Florida);
- c. All landscape buffer easements as depicted on said Plat, with responsibility for maintenance; and
- d. All irrigation easements on said Plat, with responsibility for maintenance.

(ii) As depicted on University Highland replat recorded at Official Records Instrument No. 2014000100081, Public Records of Lee County, Florida, the following property:

- a. Everblades Parkway loop road (Everblades Parkway North, Everblades Parkway South and Everblades Parkway) (being Tract A on said Plat), more specifically identified as Lee County STRAP No. 26-46-25-E3-3400A.0000;
- b. All lake maintenance easements and drainage easements as depicted on said Plat for surface water management, drainage, and maintenance; and
- c. The retention pond being Tract L on said Plat, more specifically identified as Lee County STRAP No. 26-46-25-E3-3400L.0000.

(iii) As depicted on Tidewater plat recorded at Official Records Instrument No. 2015000254670, Public Records of Lee County, Florida, the following property:

- a. Portion of Tiburon Way being Tract R-3 on said Plat, more specifically identified as Lee County STRAP No. 26-46-25-E2-3500R.03CE.

4. **Title Commitment and Survey.** Within twenty-five (25) days from the Effective Date of this Agreement, T&T and KTB (the "Grantors") shall furnish the Village with a title search report for the Sports Complex System lake and the Roads to be conveyed to the Village (the "Title Report") issued by a Florida-licensed title company setting forth any defect or encumbrance in the title. The Village may also elect to obtain a survey of any or all real property to be conveyed in accordance with Village's survey requirements (the "Survey"). If the Title Report discloses mortgages judgments, bankruptcies, liens or other encumbrances (collectively "Title Defects") unsatisfactory to the Village, and/or the Survey reveals any encroachments, the Village must notify KTB and T&T within ten (10) days of receipt of the title report or survey. No later than the Closing Date, T&T or KTB shall attempt to cure such Title Defects in recordable form satisfactory to the Village, or cure any encroachments. Should Grantors notify the Village that Grantors cannot or will not cure any title defect or encroachment, the Village shall have the right to either (i) terminate this Agreement prior to the Closing Date, and neither party shall have any further claim against the other, or (ii) waive the necessity of such cure(s) and to proceed to closing, or (iii) the Village may exercise one (1) extension ("Extension") of the Closing Date for a period of thirty (30) days. If, after the expiration of the Extension, any title defect or encroachment still remains, the Village shall have the same options of (i) and (ii), above.

5. **Closing.** Closing Date shall be sixty (60) days after the Village has been approved as the Operation and Maintenance Entity for the Sports Complex System by the District. The Parties may agree on an earlier Closing Date. The Closing shall take place in Lee County. On the Closing Date, T&T and KTB shall execute and record warranty claim deeds for conveyance of the parcels and the Parties shall execute assignments and assumptions of all recorded agreements related to the Sports Complex System and the Roads, as well as all easements held by T&T. T&T and KTB shall also execute and deliver (i) a standard owner's affidavit and any other documents necessary for the purpose of removing the "standard" exceptions from any owner's title insurance policy for the parcels acquired by the Village, (ii) a closing statement, and (iii) fully executed versions of any documents reasonably required to effect the transfers contemplated herein. Notwithstanding the foregoing, in no event shall T&T or KTB be required to execute any document which requires offering or providing an opinion, warranty, or representation which exceeds the scope or knowledge of either party. T&T and KTB will deposit or remit prorated real

estate tax for the year of closing on their respective parcels conveyed to the Village as determined by the Lee County Tax Collector, and the closing agent will follow the procedure for removal of the parcels conveyed to the Village from the ad valorem tax roll pursuant to Florida Statutes § 196.295(1). Documentary stamp tax on the deeds at nominal value will be paid by T&T and KTB for their respective conveyances, and the Village shall pay for the Title Reports and recording charges. If the Village receives a final determination that it will not be approved as the Operation and Maintenance Entity for the Sports Complex System by the District, then any party may terminate this Agreement, and no party shall have any further claim against the others.

6. **Release.** It is agreed that after closing, T&T and KTB shall each have no further responsibility or expense associated with the operation and maintenance, repair or replacement of the Sports Complex System, and the Roads, nor any liability for injuries to any person or property resulting from the operation and maintenance of said system and roads, and the Village shall assume such responsibilities and expenses. The Village agrees to indemnify, defend and hold T&T and KTB harmless from and against any and all liabilities, losses, costs, damages, and expenses (including reasonable attorneys' fees and costs) resulting from its performance or nonperformance as the Operation and Maintenance Entity of the Sports Complex System and as the owner of the parcels to be conveyed.

7. **Preparation of Documents.** All deeds, easements, licenses and conveyances to be provided to the Village pursuant to this Agreement shall be prepared by the respective private entities (T&T and KTB) at their own expense, and shall be subject to review and approval by the Village, which approval shall not be unreasonably withheld.

8. **Pre- and Post-Closing Cooperation.** T & T and KTB agree to cooperate with the Village on the Village's application for approval as the Operation and Maintenance Entity of the Sports Complex System including, but not limited to, promptly executing all documents and applications that may be reasonably required to be executed and petitions required of the owner of the parcels involved, and after closing by: (i) conveying any parcels or easements and other rights in the nature of easements, expressly contemplated by this Agreement which may not have been conveyed at closing; (ii) pursuing amendments to any covenants and restrictions affecting the parcels conveyed to enable the Village's operation, maintenance and use of the parcels as intended herein.

9. **Approval Contingency.** This Agreement is contingent upon: (i) approval by the Members of T&T or the Board of Directors to the extent required by the T&T Declaration; and (ii) approval by KTB. Such approval will be confirmed by T&T's and KTB's execution of this Agreement.

10. **Governing Law, Venue; Attorneys' Fees.** This Agreement shall be construed and governed in accordance with the laws of the State of Florida. Any lawsuit filed to enforce or interpret this Agreement shall be brought exclusively in a state court of competent jurisdiction located in Lee County, Florida. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to attorneys' fees and costs in addition to any other relief to which such party may be entitled.

11. **No Broker Warranty.** The Parties warrant that there are no brokers with whom they dealt related to this Agreement. The party who breaches this warranty shall defend, hold

harmless, and indemnify to the extent allowed by law the non-breaching party from any claims or liability arising from the breach.

12. **No Joint Venture, Partnership or Agency.** Nothing in this Agreement nor any of the acts of the Parties will be construed, nor is it the intent of the Parties, to create a joint venture or partnership between any of them, nor is either the party the agent or representative of the other.

13. **Amendments.** No change in or addition to or waiver or termination of this Agreement will be valid unless made in writing and signed by the Parties.

14. **Headings.** The paragraph headings appearing in this Agreement are for convenience only and are not a part of this Agreement and do not limit or amplify the terms and provisions of this Agreement.

15. **Force Majeure.** Unless otherwise provided in this Agreement, if performance under this Agreement is prevented, restricted or interfered with by reason of any event beyond the reasonable control of the Parties, including but not limited to, fire, flood, epidemic, earthquake, explosion, act of God or public enemy, riot or civil disturbance, strike, labor dispute, war, terrorist threat or activity, any government law, order, or regulation, or order of any court or jurisdiction (a "Force Majeure"), the restricted Party will not be in breach hereof and the performance or obligation of such Party will be excused for a period of time equal to the period during which the Force Majeure prevents such performance. In such event, the Parties will make reasonable efforts to determine sufficient "make goods" allowing the restricted Party to satisfy its obligations hereunder. The financial condition, default, breach, or intentional or negligent act or omission of this Agreement by the Party seeking excuse from performance will not constitute a Force Majeure.

16. **No Third Party Beneficiaries.** This Agreement is for the benefit of the Parties and their respective successors and permitted assigns, and it is not the intent of the Parties to enter this Agreement for any other person's or entity's benefit, and no person or entity not a Party to this Agreement is intended to have standing to file any court action seeking the enforcement or interpretation thereof.

17. **Merger.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and arrangements, both oral and written, between the Parties with respect thereto.

[Signatures on the following page.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, and it shall be effective as of the date the last party signs this Agreement.

**T & T UMBRELLA ASSOCIATION, INC., a
Florida not for profit Corporation**

By: _____
Rosemary Thompson McAvoy, President

**KTB FLORIDA SPORTS ARENA, LLC,
a Michigan limited liability company**

By: _____
Gregory Hoffmann, Manager

ATTEST:

VILLAGE OF ESTERO, a Florida municipality

BY: _____
Carol Sacco, Village Clerk

By: _____
Village of Estero Mayor
