**PUBLIC SCHOOL FACILITIES**

**CONCURRENCY RESERVATION FEES**

**MITIGATION AGREEMENT**

This MITIGATION AGREEMENT (“Agreement”) is made by and between CITY OF PALM COAST, a political subdivision of the State of Florida (hereinafter referred to as “City”), whose address is 160 Cypress Point Parkway, Suite B-106, Palm Coast, Florida 32164; THE SCHOOL DISTRICT OF FLAGLER COUNTY, FLORIDA, a body corporate and political subdivision of the State of Florida (“the School District”) acting through its School Board (the “School Board”), whose address is 1769 East Moody Blvd., Bunnell, Florida 32110; and DEVELOPER NAME (hereinafter referred to as “Applicant”), whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

**RECITALS**

**WHEREAS**, the Applicant is the fee simple owner of 36.19 acres of certain tract of land located in the City of Palm Coast, Florida, more particularly described on Attachment “A” attached hereto and incorporated herein (hereinafter “the Property”); and

**WHEREAS**, the Property is subject to a pending application for approval of 101 platted lots (“the Application”); and

**WHEREAS,** under the Interlocal Agreement for Public School Facility Development, Section 15(d), the School District shall review a Concurrency application and report in writing to the local government whether adequate school capacity exists for each level of school, based on the standards set forth in the Interlocal Agreement; and

**WHEREAS,** such determination of capacity is valid for thirty days; and

**WHEREAS**, the School District has determined that there is adequate capacity available to serve the projected students from the Application Attachment “B”; and

**WHEREAS,** on or before the 30th day a reservation fee must be paid or the capacity determination is null and void;

**WHEREAS,** concurrency reservation fess shall, at a minimum, be equal to the school impact fees unless a legally binding mitigation agreement states otherwise;

**WHEREAS**, the City and the School Board have determined that the terms and provisions of this Agreement meet all requirements of the City of Palm Coast Public School Facilities Element of the City Comprehensive Plan (“PSFE”), the Interlocal Agreement between the City, School District acting through its School Board, Flagler County and City of Bunnell (the “Interlocal Agreement”) as a legally binding mitigation agreement; and

**NOW, THEREFORE**, in consideration of the foregoing described Proportionate Share Mitigation, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. INCORPORATION OF RECITALS. The foregoing recitals are true and correct and are hereby incorporated into this Agreement by this reference as if fully set forth herein.
2. DEFINITION OF MATERIAL TERMS. Any terms that are not defined herein are defined as set forth in the PSFE or Interlocal Agreement.
3. LEGALLY BINDING COMMITMENT. The Parties agree that this Agreement constitutes a legally binding commitment by the Applicant or Its Successor to pay the Public School Facilities Impact Fee in effect at the time of Application for a building permit for construction of the residential unit(s); such payment(s) are subject to an additional three (3) percent administrative fee for the City of Palm Coast.
4. SATISFACTION OF SCHOOL CONCURRENCY RESERVATION. The Parties agree that this mitigation agreement shall constitute the satisfaction of school concurrency reservation for the Property. This Agreement shall serve as Concurrency Reservation Certificate for the Property.
5. MAINTENANCE OF CAPITAL IMPROVEMENTS CONSISTENCY. The School Board agrees to apply the Impact Fee as herein described toward a school capacity improvement which will be added to the planned capital improvements in the Five Year Work Program at a time that demand warrants the construction of additional student capacity.
6. EFFECTIVE DATE. The “Effective Date” of this Agreement shall mean the date after which all parties approve this Agreement.
7. AMENDMENTS TO THE AGREEMENT. The Parties agree that this Agreement shall continue in full force and effect, notwithstanding any future amendments to the Project which may generate demands for public school facilities consistent with Section 14 of the Interlocal Agreement.
8. NOTICES. Whenever any of the Parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. Until otherwise designated by amendment to this Agreement, the Parties designate the following as the respective places for giving notice:

FOR CITY:

City of Palm Coast

160 Cypress Point Parkway, Suite B-106

Palm Coast, Florida 32164

FOR SCHOOL DISTRICT:

School Board of Flagler County, Florida

1769 East Moody Boulevard

Bunnell, Florida 32110

FOR APPLICANT:

NAME

ADDRESS

1. VENUE; CHOICE OF LAW. Any controversies or legal issues arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be submitted to the jurisdiction of the State Court of the Seventh Judicial Circuit, in and for Flagler County, Florida, the venue sitis, and shall be governed by the laws of the State of Florida.
2. CAPTIONS AND PARAGRAPH HEADINGS. Captions and paragraph headings contained in this Agreement are for convenience and reference only. They in no way define, describe, extend or limit the scope of intent of this Agreement.
3. NO WAIVER. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted. Any such written waiver shall only be applicable to the specific instance to which it relates, and shall not be deemed to be a continuing or future waiver.
4. EXHIBITS. All exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by reference.
5. FURTHER ASSURANCES. The Parties hereby agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and to perform such acts as shall reasonably be requested of them in order to carry out this Agreement.
6. AMENDMENTS. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by all the Parties to this Agreement.
7. ASSIGNMENT. The Applicant may assign its rights, obligations and responsibilities under this Agreement in whole or in part to a third party purchaser of all or any part of fee simple title to the Property. Any such assignment shall be in writing, and shall not require the prior written consent of all of the Parties, and shall automatically constitute a release of the assignor from any obligations of assignor assigned to such third party. The Parties agree to furnish each other documentation upon reasonable request providing the development status of dwelling units approved under this Agreement, and the status of mitigation that has been provided.
8. COUNTERPARTS. This Agreement may be executed in three (3) counterparts, each of which may be deemed to be an original.
9. RECORDING OF THIS AGREEMENT. The School Board agrees to record this Agreement within fourteen (14) days after execution in the Flagler County Public Records.
10. MERGER CLAUSE. This Agreement sets forth the entire agreement among the Parties, and it supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, among the Parties.
11. SEVERABILITY. If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision will be stricken from the Agreement, and the balance of the Agreement will remain in full force and effect as long as doing so would not affect the overall purpose or intent of the Agreement.

IN WITNESS WHEREOF, the Parties have made and executed this Agreement on the respective dates under each signature:

The City of Palm Coast, Florida, through its City Council, signing by and through its City Manager, authorized to execute same by the City Councils’ action on this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20\_\_\_.

The School District of Flagler County, acting through its School Board signing by and through the School Board Chair, authorized to execute same by Board action on this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_ , 20\_\_\_.

The Applicant, signing by and through its Representative, duly authorized to execute same, on this day of , 20\_\_\_.

CITY OF PALM COAST

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

Witness

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

Title: Mayor

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

ATTEST:

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

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

Title: City Clerk

DATED this \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20\_\_\_.

APPROVED AS TO FORM:

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

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

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

**STATE OF FLORIDA**

**COUNTY OF**

Before me, the undersigned authority personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Mayor of the City of Palm Coast, who acknowledged that he/she signed the foregoing Public School Facilities Concurrency Reservation Fees Mitigation Agreement as his free and voluntary act on behalf of the City of Palm Coast.

**WITNESS my hand and official seal this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_, at \_\_\_\_\_\_\_\_\_\_\_\_\_, Flagler County, Florida**

**NOTARY PUBLIC, STATE OF FLORIDA**

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

**Commission Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Expiration Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

SCHOOL BOARD OF FLAGLER COUNTY, FLORIDA

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

Witness

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

Title: Chairperson

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

ATTEST:

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

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

Title:

DATED this \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20\_\_\_.

APPROVED AS TO FORM:

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

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

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

**STATE OF FLORIDA**

**COUNTY OF**

Before me, the undersigned authority personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Chair of the School Board of Flagler County, Florida who acknowledged that he/she signed the foregoing Public School Facilities Concurrency Reservation Fees Mitigation Agreement as his free and voluntary act on behalf of the School District of Flagler County.

**WITNESS my hand and official seal this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_, at \_\_\_\_\_\_\_\_\_\_\_\_\_, Flagler County, Florida**

**NOTARY PUBLIC, STATE OF FLORIDA**

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

**Commission Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Expiration Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

APPLICANT

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

Witness

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

Title:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

ATTEST:

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

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

Title:

DATED this \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20\_\_\_.

APPROVED AS TO FORM:

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

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

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

**STATE OF FLORIDA**

**COUNTY OF**

Before me, the undersigned authority personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Title , Name of Company, who acknowledged that he/she signed the foregoing Public School Facilities Concurrency Reservation Fees Mitigation Agreement as his free and voluntary act on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**WITNESS my hand and official seal this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_, at \_\_\_\_\_\_\_\_\_\_\_\_\_, Flagler County, Florida**

**NOTARY PUBLIC, STATE OF FLORIDA**

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

**Commission Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Expiration Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**ATTACHMENT A – LEGAL DESCRIPTION OF SUBJECT PROPERTY**



**ATTACHMENT B – CAPACITY AVAILABILITY LETTER**

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