

**CITY OF PALM COAST PUBLIC SCHOOL
CONCURRENCY PROPORTIONATE SHARE
MITIGATION DEVELOPMENT AGREEMENT**

THIS SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT 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 **WILSON GREEN, LLC** (hereinafter referred to as “Applicant”), whose address is 1548 The Greens Way, Suite 4, Jacksonville Beach, Florida 32250 (collectively, the “Parties”).

RECITALS

WHEREAS, the Applicant is the fee simple owner of that certain tract of land located in the City of Palm Coast, Florida, more particularly described on Exhibit “A” attached hereto and incorporated herein (hereinafter “the Property”). The location of the Property described in **Exhibit “A”** is illustrated with a map appearing in **Exhibit “B”**; and

WHEREAS, the Property is subject to a pending application for approval as a Development of Regional Impact (“DRI”) pursuant to Section 380.06, Florida Statutes, for 5,000 residential dwelling units of which 1,000 dwelling units are age-restricted, and up to 1.15 million square feet of non-residential uses, over three (3) phases (the “Development Proposal”), subject to further requests for extensions and tolling provisions set forth in the DRI Development Order and the Florida Statutes; and

WHEREAS, the City has determined that the Comprehensive Plan Amendment for the DRI Property meets the financial feasibility requirements of Chapter 163, Florida Statutes, in that adequate capacity is available to serve Phase I of the DRI in the Concurrency Service Areas in which the Property is located or in adjacent Concurrency

Service Areas, in the 2014 School Board Work Program and the Five-Year City of Palm Coast Capital Improvement Plan of the Comprehensive Plan.

WHEREAS, the Parties agree that under the existing Work Program of the School District, adequate School Capacity is expected to be available for the proposed units through the life of the Development Proposal at the Level of Service Standard either within the Concurrency Service Areas in which the Development Proposal is located, or in an adjacent Concurrency Service Area, to accommodate the anticipated number of public school students that the Development Proposal will generate, with the exception of a deficiency in elementary student stations as provided by the School District (“School Concurrency Determination”) for which the Applicant shall provide mitigation in the form of funding and land donations as provided for in this Agreement; and

WHEREAS, under Section 380.06(15)(e)2, Florida Statutes, local governments shall not approve a Development of Regional Impact that does not make adequate provision for the public facilities needed to accommodate the impacts of the proposed development; and

WHEREAS, educational facilities are considered public facilities under Section 163.3164(24), Florida Statutes; and

WHEREAS, City and School Board have reviewed the school concurrency application for the DRI and have calculated the proportionate share obligation for the DRI pursuant to the PSFE and Interlocal Agreement (each as hereinafter defined) and pursuant to Chapter 7 of the City of Palm Coast Unified Land Development Code and determined that the cost of such mitigation does not exceed the value of impact fees, land donations, and other funding sources which will be provided to the School District from residential units within the DRI; and

WHEREAS, Section 163.3180(13), Florida Statutes, recognizes that school concurrency for a development is satisfied if the developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by the actual development of the property, including but not limited to the funding, construction, expansion or payment for land acquisition or construction of a public school facility (“Proportionate Share Mitigation”); and

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”) and Chapter 163.3180(13), Florida Statutes, as a binding proportionate share mitigation agreement benefiting the DRI; and

WHEREAS, the School Board has determined that the terms and provisions of this Agreement meet all requirements of School Board Policy 734 in the School District’s School Board Policy Manual of Flagler County, Florida (“School Board Policy 734”);

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 to provide Proportionate Share Mitigation for the 4,000 primary residential (non age-restricted) dwelling units sought to be approved by the City in the Development Proposal for the Property. The 1,000 age-restricted dwelling units within the DRI do not require mitigation.

4. **SATISFACTION OF SCHOOL CONCURRENCY.** The Parties agree that the Applicant’s Proportionate Share Mitigation, as specified in **Exhibit “C”** amounts to \$25,155,556.00 in 2010 dollars. The Parties further agree that (i) the commitment for the donation of the school site and the specified improvements to said site under the terms and conditions described in **Exhibit “D”**, (ii) payment of the then-applicable

school impact fees in accordance with the School Impact Fee Ordinance as described in **Exhibit “C”**, (iii) the payment of capital portion ad valorem tax to be derived from the residential and non residential development constructed upon the Property as described in **Exhibit “C”** and, (iv) the payment of an impact fee surcharge to be derived from the 4,000 primary residential units to be paid at time of building permit issuance as described in **Exhibit “C”** is an appropriate Proportionate Share Mitigation option necessary to maintain the Level of Service Standard for school capacity in the affected Concurrency Service Area. The age-restricted dwelling units within the DRI do not require mitigation. Therefore, such Proportionate Share Mitigation satisfies school concurrency requirements under Section 163.3180(13)(e), Florida Statutes.

5. **MAINTENANCE OF CAPITAL IMPROVEMENTS CONSISTENCY.** The School Board agrees to apply the Proportionate Share Mitigation contributed by the Applicant as herein described toward a school capacity improvement which will be added to the planned capital improvements in the Five Year Work Program at the time of its next annual update, and which satisfies the demands created by the Development in accordance with this Agreement. Further, the School Board and the City agree to take the residential units approved as part of the DRI into account, such that the residential units as developed within the Property shall at all times by virtue of this Agreement meet the requirements for school concurrency under Chapter 163, Florida Statutes, and all City of Palm Coast and School District ordinances and regulations.

6. **COMMITMENT TO RESERVE SCHOOL CAPACITY.** Upon execution of this Agreement the reservation of school capacity required to meet the requirements of the Development Proposal shall be confirmed by the School Board. The School Board shall issue a revised School Concurrency Determination confirming that this Agreement provides mitigation for the Property and that this Agreement satisfies the concurrency requirements to offset the demand for public school facilities created by the Development Proposal. The reservation of school capacity shall be in accordance with the projected student enrollment of the Development Proposal phasing schedule as shown in **Exhibit “E”**. The duration and effect of this School Concurrency Determination shall be in accordance with the Interlocal Agreement and the PSFE. However, in no event

shall this School Concurrency Determination, or any capacity reservation based on this Determination, continue to be effective if the Applicant fails to perform its obligation under this Agreement. Conversely, if the Applicant continues to perform its obligations under this Agreement, the Applicant shall be entitled to rely on the School Concurrency Determination and capacity reservation to the extent of the capacity provided by the Proportionate Share Mitigation and once the Applicant has completely performed its obligations under this Agreement, such right to reliance shall survive the expiration of this Agreement.

7. **APPLICATIONS FOR CONCURRENCY RESERVATION CERTIFICATES.** Upon an application for a subdivision plat, building permit, development order or development permit which requires a review of whether adequate school capacity is available for a particular residential development within the DRI, the School Board, under the authority of this Agreement, shall issue a finding of available school capacity pursuant to the Interlocal Agreement (or its equivalent under any then-existing school concurrency ordinance), and shall confirm such finding in writing to the Applicant, its successors and assigns, and to prospective purchasers identified by Applicant or its successors and assigns upon request, without the requirement for payment of reservation fees (except as to the land donation provided for in Section 4 above), nor any additional consideration other than customary application fees. Any CRC or its equivalent issued based on such a finding of available school capacity shall have a duration and effect in accordance with the Interlocal Agreement or City Code of Ordinances, as applicable. However, should a CRC expire, the Applicant may reapply for a new CRC after any such expiration and shall receive new finding(s) of available school capacity (or its equivalent). It is the intent of the Parties that CRCs shall be available for each dwelling unit within the DRI at any time prior to the buildout date of the approved DRI Development Order to reflect that such mitigation has been provided, without any additional mitigation or exactions, subject to the Applicant or its successors or assigns fulfilling all requirements of the DRI Development Order for the land donation as contemplated in **Exhibit “D”** and otherwise meeting the requirements for impact fee payments in accordance with the School Impact Fee Ordinance.

8. **PAYMENT OF SCHOOL IMPACT FEES.** Non age-restricted residential dwelling units within the DRI shall be subject to payment of school impact fees pursuant to the then-applicable School Impact Fee Ordinance as and when they become due under such ordinance. Pursuant to paragraph 29 below, the age-restricted dwelling units in the DRI are not subject to payment of school impact fees. Consistent with Section 163.3180(13)(e)3, Florida Statutes, the School Board agrees to direct such impact fees toward a school capacity improvement that satisfies the demands created by the Development for which such fees were paid.

9. **IMPACT FEE SURCHARGE CREDIT.** Exhibit "C" has projected Impact Fees (Section C - \$11,731,000) and Surcharges to Impact Fees (Section F - \$510,295) for a total of \$12,241,295 which has been applied to the Proportionate Share Mitigation. In the event that the Impact Fees are later increased, the Applicant shall be entitled to decrease the Surcharges to Impact Fees in the amount equivalent to the increase in Impact Fees.

10. **SCHOOL CAPACITY IMPROVEMENT.** Following receipt of conveyance of the school site to the School Board under the term of this Agreement, the City and School Board shall, to the extent that Section 163.3180(13)(e)3, Florida Statutes, applies, direct such conveyance towards a school capacity improvement that satisfies the demands created by the Development.

11. **EFFECTIVE DATE.** The "Effective Date" of this Agreement shall mean the date after which the City approves the DRI Development Order and related Comprehensive Plan Amendment, and the expiration of all appeal periods. Either of the Parties may at their option terminate this Agreement upon thirty (30) days prior written notice to the other in the event the DRI Development Order or the related Comprehensive Plan Amendment for the Property is not approved (including expiration of any appeal period or final resolution of any appeal) or if the DRI Development Order is abandoned by the Applicant.

12. **TERM.** This Agreement shall expire on the earlier of the expiration date of the DRI Development Order or when the Parties have completed performance of all obligations herein.

13. **AMENDMENTS TO THE DRI.** The Parties agree that this Agreement shall continue in full force and effect, notwithstanding any future amendments to the DRI Development Order that are approved by the City of Palm Coast. The City and the School Board reserve the right to review and require mitigation for educational facilities impacts from any future modification of the DRI Development Order which increases the number of residential dwelling units, subject to the requirements of applicable law.

14. **STATUTORY COMPLIANCE.** The Parties agree that this Agreement satisfies the requirements for a binding Proportionate Share Mitigation agreement in Section 163.3180(13)(e), Florida Statutes.

15. **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 Blvd.
Bunnell, Florida 32110

FOR APPLICANT:

Wilson Green, LLC:
Attn: Douglas M. Davis
1548 The Greens Way, Suite 4

Jacksonville Beach, Florida 32250

WITH A COPY TO:

Greenberg Traurig, P.A.

Attn: Reggie L. Bouthillier

101 East College Avenue

Tallahassee, Florida 32301

16. **RELEASE.** When all of the Applicant's obligations set forth herein are fully performed, but not later than issuance of the final residential building permit for the development Proposal within the DRI, the School Board on behalf of the District and the City shall release the Applicant from this Agreement, and when all of the City, School Board and District obligations as set forth herein are fully performed, the Applicant shall release the School Board, District and the City from any and all future claims, costs or liabilities arising out of the provision of Proportionate Share Mitigation in accordance with this Agreement. These releases shall be recorded in the Official Records of Flagler County, Florida, evidencing such performance.

17. **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.

18. **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.

19. **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.

20. **EXHIBITS.** All exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by reference.

21. **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.

22. **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.

23. **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.

24. **COUNTERPARTS.** This Agreement may be executed in three (3) counterparts, each of which may be deemed to be an original.

25. **RECORDING OF THIS AGREEMENT.** The School Board agrees to record this Agreement within fourteen (14) days after execution in the Flagler County Public Records.

26. **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.

27. **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.

28. **REPORTING.** Coincident with same date for filing of any biennial report applicable to the DRI, the Applicant shall include the School Board in such filings.

29. **AGE-RESTRICTED COMMUNITIES.** Nothing in this Agreement is intended to change the existing law exempting age-restricted adult communities from school impact fees. No school impact fee is owed under this Agreement as a result of constructing age-restricted adult communities within the DRI so long as said communities meet the requirements for exemptions from school impact fees set forth in the School Impact Fee Ordinance which is in effect at the time a building permit is issued.

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 Mayor, 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 _____, duly authorized to execute same, on this _____ day of _____, 20__.

CITY OF PALM COAST

CITY OF PALM COAST

By: _____

Printed Name: _____ Witness

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 signed the foregoing
Flagler County Public School Concurrency Proportionate Share Mitigation Development
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.

(Official Seal)

NOTARY PUBLIC, STATE OF FLORIDA
Printed
Name: _____
Commission No: _____
Commission expires: _____
____ Personally known
____ Produced identification
Type: _____

* * * * *

SCHOOL BOARD OF FLAGLER COUNTY, FLORIDA

**SCHOOL DISTRICT OF
FLAGLER COUNTY, FLORIDA**

By: _____

Printed Name: _____ Witness

Title: Chairman of Board

School Board of Flagler County _____

Witness

DATED this _____ day of _____, 20__.

(Corporate Seal)

ATTEST:

By: _____

Printed Name: _____

Title: _____

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, acting on behalf of the School District
of Flagler County, Florida, who acknowledged that he/she signed the foregoing Flagler
County Public School Concurrency Proportionate Share Mitigation Development
Agreement as his/her 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.

(Official Seal)

NOTARY PUBLIC, STATE OF FLORIDA
Printed Name: _____
Commission No: _____
Commission expires: _____
____ Personally known
____ Produced identification
Type: _____

* * * * *

APPLICANT

WILSON GREEN, LLC

By: _____

Printed Name: Barry P. Marcus

Witness

Title: Senior Vice President

Witness

* * * * *

STATE OF _____
COUNTY OF _____

Before me, the undersigned authority, personally appeared _____,
the _____ of Wilson Green, LLC, who acknowledged that he
signed the foregoing Flagler County Public School Concurrency Proportionate Share
Mitigation Development Agreement as his free and voluntary act on behalf of Wilson
Green, LLC.

WITNESS my hand and official seal this _____ day of
_____, 20__, at _____,
_____ County, _____.

(Official Seal)

NOTARY PUBLIC, STATE OF FLORIDA

Printed Name: _____

Commission No: _____

Commission expires: _____

___ Personally known

___ Produced identification

Type: _____

* * * * *

EXHIBIT "A"

Legal Description of DRI Property

PARCEL A

A PORTION OF SECTION 18, TOWNSHIP 10 SOUTH, RANGE 30 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF SAID SECTION 18; THENCE NORTH 88°50'09" EAST, ALONG THE SOUTHERLY LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 18, A DISTANCE OF 2654.39 FEET TO THE SOUTHERLY LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 18; THENCE NORTH 89°51'49" EAST, ALONG LAST SAID LINE, 2633.84 FEET TO THE EASTERLY LINE OF SAID SECTION 18; THENCE NORTH 00°36'34" WEST, ALONG LAST SAID LINE, 2664.61 FEET TO THE NORTHERLY LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 18; THENCE SOUTH 89°03'17" WEST, ALONG LAST SAID LINE, 2646.28 FEET TO THE EASTERLY LINE OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 18; THENCE NORTH 00°52'54" WEST, ALONG LAST SAID LINE, 1318.42 FEET TO THE SOUTHERLY LINE OF THE NORTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 18; THENCE NORTH 88°59'22" EAST, ALONG LAST SAID LINE, 1325.16 FEET TO THE EASTERLY LINE OF SAID NORTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 18; THENCE NORTH 00°47'39" WEST, ALONG LAST SAID LINE, 1319.93 FEET TO THE NORTHERLY LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 18; THENCE SOUTH 88°55'28" WEST, ALONG LAST SAID LINE, 1327.18 FEET TO THE NORTHERLY LINE OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 18; THENCE SOUTH 89°04'11" WEST, ALONG LAST SAID LINE, 2643.62 FEET TO THE WESTERLY LINE OF SAID SECTION 18; THENCE SOUTH 00°45'54" EAST, ALONG LAST SAID LINE, 5275.07 FEET TO THE POINT OF BEGINNING.

CONTAINING 520.98 ACRES, MORE OR LESS.

PARCEL B

SECTIONS 23, 24, 25, AND 36 AND A PORTION OF SECTIONS 22, 26, 27 AND 35, TOWNSHIP 10 SOUTH, RANGE 29 EAST, A PORTION OF SECTION 31, TOWNSHIP 10 SOUTH, RANGE 30 EAST, AND A PORTION OF SECTIONS 1 AND 2, TOWNSHIP 11 SOUTH, RANGE 29 EAST, ALL LYING IN FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEAST CORNER OF SAID SECTION 24; THENCE SOUTH 89°34'20" WEST, ALONG THE NORTHERLY LINE OF SAID SECTIONS 24, 23 AND 22, A DISTANCE OF 14500.24 FEET TO THE CENTERLINE OF OLD BRICK ROAD (AS NOW ESTABLISHED); THENCE SOUTHERLY AND SOUTHEASTERLY, ALONG SAID CENTERLINE OF OLD BRICK ROAD, ALSO BEING THE WESTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS 1558, PAGE 679 OF THE PUBLIC RECORDS OF SAID COUNTY AND THE EASTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS 565, PAGE 444 OF SAID PUBLIC RECORDS, RUN THE FOLLOWING THIRTY-THREE (33) COURSES AND DISTANCES: COURSE NO. 1: SOUTH 06°59'25" EAST, 26.97 FEET; COURSE NO. 2: SOUTH 09°59'58" EAST, 152.07 FEET; COURSE NO. 3: SOUTH 09°25'15" EAST, 345.94 FEET; COURSE NO. 4: SOUTH 10°43'37" EAST, 124.08 FEET; COURSE NO. 5: SOUTH 14°27'44" EAST, 50.90 FEET; COURSE NO. 6: SOUTH 16°32'58" EAST, 53.69 FEET; COURSE NO. 7: SOUTH 18°24'59" EAST, 96.60 FEET; COURSE NO. 8: SOUTH 20°52'15" EAST, 400.21 FEET; COURSE NO. 9: SOUTH 20°22'19" EAST, 1878.38 FEET; COURSE NO. 10: SOUTH 20°52'53"

EAST, 155.63 FEET; COURSE NO. 11: SOUTH 20°23'01" EAST, 882.13 FEET; COURSE NO. 12: SOUTH 19°33'01" EAST, 87.05 FEET; COURSE NO. 13: SOUTH 20°24'44" EAST, 1589.09 FEET; COURSE NO. 14: SOUTH 20°14'39" EAST, 180.97 FEET; COURSE NO. 15: SOUTH 20°30'30" EAST, 250.49 FEET; COURSE NO. 16: SOUTH 22°12'35" EAST, 444.14 FEET; COURSE NO. 17: SOUTH 22°17'21" EAST, 742.52 FEET; COURSE NO. 18: SOUTH 25°36'44" EAST, 198.92 FEET; COURSE NO. 19: SOUTH 28°41'30" EAST, 194.24 FEET; COURSE NO. 20: SOUTH 30°57'44" EAST, 1001.16 FEET; COURSE NO. 21: SOUTH 30°31'44" EAST, 1417.57 FEET; COURSE NO. 22: SOUTH 31°38'12" EAST, 56.74 FEET; COURSE NO. 23: SOUTH 30°35'25" EAST, 877.06 FEET; COURSE NO. 24: SOUTH 30°24'18" EAST, 783.03 FEET; COURSE NO. 25: SOUTH 32°46'29" EAST, 82.31 FEET; COURSE NO. 26: SOUTH 27°26'44" EAST, 90.87 FEET; COURSE NO. 27: SOUTH 31°34'59" EAST, 199.99 FEET; COURSE NO. 28: SOUTH 35°43'00" EAST, 198.30 FEET; COURSE NO. 29: SOUTH 38°59'00" EAST, 1270.87 FEET; COURSE NO. 30: SOUTH 39°04'10" EAST, 479.49 FEET; COURSE NO. 31: SOUTH 40°30'25" EAST, 143.90 FEET; COURSE NO. 32: SOUTH 35°18'50" EAST, 60.72 FEET; COURSE NO. 33: SOUTH 38°48'32" EAST, 488.46 FEET; THENCE SOUTH 38°35'10" EAST, CONTINUING ALONG LAST SAID LINE AND ALONG THE EASTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS 1404, PAGE 1753 OF SAID CURRENT PUBLIC RECORDS, 763.05 FEET; THENCE SOUTHEASTERLY, ALONG SAID CENTERLINE OF OLD BRICK ROAD, ALSO BEING THE WESTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS 1558, PAGE 679 OF SAID PUBLIC RECORDS AND THE EASTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS 1404, PAGE 1753 OF SAID PUBLIC RECORDS, RUN THE FOLLOWING FIFTEEN (15) COURSES AND DISTANCES: COURSE NO. 1: SOUTH 37°16'50" EAST, 176.49 FEET; COURSE NO. 2: SOUTH 36°11'00" EAST, 317.55 FEET; COURSE NO. 3: SOUTH 29°29'42" EAST, 100.40 FEET; COURSE NO. 4: SOUTH 24°15'43" EAST, 1738.10 FEET; COURSE NO. 5: SOUTH 29°56'16" EAST, 24.23 FEET; COURSE NO. 6: SOUTH 24°24'18" EAST, 77.82 FEET; COURSE NO. 7: SOUTH 21°32'08" EAST, 64.19 FEET; COURSE NO. 8: SOUTH 24°16'14" EAST, 920.28 FEET; COURSE NO. 9: SOUTH 23°48'09" EAST, 77.28 FEET; COURSE NO. 10: SOUTH 24°12'47" EAST, 617.87 FEET; COURSE NO. 11: SOUTH 25°50'57" EAST, 22.84 FEET; COURSE NO. 12: SOUTH 23°57'03" EAST, 291.18 FEET; COURSE NO. 13: SOUTH 24°19'07" EAST, 3161.55 FEET; COURSE NO. 14: SOUTH 26°49'39" EAST, 105.62 FEET; COURSE NO. 15: SOUTH 22°44'59" EAST, 48.74 FEET TO THE SOUTHERLY LINE OF SAID SECTION 1; THENCE NORTH 89°32'18" EAST, ALONG LAST SAID LINE, 4282.06 FEET TO THE EASTERLY LINE OF SAID SECTION 1; THENCE NORTH 00°21'26" WEST, ALONG LAST SAID LINE, 5271.42 FEET TO THE SOUTHERLY LINE OF SAID SECTION 31; THENCE SOUTH 89°54'18" EAST, ALONG LAST SAID LINE, 1324.68 FEET TO THE EASTERLY LINE OF THE WEST ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 31; THENCE NORTH 00°03'47" WEST, ALONG LAST SAID LINE, 2654.89 FEET TO THE NORTHERLY LINE OF SAID WEST ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 31; THENCE NORTH 89°50'58" WEST, ALONG LAST SAID LINE, 1325.27 FEET TO THE EASTERLY LINE OF SAID SECTION 36; THENCE NORTH 00°39'38" WEST, ALONG LAST SAID LINE, 2490.78 FEET TO THE NORTHERLY LINE OF SAID SECTION 36; THENCE SOUTH 89°22'47" WEST, ALONG LAST SAID LINE, 112.08 FEET TO THE EASTERLY LINE OF SAID SECTION 25; THENCE NORTH 00°20'11" WEST, ALONG LAST SAID LINE, 5263.09 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 24; THENCE NORTH 00°56'20" EAST, ALONG THE EASTERLY LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 24, A DISTANCE OF 2658.49 FEET TO THE EASTERLY LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 24; THENCE NORTH 00°25'15" WEST, ALONG LAST SAID LINE, 2634.77 FEET TO THE POINT OF BEGINNING.

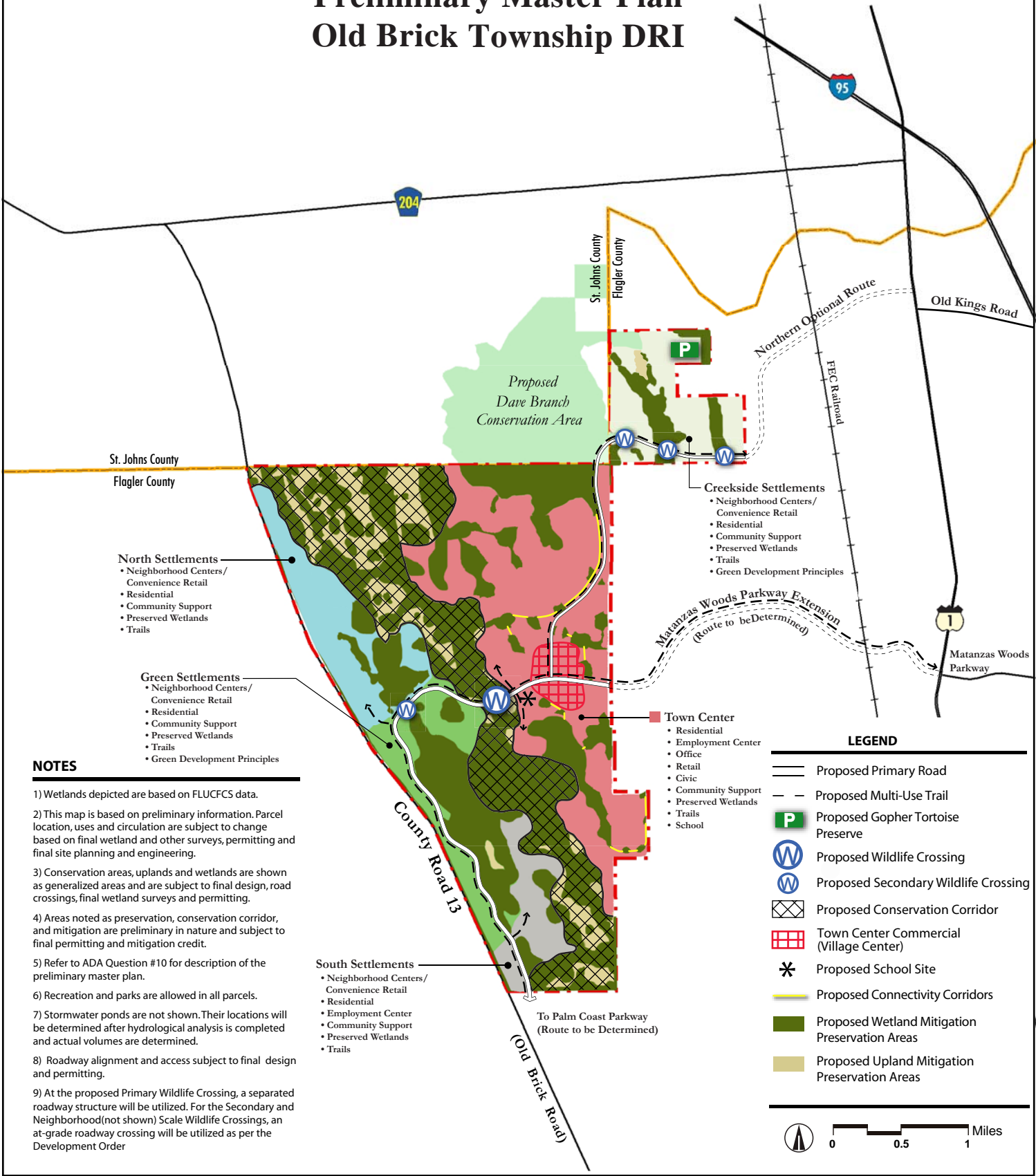
CONTAINING 4,752.46 ACRES, MORE OR LESS

Exhibit "B"

Proportionate Share Mitigation Agreement

Preliminary Master Plan

Old Brick Township DRI



St. Johns County
Flagler County

North Settlements
 • Neighborhood Centers/
 Convenience Retail
 • Residential
 • Community Support
 • Preserved Wetlands
 • Trails

Green Settlements
 • Neighborhood Centers/
 Convenience Retail
 • Residential
 • Community Support
 • Preserved Wetlands
 • Trails
 • Green Development Principles

Creekside Settlements
 • Neighborhood Centers/
 Convenience Retail
 • Residential
 • Community Support
 • Preserved Wetlands
 • Trails
 • Green Development Principles

Town Center
 • Residential
 • Employment Center
 • Office
 • Retail
 • Civic
 • Community Support
 • Preserved Wetlands
 • Trails
 • School

South Settlements
 • Neighborhood Centers/
 Convenience Retail
 • Residential
 • Employment Center
 • Community Support
 • Preserved Wetlands
 • Trails

NOTES

- 1) Wetlands depicted are based on FLUCFCS data.
- 2) This map is based on preliminary information. Parcel location, uses and circulation are subject to change based on final wetland and other surveys, permitting and final site planning and engineering.
- 3) Conservation areas, uplands and wetlands are shown as generalized areas and are subject to final design, road crossings, final wetland surveys and permitting.
- 4) Areas noted as preservation, conservation corridor, and mitigation are preliminary in nature and subject to final permitting and mitigation credit.
- 5) Refer to ADA Question #10 for description of the preliminary master plan.
- 6) Recreation and parks are allowed in all parcels.
- 7) Stormwater ponds are not shown. Their locations will be determined after hydrological analysis is completed and actual volumes are determined.
- 8) Roadway alignment and access subject to final design and permitting.
- 9) At the proposed Primary Wildlife Crossing, a separated roadway structure will be utilized. For the Secondary and Neighborhood (not shown) Scale Wildlife Crossings, an at-grade roadway crossing will be utilized as per the Development Order

LEGEND

- Proposed Primary Road
- Proposed Multi-Use Trail
- Proposed Gopher Tortoise Preserve
- Proposed Wildlife Crossing
- Proposed Secondary Wildlife Crossing
- Proposed Conservation Corridor
- Town Center Commercial (Village Center)
- Proposed School Site
- Proposed Connectivity Corridors
- Proposed Wetland Mitigation Preservation Areas
- Proposed Upland Mitigation Preservation Areas



Exhibit "C"
Old Brick Township DRI
Proportionate Share Mitigation

A. STUDENTS

Grades PK-5 (45.03%)		489 students
Grades 6-8 (24.48%)		260 students
Grades 9-12 (30.39%)		336 students
Total		1,085

B. NET SCHOOL CAPITAL COST (MITIGATION AMOUNT)

489 elementary students	x \$20,272* per station	= \$ 9,913,008
260 middle students	x \$21,881* per station	= \$ 5,689,060
336 high students	x \$28,433* per station	= \$ 9,553,488
Total		= \$25,155,556**

*Includes a land cost of \$30,000 per acre

**Includes construction cost inflation factor

Source: City of Palm Coast (Costs based on October 2009 PECO)

C. IMPACT FEES (4,000 du's – 1,000 Age Restricted Do Not Pay Impacts Fees)

3,000 SFD/DUPLEX	x \$3,600 per unit	= \$10,800,000
1,000 Apartments	x \$931 per unit	= \$ 931,000
Total		= \$11,731,000

Source: City of Palm Coast, Summary of Application and Impact Fees, October 1, 2009

D. SCHOOL SITE CONTRIBUTION/ IMPROVEMENT

D1. Land (40 acres x \$30,000 per acre)		= \$1,200,000
D2. Master Stormwater/Site Rough Grade*		= \$ 724,034
D3. Offsite Utilities*		= \$ 131,381
D4. Offsite Roadway*		= \$1,116,500
D5. Wetland Mitigation*		= \$2,879,800
Total		= \$6,051,715

*Per Engineers Estimates

E. CAPITAL REVENUE (Phase 1, 2 & 3)

NPV (0.75 Mills *{i.e., 50% of 1.50 capital ad valorem}* 15 years at 5 % discount rate)

Source: Estimated via St. Johns County Schools Concurrency Model.

NPV = \$6,862,546

F. IMPACT FEE SURCHARGE DUE AT BUILDING PERMIT

Estimated Payment per Dwelling Unit (\$442,966/ 4,000) = \$127.57

= \$ 510,295

G. PROPORTIONATE SHARE MITIGATION

= \$25,155,556

Contribution
LESS

Impact Fees		\$11,731,000
Site Contribution/Improvement		\$ 6,051,715
Capital Revenue		\$ 6,862,546
Impact Fee Surcharge		\$ 510,295
Subtotal		\$25,155,556

EXHIBIT “D”

Proportionate Share Mitigation – School Site

1. **Conveyance.** The Applicant shall convey property (the “School Site”) to the School Board not to exceed forty (40) acres in size within the boundary of the DRI, at such location as is generally shown on **Exhibit “B”** and as specified in **Exhibit “C”**. Prior to conveyance, the Applicant and the School Board shall finalize the location and boundary of the School Site. The conveyance of the School Site shall occur no later than six (6) months after issuance of the first building permit for vertical construction of residential units in the DRI or at such later time as is directed by the School Board. As part of the conveyance, the Applicant shall provide a boundary survey and a special warranty deed. The Applicant shall complete the remaining infrastructure described in this Exhibit after all the following conditions are fulfilled: (i) the School Site has been conveyed to the School Board; (ii) the Applicant's receives written notice from the School Board verifying its commitment to build a school on the School Site; and (iii) 24 months have expired from the receipt of all necessary permits to construct the infrastructure described in this Exhibit.
2. **Wetlands.** The Applicant shall be required, at its expense as specified in **Exhibit “C”** to mitigate for wetland impacts on the School Site, provided that the School Board shall provide the Applicant adequate information regarding the expected impacts of their development with which to process wetlands permit applications.
3. **Stormwater.** The Applicant shall be required, at its expense as specified in **Exhibit “C”**, to provide stormwater treatment and retention for the School Site within the School Site boundary. The School Board shall be responsible, at its expense, for permitting and construction of the stormwater collection systems for the surface water management systems located on the School Site. In addition, the stormwater conveyances (i.e., curbs, gutters, and culverts) located on the School Site and that are necessary to direct stormwater to the stormwater system shall be constructed by the School Board, at its expense.

4. **Utilities.** Water and sewer shall be provided to the School Site by the Applicant, at its expense as specified in **Exhibit “C”**, such that general contractors constructing the public schools need only connect to water and sewer lines running to the boundary of the School Site or on the School Site.
5. **Access.** The Applicant shall provide access to the School Site, at its expense as specified in **Exhibit “C”** by roads that are suitable to accommodate the traffic requirements of the public school.
6. **Pathways.** The School Board shall be required to connect to the DRI multi-use pathway system (as described in more detail in the DRI Development Order or Rezoning Master Planned Development (MPD) or its equivalent so as to provide a pathway connection from the School Site to the adjacent DRI lands. The Parties agree to coordinate pathway locations and entry points for the School Site with adjoining lands.
7. **School Site and City Park Facilities.** Co-location and shared use of facilities are important to both the School Board and the City of Palm Coast. A separate agreement may be developed for each instance of co-location and shared use which addresses legal liability, operating and maintenance costs, scheduling use of the facilities, security, and facility supervision or any other issues that may arise from co-location and shared use.
8. **Use Restriction.** The Applicant shall be responsible for the rezoning of the School Site to a Master Planned Development (MPD) Zoning District as part of the rezoning of the DRI Property. Public schools and accessory uses deemed necessary (including but not limited to warehousing, storage, wireless communication facilities and laboratories) will be included in the MPD as a permitted use and allowed on the School Site pursuant to the limitations of the City of Palm Coast Unified Land Development Code. In the event the School Board elects not to develop a public school on the School Site in the future, the School Board or subsequent owners will be restricted from modifying the School Site to certain land uses which are inconsistent with the intent and character of the DRI Property. The following provisions shall be included as a deed covenant and restriction in the deed of conveyance of the School Site.

A. Such restrictions are placed on the following principal or similar uses as defined in Section 3.03.02 of the City of Palm Coast Unified Land Development Code, as amended: Equestrian Activities and Uses; Cemeteries; Kennels and Pet Boarding; Veterinary Clinics and Services; Wireless Communication Facilities; Eating, Drinking and Entertainment uses; Manufacturing; Medical and Diagnostic Laboratories; Wastewater Treatment Facilities; Landfills; Dredge Spoil Disposal; Vehicle Sales, Rental, Service and Repair uses; and, Warehousing.

B. In addition, restrictions are placed on the following: Asphalt Manufacturing Plants; Animal Feed Lots and Livestock Operations; Deep Well Injection of Waste Products; Dog Farms; Hog and Poultry Farms, Incinerator Plants; Junkyards and Salvage Yards; Motor Vehicle Race Tracks; Paper and Pulp Mills or similar uses as those listed above and other uses which may be added to Section 3.01.06 of the City of Palm Coast Unified Land Development Code, as amended.

9. **Right of First Refusal**. The Applicant shall include as a deed covenant and restriction in the deed of conveyance of the School Site a provision for a right of first refusal on the School Site property, so that in the event the School Board elects not to develop a public school on the School Site, the Applicant, its successors and assigns may purchase the School Site at the price specified in **Exhibit “C”** in 2010 dollars adjusted for inflation plus the actual cost of on-site infrastructure and/or improvements. If the Applicant, its successors and assigns does not exercise this provision to purchase the School Site from the School Board, it will not affect the credit previously applied to satisfy the Proportionate Share Mitigation.

Exhibit "E"
Flagler Public School District
Student Enrollment by Phasing Schedule
Old Brick Township DRI

Totals	Elementary	Middle	High	Total Number of Students
Phase 1 2011-2015	122	64	84	270
Phase 2 2016-2020	162	85	109	356
Phase 3 2021-2025	205	111	143	459
Totals	489	260	336	1,085

Source: Prosser Hallock, Inc.