

1 on certain real property as more specifically described on
2 Second Revised Exhibit "A" hereto (the "DRI Property");

3 WHEREAS, the ADA was reviewed by the Northeast Florida
4 Regional Council ("NEFRC") as required by Section 380.06,
5 *Florida Statutes*, and the NEFRC recommended that the ADA be
6 approved, with conditions; and

7 WHEREAS, ~~the Developer~~ FLC and PCL provided complete
8 copies of the ADA, as amended by ADA First Sufficiency
9 Response and ADA Second Sufficiency Response to the Florida
10 Department of Community Affairs ("DCA"), NEFRC and the City;
11 and

12 WHEREAS, the Palm Coast Park DRI is consistent with the
13 City's Comprehensive Plan; and

14 WHEREAS, pursuant to Section 380.06, *Florida Statutes*,
15 the City Council of the City ("City Council") heard at a
16 public hearing convened on December 7, 2004, the ADA for the
17 Palm Coast Park DRI and afforded the public and all affected
18 parties an opportunity to be heard and to present evidence;
19 and

20 WHEREAS, after such public hearing and in consideration
21 of the recommendations made and submitted to the City
22 Council, the City Council has made certain findings and
23 determinations; as more specifically set forth hereinafter;

24 WHEREAS, Resolution 2004-48 approving the Palm Coast Park
25 ADA and the Palm Coast Park DRI Development Order ("DO") were

1 recorded on December 10, 2004, in Official Records Book 1177,
2 Page 1796, of the Public Records of Flagler County, Florida;

3 ~~WHEREAS, thereafter Resolution 2005-03 providing for~~
4 ~~clarification of the Palm Coast Park DRI DO was recorded on~~
5 ~~March 16, 2005, in Official Records Book 1215, Page 1424, of~~
6 ~~the Public Records of Flagler County, Florida;~~

7 ~~WHEREAS, pursuant to Subsection 380.06(19), Florida~~
8 ~~Statutes, on or about February 21, 2007, Developer submitted~~
9 ~~to the City, the NEFRC and the DCA a Notification of a~~
10 ~~Proposed Change to a Previously Approved Development of~~
11 ~~Regional Impact ("NOPC");~~

12 ~~WHEREAS, the City has reviewed the NOPC, held a public~~
13 ~~hearing on July _____, 2007 and with the concurrence of the~~
14 ~~NEFRC and DCA, has determined that the NOPC does not~~
15 ~~constitute a substantial deviation to the previously approved~~
16 ~~Palm Coast Park DRI.~~

17 ~~WHEREAS, all of the modifications to the Palm Coast Park~~
18 ~~DRI DO and clarification thereto, as set forth in the NOPC~~
19 ~~are incorporated into this Amended and Restated Development~~
20 ~~Order.~~

21 WHEREAS, thereafter Resolution 2005-03 providing for
22 clarification of the DO was recorded on March 16, 2005, in
23 Official Records Book 1215, Page 1424, of the Public Records
24 of Flagler County, Florida;

25 WHEREAS, pursuant to Subsection 380.06(19), Florida
Statutes, by Resolution 2007-105 effective July 17, 2007,

1 Developer's Notification of a Proposed Change to a Previously
2 Approved Development of Regional Impact was approved and the
3 Amended and Restated Palm Coast Park DRI Development Order
4 (the "Amended and Restated DO") was recorded on July 23,
5 2007, in Official Records Book 1600, Page 49, of the Public
6 Records of Flagler County, Florida;

7 WHEREAS, on or about December 3, 2010, FLC and PCL
8 submitted to the City, the NEFRC and the DCA a Notification
9 of a Proposed Change to a Previously Approved Development of
10 Regional Impact ("NOPC");

11 WHEREAS, on or about September _____, 2011, FLC
12 transferred all of its title and ownership to portions of the
13 DRI Property to PCL by Quit Claim Deeds recorded on
14 _____, 2011 in Official Records Book _____, Page(s)
15 _____, and Official Records Book _____, Page (s), both of
16 the Public Records of Flagler County, Florida.

17 WHEREAS, PCL will hereinafter be referred to as
18 "Developer".

19 WHEREAS, the City has reviewed the NOPC, held a public
20 hearing on _____, 20____, and with the concurrence of the
21 NEFRC and DCA, has determined that the NOPC does not
22 constitute a substantial deviation to the previously approved
23 Palm Coast Park DRI.

24 WHEREAS, all of the modifications to the Amended and
25 Restated DO and clarification thereto, as set forth in the

1 NOPC, are incorporated into this Second Amended and Restated
2 DO.

3 WHEREAS, whenever an action or approval of the City is
4 referred to herein, except for actions relating to the City
5 Council, the action shall be taken by the City Manager, or
6 designee; and

7 WHEREAS, whenever an action, right or eligibility of the
8 Developer is referred to herein, the action may be taken by,
9 or the right or eligibility may belong to Palm Coast Park
10 Community Development District ("CDD") but all conditions,
11 covenants and agreements set forth in this ~~Development~~
12 ~~Order~~ Second Amended and Restated DO are the obligation of the
13 Developer.

14 WHEREAS, the Palm Coast Park DRI is a proposed mixed-use
15 development on approximately 4, ~~740~~ 677 acres located in the
16 City along both sides of US-1, generally between Palm Coast
17 Parkway to the south and Old Kings Road to the north; and

18 WHEREAS, all covenants and conditions set forth herein
19 are agreed to by the Developer and represent covenants which
20 touch and concern the subject DRI Property and run with the
21 land and are thereby binding upon the transferees, successors
22 and assigns of the Developer.

23 NOW, THEREFORE, BE IT HEREBY ORDERED AND RESOLVED by the
24 City Council, that based upon the following Findings of Fact
25 and Conclusions of Law, and the consent and agreement of the
Developer, and subject to the following terms and conditions,

1 the City Council hereby approves this Second Amended and
2 Restated ~~Development Order~~DO, pursuant to the provisions of
3 Section 380.06, *Florida Statutes*, and other applicable State
4 laws, and the codes and ordinances of the City:

5 **PART I**

6 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

7 1. The above Recitals/Whereas clauses are hereby
8 adopted and incorporated into this ~~Development Order~~Second
9 Amended and Restated DO.

10 2. The DRI Property is not in an area designated as an
11 Area of Critical State Concern pursuant to the provisions of
12 Section 380.05, *Florida Statutes*.

13 3. The Palm Coast Park DRI is consistent with the
14 State's Comprehensive Plan as set forth at Chapter 187,
15 *Florida Statutes*, and Rule 9J-5, *Florida Administrative Code*.

16 4. The Palm Coast Park DRI is consistent with the
17 Strategic Regional Policy Plan adopted by the NEFRC.

18 5. The Palm Coast Park DRI is consistent with the
19 City's Comprehensive Plan.

20 6. The Palm Coast Park DRI is consistent with the
21 Assessment Report and Recommendations of the NEFRC issued
22 pursuant to Section 380.06, *Florida Statutes*.

23 7. The public hearing to consider this ~~Development~~
24 OrderSecond Amended and Restated DO was properly noticed and
25 held by the City Council pursuant to Section 380.06, *Florida*
Statutes.

1 accordance with the provisions of Sections 28.222 and
2 380.06(15)(f), *Florida Statutes*, with the Clerk of the
3 Circuit Court of Flagler County, Florida. Any subsequent
4 owner/developer or assignee from Developer shall be subject
5 to the provisions contained in this ~~Development Order~~Second
6 Amended and Restated DO. Any contract or agreement for sale
7 by Developer of all or any portion of the Palm Coast Park DRI
8 shall contain a legend substantially in the following form
9 clearly printed or stamped thereon.

10 THE PROPERTY DESCRIBED HEREIN IS PART OF THE
11 PALM COAST PARK DEVELOPMENT OF REGIONAL
12 IMPACT AND IS SUBJECT TO A DEVELOPMENT ORDER,
13 NOTICE OF WHICH IS RECORDED IN THE PUBLIC
14 RECORDS OF FLAGLER COUNTY, FLORIDA, WHICH
15 IMPOSES CONDITIONS, RESTRICTIONS AND
16 LIMITATIONS UPON THE USE AND DEVELOPMENT OF
17 THE SUBJECT PROPERTY WHICH ARE BINDING UPON
18 EACH SUCCESSOR AND ASSIGN OF ~~FLORIDA LANDMARK~~
19 ~~COMMUNITIES, INC.,~~ PALM COAST LAND, LLC ~~OR~~
20 ~~PALM COAST FOREST, LLC~~. A COPY OF THE
21 DEVELOPMENT ORDER MAY BE REVIEWED AT THE
22 DEVELOPMENT SERVICES DEPARTMENT, CITY OF PALM
23 COAST OR AT THE OFFICES OF THE DEPARTMENT OF
24 COMMUNITY AFFAIRS, STATE OF FLORIDA,
25 TALLAHASSEE, FLORIDA.

1 3. **Land Use Totals.** The Palm Coast Park DRI may be
 2 developed up to, but not to exceed, the following:

<u>Land Use</u>	<u>Gross Bldg./Units or Area</u>	<u>Acreage *</u>
Residential Acres	3,600/DUs _____	1, 600 <u>528</u>
Office <u>140</u> Acres	800,000/SF _____	150
Commercial <u>475</u> Acres	1,500,000/SF _____	500
Industrial <u>300</u> Acres	800,000/SF _____	320
Institutional <u>20</u> Acres	100,000/SF _____	30
Common Area Acres** _____	--	2, 140 <u>214</u>

16 * The Palm Coast Park DRI is planned as an integrated mixed-use
 17 development. As a result, land uses will be integrated, rather
 18 than specifically assigned to designated areas. Consequently,
 19 acreage is approximate for each land use category.

20 ** Common Area includes all open space, areas for preservation and
 21 greenbelts that shall be available for the common use and
 22 enjoyment of all Palm Coast Park DRI property owners and
 23 visitors.

24 In addition to the above land uses, public schools,
 25 fire and rescue stations and other public facilities that are
 required by this ~~Development Order~~ Second Amended and Restated
DO are allowable uses within the Palm Coast Park DRI.

4. **Land Use Conversion Table.**

1 (a) Developer may increase certain land uses and
2 simultaneously decrease other land uses ("Land Use
3 Conversions") without filing a Notice of Proposed Change
4 provided that such changes are consistent with the
5 conversion table attached as **Exhibit "C"** hereto (the
6 "Conversion Table"), and provided that such changes do not
7 have a substantial adverse effect or impact on public
8 infrastructure facilities as determined by the City, and are
9 reported in the Monitoring Reports, as provided for in
10 Section 11 below.

11 Conversions (simultaneous increases and
12 decreases) of total land uses, as shown in Section 3 above,
13 shall be permitted, subject to the following conditions and
14 limitations:

15 • Approximate acreage for each land use
16 category shall not be altered as a result of any conversion.

17 • Conversions of up to 10% of any land use
18 (as measured by dwelling units or square feet) shall be an
19 entitlement of the Developer but shall require notice to the
20 City Manager as a tracking mechanism.

21 • Conversions of any non-residential land
22 use in excess of 10%, but in no event cumulatively more than
23 30%, or conversion of residential land use in excess of 10%,
24 but in no event cumulatively more than 600 dwelling units,
25 may occur, subject to City Council approval, to insure that

1 substantial and material adverse impacts on public
2 facilities do not occur as a result of the conversion.

3 At the time of election of a land use
4 conversion under the Conversion Table, Developer shall
5 notify the City, DCA and the NEFRC of the election and shall
6 provide the DCA, the City, and the NEFRC with cumulative
7 land use totals and remaining allowable quantities in the
8 next Monitoring Report.

9 (b) So long as the conversion is consistent with
10 the criteria contained in the Conversion Table and no change
11 is made to the Master Plan, no additional approvals shall be
12 required for any land use conversion.

13 **5. Phasing, Buildout and Expiration.** The Palm Coast
14 Park DRI shall be developed in three phases as shown on the
15 following schedule:

Land Use	Phase 1		Phase 2		Phase 3		Total	
	Sq. ft.	Units	Sq. ft.	Units	Sq. ft.	Units	Sq. ft.	Units
Residential		1,800		1,800				3,600
Office	200,000		200,000		400,000		800,000	
Retail Commercial	300,000		400,000		800,000		1,500,000	
Industrial	200,000		200,000		400,000		800,000	
Institutional	40,000		40,000		20,000		100,000	

21 Notes: 1) The non-residential uses are stated in square feet of gross
22 building area.

23 2) These land uses shall be integrated into the Palm Coast Park
24 ~~Mixed-Use~~ Master Plan Development Zoning as shown on the Master
25 Plan.

26 During Phase 1, Developer shall construct or cause
27 to be constructed, at a minimum, the major infrastructure

1 improvements for Palm Coast Park DRI, consisting of the
2 following:

3 (a) Master water distribution system.

4 (b) Master sewage collection system.

5 (c) Master effluent transmission system.

6 (d) Master underground electric distribution system.

7 (e) US-1 linearfrontage park, including, but not
8 limited to, a multi-purpose trail system.

9 (f) Hewitt Sawmill Park improvements.

10 (g) As part of the major infrastructure improvements
11 for the Palm Coast Park DRI, Developer shall install, or
12 require other developers to install, conduit for fiber
13 optics, telephone and cable service. Title to all conduit
14 shall be dedicated or otherwise conveyed to the City.

15 Each phase shall last at least 5 years unless
16 extended pursuant to Section 380.06(19), *Florida Statutes*, or
17 unless Developer elects to accelerate the beginning date of a
18 subsequent phase, provided that all mitigation requirements
19 for the particular phase to be affected are met. The end
20 date of a phase shall not be affected by an acceleration of
21 the beginning date.

22 Unused development rights from a particular phase
23 shall carry over into the next phase until buildout.
24 Physical development shall commence no later than June 30,
25 2006.

1 Although the Palm Coast Park DRI is phased through
2 ~~2020~~2029, buildout may not occur by that date. As a result,
3 the DRI termination date and the expiration date of this
4 Order are both established as of December 31, ~~2025~~2034.

5 6. **Effective Date.** This ~~Development Order~~Second Amended
6 and Restated DO shall take effect upon transmittal to the DCA
7 in accordance with Rule 9J-2.025(5) *Florida Administrative*
8 *Code* and Subsection 380.07(2), *Florida Statutes*.

9 7. **Monitoring Official.** The City Manager or designee
10 shall be the local official responsible for monitoring the
11 Palm Coast Park DRI for compliance by Developer with this
12 ~~Development Order~~Second Amended and Restated DO.

13 8. **Downzoning Protection.** The Palm Coast Park DRI, as
14 approved in this ~~Development Order~~Second Amended and Restated
15 DO, shall not be subject to downzoning or reduction of land
16 uses before December 31, ~~2025~~2034, unless Developer consents
17 to such change, or the City demonstrates that substantial
18 changes in the conditions underlying the approval of this
19 ~~Development Order~~Second Amended and Restated DO have occurred
20 or that this ~~Development Order~~Second Amended and Restated DO
21 was based on substantially inaccurate information provided by
22 Developer or that the changes are essential to public health,
23 safety and welfare.

24 9. **Election Regarding Environmental Rules.** Pursuant to
25 Section 380.06(5)(c), *Florida Statutes*, Developer has elected
to be bound by the rules adopted pursuant to Chapters 373 and

1 | 403, *Florida Statutes*, in effect as of the date of ~~this~~
2 | ~~Development Order~~the DO, including, but not limited to, the
3 | provisions of Section 373.414(13), *Florida Statutes*. Such
4 | rules shall be applicable to all applications for permits
5 | pursuant to those chapters which are necessary for and
6 | consistent with the development authorized in this
7 | ~~Development Order~~Second Amended and Restated DO, except that
8 | a later adopted rule shall be applicable to an application
9 | if:

10 | (a) the later adopted rule is determined by the
11 | adopting agency to be essential to the public health, safety
12 | and welfare, or

13 | (b) the later adopted rule is being adopted
14 | pursuant to Section 403.061(27), *Florida Statutes*; or

15 | (c) the later adopted rule is being adopted
16 | pursuant to a subsequently enacted statutorily mandated
17 | program; or

18 | (d) the later adopted rule is mandated in order for
19 | the State to maintain delegation of a Federal program; or

20 | (e) the later adopted rule is required by State or
21 | Federal law.

22 | Further, to qualify for the benefits of this
23 | provision, the application must be filed within 5 years from
24 | the issuance of ~~this Development Order~~the DO and the permit
25 | shall not be effective for more than 8 years from the
effective date of ~~this Development Order~~the DO. Nothing in

1 this Section shall be construed to alter or change any
2 permitting agency's authority to approve permits or to
3 determine applicable criteria for longer periods of time.

4 10. **Level of Service Standards.** The Palm Coast Park DRI
5 shall be required to meet all level of service standards in
6 the City's Comprehensive Plan and all requirements of the
7 City's concurrency management system. However, pursuant to
8 Section 163.3180(12), *Florida Statutes*, if authorized by the
9 City's Comprehensive Plan, the Developer may satisfy the
10 transportation concurrency requirements by meeting the
11 transportation conditions contained in this ~~Development~~
12 ~~Order~~Second Amended and Restated DO and paying all City
13 transportation impact fees.

14 11. **Biennial Reporting.** A biennial monitoring report for
15 the Palm Coast Park DRI shall be prepared by Developer or its
16 successors or assigns and shall be submitted to NEFRC, DCA
17 and the City no later than June 30, 2006 and then biennially
18 thereafter until buildout (individually a "Monitoring Report"
19 and collectively the "Monitoring Reports"). The Monitoring
20 Reports shall be submitted consistent with the reporting
21 requirements adopted in Section 380.06(18), *Florida Statutes*,
22 as amended from time to time. Each Monitoring Report shall
23 include the following:

24 (a) A description of any changes made in the plan
25 of development, phasing, or in representations contained in
the ADA since the effective date of ~~this Development Order~~the

1 | DO, and any actions taken by the City to address those
2 | changes. Copies of any approvals taken to address changes,
3 | including copies of any revised master plans not previously
4 | submitted, shall be attached to each Monitoring Report.

5 | (b) A summary comparison of development activity
6 | proposed or conducted since the previous Monitoring Report
7 | and activity projected for the period until submittal of the
8 | next Monitoring Report. The summary shall include the
9 | following: a description of site improvements, gross floor
10 | area constructed by land use type, location, and phase, with
11 | appropriate maps. A tabulation of the amount of acreage
12 | developed in the reporting period shall be provided by land
13 | use categories listed in Chapter 28-24, *Florida*
14 | *Administrative Code*.

15 | (c) An identification of the name(s) of the
16 | purchaser(s) of any undeveloped tract(s) of the DRI Property,
17 | including the location(s) and size of the tract(s) purchased,
18 | and the amount of development rights allocated to the
19 | purchaser(s), with map(s) which show the parcel(s) or sub-
20 | parcel(s) acquired.

21 | (d) A cumulative summary of all development that
22 | has taken place within the Palm Coast Park DRI by the land
23 | use categories shown on the Master Plan, including gross
24 | floor areas constructed by land use type and location,
25 | together with a cumulative summary of location, size
(acreage), development rights purchased (land use type and

1 square footage or units), and the name of the purchaser of
2 all parcels purchased within the Palm Coast Park DRI.

3 (e) To the extent known to Developer, a description
4 of any lands purchased or optioned within 1 mile of the
5 boundaries of the Palm Coast Park DRI by a person who has
6 acquired a fee simple or lesser interest in the Palm Coast
7 Park DRI subsequent to the effective date of ~~this Development~~
8 ~~Order~~ the DO (but excluding persons who have only acquired a
9 leasehold interest in lands or improvements within the Palm
10 Coast Park DRI), identifying such land, its size, and its
11 intended use on a site plan and map (to the extent feasible).

12 (f) A listing of any substantial local, state, and
13 federal permits, which were obtained, applied for, or denied,
14 during this reporting period, specifying the agency, type of
15 permit, permit number, permit expiration date, parcel,
16 location, and activity for each permit.

17 (g) A description of any moratorium or consent
18 order imposed by a regulatory agency on development within
19 the Palm Coast Park DRI, specifying the type of moratorium or
20 consent order, duration, cause, and remedy as well as
21 additional information regarding any "out of compliance"
22 status issued by the applicable regulatory authority.

23 (h) An analysis, including a letter from the
24 appropriate utility service provider, demonstrating that
25 there will be sufficient capacity of potable water,
wastewater, and solid waste facilities serving the Palm Coast

1 Park DRI for the anticipated development for the ensuing
2 reporting period.

3 (i) An assessment of Developer's or its successor's
4 compliance with conditions and commitments contained in this
5 ~~Development Order~~Second Amended and Restated DO.

6 (j) A description of any change to the previously
7 reported stormwater plans and design criteria or planting,
8 monitoring, mitigation and maintenance programs.

9 (k) A description of any known incremental
10 applications for development approval or requests for a
11 substantial deviation that were filed in the reporting period
12 or to be filed during the next reporting period.

13 (l) A description of any change in local
14 governmental jurisdiction for any portion of the Palm Coast
15 Park DRI since the effective date of ~~this Development~~
16 ~~Order~~the DO.

17 (m) Traffic reports, which shall be submitted to
18 the Florida Department of Transportation ("FDOT") District
19 Urban Office in Orlando, as well as to the City of Palm Coast
20 Development Services Department, NEFRC, and DCA. The first
21 traffic report shall be due concurrently with the first
22 annual Monitoring Report and then biennially thereafter until
23 project buildout, unless otherwise specified by the NEFRC.
24 The following information shall be included:

25

1 (i) A description of current development by
2 land use, type, location, number of residential units and
3 amount of square footage of non-residential, along with the
4 proposed construction schedule for the ensuing 2 year period,
5 and appropriate maps.

6 (ii) Traffic counts, turning movements, and
7 actual levels of service for existing conditions and
8 projected for the ensuing 2 year period, including traffic
9 estimates for the following roads, including intersections.
10 Developer shall distinguish between project-related traffic
11 and total traffic volumes:

- 12 • US-1 from Palm Coast Parkway north to
13 the I-95/US-1 interchange
- 14 • I-95 from Palm Coast Parkway north to
15 the I-95/US-1 interchange

16 Actual FDOT traffic counts shall be used where
17 possible. If actual FDOT counts are not available for a
18 particular road or intersection, Developer shall retain, at
19 its expense, a traffic engineering firm, acceptable to the
20 City using methodology and techniques acceptable to the City,
21 to collect the necessary counts. FDOT seasonal adjustment
22 factors shall be used when adjusting traffic counts.

23 (iii) A description of any new and/or improved
24 roadways, traffic control devices or other transportation
25 facility improvements to be constructed or provided by

1 Developer or governmental entity to accommodate the total
2 existing and anticipated traffic demands.

3 (n) A statement certifying that the NEFRC, DCA, the
4 City, and all affected agencies have been sent copies of the
5 Monitoring Report in conformance with Subsections 380.06(15)
6 and (18), *Florida Statutes*. Developer shall ensure that
7 appropriate agencies receive a copy of each Monitoring
8 Report.

9 12. **Application for Proposed Changes.** Developer shall
10 submit simultaneously to the City, the NEFRC, and the DCA,
11 any applications for proposed changes to the Palm Coast Park
12 DRI and shall comply with the provisions of Section
13 380.06(19), *Florida Statutes*, concerning non-substantial
14 deviations.

15 13. **Limitations of Approval.** The approvals provided in
16 this ~~Development Order~~Second Amended and Restated DO shall
17 not be construed to obviate the duty of Developer to comply
18 with all other applicable local or State permitting
19 procedures.

20 14. **Notices.** Any and all notices required or allowed to
21 be given in accordance with this ~~Development Order~~Second
22 Amended and Restated DO shall be mailed or delivered as
23 follows:

24 **To Developer:** ~~Florida Landmark Communities, Inc.,~~
25 ~~_____~~ Palm Coast Land, LLC ~~and~~

1 145 City Place, Suite 300

2 Palm Coast Forest, LLC, Florida 32164

3 ~~One Corporate Drive, Suite 3A~~

4 ~~Palm Coast, Florida 32137~~

5 Attn: President and Manager

6 Telephone: (386) 446-6226

7 **With a copy to:** RDL

8 P.O. Box 1077

9 660 6th Avenue

10 Windermere, Florida 34786

11 Attn: Bob Londeree

12 Telephone: (407) 876-4644

13 **To the City:** City of Palm Coast

14 ~~2 Commerce Boulevard~~

15 160 Cypress Point Parkway

16 Suite B-106

17 Palm Coast, Florida 32164

18 Attn: City Manager

19 Telephone: (386) 986-3702

20 ~~With a Copy to: Stenstrom, McIntosh, Colbert, Whigham,~~

21 ~~Reischmann & Partlow~~

22 ~~200 West First Street, Suite 22,~~

23 ~~SunTrust Bldg.~~

24 ~~P.O. Box 4848~~

25 ~~Sanford, Florida 32772-4848~~

1 ~~Attn: Palm Coast City Attorney~~

2 ~~Telephone: (407) 322-2171~~

3 15. **Severability.** In the event any stipulation, or any
4 portion of any Section of this ~~Development—OrderSecond~~
5 Amended and Restated DO shall be declared invalid, illegal,
6 or unconstitutional by a court of competent jurisdiction,
7 such adjudication shall in no manner affect the approval
8 granted herein, and other stipulations, or the other
9 provisions of the affected stipulation, which shall remain in
10 full force and effect as if the stipulation or portion or
11 Section thereof so declared invalid, illegal, or
12 unconstitutional, were not originally a part hereof,
13 provided, however, that if the result of the severance of the
14 stipulation or portion or Section results in harm to the
15 public health, safety or welfare; results in a public harm;
16 or substantially negates a public benefit or imposes a public
17 burden; then the provisions of this ~~Development—OrderSecond~~
18 Amended and Restated DO shall be deemed not severable and
19 this ~~Development—OrderSecond~~ Amended and Restated DO shall be
20 reformulated and reconstituted by the City to address said
21 matters.

22 16. **Rendition of Order to DCA.** Within 20 days of the
23 approval and execution of this ~~Development—OrderSecond~~
24 Amended and Restated DO, the City shall render a copy of this
25 ~~Development—OrderSecond~~ Amended and Restated DO, with all

1 attachments certified as complete and accurate by certified
2 mail, return receipt requested, to the DCA, Bureau of Local
3 Planning, the NEFRC, and the Developer.

4 **17. Other General Conditions.**

5 (a) Notwithstanding any provision contained in this
6 ~~Development Order~~Second Amended and Restated DO to the
7 contrary, the City shall have no financial responsibility to
8 contribute to or participate in the funding, design,
9 engineering, permitting, and/or construction of improvements
10 to State roads, County roads, or roads constructed or to be
11 constructed within the DRI Property.

12 (b) Development of the DRI Property based upon this
13 ~~Development Order~~Second Amended and Restated DO shall comply
14 with all applicable Federal, State and local laws, codes,
15 ordinances, rules and regulations which are hereby
16 incorporated herein by this reference.

17 (c) The Developer acknowledges that the
18 requirements and conditions of this ~~Development Order~~Second
19 Amended and Restated DO as set forth herein result from the
20 impacts of development of the DRI Property on public
21 facilities and systems, are reasonably attributable to the
22 development of the DRI Property, are based upon comparable
23 requirements and commitments that the City or other agencies
24 of government would reasonably expect to require a developer
25 to expend or provide, and are consistent with sound and

1 generally accepted land use planning and development
2 practices and principles.

3 (d) This ~~Development—Order~~Second Amended and
4 Restated DO and its terms and conditions and all of the
5 promises, commitments, obligations, covenants, liabilities,
6 and responsibilities of the Developer touch and concern the
7 DRI Property and shall continue to run with, follow and
8 burden the DRI Property. To this end, the promises,
9 commitments, obligations, covenants, liabilities, and
10 responsibilities provided for herein shall inure to the
11 benefit of the City and shall operate as a perpetual burden
12 and servitude upon the DRI Property unless released by the
13 City by means of an appropriate recordable instrument
14 approved and executed by the City. The promises,
15 commitments, obligations, covenants, liabilities, and
16 responsibilities provided for herein shall be binding upon
17 the Developer and the Developer's heirs, transferees, assigns
18 and successors in interest (specifically including, but not
19 by way of limitation, building permit applicants and any
20 person or entity developing any part of the DRI Property) and
21 shall inure to the benefit of the City and its assigns and
22 successors in interest as to all parts and each part of the
23 DRI Property. The Developer shall pay any and all costs of
24 recording instruments in the public records of the County.

1 In addition to the foregoing general conditions, the
2 following specific conditions are included in this
3 ~~Development Order~~Second Amended and Restated DO to mitigate
4 identified regional impacts.

5 **PART III**

6 **SPECIFIC CONDITIONS TO THIS DEVELOPMENT ORDER**

7 **1. Vegetation and Wildlife.**

8 (a) The Developer shall preserve at least 116 acres
9 of gopher tortoise habitat prior to commencing any
10 development activities on the DRI Property. Preservation
11 shall be accomplished as follows: (i) preserving the
12 44.66-acres shown as Tract C on Second Revised Exhibit "D"
13 hereto, through granting a perpetual conservation easement to
14 the Florida Fish and Wildlife Conservation Commission
15 ("FFWCC"), in a form acceptable to the FFWCC, within 1
16 calendar year from the effective date of ~~this Development~~
17 ~~Order~~the DO; and (ii) preserving an additional 71.34-acres of
18 gopher tortoise habitat within 2 calendar years from the
19 effective date of ~~this Development Order~~the DO by either (1)
20 contributing to the purchase of preservation land by payment
21 of a sum equal to \$5,859 per acre, or the prevailing cost per
22 acre in effect at the time of the payment, whichever is
23 greater, to the FFWCC Land Acquisition Trust Fund, (2)
24 preserving an appropriate number of acres of habitat on site,
25 agreeable to the FFWCC, or (3) choosing a combination of

1 items (1) or (2) that equal a total of 71.34 acres of gopher
2 tortoise habitat protection. Any onsite habitat preserve
3 shall encompass at least 25-acres of contiguous gopher
4 tortoise habitat and shall be acceptable to the FFWCC. No
5 construction shall commence on the DRI Property until the
6 Developer has protected at least 116-acres of gopher tortoise
7 habitat, obtained the necessary gopher tortoise permit(s)
8 from the FFWCC, and complied with all permit conditions.

9 (b) Informational signs or posters shall be located
10 on active construction sites in areas that may contain
11 suitable habitat for the Indigo Snake. The Developer shall
12 develop an Eastern Indigo Snake Protection/Education Plan
13 (the "Snake Plan"). The Snake Plan shall meet the
14 requirements and standards set forth in the "Standard
15 Protection Measure For The Eastern Indigo Snake" provided on
16 Page 12-1 of the ADA Second Sufficiency Response, dated
17 February 20, 2004. The Snake Plan shall be provided to all
18 contractors performing work on the DRI Property.

19 (c) Should listed species be determined to reside
20 on, or otherwise be significantly dependent upon the Palm
21 Coast Park DRI property, the Developer shall cease all
22 development activities which might negatively affect that
23 individual or population. The DRI Property shall be
24 developed in full compliance with all applicable laws, rules
25 and regulations. The Developer shall provide proper

1 protection to the satisfaction of all agencies with
2 jurisdiction over the matter.

3 **2. Wetlands.**

4 (a) Development of the Palm Coast Park DRI shall not
5 impact more than 185 acres of wetlands on the DRI Property.

6 (b) Upland buffers adjacent to wetlands shall be
7 established on the DRI Property that are consistent with the
8 City's Land Development Code. At a minimum, the buffers
9 shall include the following:

10 (i) A 25' average width upland buffer around
11 all protected or enhanced wetlands.

12 (ii) To reduce erosion, all swales and drainage
13 ways constructed by the Developer shall be vegetated or
14 sodded. The inside detention slopes for stormwater ponds
15 shall be sodded. The berm and outside slopes for stormwater
16 ponds shall be hydroseeded. All slopes steeper than 3:1
17 (horizontal:vertical) shall be sodded. Only those areas
18 needed for development may be cleared. All cleared
19 development areas shall be hydroseeded or seeded and mulched
20 immediately. All areas which are covered with vegetation or
21 sod or which are seeded and mulched or hydroseeded shall be
22 maintained after construction.

23 (iii) Sedimentation of wetlands shall be
24 prevented through adherence to the erosion and sediment
25 control plan submitted as part of the stormwater permit.

1 (iv) Wildfire mitigation management practices
2 will be routinely implemented on all vacant property within
3 the DRI boundaries, specifically in the vegetation areas
4 shown as scrub and brushland, pine flatwoods, coniferous
5 plantations and forest regeneration areas. Mitigation shall
6 include, but is not limited to controlled burning, mechanical
7 mowing or chopping, tree thinning and animal grazing. The
8 Developer shall implement these practices on normal cycle for
9 this work which is approximately three to five years

10 (c) The Developer shall record conservation
11 easements in favor of the St. Johns River Water Management
12 District ("SJRWMD") and the City covering the preserved
13 wetlands on-site. The conservation easements shall be
14 recorded upon recordation of a plat containing the wetlands
15 or upland buffer areas.

16 Should silviculture operations continue prior to
17 the commencement of individual site development, silviculture
18 activities shall be prohibited in that portion of the DRI
19 Property that consists of wetland areas to be preserved and
20 those areas adjacent to wetlands that will be used as buffers
21 to the wetland areas.

22 (d) The Developer shall perform field verification
23 of wetland boundaries associated with Conservation FLUM areas
24 which shall be provided to the City in electronic format.
25 After field verification, the delineated Conservation FLUM

1 areas shall be preserved, except where they are crossed by
2 road rights-of-way or easements or rights-of-way for other
3 public facilities.

4 (e) The Developer shall promptly provide to the City a
5 copy of all Federal and State environmental permits prior to
6 construction activities being undertaken. The Developer or
7 its assigns shall be required to comply with all terms and
8 conditions of all such permits. No wetland impacts shall
9 occur without acquiring all necessary State and Federal
10 permits and approvals by the City.

11 3. **Floodplains.**

12 (a) All structures shall have a finished floor
13 elevation a minimum of 1-foot above the FEMA 100-year
14 floodplain. All structures shall also have a finished floor
15 elevation a minimum of 1 foot above the center line of the
16 adjacent roadway. The City Engineer may waive the foregoing
17 requirements provided a site grading plan is submitted
18 demonstrating sufficient treatment storage is provided and
19 adequate conveyance will prevent flooding of structures during
20 the 100-year event. All roadways shall be constructed at or
21 above the FEMA 100-year floodplain. The 10-year frequency
22 storm shall be used to calculate the design hydraulic gradient
23 line for local roadways. The maximum hydraulic gradient line
24 for roadways shall be no higher than 6-inches below the edge
25 of pavement.

1 (b) All roads constructed within the Palm Coast Park
2 DRI shall be designed in accordance with criteria of FDOT or
3 the City, as applicable.

4 **4. Water Supply.**

5 (a) A distribution system for reuse (non-potable
6 water) shall be installed concurrent with development of the
7 Palm Coast Park DRI (residential and non-residential). The
8 non-potable distribution system shall be developed parallel to
9 the potable system for all land uses for utilization when
10 reuse water is available. Depending on design requirements
11 and location within the DRI Property, the non-potable
12 distribution system may include or consist of direct pumping
13 from ponds and lakes, as the means for providing non-potable
14 water for irrigation.

15 To the maximum extent feasible, reclaimed water
16 shall be the primary source of water to meet irrigation
17 demand, with surface water from the stormwater management
18 system acting as back up source to meet additional irrigation
19 requirements.

20 (b) The Developer shall undertake 2 demonstration
21 projects, 1 residential and 1 non-residential, which implement
22 and exhibit water-wise landscaping principals which
23 incorporate drought-tolerant or native vegetation. The non-
24 residential demonstration project may be undertaken on a
25 1-acre site within the linearfrontage park along US-1.

1 (c) Water conservation strategies, including
2 Xeriscape landscape techniques and low flow plumbing fixtures
3 shall be incorporated into the construction, operation, and
4 maintenance phases of the Palm Coast Park DRI, and shall be
5 included in the covenants and deed restrictions. The
6 conservation strategies shall include the following
7 conditions:

8 (i) Within common areas, commercial areas and
9 multi-family residential complexes, 50% of planted vegetation,
10 by aerial extent, shall consist of native, drought-tolerant or
11 Xeriscape vegetation in all landscaped areas. Landscaped
12 areas are defined as any pervious area that will be altered
13 due to development. Wetlands, wetland buffers, vegetative
14 buffers between land uses, stormwater systems and required
15 preservation areas are not included as landscaped areas.
16 Native or drought-tolerant plants include those in the
17 SJRWMD's *Waterwise Florida Landscapes*, the Florida Native
18 Plant Society's list of native landscape plants for Flagler
19 County, *A Gardner's Guide to Florida's Native Plants* (Osorio
20 2001), or comparable guidelines prepared by the Florida
21 Department of Agriculture and Consumer Services, SJRWMD,
22 FFWCC, or FDEP.

23 (ii) The Developer shall include information on
24 Xeriscape and/or native vegetation and/or drought-tolerant
25 vegetation (SJRWMD Xeriscape Plant Guide), water conservation

1 guides & IFAS's Xeriscape plant guides and IFAS Cooperative
2 Extension Services' "Florida Yards and Neighborhoods"
3 materials in design guidelines.

4 (iii) Fertilizer used within the Project shall
5 contain at least 70% organic or slow release ingredients, with
6 the exception of limited special purpose fertilizer
7 applications as appropriate.

8 (iv) A comprehensive water conservation plan
9 shall be developed and implemented which addresses:

- 10 • Specific percentage of water
11 wise/native vegetation required throughout the DRI Property.
- 12 • Limits on turf areas.
- 13 • Use of water-saving fixtures.
- 14 • Sub-metering multi-family units.
- 15 • Use of non-potable water for outside
16 irrigation.
- 17 • Use of rain-sensing sprinklers.
- 18 • Distribution of water conservation
19 literature to residents and tenants.

20 (v) The Developer shall ensure compliance with
21 conditions (c)(i) through (c)(iv) of this ~~Development~~
22 OrderSecond Amended and Restated DO; provided, however, that
23 such obligations may be assigned to other parties by the
24 Developer with the consent of the City. The Developer,
25 homeowner's association or CDD, shall implement a customer and

1 employee water conservation education program as specified in
2 Section 12.2.5.1(e) of the SJRWMD Consumptive Use Permitting
3 Applicant's Handbook. The curriculum of the education program
4 shall be supplied with the first Monitoring Report and each
5 subsequent Monitoring Report until build-out. This condition
6 may be satisfied by the City with approval from the SJRWMD.

7 (d) Easements for adequate accessibility to and from
8 existing and proposed wellheads shall be established within 1
9 year for each wellhead on the DRI property in order that
10 construction, maintenance, and other necessary activities to
11 facilitate the production of potable water is achieved. All
12 easements shall be in a form approved by the City. Developer
13 or any successors in interest shall have the right from time
14 to time to relocate any easements that provide accessibility
15 to and from any existing or proposed wellhead to another
16 location, provided, however, that (i) any such relocation of
17 an easement shall not unreasonably interfere with the City's
18 non-exclusive right to utilize the easement, as relocated, for
19 access to and from the wellhead; (ii) such relocation of the
20 easement shall result in the City's right to and enjoyment of
21 a means of an access to and from the wellhead which is
22 substantially similar to the means of access which the City
23 possessed and enjoyed prior to such alteration or relocation
24 of the easement; (iii) the Developer shall bear the cost of
25 relocating any roadways, power lines or other facilities

1 serving the well site which are moved as a result of the
2 relocation of any easement; and (iv) relocation of roadways,
3 power lines and other facilities serving a well site shall be
4 accomplished in a manner that does not cause disruption to the
5 production of any existing well or result in degradation,
6 alteration or loss of production of potable water.

7 (e) Within 1 year from the effective date of ~~this~~
8 ~~Development Order~~the DO, a linear easement shall be
9 established that parallels the boundary of the DRI Property
10 abutting the Florida East Coast railroad right-of-way. The
11 easement shall be 65 feet in width, a portion of which shall
12 also be subject to an easement in favor of Florida Power &
13 Light for an electric transmission line. The easement shall
14 provide ingress/egress to access well sites and provide full
15 eastern access along the rail system for emergency vehicles
16 should a train derailment occur. The easement shall be in a
17 form approved by the City.

18 **5. Groundwater Protection.**

19 (a) A buffer zone with a 500-foot radius shall be
20 established around each existing and proposed wellhead where
21 no construction activities involving hazardous materials shall
22 be conducted and no hazardous material and/or waste generation
23 facilities may be constructed. Direct stormwater runoff shall
24 be diverted away from these buffer areas to stormwater
25

1 treatment ponds which shall be located outside of the
2 protection zone.

3 (b) Use of Floridan Aquifer, intermediate (confined
4 surficial), and surficial aquifer wells, that do not fall
5 within the SJRWMD's specific consumptive use permitting
6 requirements (less than 6 inches in diameter), are prohibited
7 on the Palm Coast Park DRI property, unless approved by the
8 City and applicable regulatory agencies, with the exception of
9 Tract 55C as shown on Second Revised Exhibit "D" hereto,
10 provided that the wells are approved by the applicable
11 regulatory authorities. This prohibition, as with all other
12 provisions of this ~~Development—Order~~Second Amended and
13 Restated DO, shall act as a deed restriction to the DRI
14 Property.

15 (c) Any abandoned wells discovered prior to or
16 during development shall be properly plugged and abandoned in
17 accordance with SJRWMD's rules.

18 (d) The following best management practices shall
19 apply to geotechnical borings:

20 (i) All borings deeper than 20 feet shall be
21 neat cement grouted to the surface to prevent downward
22 migration of surface and subsurface contaminants along the
23 borehole to the shallow intermediate or Floridan Aquifer.

24 (ii) All borings less than 20 feet deep shall be
25 backfilled with the original drilled soil to the surface to

1 prevent the creation of a sump. Where the boring is advanced
2 through asphalt or concrete it shall be patched at the surface
3 with a similar impervious material.

4 (iii) If contamination is detected in any
5 geotechnical boring, the contaminated soil shall not be used
6 as replacement material and the horizontal and vertical extent
7 of the contamination shall be assessed and reported to the
8 City and the appropriate regulatory authority.

9 (e) Any discharge of a regulated substance at
10 regulatory reporting thresholds shall be reported immediately
11 by the facility owner, operator, or responsible party to the
12 City. Such notification shall in no way alleviate the owner,
13 operator, or responsible party from other City, State, and
14 Federal reporting obligations as required by law. All
15 facilities with discharges of any quantity of a regulated
16 substance shall be remediated so that contamination of soil,
17 surface water, or groundwater is brought into compliance with
18 State, local, and/or Federal standards. Clean-up activities
19 shall begin concurrent with or immediately following emergency
20 response activities. This prohibition shall act as a deed
21 restriction within the Palm Coast Park DRI Property.

22 (f) Whenever it is determined by the City or
23 authorized regulatory agency that a discharge of regulated
24 substances is resulting in imminent threat of contamination of
25 groundwater or danger to life or property from the

1 contamination of groundwater, the Developer shall require
2 immediate corrective action as required by the City. The
3 Developer hereby grants to the City the right of entry into
4 the DRI Property and the right to take clean-up activities
5 necessary to protect the public health, safety and welfare and
6 to pass on the cost of clean up activities to the responsible
7 party. Initiation of any required clean-up activities as
8 directed by the City shall commence within 24 hours and shall
9 be completed within the time specified by the City or other
10 regulatory authority. If immediate corrective measures are
11 not taken and there is immediate threat to the City's potable
12 water resources, danger or hardship to the public, the City
13 may enter upon lands, take corrective actions, and place a
14 lien on the real property of such person(s) to recover the
15 costs of the corrective measures. This prohibition, as with
16 all other provisions of this ~~Development Order~~Second Amended
17 and Restated DO, shall act as a deed restriction within the
18 DRI Property.

19 **6. Wastewater Management.**

20 (a) Development within Palm Coast Park DRI shall
21 occur concurrent with the provision of adequate central sewer
22 service meeting the adopted level of service of the City's
23 Comprehensive Plan.

24 (b) Onsite Wastewater Treatment Systems (septic
25 systems) may be allowed for single family residential areas

1 with lot sizes that contain a minimum of 1-acre of contiguous
2 uplands but only in the area designated as Tract 55C on Second
3 **Revised Exhibit "D"** hereto; provided, however, that all septic
4 systems must be approved by the appropriate regulatory
5 authority to ensure that ground or surface waters will not be
6 negatively impacted. The City, through coordination with the
7 Flagler County Health Department, may require aerobic
8 treatment units adjacent to lands that the City deems as
9 environmentally sensitive. Temporary above-ground tanks may
10 be used to provide sewage service to construction and
11 marketing trailers until central sewer lines are installed.

12 (c) The Developer shall identify a minimum 30-acre
13 site acceptable to the City for the purpose of locating new
14 water and wastewater utility plants. The site shall be
15 dedicated to the City within 60 days of the effective date of
16 ~~this Development Order~~ the DO in a form acceptable to the City.
17 Simultaneously with the conveyance of title to the site for
18 the water and wastewater utility plants, the City shall
19 release its option to purchase a well site that is known as
20 the SW-108 Well Site and its option to purchase a water plant
21 site along US-1.

22 **7. Stormwater Management.**

23 (a) A stormwater pollution prevention construction
24 operating plan ("SWPPP") shall be attached to and incorporated
25 into the construction and permit documents for all projects

1 constructed within the Palm Coast Park DRI that require a
2 general or individual SJRWMD permit. The SWPPP shall be
3 implemented upon initiation of construction activities. The
4 SWPPP shall be similar to the SWPPP provided in **Exhibit "E"**
5 hereto, but may be modified to accommodate the specific
6 construction project and site. Appropriate maintenance
7 personnel shall be required to attend the Florida Stormwater,
8 Erosion and Sedimentation Control Training and Certification
9 Course for Contractors and Inspectors.

10 (b) A Water Quality Monitoring Plan ("WQ Monitoring
11 Plan") shall be developed by the Developer for review and
12 approval of FDEP. The WQ Monitoring Plan shall include water
13 quality monitoring stations, all of which shall be approved by
14 FDEP. There shall be 2 baseline-sampling events (1 wet and 1
15 dry) completed prior to initiation of development activities
16 on the DRI Property. When approved, the WQ Monitoring Plan
17 shall be automatically incorporated into this ~~Development~~
18 ~~Order~~Second Amended and Restated DO.

19 (c) If a golf course is developed on the DRI
20 Property, the following shall be required:

21 (i) Implementation of a Pesticide/Nutrient
22 Management Plan, with a City approved entity identified and
23 appointed to oversee the process. The plan that is adopted
24 and the name of the entity that was appointed to oversee the
25 process shall be provided to the City and the FDEP.

1 (ii) Development and implementation of golf
2 course best management practices from the following
3 publications:

4 • Best Management Practices for Golf
5 Course Maintenance Department.

6 • Florida Green Industries: Best
7 Management Practices for Protection of Water Resources in
8 Florida.

9 The best management practices that are adopted
10 shall be provided to the City and the FDEP.

11 **8. Transportation.**

12 (a) Notwithstanding the phasing schedule that is set
13 forth in Section 5, under Part II above, for the purpose of
14 phasing and transportation recommendations, Palm Coast Park
15 DRI is divided into 3 phases based upon ITE trip generation
16 estimates for approved construction, as shown on the following
17 schedule:

18

	Estimated Build-Out	Daily ITE Trips	PM ITE Peak Trips	Cumulative ITE Trips	
				Daily	PM Peak
Phase 1	2010 <u>2019</u>	32,834	3,145	32,834	3,145
Phase 2	2015 <u>2024</u>	33,965	3,316	66,799	6,461
Phase 3	2020 <u>2029</u>	38,569	3,772	105,368	10,233

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23 (b) The Developer shall provide all rights-of-way and
24 associated easements and facilities necessary to construct the
25 internal roadway network and shall be responsible for

1 constructing the internal roadway network. The creation of the
2 rights-of-way shall be in a form acceptable to the City.

3 (c) The Developer shall be responsible for the
4 construction of all turn lanes and traffic signals (as
5 required) providing direct access to Palm Coast Park DRI as
6 well as the conveyance of additional necessary rights-of-way.

7 (d) Prior to the end of Phase 1 or ~~2010~~2019,
8 whichever is sooner, an Interchange Justification Report
9 ("IJR") shall be completed by the Developer in cooperation
10 with the FDOT (District 5 and District 2) for the proposed
11 Interstate 95/Matanzas Woods Parkway interchange (the
12 "Interchange"). Upon the Palm Coast Park DRI generating a
13 total of 3,145 PM Peak Hour Trips (including primary,
14 internal, pass-by and diverted), if the IJR determines that
15 the Interchange is required, the Interchange must be funded in
16 the City's Capital Improvement Element or Plan or in the first
17 three years of FDOT's five year plan or the provision of
18 subsection 8(e) will apply.

19 (e) If the condition relating to the funding of the
20 Interchange set forth in Section 8(d.) has not been met, the
21 Developer must submit a modification to ~~the Development~~
22 Order this Second Amended and Restated DO through the DRI
23 substantial deviation process. The substantial deviation shall
24 require the reanalysis of the projected Palm Coast Park DRI
25 traffic impacts and identification of any mitigation that is

1 required to maintain concurrency without the Interchange.
2 Alternately, the Developer may elect to suspend or reduce the
3 development program of the Palm Coast Park DRI to levels that
4 will not adversely impact the road network.

5 (f) Developer's proportionate share contribution to
6 mitigate offsite transportation impacts for Palm Coast Park
7 DRI, equal to 10,233 PM Peak Hour Trips, totals \$14,021,000,
8 as shown on **Exhibit "F"** hereto. Pursuant to Section
9 163.3180(12), Florida Statutes, the Developer shall mitigate
10 offsite transportation impacts for Palm Coast Park DRI by
11 paying to the City the amount of \$7,271,000 and paying the
12 cost of the IJR in the estimated amount of \$250,000 for a
13 total contribution of \$7,521,000 ("Traffic Mitigation Pipeline
14 Amount"), and in addition, Developer hereby waives its right
15 to impact fee credits for impact fees that are paid in
16 connection with development within the Palm Coast Park DRI
17 (the "Palm Coast Park Impact Fees"). Based upon current
18 impact fees, the Palm Coast Park Impact Fees are estimated at
19 \$6,750,034, and consequently the value of Developer's
20 proportionate-share contribution upon execution of this
21 agreement is estimated at \$14,271,034 (\$7,521,000 Traffic
22 Mitigation Pipeline Amount + \$6,750,034 estimated Palm Coast
23 Park Impact Fees = \$14,271,034). Impact fees are not limited
24 to any amount specified in this paragraph; the developer or
25 sub-developers will pay the impact fee amounts in effect at

1 the time each building permit is issued. Developer shall pay
 2 the Traffic Mitigation Pipeline Amount, with the exception of
 3 the cost of the IJR, to the City within 1 year following the
 4 date the Palm Coast Park CDD is created, but not later than 18
 5 months following the effective date of ~~this Development~~
 6 Order the DO unless extended by the City and subject to such
 7 conditions as the City may impose. Developer shall pay the
 8 cost of the IJR in accordance with Subsection (d) above.

9 Consistent with the requirements of Section
 10 163.3180(12), Florida Statutes, the City shall use the
 11 Developer Proportionate Share Contribution to complete the
 12 four (4) laning of Matanzas Woods Parkway from US-1 to Belle
 13 Terre Parkway and some portion or all of the regionally
 14 significant transportation facilities that are shown on the
 15 following schedule consistent with the City's budgetary
 16 practices and limitations:

17 **CITY TRAFFIC MITIGATION**

18

Improvements	Location	2004 Estimated Cost
Add Traffic Signal Control	Intersection of Belle Terre Parkway at Pine Lakes Parkway (N)	\$250,000
Add Traffic Signal Control	Intersection of Belle Terre Parkway at Belleaire Drive	\$250,000
Intersection Improvement	Fix Culvert Problem at Pine Lakes Parkway and Palm Coast Parkway	\$850,000
4-Lane Belle Terre Parkway	Bellaire Drive to Matanzas Woods Parkway	\$7,900,000
4-Lane Matanzas Woods Parkway	Belle Terre Parkway to I-95	\$1,400,000

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1 The Traffic Mitigation Pipeline Amount may be funded
2 by the Developer through the Palm Coast Park CDD in a manner
3 acceptable to the City. Payment of the Traffic Mitigation
4 Pipeline Amount and waiver by the Developer of its right to
5 impact fee credits in connection therewith shall mitigate all
6 of Palm Coast Park DRI's non-state roadway impacts in the
7 entirety for 10,233 Peak Hour Trips.

8 (g) To demonstrate that the State Road System will
9 not be degraded below adopted service levels as indicated in
10 the traffic analysis for the Palm Coast Park DRI, each
11 Monitoring Report shall include a report on the status of the
12 Matanzas Woods Parkway/I-95 overpass (the "Overpass") and the
13 status of the Interchange (the "Overpass/Interchange Status
14 Report").

15 Until the Overpass is constructed and accepted
16 by FDOT, the Overpass/Interchange Status Report shall include
17 the status of funding, permitting and construction of the
18 Overpass. Until the Interchange has been constructed and
19 accepted by FDOT, the Overpass/Interchange Status Report shall
20 include the status of the IJR, design, permitting and
21 construction of the Interchange. The Overpass/Interchange
22 Status Report shall be discontinued after the Overpass and
23 Interchange have both been constructed and accepted by FDOT.
24
25

In the event the Overpass and Interchange are not constructed or funded for construction within 3 years of the projected need, the Developer shall be required to identify alternative traffic improvements (the "Alternative Traffic Improvements") that will maintain the adopted service levels on the roadways within the primary impact area of Palm Coast Park DRI ("Adopted Service Levels"). In the event Alternative Traffic Improvements are not funded for construction within 3 years of the projected need, the density/intensity of development within the Palm Coast Park DRI shall be limited to the extent necessary to maintain the Adopted Service Levels.

(h) In addition to the Overpass/Interchange Status Report, each Monitoring Report shall include a PM Peak Hour Traffic Analysis of US-1 and I-95 as follows:

Road	From	To	Segments to Monitor by Report Year		
			Phase 1 2004- 2009 2018	Phase 2 2010- 2014 2019- 2023	Phase 3 2015 2024 and beyond
US-1	CR 304	Belle Terre Parkway	No	No	Yes
US-1	Belle Terre Pkwy	Royal Palms Pkwy	No	Yes	Yes
US-1	<u>Royal Palms Parkway</u>	I-95	Yes	Yes	Yes
US-1	I-95	SR-206	No	No	Yes
I-95	Old Dixie Highway	SR-100	No	No	Yes

Road	From	To	Segments to Monitor by Report Year		
			Phase 1 2004- 2009 2018	Phase 2 2010- 2014 2019- 2023	Phase 3 2015 2024 and beyond
I-95	SR-100	Palm Coast Pkwy	No	Yes	Yes
I-95	Palm Coast Pkwy	US-1	No	Yes	Yes
I-95	US-1	SR-206	No	Yes	Yes
I-95	SR-206	SR-207	Yes	Yes	Yes
I-95	SR-207	SR-16	No	Yes	Yes
I-95	SR-16	International Golf Pkwy	No	No	Yes

The traffic study shall include the evaluation of PM peak hour conditions for each roadway segment identified on US-1 and I-95, and include an evaluation of all signalized intersections within the limits of US-1, from Palm Coast Parkway north to I-95, as well as the unsignalized intersections of the I-95 ramps with US-1, subject to the phased segment limits described above. The traffic study shall include a projection of background and Project traffic for the next 2-year period and the resulting projection of the level of service for those roadways at the end of the 2-year period. Project traffic shall include the impacts of all existing Project development, and all Project development likely to receive building permits during the next 2-year period. At a minimum, the traffic study methodology and the study results shall be supplied to the NEFRC and the FDOT (District 5 and District 2) for review, and shall be subject to written

1 approval by the City and DCA. The evaluation of I-95 shall be
2 based on the most recent Annual Average Daily Traffic volume,
3 as identified by the FDOT, converted to a 2-way peak hour
4 volume using a K¹⁰⁰ factor, calculated from FDOT data for the
5 closest continuous count station.

6 The traffic study shall include an assessment of
7 2-way external PM peak hour trips (defined as total trips
8 minus internal trips minus pass-by trips) for the existing
9 Project and Project traffic for the next 2-year period. The
10 phase of the Project will be defined by the number of Project
11 external PM peak hour 2-way trips (which ever is reached
12 first), as identified below:

Phase	Year	Cumulative Project External PM Peak Hour 2-Way Trips
1	2010 2019	2,596
2	2015 2024	5,083
3	2020 2029	7,304

19 The Monitoring Report shall be used for the
20 following purposes:

- 21 • To determine the operational conditions of US-1
22 and I-95 given their current rural, free-flow characteristics
23 and changes anticipated over time to an urban, interrupted-
24 flow arterial and interstate.
25

1 • To evaluate the impact to US-1 and I-95 in the
2 event construction of the Overpass or Interchange is delayed
3 or not constructed.

4 Based upon accepted peak hour analysis procedures
5 standard to the traffic engineering profession, the Monitoring
6 Report shall identify the following on the relevant segments
7 of US-1 and I-95:

- 8 • Level of service adopted by the City and FDOT.
- 9 • Applicable area type associated with US-1 and
10 I-95 (e.g., rural, transitioning or urban) as from time to
11 time adopted by the appropriate authorities and used by the
12 City and FDOT to adopt and modify level of service
13 requirements.
- 14 • Service volume as adopted by the City and FDOT.
- 15 • Spacing of approved and proposed full median
16 openings/traffic signals and a statement of compliance with
17 the FDOT Access Management requirements.
- 18 • Spacing of approved and proposed directional
19 access locations (including directional left-turn median
20 openings and right-in/right-out access) and a statement of
21 compliance with the FDOT Access Management requirements.
- 22 • Identification of joint access driveways.
- 23
- 24
- 25

1 • Identification of improved roadways parallel to
2 US-1 which reduce direct access from the Palm Coast Park DRI
3 to US-1 or increase corridor capacity.

4 The Monitoring Report shall include daily traffic
5 counts on US-1 indicating hourly directional flows collected
6 at up to 4 locations between full median accesses located at
7 active entrances to the Palm Coast Park DRI. For purposes
8 hereof, an active entrance is any entrance on US-1 that
9 provides access to a development area within the Palm Coast
10 Park DRI that has received a certificate of occupancy. Daily
11 traffic counts shall be averaged from traffic counts conducted
12 over a consecutive 72-hour period beginning no earlier than
13 12:00 p.m. (noon) on a typical Monday and ending no later than
14 12:00 p.m. (noon) on a typical Friday. The traffic counts
15 shall be factored to peak-season values using FDOT's weekly
16 count factors maintained for Flagler County.

17 The Monitoring Report shall indicate the level of
18 service for the relevant segments of US-1 and I-95 according
19 to the procedures set forth in the current version of the
20 Highway Capacity Manual as may be implemented by software
21 approved by FDOT (e.g., the current version of the Highway
22 Capacity Software). The Monitoring Report shall identify the
23 existing peak-hour level of service and the projected peak-
24
25

1 hour level of service based upon the traffic impacts from the
2 planned development within the Palm Coast Park DRI over the
3 following 2 years. If roadway improvements are required to
4 maintain the adopted level of service on US-1 and I-95, the
5 improvements shall be identified and if they are not funded
6 for construction within 3 years of the projected need, the
7 density/intensity of development within the Palm Coast Park
8 DRI shall be limited to the extent necessary to maintain the
9 Adopted US-1 Service Level.
10

11 The Developer may elect, at its discretion, to study
12 a longer horizon period to provide advance identification of
13 potential capacity deficiencies on US-1. Advance
14 identification of deficiencies may allow for the planning,
15 programming and funding of improvements in a timely manner
16 thereby avoiding the potential interruption of development
17 within the Palm Coast Park DRI.

18 A roadway segment shall be determined to be
19 significantly impacted by the proposed development if, at a
20 minimum, the traffic projected to be generated at the end of
21 any phase of the Project, cumulatively with previous phases,
22 will utilize 5% or more of the adopted peak hour level of
23 service maximum service volume of the roadway.

24 If and when the service level for a roadway listed in
25 the Monitoring Report, which the Project significantly

1 impacts, falls below the adopted level of service in the
2 City's Comprehensive Plan for US-1, prior to buildout of the
3 Project, no further building permits shall be issued until
4 mitigation measures and/or improvements which would achieve
5 the minimum acceptable levels of service are guaranteed and
6 scheduled, as follows:

7 ● **SCHEDULE AND GUARANTEE OF IMPROVEMENTS** - If and
8 when required to allow additional building permits to be
9 issued, a schedule shall be provided by the Developer which
10 specifically provides for the mitigation of impacts from the
11 Project on each significantly impacted relevant segment of US-
12 1 and I-95 which will operate below the adopted level of
13 service standard at the end of buildout of each phase of the
14 Project, or alternatively, a subset stage of that phase. The
15 schedule shall ensure that each and every improvement to
16 relevant segments of US-1 and I-95 which is necessary to
17 achieve the adopted level of service standard for that stage
18 or phase of the Project shall be guaranteed to be under actual
19 construction. This guarantee shall be in the form of (i) a
20 clearly identified, executed and recorded local government
21 development agreement, consistent with Sections 163.3220
22 through 163.3243, Florida Statutes, that is attached as an
23 exhibit to a development order, and which ensures, at a
24 minimum, that all needed roadway improvements will be
25 available concurrent with the impacts of development,

1 consistent with Section 163.3180(2)(c), Florida Statutes;
2 (ii) The City's CIE adopted pursuant to Rule 9J-5.0055(3)(c),
3 *Florida Administrative Code*, concurrency management system in
4 its Comprehensive Plan; (iii) an FDOT commitment in the
5 current 5 years of the Adopted Work Program for Florida
6 Intrastate Highway System (FIHS) facilities in construction
7 within the first 3 years of the Adopted Work Program for all
8 other facilities to provide all needed roadway improvements;
9 (iv) a binding and enforceable commitment in a development
10 order by the Developer to provide all needed roadway
11 improvements concurrently with the development schedule
12 approved in the development order; or (v) any combination of
13 guarantees (i) thru (iv) above that ensures that all needed
14 roadway improvements will be provided concurrently with the
15 development schedule approved in the development order.

16 In addressing the construction of the needed roadway
17 improvements to the relevant segments of US-1 and I-95, the
18 schedule shall list all roadway improvements needed to be
19 constructed by phase or stage, the anticipated date of
20 completion for the construction of each needed improvement,
21 the party responsible for the construction of each
22 improvement, and the form of the commitment that relates to
23 the construction of each improvement.

24 As part of the Monitoring Report, the status of the
25 road improvements shall be assessed and reported. The City

1 shall evaluate the appropriateness of issuing additional
2 building permits if the Monitoring Report reveals that any
3 needed transportation improvements as set forth herein are no
4 longer scheduled, or have been delayed in schedule, such that
5 the Developer or it assigns no longer ensure that the planned
6 roadway improvements for that stage or phase of the Project
7 will be constructed within the planned time frame.

8 A change to the approved development schedule for
9 the Project, as opposed to a change to the schedule of needed
10 improvements, will need to be addressed through the
11 notification of proposed change provisions of Section
12 380.06(19), *Florida Statutes*.

13 ● **PROPORTIONATE SHARE PAYMENTS** - This option shall
14 only be available to the extent that the FDOT, for facilities
15 on the State Road System, agrees to accept proportionate share
16 payments as adequately mitigating the impacts of the Project
17 on the significantly impacted portions of US-1 and I-95. Such
18 an agreement shall be attached as an exhibit to a development
19 order and shall be in the form of either a clearly identified,
20 executed and recorded local government development agreement,
21 consistent with Sections 163.3220 through 163.3243, Florida
22 Statutes; an interlocal agreement; a FDOT joint participation
23 agreement; or a written acceptance by the affected local
24 government governing board or the FDOT (District 5 and
25 District 2), as appropriate.

1 For purposes hereof, "proportionate share
2 payment" means a contribution from a developer or owner of a
3 DRI to the local government or the governmental agency having
4 maintenance responsibility for those facilities, which makes
5 adequate financial provision for the public transportation
6 facilities needed to accommodate the impacts of the proposed
7 development. The proportionate share payment shall be deemed
8 to make adequate financial provision for such facilities if it
9 is equal to or greater than the sum of the costs of
10 improvements attributable to the proposed development derived
11 from the application of the following formula. The costs of
12 improvements attributable to the proposed development are
13 based upon the sum of the cost of improving each significantly
14 impacted state and regional roadway which will operate at
15 worse than the level of service standard in the local
16 government's approved comprehensive plan or the FDOT level of
17 service standards for roads on the Florida Intrastate Highway
18 System at each project stage or project phase and at project
19 buildout. The proportionate share of the cost of improvements
20 of each such roadway is calculated according to the following
21 formula:

$$\frac{\text{(DRI trips)}}{\text{(SV increase)}} = \text{cost}$$

22
23 DRI trips = cumulative number of the 2-way trips from the
24 proposed development expected to reach the roadway during the
25

1 peak hour from the complete buildout of a stage or phase being
2 approved.

3 SV increase = the change in 2-way peak hour maximum
4 service volume of the roadway resulting from construction of
5 the improvement necessary to maintain the adopted level of
6 service. In determining the SV increase for US-1, the base
7 service volume shall be defined as the service volume for a
8 4-lane divided uninterrupted flow highway for urban areas as
9 described in the 2002 Quality/Level of Service Handbook,
10 published by the Florida Department of Transportation.

11 Cost = cost of construction, at the time of developer
12 payment, of an improvement necessary to maintain the adopted
13 level of service. Construction cost includes all improvement
14 associated costs, including engineering design, right-of-way
15 acquisition, planning, engineering, inspection, and other
16 associated physical development costs directly required and
17 associated with the construction of the improvement, as
18 determined by the governmental agency having maintenance
19 authority over the roadway.

20 **9. Air Quality.**

21 The following dust control measures shall be
22 undertaken by the Developer during all construction activities
23 throughout build-out of the Palm Coast Park DRI:
24
25

1 (a) Contractors shall moisten soil or use resinous
2 adhesives on barren areas, which shall include at a minimum,
3 all roads, parking lots or material stockpiles;

4 (b) Contractors shall use mulch, liquid resinous
5 adhesives with hydro-seeding or sod on all landscaped areas;

6 (c) Contractors shall remove soil and other dust-
7 generating material deposited on paved streets by vehicular
8 traffic, earth-moving equipment or soil erosion; and

9 (d) Contractors shall utilize best operating
10 practices in conjunction with any burning resulting from land
11 clearing, which may include use of air curtain incinerators.

12 **10. Hurricane Evacuation.**

13 (a) All residents of the Palm Coast Park DRI shall
14 be provided by the Developer with information regarding the
15 vulnerability of the development to the impacts of hurricanes.
16 This information shall take the form of educational materials
17 designed to increase evacuation participation.

18 (b) No residential units shall be developed within
19 the category 1, 2 or 3 storm surge inundation zone, based on
20 the final survey and referenced with the storm surge levels
21 indicated in the 1998 Northeast Florida Hurricane Storm Surge
22 Atlas Series.

23 (c) Prior to the construction of the bridge crossing
24 the Hulett Branch, an engineering study shall be completed
25 that includes analysis to ensure the final structure shall

1 remain stable and not be damaged by the surge flow during a
2 hurricane storm event.

3 **11. Affordable Housing.**

4 (a) Prior to the commencement of development of
5 Phase 2 and Phase 3, the Developer shall reanalyze the
6 affordable housing impacts of the Palm Coast Park DRI. The
7 methodology to be utilized to complete this reanalysis and the
8 results of the reanalysis shall be reviewed and approved by
9 the DCA (or its successor), the NEFRC and the City. The
10 reanalysis shall also include an assessment of need for
11 moderate-income housing generated by the Palm Coast Park DRI.
12 If the reanalysis indicates that employees within the Palm
13 Coast Park DRI are having a significant problem finding
14 affordable housing in reasonable proximity to their places of
15 work, that impact shall be mitigated as appropriate. This
16 ~~Development Order~~Second Amended and Restated DO shall be
17 amended to incorporate appropriate mitigation strategies for
18 any identified affordable housing impacts prior to the
19 commencement of Phase 2 development.

20 (b) Any addition to the development of the
21 non-residential portion of the Palm Coast Park DRI in excess
22 of 200,000 square feet of office space, 300,000 square feet of
23 retail space, 200,000 square feet of light industrial space
24 and 40,000 square feet of institutional space during Phase 1
25 shall require an assessment of new affordable housing impacts

1 associated with the employees of the additional non-
2 residential development.

3 **12. Police and Fire Protection.**

4 (a) The Developer shall deed to the City two (2) or
5 more Fire Station Sites acceptable to the City, containing up
6 to 6 acres in total, which shall be located within a service
7 delivery area acceptable to the City for purposes of providing
8 fire and rescue services to the Palm Coast Park DRI. The Fire
9 Station Sites shall be deeded to the City free of charge, in a
10 form acceptable to the City, and shall be free and clear of
11 liens or encumbrances. The Developer shall convey title to
12 the first Fire Station Site to the City within 180 days
13 following a request by the City.

14 (b) Prior to the construction of any development
15 exceeding 3 stories in height, one of the following scenarios
16 must occur within the 3-mile service delivery area:

17 (i) The operation of an aerial apparatus
18 available on a 24-hour, 7 days a week basis; or

19 (ii) The Developer has contributed a
20 proportionate share of the cost of an aerial apparatus based
21 upon approved non-residential development square footage and
22 residential units in excess of 3 stories within the service
23 delivery area (fire station within 3 miles). An agreement for
24 provision of service reached between the Developer and the
25

1 City with regard to proportionate share contributions may
2 supercede this condition at the City's election.

3 13. Recreation and Open Space.

4 (a) The Developer shall deed ~~or cause project~~
5 ~~developers to deed~~ to the City, on a form ~~or forms~~ acceptable
6 to the City, title to 74 acres of land to serve as park sites.
7 ~~The acreage shall consist of 2 or more parcels, each of which shall contain~~
8 ~~at least 50% of contiguous uplands, 1~~ (together "Park Sites";
9 individually "Park Site"). The Park Sites shall consist of
10 Tracts A and 5F and Tract 10C or a site in Tract 9 or Tract
11 10A, as shown on **Second Revised Exhibit "D"** hereto. At least
12 50% of each Park Site shall consist of contiguous reasonably
13 compact uplands. Conveyance of ~~which shall be located on title to~~
14 the ~~east side of US 1 approximately 1½ miles south of~~ Park Sites to the
15 ~~Matanzas Woods/US 1 intersection. The conveyance of land~~ City shall not
16 relieve the Developer of its obligations to pay the ~~City's Park~~
17 ~~Impact~~ City's park and recreation impact fees.

18 ~~(b) In addition, the Developer shall provide~~
19 ~~facilities within the Palm Coast Park DRI consistent with~~
20 ~~guidelines provided in the State Comprehensive Outdoor~~
21 ~~Recreation Plan, including the type and amount of activity-~~
22 ~~based facilities to serve the population of the Palm Coast~~
23 ~~Park DRI.~~

24 ~~(c) The Developer shall construct a direct trail~~
25 ~~connection between the existing school sites and the City park~~

1 ~~site on Belle Terre Parkway to a park and/or school site with~~
2 ~~frontage along the linear park that will parallel US-1.~~
3 ~~Additionally, the Developer shall construct a multi-purpose~~
4 ~~trail system connecting commercial areas with residential~~
5 ~~areas and recreational amenities within the Project and to~~
6 ~~adjacent sidewalks and trails as shown on **Exhibit "G"** hereto.~~
7 ~~The Project's internal sidewalk system may be used as~~
8 ~~connections between trail segments where appropriate. The~~
9 ~~trail system shall be identified in future planned unit~~
10 ~~development zoning and/or site plans submitted to the City and~~
11 ~~shall be consistent with the City's trail plan as provided for~~
12 ~~in the City's Comprehensive Plan.~~

13 ~~The Developer may be entitled to park impact fee credits~~
14 ~~from the City for Public Parks in the amount of the cost of~~
15 ~~donated Park Facilities in accordance with the City's Park~~
16 ~~System Impact Fee Ordinance.~~

17 (b) In cooperation with City staff, the Developer
18 and the CDD shall use due diligence to prepare a conceptual
19 park site plan for Tract A, as shown on **Second Revised Exhibit**
20 **"D"** hereto (the "Community Park Site") and permit and improve
21 the Community Park Site so buildings, playfields and other
22 recreational facilities can be constructed thereon in the
23 future without additional site preparation ("Site
24 Improvements"). Site Improvement shall include clearing (to
25 the extent required), excavating a pond, or ponds, sufficient

1 in size to provide stormwater retention for the Community Park
2 Site, depositing and leveling the excavated fill material on
3 the site, seeding and mulching to establish suitable ground
4 cover and planting trees in compliance with Section 3(d) of
5 **Second Revised Exhibit "H" hereto.**

6 (c) Within 12 months following completion of the
7 Site Improvements (subject to permitting delays) the Developer
8 and the CDD shall design and construct roadway improvements to
9 provide access from US-1 to the Community Park Site costing up
10 to \$300,000 (the "Access Improvements"). The Access
11 Improvements may include US-1 median improvements, acceleration
12 and deceleration lanes and a shared access road with adjacent
13 Tract 4. If the cost to design and construct the Access
14 Improvements is less than \$300,000, the Developer and the CDD
15 will spend the difference to install landscaping or make other
16 improvements to the Community Park Site as determined by the
17 City (the "Other Improvements").

18 (d) Consistent with (a) above, when Site
19 Improvements are completed, the Developer (Palm Coast Land,
20 LLC) shall convey to the City title to the Community Park Site,
21 free and clear of any liens and other encumbrances, including
22 CDD assessments, but subject to easements in favor of the CDD
23 for the existing frontage park along US-1 (the "US-1 Frontage
24 Park") and the segment of the trail connection between Belle
25 Terre Parkway and US-1 that runs through the Community Park

1 Site (the "Trail Segment"). The conveyances will also be
2 subject to a covenant that the City will enhance and maintain
3 the ground cover and landscaping in the segment of the US-1
4 Frontage Park that is located on the Community Park Site at
5 such time as the Community Park Site is developed as an active
6 park by the City, as mutually agreed on by the Developer and
7 the City so the US-1 Frontage Park will have a uniform
8 appearance as the tracts along US-1 are built out. The
9 easement for the Trail Segment may be relocated by the City
10 consistent with the park site plan for the Community Park Site.
11 In the event the City desires to relocate the easement for the
12 Trail Segment, the City shall notify the Developer, providing
13 therewith a legal description of the location to which the City
14 desires to relocate the Trail Segment, and within ninety (90)
15 days following receipt thereof, the Developer shall cause the
16 CDD to execute and deliver to the City a recordable instrument
17 that legally relocates the easement for the Trail Segment as
18 requested by the City.

19 (e) Also consistent with (a) above, upon the City's
20 request, the Developer shall convey or require the project
21 developer to convey to the City, title to Tracts 5F and 10C or
22 a site in Tract 9 or Tract 10A, at Developer's election.
23 Subject to approval of the City, title to Tracts 5F and 10C, or
24 a site in Tract 9 or Tract 10A, may be conveyed to the CDD or a
25 property owners' association for use as neighborhood parks.

1 (f) The City hereby acknowledges that the Developer
2 and the CDD completed the design of an offsite trail connecting
3 the existing multi-purpose trail system within the Project
4 along the southern side of Matanzas Woods Parkway to the
5 existing sidewalk or trail that connects to the Matanzas High
6 School, including a bridge over Bellaire Waterway (the
7 "Matanzas Woods Parkway Trail"), and those plans were provided
8 to Flagler County at no cost so the Matanzas Woods Parkway
9 Trail can be constructed using available grant funds.

10 (g) By **December 31, 2012** (subject to any permitting
11 delays), the Developer and the CDD shall design, permit and
12 construct an offsite trail connecting the existing multi-
13 purpose trail system within the Project from its current
14 southern terminus along the eastern side of US-1 to Palm Coast
15 Parkway, and from there, along the northern side of Palm Coast
16 Parkway to the existing sidewalk fronting the Baptist Church
17 site (the "US-1/Palm Coast Parkway Trail Extension"). The
18 location of the US-1/Palm Coast Parkway Trail Extension is
19 shown on **Exhibit "I"** hereto and the design cross-section and
20 specifications for the US-1/Palm Coast Parkway Trail Extension
21 are shown on **Exhibit "J"** hereto. In compensation for the
22 Developer acting as the CDD's project manager for the design of
23 the Matanzas Woods Parkway Trail, the design and construction
24 of the US-1/Palm Coast Parkway Trail Extension, and obtaining
25 easements from third parties, the City shall relieve and

1 release the Developer (Florida Landmark Communities, LLC) from
2 its obligation to install sidewalks at Citation Commerce Park
3 (performance bond #104470866) and Seminole Pointe (performance
4 bond #104470869) and hereby authorizes the Developer to reduce
5 those bond amounts accordingly.

6 (h) The City hereby acknowledges that the Developer
7 has already satisfied a portion of its requirement to provide
8 recreation and open space at Palm Coast Park by constructing
9 Hewitt Sawmill Park, as well as the direct trail connection
10 between the existing school sites on Belle Terre Parkway
11 through the Community Park Site to the trail within the US-1
12 Frontage Park. Additionally, the Developer has constructed a
13 multi-purpose trail system connecting commercial areas with
14 residential areas and recreational amenities within the Project
15 to adjacent sidewalks and trails as shown on **Exhibit "G"**
16 hereto. The Project's internal sidewalk system may be used as
17 connections between trail segments where appropriate. The
18 trail system shall be identified on site plans submitted to the
19 City and shall be consistent with the City's trail plan as
20 provided for in the City's Comprehensive Plan.

21 (i) The Developer hereby waives any right to park
22 and recreation impact fee credits for park and recreation
23 impact fees that are paid in connection with the development
24 within the Palm Coast Park DRI for donation of the Park Sites,
25 Site Improvements, designing the Matanzas Woods Parkway Trail,

1 constructing the US-1/Palm Coast Parkway Trail Extension and
2 designing and constructing the Access Improvements and the
3 Other Improvements.

4 **14. Education.**

5 Residential development within the Palm Coast Park
6 DRI shall cease if adequate school facilities are not in place
7 at a time that impacts occur to handle the school age children
8 generated by the Palm Coast Park DRI. The Developer shall
9 dedicate ~~upor~~ cause the project developer to dedicate a 25
10 acre school site ~~at,~~ consisting of all or a ~~location~~
11 ~~acceptable~~ portion of Tract 10B, to the ~~City and the~~ Flagler
12 County School District ~~which site shall, if desired by the~~
13 ~~City and the School District, be located in or adjacent to a~~
14 ~~City Park site.~~

15 **15. Historical and Archaeological Sites.**

16 The Florida Master Site file has indicated that 2
17 archeological sites (8FL14, Hewitt's Mill and 8FL186, and the
18 Old King's Road) exist on the DRI Property.

19 No development shall commence within ¼ mile of
20 archeological sites 8FL14, Hewitt's Mill and 8FL186, and the
21 Old Kings Road until the Archaeological Investigation Final
22 Report has been reviewed and accepted by the State Historic
23 Preservation Officer ("SHPO"). Any and all conditions set
24 forth or otherwise agreed to in the SHPO letter of acceptance
25

1 shall become a condition of this ~~Development Order~~Second
2 Amended and Restated DO.

3 In the event any other regionally significant
4 historical and archaeological resources are discovered in the
5 course of development, the Developer shall immediately notify
6 the Division of Historical Resources ("DHR"). No disruption
7 of the findings shall be permitted until the investigation is
8 complete and DHR has rendered a recommendation, which shall be
9 binding to the Developer.

10 **16. Land Uses and Development.**

11 Development within the Palm Coast Park DRI shall be
12 permitted in accordance with the terms and conditions that are
13 setforth on Second Revised Exhibit "H" hereto which are
14 consistent with the City's Comprehensive Land Use Plan.

15 ~~17. Additional DRI Property.~~

16 ~~In the event the City and Palm Coast United Methodist~~
17 ~~Church, Inc., (hereinafter referred to as the "Church") come~~
18 ~~to agreement and close on a transaction relative to right-of-~~
19 ~~way acquisition for the Belle Terre Parkway Road Improvement~~
20 ~~Project, the Developer and the Church agree to exchange of~~
21 ~~lands whereby the Developer will acquire lands from the Church~~
22 ~~which are currently outside of the DRI Property boundary (see~~
23 ~~Exhibit "I-1" attached hereto) and the Developer will transfer~~
24 ~~lands to the Church which are currently within the DRI~~
25 ~~Property boundary (see Exhibit "I-2" attached hereto)~~

1 ~~(collectively the "Church Land Exchange"). In such event, the~~
2 ~~DRI Property, Master Plan and Tract Map shall be modified in~~
3 ~~accordance with the Church Land Exchange, provided the Church~~
4 ~~Land Exchange will not cause an increase in the permitted land~~
5 ~~use totals for the Palm Coast Park DRI from that shown in~~
6 ~~Section 3 under Part II above. The property acquired by~~
7 ~~Developer shall be incorporated into Tract 11.~~

8 **WHEREFORE**, the parties hereto have caused these presents
9 to be signed all as of the date and year first above written.

10
11 ATTEST:

CITY OF PALM COAST

12 _____
~~Clare Hoeni~~

_____ ~~James V. Canfield~~

13 _____
Jon Netts, Mayor

14 City Clerk
15
16
17
18
19
20
21
22
23
24
25

DEVELOPER'S COVENANT AND AGREEMENT

COMES NOW, the undersigned, and covenant and agree to the foregoing.

WITNESS my hand and official seal this ___ day of _____, 2007__.

WITNESSES: ~~FLORIDA LANDMARK COMMUNITIES, INC., a Florida corporation~~

~~William I. Livingston Its President~~

~~PALM COAST FOREST, LLC, a Florida limited liability company~~

~~William I. Livingston Its Manager~~

PALM COAST LAND, LLC, a Florida limited liability company

William I. Livingston Its Manager

STATE OF FLORIDA)
COUNTY OF FLAGLER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2007__, by **William I. Livingston**, the

1 ~~President, for and on behalf of the Florida Landmark~~
2 ~~Communities, Inc.; the~~ Manager, for and on behalf of Palm
3 Coast Land, LLC ~~and Palm Coast Forest, LLC, both being Florida~~
4 ~~limited liability company,~~ who is personally known to me and
5 who did not take an oath.

6 WITNESS my hand and official seal this ___ day of _____,
7 2007.

8
9 .

Signature

10
11 (Seal)

Printed Name