

CONCEPTUAL MASTER PLAN DEVELOPMENT AGREEMENT

Return to:
City Clerk
City of Palm Coast
160 Cypress Point Parkway, Suite B-106
Palm Coast, FL 32164

----- [SPACE ABOVE THIS LINE FOR RECORDING DATA] -----

CONCEPTUAL MASTER PLAN DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PALM COAST AND NEOGA LAKES, LLC

THIS CONCEPTUAL MASTER PLAN DEVELOPMENT AGREEMENT, (herein referred to as the “Development Agreement”) is made and executed this _____ day of _____, 2012, by and between the **CITY OF PALM COAST**, a Florida municipal corporation (herein referred to as the “City”), whose address is 160 Cypress Point Parkway, Suite B-106, Florida, 32164, and the owner of the subject property, **NEOGA LAKES, LLC**, a Delaware limited liability company (hereinafter referred to as “Neoga” or “Owner”) whose address is 1301 Riverplace Boulevard, Suite 2300, Jacksonville, Florida 32207.

WITNESSETH:

WHEREAS, the Owner is the owner of fee simple title to certain real property consisting of approximately 6,378 acres located generally to the west of U.S. 1 and north of Espanola in the City of Palm Coast, Flagler County, Florida, as more particularly described in Exhibit “A” and shown on the General Location Map attached hereto as Exhibit “B” and incorporated herein by this reference (herein referred to as the “Subject Property”); and

WHEREAS, Owner filed an application for conceptual rezoning of the Subject Property and this Development Agreement on November 16, 2011.

WHEREAS, the Subject Property has a Future Land Use Map designation of Development of Regional Impact-Mixed Use and Conservation and is subject to the City 2035 Comprehensive Plan (the “Comprehensive Plan”), including Future Land Use Goal 1.9 and its subsequent policies which policies are Neoga Lakes Site Specific Standards, Goals, Objectives and Policies approved under Ordinance 2010-14 (the “CPA”); and

WHEREAS, the Subject Property is subject to the Neoga Lakes Development of Regional Impact Development Order (“DRI/DO”) approved by Resolution 2010-138 on October 5, 2010, pursuant to Section 380.06, *Florida Statutes*; and

WHEREAS, DRI/DO General Condition 14(b) allows Neoga to submit this Development Agreement to conceptually depict the location of the allowed uses, including common areas and open space, traffic circulation for major road systems and project wide permitted uses, densities and intensities, and thereafter additional incremental master plan development (“Incremental MPD”) agreements may be reviewed and approved for specific parcels or increments within the Subject Property to further specify the allowed development on said parcels or increments; and

WHEREAS, the Owner requests approval for a Conceptual Master Plan Development to allow the Subject Property, which is part of the Neoga Lakes mixed use project, to be developed subject to the conditions set forth in this Development Agreement, the DRI/DO and the CPA; and

WHEREAS, the Owner is in voluntary agreement with the conditions, terms, and restrictions hereinafter recited, and has agreed voluntarily to its imposition as a condition to development of the Subject Property; and

WHEREAS, the City of Palm Coast City Council finds that this Development Agreement is consistent with the Comprehensive Plan and Unified Land Development Code, (the “LDC”) and that the conditions, terms, restrictions, and requirements set forth herein are necessary for the protection of the public health, safety, and welfare of the citizens of the City; and

WHEREAS, the City of Palm Coast City Council further finds that this Development Agreement is consistent with and an exercise of the City’s powers under the *Municipal Home Rule Powers Act*; Article VIII, Section 2(b) of the *Constitution of the State of Florida*; Chapter 166, *Florida Statutes*; the *City of Palm Coast City Charter*; other controlling law; and the City’s police powers; and

WHEREAS, this is a non-statutory Development Agreement which is not subject to or enacted pursuant to the provisions of Sections 163.3220 -163.3243, *Florida Statutes*.

NOW, THEREFORE, it is hereby resolved and agreed by and between the City and the Owner that the Owner’s application for a Conceptual Master Plan Development, including this Development Agreement, is approved subject to the following terms and conditions:

SECTION 1. RECITALS.

The above recitals are true and correct and are incorporated herein by this reference and form a material part of this Development Agreement upon which the City and the Owner have relied.

SECTION 2. REPRESENTATIONS OF OWNER.

(a). The Owner hereby represents and warrants to the City that it is the owner of the Subject Property in accordance with the Record Ownership and Encumbrance

Report ("O&E Report") provided by the Owner to the City (under separate cover), which said O&E Report was issued by a title insurance company licensed to provide services in the State of Florida and shows all liens and mortgages not satisfied or released of record relative to the Subject Property.

(b). The Owner represents and warrants to the City that it has the power and authority to enter into and consummate the terms and conditions of this Development Agreement; that all acts, approvals, procedures and similar matters required in order to authorize this Development Agreement have been taken, obtained or followed, as the case may be; that this Development Agreement and the proposed performance of this Development Agreement by the Owner is not an *ultra vires* act; and that, upon the execution of this Development Agreement by the parties, this Development Agreement shall be valid and binding upon the parties hereto and their successors in interest, as provided for in Section 16.

(c). The Owner and City acknowledge that there are no joinders and consents required for this Development Agreement.

SECTION 3. APPROVAL OF CONCEPTUAL MASTER PLAN DEVELOPMENT.

(a). The City Council at its regular meeting on _____ 2012, adopted a Conceptual Master Plan Development for the Subject Property subject to the terms and conditions of this Development Agreement.

(b). The City acknowledges that this Development Agreement and the companion conceptual rezoning, the CPA and the DRI/DO shall allow the Owner to develop the Subject Property consistent with these documents, the development rights set forth therein and the subsequently approved Incremental MPDs.

SECTION 4. INCREMENTAL MASTER PLAN DEVELOPMENT

AGREEMENTS.

(a). The Owner acknowledges that as a condition to development, Incremental MPD Agreements shall be submitted and require the approval of the City of Palm Coast City Council following the recommendation of the Planning and Land Development Regulation Board for each parcel or increment of the Subject Property prior to development of any non-residential square footage or residential unit within those parcels or increments. The City will review the Incremental MPD Agreements in accordance with the applicable LDC requirements, consider waivers, deviations or variances from the LDC, and review the Incremental MPD Agreement for consistency with the DRI/DO, this Development Agreement, and the City's Comprehensive Plan. The purpose of the Incremental MPD Agreements will be to supplement this Development Agreement by setting forth in each Incremental MPD Agreement the following items (as applicable to each parcel or increment of the Subject Property):

1. permitted, accessory and prohibited uses;
2. site plan;
3. density and intensity;
4. dimensional standards (e.g. floor area ratio ("FAR"), setbacks, lot width, building height, impervious surface area, etc.);
5. location and width for any portion of the Pathway System (as defined in the DRI/DO), roads, streets, alleys and other rights-of-way;
6. landscaping, signage and parking standards;
7. recreation and public facilities;

8. stormwater management system(s);
9. water and wastewater;
10. environmental standards (e.g. upland buffers, wildlife protection) consistent with the DRI/DO and CPA;
11. consistency with the approved Habitat Management Plan (as may be modified) described in Special Condition 17 of the DRI/DO; and
12. requested variances, deviations or waivers from the LDC, which are subject to approval by the City.

The Owner's submittal of subsequent Incremental MPDs and associated agreements shall not be subject to the frequency limitation in LDC Section 2.06.04. Provisions for the general location of road connections to future development shall be shown on the site plan(s) attached to the Incremental MPD Agreement.

(b). The Owner acknowledges that, as a condition to development, there are certain design, development and/or permitting requirements set forth in the DRI/DO that must be further defined in subsequent Incremental MPD Agreements (the "DRI/DO Incremental MPD Requirements"). The Owner agrees that the DRI/DO Incremental MPD Requirements shall be set forth in the Incremental MPD that encumbers the parcel or increment of the Subject Property which is subject to said requirements. The following specific DRI/DO Incremental MPD Requirements shall be provided in the appropriate Incremental MPD, as well as any additional requirements set forth in the DRI/DO:

1. land use incentives (e.g., increased FARs, decreased setbacks, parking incentives, etc.) for the Employment Center lands, which lands are depicted on the Neoga Lakes Conceptual MPD Site Plan

(the "Site Plan") attached hereto as Exhibit "C" (See DRI/DO General Condition 2(b));

2. reduced setbacks and landscaping requirements to maximize the usable lands for the area(s) within the Employment Center adjacent to the Extension (as defined below) (See DRI/DO Special Condition 25(d)(iv));
3. the final geometry and design for the roadway improvements described in DRI/DO Special Condition 25 that will be dedicated to the City or constructed within City right-of-way (See DRI/DO Special Condition 25(a)(ii));
4. the exact right-of-way width for the portion of New Brick Parkway (as described in the DRI/DO) traversing the Subject Property (See DRI/DO Special Condition 25(h));
5. the architectural guidelines and requirements for the Fire/Police Facilities and the Civic Uses (as defined in the DRI/DO) (See DRI/DO Special Condition 28); and
6. the location of the community and neighborhood parks and description of the associated improvements for these parks (See DRI/DO Special Condition 29).

SECTION 5. PERMITTED USES.

(a). The Owner agrees that the uses and densities and intensities generally allowed on the Subject Property are as shown on the Site Plan attached hereto as Exhibit "C", subject to any conversions allowed under the DRI/DO, including the DRI/DO Land Use Conversion Matrix, and use modifications as may be approved under the

DRI/DO or subsequent Incremental MPDs. In addition, the Owner may continue agricultural and/or silvicultural use of the Subject Property, including on those lands discussed in Section 6 below, consistent with the provisions of DRI/DO Special Condition 17(k).

(b). Notwithstanding LDC Section 3.04.02, the DRI/DO, the Comprehensive Plan, including the CPA, and this Development Agreement shall control for purposes of the permitted uses on the Subject Property. This section specifically supersedes the requirements in LDC Section 3.04.02, which requirements are satisfied in the DRI/DO, the City's Comprehensive Plan and this Development Agreement.

SECTION 6. GREENWAY PRESERVE LANDS.

Approximately 919 acres of land within the Subject Property have been designated under the CPA as Conservation on the City's Future Land Use Map (the "Initial Conservation Lands"). Pursuant to the Comprehensive Plan's Future Land Use Goal 1.9 and the environmental sequencing process in the Northwest Corridor Overlay Area ("NCOA") standards contained in the Comprehensive Plan, at a minimum, an additional 2,231 acres of land within the Neoga Lakes project shall be designated as Conservation on the City's Future Land Use Map in the future (the "Future Conservation Lands"). The Initial Conservation Lands and the Future Conservation Lands, when so designated, shall collectively comprise the Subject Property's Greenway Preserve as set forth in the CPA and NCOA standards (the "Greenway Preserve"). The City acknowledges that the protection afforded the Greenway Preserve under the CPA and NCOA provide adequate standards to meet the LDC preservation requirements and that the Greenway Preserve standards set forth in NCOA Policy 1.8.5.2(B) have been satisfied under the DRI/DO and CPA for the Subject Property.

SECTION 7. LAND DEVELOPMENT CODE NON-APPLICABILITY.

The Owner may request specific waivers, variances, deviations or non-applicability from the provisions of the LDC in each subsequent Incremental MPD Agreement. Such request shall be set forth in the applicable Incremental MPD Agreement and may be approved by the City as part of the Incremental MPD Agreement approval.

SECTION 8. PHASING AND TERM OF DEVELOPMENT.

The Subject Property is anticipated to be developed in three (3) phases as set forth on the Site Plan attached hereto as Exhibit "C", subject to any applicable extensions. Notwithstanding LDC Sections 2.05.06 and 2.14.01, the DRI/DO shall control for purposes of the phasing, commencement of physical development, buildout and termination and expiration dates (the "Dates") applicable to the Subject Property. The Dates contained in this Development Agreement are for informational purposes only. Any changes to the DRI/DO phasing, commencement of physical development, buildout and termination dates shall not require a modification to this Development Agreement. This section specifically supersedes the duration and extension requirements in LDC Sections 2.05.06 and 2.14.01 applicable to master plan development agreements.

SECTION 9. ROYAL PALMS EXTENSION RIGHT-OF-WAY.

(a). DRI/DO Special Condition 25(d)(iv) requires, as a condition of development, for the Owner to reserve a right-of-way width of one hundred and fifty (150) feet with a length not to exceed four thousand (4,000) linear feet for an extension of Royal Palms Parkway traversing the southeastern portion of the Subject Property through the area designated on the Site Plan attached hereto as Exhibit "C" as

Employment Center (the "Extension") with the location of the Extension to be determined by the Owner in coordination with the City as part of this Development Agreement process. In satisfaction thereof, the Developer shall locate the Extension in either the (i) Alternative A corridor area or (ii) Alternative B corridor area graphically depicted on the Royal Palms Parkway Corridor Extension Map attached hereto as Exhibit "D". The Extension location shall be finalized by the Developer at the time of Incremental MPD approval for the parcel or increment of the Subject Property that encumbers the Extension.

(b). The City and Owner acknowledge that this Section 9 satisfies the requirement in DRI/DO Special Condition 25(d)(iv).

SECTION 10. FACILITY COMMITMENTS.

(a). No building permits or development permits shall be issued for the Subject Property unless adequate capacity of concurrency monitored facilities is available for the development for which such building permit or development is to be issued concurrent with the impact on said facilities by the development as provided for in the LDC and the Comprehensive Plan. In addition and consistent with the DRI/DO, the Owner shall be required to meet the level of service standards in the City's Comprehensive Plan and the requirements in the City's concurrency management system as provided for in the DRI/DO. Notwithstanding the foregoing, however, mitigation for transportation impacts is being implemented through "pipelining" provisions set forth in Section 163.3180(12), *Florida Statutes* (2010). School concurrency requirements will be satisfied pursuant to Section 163.3180(13), *Florida Statutes* (2010), under the terms of the City of Palm Coast Public School Concurrency Proportionate Share Mitigation Development Agreement between the City, Neoga and

the School District of Flagler County, Florida, acting through its School Board recorded at Official Records Book 1790, page 501 of the Public Records of Flagler County, Florida (the "Proportionate Share Agreement").

(b). As a condition to development of the Subject Property, the Owner agrees to develop the Subject Property, including construction of any facility or infrastructure improvements, as set forth in the DRI/DO, as may be amended from time to time, pursuant to Section 380.06, *Florida Statutes* (2010), and this Development Agreement, as may be amended from time to time.

(c). Consistent with the Master Utility Agreement for Water, Wastewater and Reuse Service ("MUA") between the City and Neoga recorded at Official Records Book 1790, page 718 of the Public Records of Flagler County, Florida, the Owner agrees to grant to the City those utility easements as set forth in the MUA.

(d). The Owner hereby agrees that the City has shown an essential nexus between a legitimate City interest and the conditions imposed herein. Further, the Owner agrees that the City has established that all proposed conditions are roughly proportional to the impact of the development upon the public problems addressed herein and in the DRI/DO based upon an individualized determination that the required dedication/commitment is related in both nature and extent to the impacts of the proposed development.

SECTION 11. LIST OF OUTSTANDING PERMITS/APPROVALS, AND PROPER SEQUENCING.

(a). The failure of the Development Agreement to address any specific City, county, state, or federal permit, condition, term, or restriction shall not relieve the Owner

or the City of the requirement of complying with the law governing said permitting requirements, conditions, terms, or restrictions, subject to Section 17 below.

(b). All required City, county, state, or federal permits shall be obtained prior to commencement of construction, subject to Section 17 below.

SECTION 12. DEVELOPMENT FEES.

The Owner acknowledges and agrees that the City has enacted and may in the future increase the amount of citywide impact fees or similar exactions. The Owner acknowledges that the Subject Property shall be subject to all fees and credits in effect at the time of permitting; however, the rights of Owner to receive impact fee credits shall be as provided in the DRI/DO.

SECTION 13. COMMON AREAS AND MAINTENANCE.

The Owner shall establish a property owners association, homeowners association or associations (collectively referred to as "Association") or Community Development District ("CDD"), in accordance with Florida law, for any common areas within the Subject Property, to ensure the long-term ownership, maintenance, and control of those areas, prior to the issuance of any building permits for the applicable lots or parcels served by such common areas. The Association or CDD shall be comprised of the owners of lots or parcels within the development or within portions of the development. The documentation, whether contained in a deed restriction or otherwise, shall provide for the permanent maintenance of the common areas by the Association or CDD, minimum insurance requirements for the Association or CDD and adequate mechanisms to enforce financial participation by members of the Association or CDD. The documentation shall also identify the party responsible for maintaining the common areas, stormwater management system and open space, as applicable,

pursuant to LDC Section 3.03.04(l)(7). The Owner will provide a copy of the recorded documentation to the City for the purpose of allowing the City to ensure the terms of the Association documents comply with the Development Agreement.

SECTION 14. BREACH; ENFORCEMENT; ALTERNATIVE DISPUTE RESOLUTION.

(a). In the event of a breach hereof by either party, the parties shall be entitled to the following rights and remedies: (i) as to a breach by the City, the right of Owner to a writ of mandamus, if a ministerial duty is involved, or other appropriate action to compel the City to comply with the terms of this Development Agreement and (ii) as to a breach by the Owner, then the Owner shall be subject to the remedies provided for in the LDC.

(b). In the event that a dispute arises under this Development Agreement, and if the City and Owner are unable to resolve the issue(s), the parties shall attempt to resolve all disputes informally. In the event of a failure to informally resolve all disputes, the City and Owner agree to engage in mediation before a certified Circuit Court mediator selected by the parties. In the event that the parties fail to agree to a mediator, a mediator with the Florida Conflict Resolution Consortium or, if unavailable, a certified mediator, may be selected solely by the City. The parties shall equally pay all costs of mediation.

(c). Prior to the City filing any action to enforce this Development Agreement as a result of a default under this Development Agreement, the City shall first provide the Owner written notice of the default. Upon receipt of notice, the Owner shall be provided a thirty (30) day period in which to cure the default to the reasonable satisfaction of the City or if such default is of a nature which cannot be cured in thirty

(30) days, the time period for cure shall be extended to a period as is reasonably necessary to effect a cure. Any default not ultimately cured by the Owner as provided for in this Section 14, shall be subject to Section 14(a)(ii) above.

SECTION 15. NOTICES.

(a). All notices required or permitted to be given under this Development Agreement must be in writing and must be delivered to the City or the Owner at its address set forth below (or such other address as may be hereinafter designated in writing by such party).

(b). Any such notice must be personally delivered or sent by registered or certified mail, overnight courier, facsimile, or telecopy.

(c). Any such notice will be deemed effective when received (if sent by hand delivery, overnight courier, telecopy, or facsimile) or on that date which is three (3) days after such notice is deposited in the United States mail (if sent by registered or certified mail).

(d). The parties' addresses for the delivery of all such notices are as follows:

As to the City: City Manager
160 Cypress Point Pkwy, Suite B-106
Palm Coast, Florida, 32164

As to the Owner: Neoga Lakes, LLC
Attention: General Counsel
1301 Riverplace Boulevard, Suite 2300
Jacksonville, Florida 32207

With a copy to: Gunster, Yoakley & Stewart, P.A.
Attention: M. Lynn Pappas and Staci M. Rewis
225 Water Street, Suite 1750
Jacksonville, Florida 32202

SECTION 16. SUCCESSORS AND ASSIGNS.

(a). This Development Agreement and the terms and conditions hereof shall be binding upon and inure to the benefit of the City and the Owner (only as a condition to development of the Subject Property which is owned by the Owner) and their respective successors and assigns. In addition, the Owner may assign its rights, obligations and responsibilities under this Development Agreement in whole or in part to a third party purchaser of all or any part of the Subject Property. Any such assignment shall be in writing, shall not require the prior written consent of all the parties, and shall automatically constitute a release of the Owner from any obligations under this Development Agreement which are assigned to and assumed by such third party. The terms and conditions of this Development Agreement similarly shall be binding upon the Subject Property and shall run with the land and the title to the same.

(b). This Development Agreement touches and concerns the Subject Property.

(c). The Owner and any assignee expressly covenant and agree to this provision and all other terms and provisions of this Development Agreement, as related to any of the Subject Property owned by the Owner or such assignee.

SECTION 17. GOVERNING LAW/VENUE/COMPLIANCE WITH LAW.

(a). This Development Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the Code of Ordinances of the City Of Palm Coast.

(b). Venue for any dispute shall be in the Seventh Judicial Circuit Court in and for Flagler County, Florida.

(c). The Owner shall fully comply with all applicable local, state, and federal environmental regulations and all other laws of similar type or nature, except as provided for in this Development Agreement.

(d). This Development Agreement does not limit the future exercise of the police powers of the City to enact ordinances, standards or rules regulating development generally applicable to the entire area of the City. The City acknowledges that (i) the Owner has, by virtue of this Development Agreement, the DRI/DO, and the LDC, the right to submit Incremental MPDs (and associated agreements) and develop the Subject Property consistent with this Development Agreement, the DRI/DO, the LDC (subject to Section 7 above) and the Comprehensive Plan, and (ii) pursuant to this Development Agreement and the DRI/DO the rights herein granted are vested from future modifications to the LDC and the Land Development Code Technical Manual and are further vested from future modifications to any other laws or regulations of the City which have a material and adverse impact upon the cost or time of development of the Subject Property, unless the City has determined such future modification to be an exercise of the police powers of the City in regard to health, safety and welfare. The City further acknowledges that the Owner is relying on this Development Agreement and the DRI/DO in developing the Subject Property. The Owner does not waive any statutory or common law vested right or equitable estoppel claims it now has or may hereinafter acquire in the future to complete any portion of this development in accordance with the applicable state and local laws and ordinances in effect at the time this Development Agreement or any Incremental MPD (and associated agreements) becomes effective. The obligations or conditions in this Development Agreement are conditions to development of the Subject Property and nothing contained in this

Development Agreement shall be construed to obligate the Owner to develop the Subject Property.

(e). If state or federal laws are enacted after execution of this Development Agreement, which are applicable to and preclude the parties' compliance with this Development Agreement, this Development Agreement shall be modified to comply with the relevant law.

(f). This Development Agreement does not prohibit the City from adopting lawfully imposed impact fees and credits applicable to the Owner and the Master Plan Development authorized hereunder; however the rights of Owner to receive impact fee credits shall be as provided in the DRI/DO.

SECTION 18. EFFECTIVE DATE.

This Development Agreement shall be effective upon approval by the City of Palm Coast City Council and upon the last of the parties signing this Development Agreement.

SECTION 19. RECORDATION.

Upon approval by the City of Palm Coast City Council and execution of this Development Agreement by all parties, this Development Agreement and any and all amendments hereto shall be recorded by the City with the Clerk of the Circuit Court of Flagler County within fourteen (14) days after its execution by the City and the Development Agreement shall run with the land. The Owner shall pay the costs to record this Development Agreement.

SECTION 20. CONCURRENCY.

The terms and conditions of this Development Agreement do not determine concurrency for the Subject Property. Notwithstanding the above sentence, the Owner

shall satisfy transportation concurrency requirements by “pipelining” pursuant to Section 163.3180(12), *Florida Statutes* (2010), by providing one or more mobility improvements that will benefit a regionally significant transportation facility, as provided for in the DRI/DO, and the Owner shall satisfy school concurrency requirements pursuant to the Proportionate Share Agreement.

SECTION 21. THIRD PARTY RIGHTS.

This Development Agreement is not a third party beneficiary contract, and shall not in any way whatsoever create any rights on behalf of any third party, but shall inure to the benefit of the successors or assigns of Owner, as owners of the Subject Property.

SECTION 22. CAPTIONS.

Sections and other captions contained in this Development Agreement are for reference purposes only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Development Agreement, or any provision hereof.

SECTION 23. EXHIBITS.

Each exhibit referred to and attached to this Development Agreement is an essential part of this Development Agreement. The exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Development Agreement.

SECTION 24. FORCE MAJEURE.

The parties agree that in the event that the failure by either party to accomplish any action required hereunder within a specific time period (“Time Period”) constitutes a default under terms of this Development Agreement and, if any such failure is due to any unforeseeable or unpredictable event or condition beyond the control of such party including, but not limited to, acts of God, acts of government authority (other than the

City's own acts), acts of public enemy or war, terrorism, riots, civil disturbances, power failure, shortages of labor or materials, injunction or other court proceedings beyond the control of such party, or severe adverse weather conditions ("Uncontrollable Event"), then notwithstanding any provision of this Development Agreement to the contrary, that failure shall not constitute a default under this Development Agreement and any Time Period prescribed hereunder shall be extended by the amount of time that such party was unable to perform solely due to the Uncontrollable Event.

SECTION 25. INTERPRETATION.

(a). The Owner and the City agree that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one (1) heading may be considered to be equally applicable under another in the interpretation of this Development Agreement.

(b). This Development Agreement shall not be construed more strictly against either party on the basis of being the drafter thereof, and both parties have contributed to the drafting of this Development Agreement.

SECTION 26. FURTHER ASSURANCES.

Each party agrees to sign any other and further instruments and documents consistent herewith, as may be necessary and proper to give complete effect to the terms of this Agreement.

SECTION 27. COUNTERPARTS.

This Development Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one (1) and the same document.

SECTION 28. MODIFICATIONS / AMENDMENTS/NON-WAIVER.

(a). Amendments to and waivers of the provisions herein shall be made by the parties only in writing by formal amendment or in any subsequently approved Incremental MPD Agreement. This Development Agreement shall not be modified or amended except by written agreement executed by all parties hereto and upon approval of the City of Palm Coast City Council.

(b). Failure of any party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the City and Neoga have caused this Development Agreement to be duly executed by their duly authorized representative(s) as of the date first above written.

OWNER'S/APPLICANT'S CONSENT AND COVENANT:

COMES NOW, the Owner on behalf of itself and its successors, assigns and transferees of any nature whatsoever, consents to and agrees with the covenants to perform and fully abide by the provisions, terms, conditions and commitments set forth in this Development Agreement.

NEOGA LAKES, LLC,
a Delaware limited liability company

By: _____

Printed Name: _____

Title: _____

Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing affidavit was sworn and subscribed before me this _____ day of _____, 2012 by _____ as _____ of Neoga Lakes, LLC, a Delaware limited liability company, who is personally known to me or has produced _____ as identification.

(Notary Signature)

ATTEST:

CITY OF PALM COAST, FLORIDA

Virginia A. Smith, City Clerk

Jon Netts, Mayor

For use and reliance of the
Palm Coast City Council only.
Approved as to form and legality.

William E. Reischmann, Jr., Esq.
City Attorney

STATE OF FLORIDA
COUNTY OF _____

The foregoing affidavit was sworn and subscribed before me this _____ day of _____, 2012 by _____ as _____ of City of Palm Coast, Florida, who is personally known to me or has produced _____ as identification.

(Notary Signature)

EXHIBIT "A"
SUBJECT PROPERTY

FLAGLER COUNTY, FLORIDA

Lands in Township 11 South, Range 29 East

All of Sections 12 and 13, less and except right-of-way of Highway 13, a/k/a Brick Road;

All of Section 14, lying and being East of the western boundary of the abandoned F.E.C. Railway right-of-way (100 foot right-of-way); The Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$; Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$; the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$; and the South $\frac{1}{2}$ of Section 15, lying and being East of the western boundary of the-abandoned F. E. C. Railway right-of-way (100 foot right-of-way); LESS AND EXCEPT any part thereof lying within lands conveyed to Florida Power and Light Company set forth in Special Warranty Deed recorded in O. R. Book 213, page 795, Public Records of Flagler County, Florida;

All of Section 23, lying and being East of the western boundary of the abandoned F.E.C. Railway right-of-way (100 foot right-of-way);

All of Section 24, lying and being East of the western boundary of the abandoned F.E.C. Railway right-of-way (100 foot right-of-way);

All of Section 25, lying and being East of the western boundary of the abandoned F.E.C. Railway right-of-way (100 foot right-of-way);

Lands in Township 11 South, Range 30 East

All of Section 18 and 19, less and except right-of-way of Highway 13, a/k/a Brick Road;

That portion of Section 20, lying and being West of Hargrove Grade; less and except road right-of-way reserved in TILF Deed recorded in Deed Book 30, page 381;

That portion of Section 29, lying and being West of Hargrove Grade; together with that portion of the Southeast $\frac{1}{4}$ lying and being West of a 410 feet established power line right-of-way located in said section; less and except Hargrove Grade and Otis Hunter Grade road right-of-ways;

All of Section 30, Township 11 South, Range 30 East, Flagler County, Florida; Less and except the following: Begin at the Southwest corner of Section 30, Township 11 South, Range 30 East;

thence North 00°00'00" East, a distance of 1126.73 feet to the Southwesterly Right of Way line of an abandoned railroad having a 100 foot Right of Way; thence South 47°31'54" East on the Right of Way line thereof, a distance of 770.97 feet; thence North 45°00'00" East, a distance of 2876.25 feet to the Northwest corner of lands described in Official Records 535, page 1327 of the public records of said Flagler County; thence North 90°00'00" East, on the North line of said Official Records and the North line of Official Records 404, page 281, a distance of 487.17 feet to the East Right of Way line of Old Brick Yard Road having a 50 foot Right of Way; thence South 10°52'58" East, on the East Right of way line thereof, a distance of 415.68 feet to the Northwest corner of Official Records Book 1600, page 275; thence South 90°00'00" East on the North line of last said Official Records Book, a distance of 776.18 feet to the Northeast corner of last said Official Records Book; thence South 30°53'57" East, a distance of 2600.95 feet to the Southeast corner of said Section; thence North 90°00'00" West on the South line of said Section, a distance of 5,280.00 feet to the point of beginning.

Section 32:

The East ½ of the East ½; together with the following parcel of land in the Southwest ¼ of the Southeast ¼ described as follows:

Commence at the Northeast corner of the Southwest ¼ of the Southeast ¼ at a 4" x 4" concrete monument; thence along the East line of the Southwest ¼ of the Southeast ¼ South 00 degrees 05 minutes 02 seconds East a distance of 718.15 feet to an iron pipe and cap (LB 6888) located on the northerly maintained right of way of an existing dirt road, said point marking the point of beginning of the herein described parcel; thence South 73 degrees 42 minutes 15 seconds West along said Northerly maintained right of way line 446.36 feet to the point of curvature of a curve to the left, concave Southeast, having a radius of 574.60 feet; thence Southwesterly along said Northerly maintained right of way line and the arc of said curve 181.18 feet, through a central angle of 18 degrees 04 minutes 00 seconds and being subtended by a chord bearing and distance of South 64 degrees 40 minutes 15 seconds West 180.43 feet to the point of tangency; thence South 55 degrees 38 minutes 16 seconds West continuing along said Northerly maintained right of way line 173.18 feet to a point on the Northeasterly right of way line of State Road No. 13 (a variable width right of way); thence Southeast 48 degrees 54 minutes 41 seconds East to a point where the Northeasterly right of way line of S. R. 13 (a variable width right of way) intersects the southern boundary line of Section 32, Township 11 South, Range 30 East; thence South 89 degrees 03 minutes 16 seconds East along said southern boundary of Section 32 to a concrete monument (LS 2615); thence North 00 degrees 05 minutes 02 seconds West 598.69 feet to the Point of Beginning.

Section 33:

All lying and being West of the right-of-way of the Florida East Coast Railway, (150 foot right-of-way).

EXHIBIT "B"
GENERAL LOCATION MAP

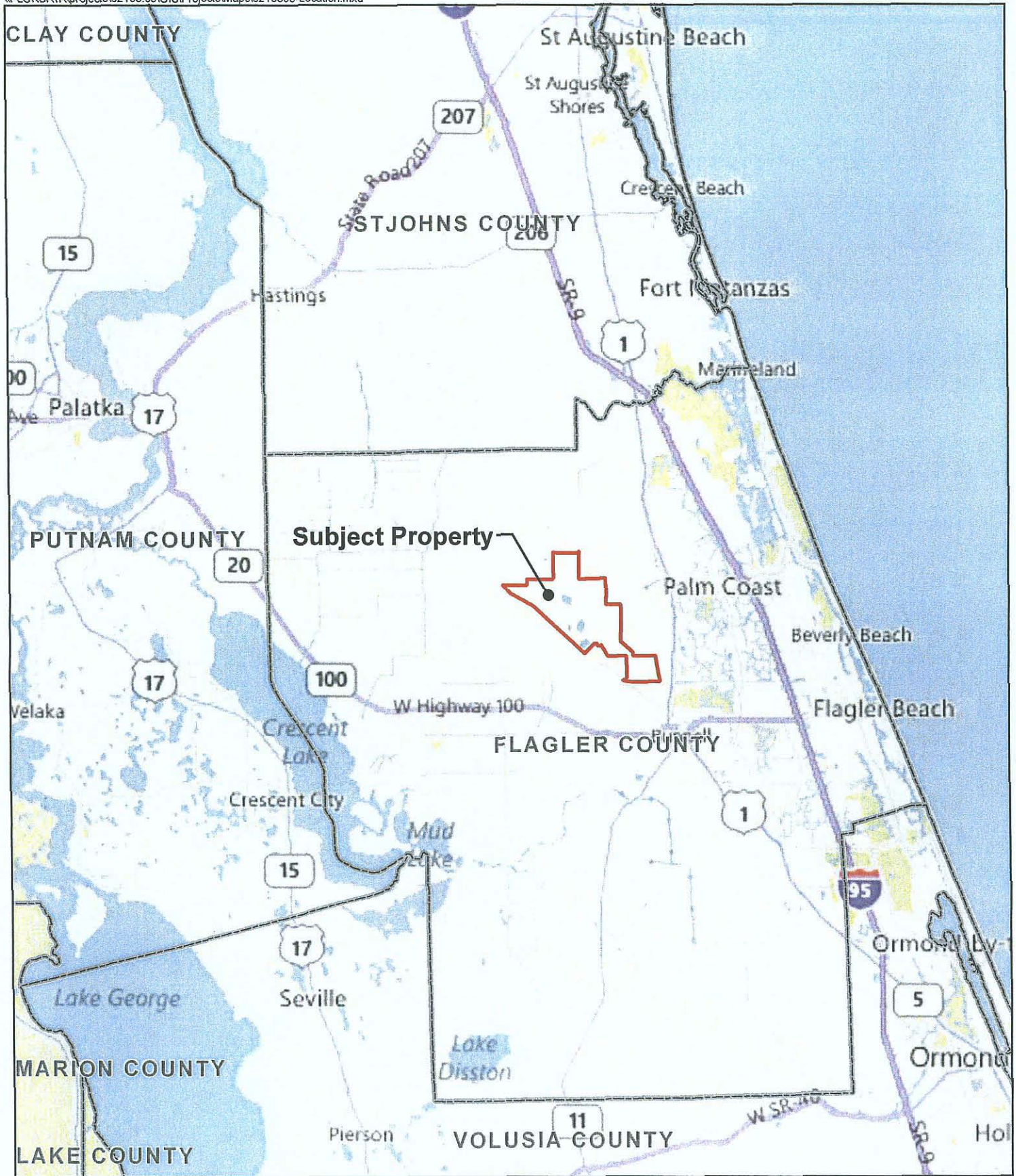
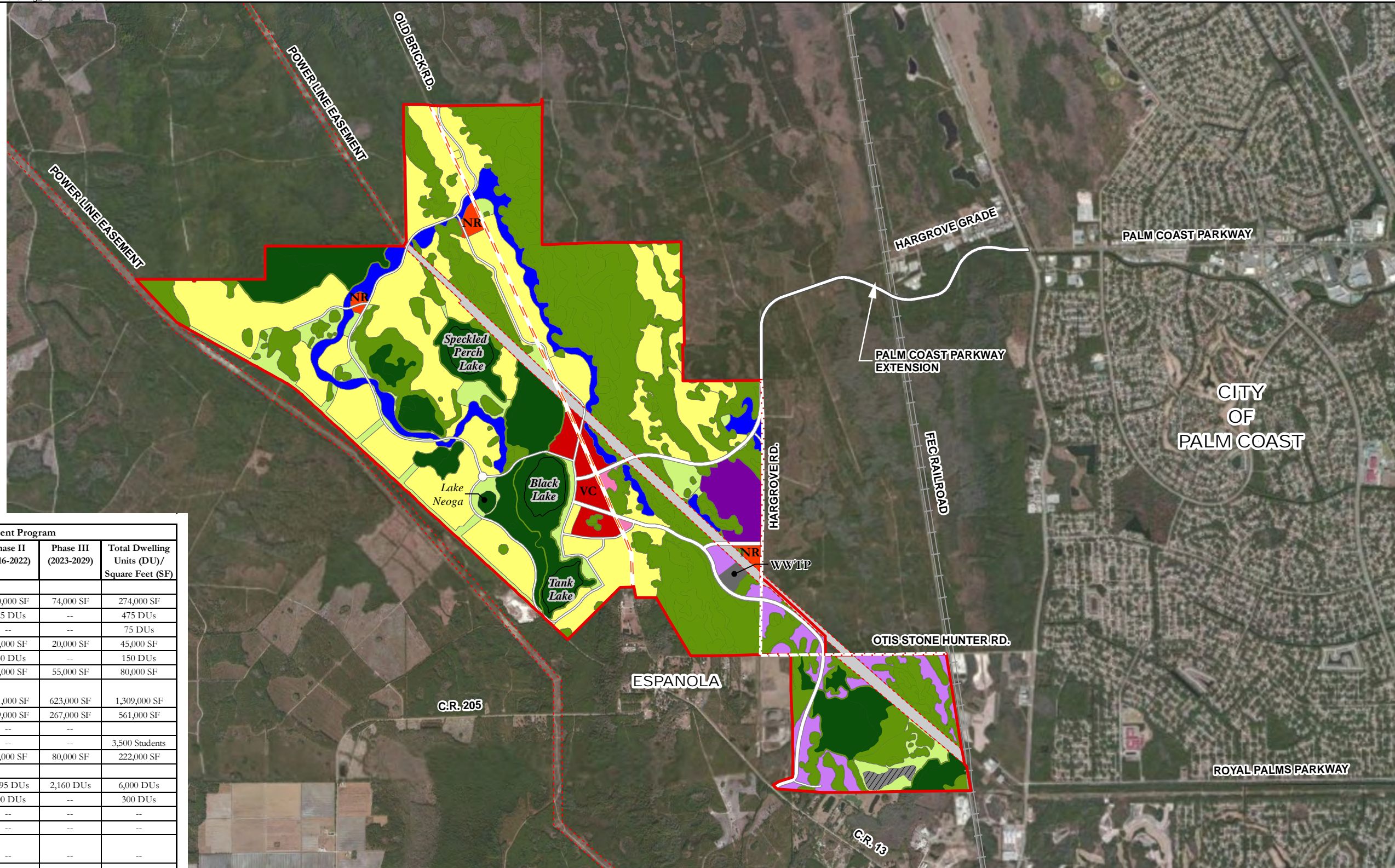


EXHIBIT "C"
NEOGA LAKES CONCEPTUAL MPD SITE PLAN

LEGEND

- PROJECT BOUNDARY
- PUBLIC RIGHT-OF-WAY
- FP&L EASEMENT
- EASEMENT
- RAILROADS
- LAND USE**
- RESIDENTIAL (SINGLE FAMILY, MULTI-FAMILY AND LIFE CARE UNITS)
- NEIGHBORHOOD RETAIL (NR)
- VILLAGE CENTER (VC)
- EMPLOYMENT CENTER
- INSTITUTIONAL
- CIVIC
- UTILITY
- PARK/OPEN SPACE
- ROW
- PROPOSED PONDS
- EXISTING BORROW AREA
- INITIAL CONSERVATION LAND
- FUTURE CONSERVATION LAND



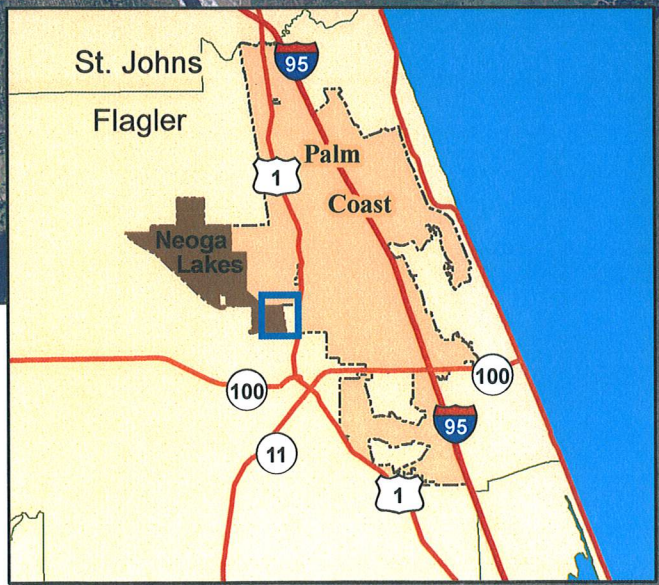
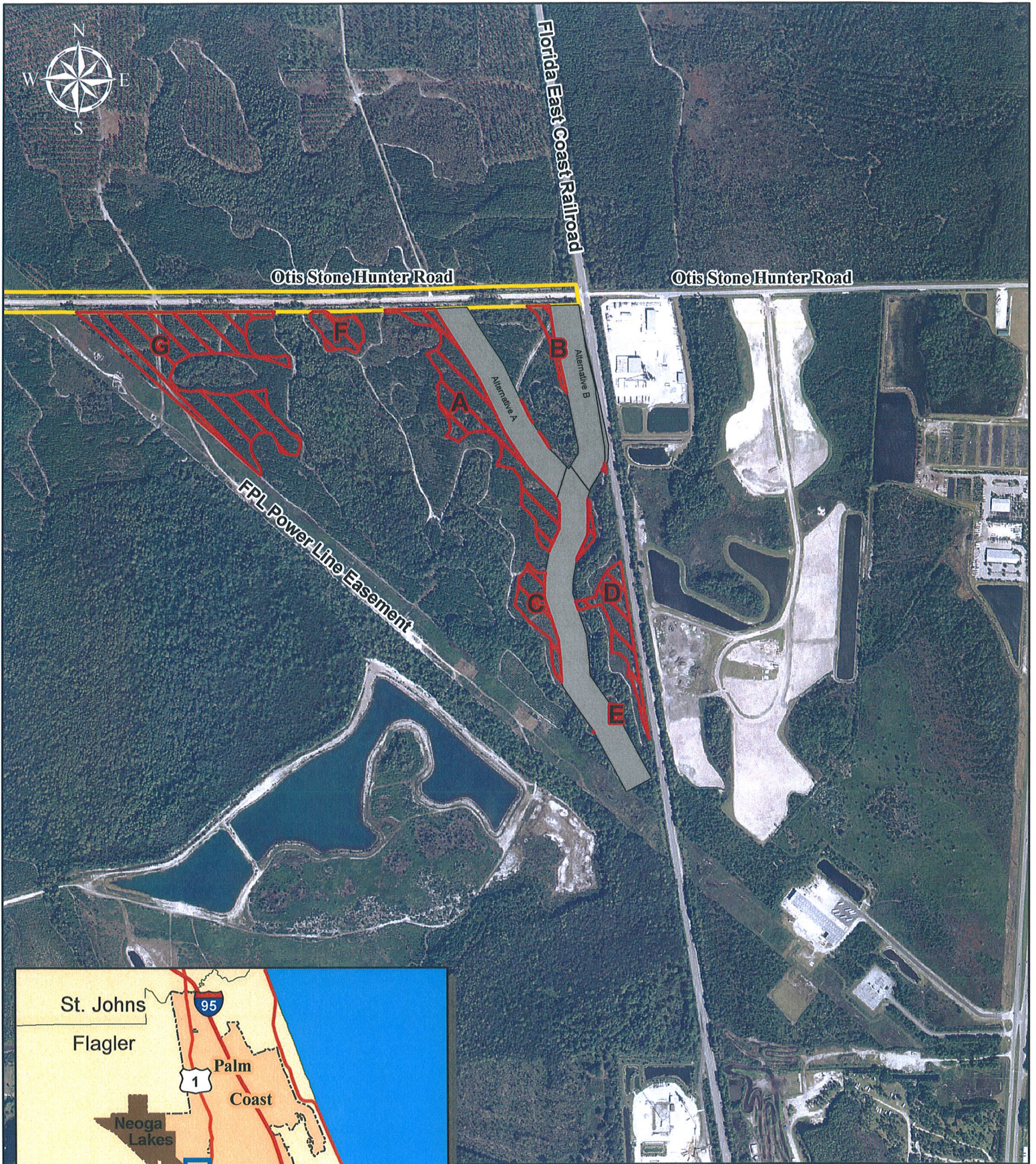
Neoga Lakes DRI Proposed Development Program					
Land Use	Acreege	Phase I (2011-2015)	Phase II (2016-2022)	Phase III (2023-2029)	Total Dwelling Units (DU)/ Square Feet (SF)
Village Center (VC)	111.66 AC				
Retail & Services		100,000 SF	100,000 SF	74,000 SF	274,000 SF
Multi-Family		250 DUs	225 DUs	--	475 DUs
Single-Family - Detached		75 DUs	--	--	75 DUs
Office		--	25,000 SF	20,000 SF	45,000 SF
Life Care Center		--	150 DUs	--	150 DUs
Neighborhood Retail (NR)	36.90 AC	--	25,000 SF	55,000 SF	80,000 SF
Employment Center	178.92 AC				
Industrial - 70%		245,000 SF	441,000 SF	623,000 SF	1,309,000 SF
Office - 30%		105,000 SF	189,000 SF	267,000 SF	561,000 SF
Utility (WWTP)	15.00 AC	1	--	--	
Institutional (Schools)	115.42 AC	3,500 Students	--	--	3,500 Students
Civic	11.23 AC	60,000 SF	82,000 SF	80,000 SF	222,000 SF
Residential	1661.18 AC				
Single-Family (SF)		2,045 DUs	1,795 DUs	2,160 DUs	6,000 DUs
Multi-Family (MF)		--	300 DUs	--	300 DUs
Parks & Open Space	336.99 AC	--	--	--	--
Man-made Lakes	281.43 AC	--	--	--	--
Conservation Lands					
Initial	919 AC	--	--	--	--
Future	2277.68 AC	--	--	--	--
Existing Borrow Areas	22.17 AC	--	--	--	--
Roads ROW	199.92 AC	--	--	--	--
FP & L Easement	210.50 AC	--	--	--	--
Total Acreege	±6,378 AC				

SOURCE:
 AERIAL: BING MAPS.
 PROJECT BOUNDARY: TERRAPOINTE LLC
 LANDUSE: VHB MILLERSELLEN

NOTE: LAND USE AREAS ESTABLISHED MAY BE CHANGED AS PART OF THE INCREMENTAL MPD PROCESS FOR EACH PARCEL OR INCREMENT OF THE SUBJECT PROPERTY TO REFLECT ACTUAL SURVEYED LAND AREAS. THESE CHANGES WILL NOT CONSTITUTE A SUBSTANTIAL CHANGE TO THE DRI OR THE CONCEPTUAL MPD.



NOTE: THE INFORMATION PROVIDED ON THIS DOCUMENT SHOULD BE TREATED AS CONCEPTUAL ONLY AND MAY BE SUBJECT TO CHANGE BASED ON MORE DETAILED SURVEY, ENVIRONMENTAL AND SPECIFIC BUILDING PRODUCT INFORMATION

EXHIBIT "D"
ROYAL PALMS PARKWAY CORRIDOR EXTENSION MAP



Royal Palms Pkwy Corridor Extension

Land Use

-  Employment Center
-  ROW Corridor (200 ft)

