

**STATE OF FLORIDA  
THE SEVENTH JUDICIAL CIRCUIT COURT  
IN AND FOR THE COUNTY OF FLAGLER  
CIVIL DIVISION**

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**DENNIS K. MCDONALD,**

Plaintiff,

Case No. 13- CA 816

-v-

**CITY OF PALM COAST, et al,**

Defendant(s).

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**COMPLAINT FOR INJUNCTIVE RELIEF**

**COMES NOW** the Plaintiff, Dennis K. McDonald, through his attorney, Joshua D. Knight, and for his Complaint to this Honorable Court states as follows:

**JURISDICTION AND VENUE**

1. This action is subject to the jurisdiction of this Court, as it involves an action seeking equitable (i.e. injunctive) relief.
2. The cause of action complained of in this case arose in City of Palm Coast, Flagler County, Florida.

**THE PARTIES**

3. Plaintiff, Dennis McDonald, is an individual residing in Palm Coast Florida.
4. Defendant, City of Palm Coast, is an incorporated municipality in the State of Florida.

## FACTUAL ALLEGATIONS

5. Defendant, by virtue of incorporation in December of 1999, is bound and beholden to a certain Declaration of Restrictive Covenants and Easements recorded at Official Records Book 479, Pages 971 through 989 (attached hereto as Exhibit "A") on December 18, 1992 by the City of Palm Coast's original developer, ITT Community Development Corporation (hereinafter referred to as "CNR's").
6. Said CNR's set forth, inter alia, that the canopy trees and all other landscaping designs were considered to be an integral part of the overall design in order to preserve the existing aesthetic integrity of the Parkway East area, in particular the Palm Harbor Shopping Center, and its surrounding outparcels.
7. On or about February 20<sup>th</sup> and March 19<sup>th</sup>, 2013, Defendant, City of Palm Coast, through its City Council, approved a setback variance, which would allow for the cutting down and/or destruction of mature trees on the premises of and surrounding the Palm Harbor Shopping Center in the Parkway East area of Palm Coast, to allow expansion and renovation of the shopping center's commercial space, parking lots, and setbacks. (See minutes from aforementioned City Council meeting attached hereto as Complaint Exhibits B and C).
8. The action by Defendant City of Palm Coast was taken without the City Council's passage of variances following recommendation(s) from the Planning and Land Regulation Board or Architectural Review Committee, pursuant to the provisions of the original Planned Unit Development filing, and in contradiction of the original CNR's.
9. The subject trees to be removed number three hundred ninety eight and include a number of old oak trees and other mature shade trees, which create a canopy effect and a sense of privacy and aesthetic beauty for residents and visitors coming into and leaving town. In addition, the CNR's strictly prohibit anyone from removing any live tree with a trunk of four (4) inches or more in diameter. (See OR 0479 PG 0971, Section 4(b)).
10. Such trees have been marked and, on information and belief, the destruction of the trees is imminent.

11. Per the City's variance, such trees are to be replaced with sapling palm trees rather than the indigenous canopy trees that have provided shade, privacy, and aesthetic appeal to current and potential residents of the City.

### **INJUNCTIVE RELIEF**

12. Plaintiff restates and incorporates by reference Paragraphs one through eleven of the above Complaint.

13. The actions of the City of Palm Coast City Council are in violation of the letter and the spirit of the PUD enacted in 2003 for the Parkway East area of Palm Coast, and the Covenants and Restrictions originally designed, envisioned and marketed by ITT to preserve a specific quality of environment.

14. Plaintiff, along with the other residents of the Parkway East area of Palm Coast will be permanently and irreparably damaged by the loss of mature canopy (shade) trees in an area where residents and visitors, including Plaintiff, ingress and egress the Parkway East area of town on a regular basis.

15. The damages include the loss of privacy and aesthetic beauty, which will not be replaced despite the age of the replacement sapling palm trees, trees which will take years to grow and will never provide the same canopy effect and sense of privacy provided by the current mature canopy of trees that the Defendant intends to cut down.

16. Plaintiff owns property in the City of Palm Coast, less than three (3) miles from the Harbor Place Shopping Center area in which the trees are scheduled to be cut down.

17. The damages include the likely diminution of property values, including Plaintiff's property, resulting from the loss of the mature shade trees and the sense of privacy and aesthetic beauty

which are a prime attraction to persons looking to Palm Coast as a place to live and raise their families.

18. Plaintiff has no adequate remedy at law that will prevent the irreparable harm cited above.

19. It is in the public interest that this Court grants preliminary and permanent injunctive relief the preventing Defendant from taking the arbitrary and unlawful actions cited above.

20. The harm to Defendant from maintaining the status quo is outweighed by the anticipated damages to Plaintiff and the residents of the city of Palm Coast, more specifically, those residing in the Parkway East area of the City.

**WHEREFORE**, Plaintiff prays for relief against Defendant as follows:

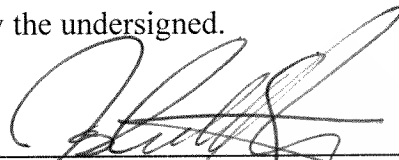
A. That the Court enter preliminary and permanent injunctive relief enjoining Defendant, per its resolution of February 26<sup>th</sup>, 2013, from removing healthy, mature shade trees on the premises and surrounding right of way of the Palm Harbor Shopping Center and Parkway East area of Palm Coast Parkway.

B. That the Court issue a temporary restraining order enjoining Defendant, and any other third party, from cutting down or otherwise removing healthy, mature trees until and unless Defendant can demonstrate to the Court in writing, with copy to Plaintiff's counsel, that such removal is authorized in accordance with any existing CNR's, and that the Planned Unit Development ordinances have been properly amended per such ordinance after recommendation by the Planning and Land Regulation Board, or through a properly sanctioned and overseen referendum vote.

C. That the Court award Plaintiff its costs, expenses and reasonable attorney fees incurred therein; and

D. That the Court award Plaintiff such other relief as to which he may be entitled.

Respectfully submitted this 8<sup>th</sup> day of August, 2013 by the undersigned.



**Joshua D. Knight, Esq.**  
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**STATE OF FLORIDA  
THE SEVENTH JUDICIAL CIRCUIT COURT  
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**DENNIS K. MCDONALD,**

PLAINTIFF,

Case No. 13-

-V-

**CITY OF PALM COAST, et.al.**

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the Complaint for Injunctive Relief upon the following parties on this 8<sup>th</sup> day of August, 2013.

Hand Delivery

Clerk of the Court Civil Division  
Kim C. Hammody Justice Center  
1769 East Moody Boulevard  
Building One  
Bunnell, Florida 32110

By First Class, Postage Paid U.S. Mail

William E. Reischmann, Jr.  
City Attorney for the City of Palm Coast  
160 Cypress Point Parkway  
Suite B-106  
Palm Coast, FL 32164

  
\_\_\_\_\_  
Joshua Knight, Attorney



\$7.00

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2/7 PLAT

(K-Mart)  
Rev: 12/3/92

# DECLARATION OF RESTRICTIVE COVENANTS AND EASEMENTS

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DECLARATION made this 7th day of December, 1992, by ITT COMMUNITY DEVELOPMENT CORPORATION, a Delaware Corporation, hereinafter called the "Company."

WHEREAS, the Company is the owner of certain lands in Flagler County, Florida, more particularly described in attached Exhibit A (hereinafter sometimes referred to as "property", "land" or "Project").

WHEREAS, the property is subject to certain restrictions as a result of legally binding agreements between the Company and the State of Florida and must further comply with a Comprehensive Land Use Plan adopted as a result of those agreements.

WHEREAS, the Company will retain lands in the proximity to the property whose value may be affected by the use of the property.

WHEREAS, in light of these considerations it is the Company's intention that the property be made subject to certain uniform covenants and easements and that any prior covenants and easements heretofore made by the Company are hereby canceled and set aside and replaced in their entirety by the covenants and easements herein declared.

NOW, THEREFORE, the Company declares that the property is held and shall be sold by it subject to the following covenants and easements which shall run with the property for thirty (30) years from the date hereof, after which time they shall be automatically extended for successive periods of ten (10) years each, except the easements and licenses referred to in Paragraph C.13(a) and Paragraph C.13(b) hereof shall be perpetual in duration.

## A. USE OF PROPERTY

1. (a) The property shall be used exclusively for the following uses as defined by the Standard Industrial Classification (SIC) Manual 1987, issued by the Executive Office of the President Office of Management and Budget:

Retail Trade	- SIC Code Nos. 521-526, 531-541, 545-549, 551-594.
Automobile Service Stations	- SIC Code No. 554
Banking and Financing	- SIC Code Nos. 601-615, 631-639 and 641.
Professional and Business Services	SIC Code Nos. 7011, 733, 737, 811, 871 and 872.

(b) No activity of any kind that is of a noxious, offensive or dangerous nature shall be carried on in any part of the property nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood by reason of, but not limited to, emission of dust, odor, gas, smoke, fumes or noise.

(c) Except for a reasonable period during the actual development and construction of the improvements and appurtenant facilities, not to exceed eighteen (18) months, no trailer, tent, shack, or other structure shall be erected on or used on the land, except with the express written permission of the Company, and in no event shall such structure(s) be used as living quarters.

(d) In no event shall anyone with an ownership or possessory interest in the property be permitted to erect and/or engage in any type of business on the property other than for the purposes listed in Paragraph A.1.(a) above without the express written approval of the Company.

"A"

(e) With respect to Lot 1, as shown on the Recorded Plat (as such term is defined in Paragraph C(1) hereinbelow), only retail and/or service stores shall be allowed to operate thereon, and no spa, lounge, bar, "teen lounge", bowling alley, pawn shop, skating rink, bingo or electronic or other game parlor, theater (either motion picture or legitimate), business or professional offices, sales of automobiles, health, recreational or entertainment-type activities, or non-retail or non-service type activities, shall be permitted to operate thereon; provided, however, that up to 5,000 square feet of space within said Lot 1 may be utilized for business or professional offices.

## B. ARCHITECTURAL REVIEW COMMITTEE/SUBMITTAL PROCESS

### 1. Functions

(a) No building, structure, or improvement of any kind shall be erected, placed, altered or permitted to remain on the property unless the Architectural Review Committee (hereinafter called the "Committee") has reviewed and approved a site plan, a landscape development plan, exterior elevations and such other plans and specifications as may be required by the Committee. The Committee shall review the proposed submission as to the type and quality of materials, harmony of the exterior design and location of the building or structure with existing buildings or structures, location of the building or structure with respect to topography, trees, vegetation finished grade elevation, floor slab, exterior color(s) of any building or structure and any other considerations determined to be relevant by the Committee. Upon completion of the proposed improvements, an "as-built" survey showing the finished floor and grade elevation and location of all improvements shall be filed with the Committee.

(b) The Committee acknowledges that if it fails to approve or disapprove any design, location, the kinds of materials to be used in the building or any other function required to be performed by it within thirty (30) days after receipt of all required submitted materials, then approval shall not be required.

### 2. Two-stage Review Process

The Committee shall review the proposed improvement of the property in two stages:

(a) A preliminary review shall be made of 1) a conceptual site plan showing the proposed location of all buildings, structures and improvements, 2) conceptual building elevations and/or perspectives showing the type of construction, materials and colors and 3) a conceptual landscape development plan based on a tree survey of the site delineating all pine trees 10" or greater in diameter and all hardwood (oak, maple, etc.) 6" or greater in diameter.

(b) The procedure by which existing trees will be protected both during and after construction shall be provided to the Committee during the initial review stage. It is the committee's intent to retain existing tree cover wherever possible. All site plan submittals for the property shall include a clearing plan.

(c) Following written approval by the Committee of all preliminary plans, a final review shall be made by the Committee of a final site plan, final building elevation and/or perspectives and a final landscape development plan. All submittals for review and approval under this section shall conform to the requirements of the Committee.

### 3. Required Site Plan and Building Architectural Information.

A site plan should be presented at a minimum scale of 1" equals 50' and building architectural at a minimum scale of 1/8" equals 1'. The plans must include the following:



(a) Location, size (total square feet), setback dimensions and floor plans for all proposed buildings, including storage areas and anticipated future expansion at full development.

(b) Driveways and curb cuts with arrows indicating vehicular traffic patterns into and out of the property.

(c) Layout of vehicle parking areas with stalls separately designated for the handicapped, employee cars and other vehicles. Parking areas for both initial and full development should be indicated.

(d) Indication of paved areas with extent and type of paving shown and the drainage pattern identified for all parking and storage areas.

(e) All areas to be landscaped in accordance with Paragraph C.4. of these Restrictive Covenants and Easements.

(f) Location and identification of utilities which cross Company-owned land to serve the building or buildings on the property, including but not limited to gas, electricity, telephone, water, sewers and other such utilities.

(g) Building elevations and/or perspectives of the proposed building, buildings, additions or other structures showing type of construction, materials and colors. All exterior facilities, including but not limited to outside storage rooms and solid waste receptacle areas, shall be either architecturally integrated to appear to be part of the building or adequately shielded from public view.

(h) Other site information, including driveways and their widths, property lines, dimensions, location and description of fences (material, type, color and height), yard and street lights, irrigation system and any other site features or conditions.

(i) Location of any special appurtenances, including but not limited to all roof mounted equipment, outside air conditioning equipment, exhaust fans, vents and storage facilities. This equipment shall be architecturally integrated with the building so as to adequately shield it from public view.

#### 4. Approved Site Plan and Building Architecturals

(a) Upon receipt of the Committee's written approval of the site plan and building architecturals (hereinafter collectively referred to as "plans"), any person or entity with possessory interest in the property or their designee, shall, if necessary, file an application for a building permit with the appropriate governmental agencies having jurisdiction thereof.

(b) Commencement of site clearing and/or construction will be permitted only after:

(1) the issuance of a building permit to any person with possessory interest in the property or their designee by the appropriate governmental agency having jurisdiction thereof,

(2) the issuance of a stormwater (on-site treatment) drainage permit from the St. John's River Water Management District or other governmental agency having jurisdiction, and

(3) the person or entity with possessory interest in the property has received the Committee's written approval of the plans.

(c) In addition to the plans required by the governmental agency issuing the building permit, an additional set of plans shall be provided to the Committee prior to commencement of construction, and said plans shall bear a stamp demonstrating approval of said plans by the governmental agency issuing said building permit.

(d) Plans for all future construction or other site improvements not shown in the application for a building permit shall be submitted to the Committee for review in accordance with the procedure outlined above.

(e) The Committee's final written approval for the plans is not an endorsement for, or guarantee of, the structural integrity of the building.

(f) Any substantial deviation in the plans must be submitted to the Committee for review prior to construction or installation. If the deviation is not approved in writing by the Committee, it may not be constructed or installed.

#### 5. Landscape Development Plans and Identification Signs

The Company considers the landscape development and identification signs to be an integral part of the overall design of the facility. In order to preserve the existing aesthetic integrity of the site and its landscape treatment, all submitted landscape plans shall be certified by a Florida registered landscape architect. Three (3) copies of the following shall be submitted to the Committee for review:

(a) Landscape Development Plans showing names of all trees, shrubs and ground covers, their dimensions, locations, quantities, spacings, irrigation facilities and other landscape construction details together with specifications describing the work.

(b) All areas to be seeded or sodded must be shown indicating type of grass and limit lines of seeded or sodded areas.

(c) Identification signs with sufficient illustrations showing size, type of material, color, language, location and type of illumination.

(d) Written approval of the landscaping plans and identification sign drawings will be concurrent with written approval of the final plans.

#### 6. Architectural Review Committee

(a) The Committee shall consist of at least three (3) persons, all of whom shall be designated by the Company.

(b) Any person or entity seeking any action or decision by the Committee shall hold the Committee, the Company, their agents, servants, employees or other designees harmless from any and all claims, whether valid or invalid, arising from such action, or decision. Such person or entity shall also pay all costs and attorneys fees incurred by the Committee, the Company, their agents, servants, employees or other designees, arising from such claims.

(c) Paragraph 6(b) above shall not apply to claims of third parties pertaining to the Committee's aesthetic approvals of the improvements to be constructed on the property.

(d) The Committee shall have the power to promulgate rules and regulations as necessary to enforce these Restrictive Covenants and Easements, and shall have the power to grant variances to any such rule or regulation.

#### C. GENERAL DEVELOPMENT STANDARDS

Any and all improvements, buildings and/or structures, storage or display areas, or any part or projection thereof, at any time constructed or maintained and extended above the ground surface of the property shall conform with the following:

##### 1. Set Back and Yard Restrictions

No part of any anchor tenant building or primary facility structure shall be located nearer than one hundred (100') feet from the right-of-way (ROW) line of Palm Coast Parkway and Cypress Point Parkway, fifty (50') feet from any ROW line of any internal Project roads and fifty (50') feet from any

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property line of any adjacent property within the Project. No building on Lots 2-7 of the Subdivision Plat of Southwest Quadrant Phase I, as recorded in Map Book 29, Pages 94 through 95, of the Public Records of Flagler County, Florida (herein referred to as the "Recorded Plat") (which Lots are hereinafter referred to as "out parcels") shall be located closer than fifty (50') feet from the Palm coast Parkway ROW, thirty-five (35') from any ROW line of any internal Project roads, and twenty (20') feet from any property line of any adjacent property within the Project. Final approval of all setbacks and landscape treatment for any structure shall be determined upon receipt of the final site location plans as set forth in Paragraph C of these Restrictive Covenants and Easements.

## 2. Height Limitations

No structures built in the Project shall exceed four (4) stories in height, or be in excess of forty-five (45') feet in height from the crown of the nearest improved road. No structures built on the "out parcels" as defined in Paragraph C.1. above, shall exceed two (2) stories in height, or be in excess of twenty nine (29') feet in height from the crown of the nearest improved road.

## 3. Coverage Limitations

The maximum allowable impervious area, including but not limited to buildings, parking and pavement, now or in the future, shall not exceed seventy percent (70%) of the total land area of each platted parcel within the Project. A minimum of thirty percent (30%) of each platted parcel within the Project shall remain pervious and be treated with landscape plantings, grass or other material approved in writing by the Committee. No exterior wall footprint of any buildings constructed on the "out parcels", as described in Paragraph C.1. above, shall exceed twenty five percent (25%) of the square footage of the respective out parcel.

## 4. Landscaping Requirements

(a) All unpaved areas or areas reserved for future expansion and/or use shall be landscaped and irrigated in accordance with acceptable landscaping standards and only after the written approval of the Committee has been given, including to the edge of the pavement of all adjacent ROW's.

(b) All trees, plants and shrubs shall be varieties that are adaptable to the local soil and climate condition, and, in the sole judgment of the Committee, shall blend with existing natural growth and shall be compatible with adjacent landscaped areas. No person shall remove any live tree with a trunk of four (4) inches or more in diameter (as measured one (1) foot from ground level) without the prior written consent of the Committee. Further, sufficient evidence shall be given to the Committee to show that the proposed development adjacent to any such existing tree will not adversely affect their form, character or abilities to survive. Site planning and design shall save existing tree cover wherever possible.

(c) All landscaped areas shall be perpetually maintained in good condition at all times. No grass over four (4") inches in height shall be allowed to grow on the property.

(d) All landscape work proposed for the site shall have the prior written approval of the Committee (see Paragraph B above). Fully automated underground irrigation shall be provided to all landscaped areas including interior parking and vehicular use areas.

(e) No landscaping installation shall obscure sight distance in a manner that will create a traffic hazard at access areas, or within the existing interior vehicular use areas.

(f) All storage areas, garbage dumpsters, transformers, cooling towers, air conditioning equipment and other exterior equipment shall be effectively screened from the public view. If planted material is used for screening, it shall be installed at a minimum height of three (3') feet and shall form a continuous, unbroken, visual screen which completely screens the equipment from public view within a maximum of one (1) year after



planting. In the event planted material does not reach the required height within one (1) year, it shall be immediately replaced with mature plants that satisfy the height criteria. The planted material shall be a species which in Flagler County, Florida normally achieves a mature height of at least the height of the object to be screened.

(g) A landscaped area shall be required along all ROW's and property lines. The landscaped areas defined below are exclusive of areas required for swales, sidewalks or storm water retention.

(h) Because of the unique and unusual property configuration, the following landscaping guidelines shall apply. A minimum width of ten (10') feet of natural landscaped area shall be maintained along the westerly property line. A minimum width of ten (10') feet of landscaped area shall also be maintained between any internal roadways and any parking or vehicular use area. A fifteen (15') foot minimum landscaped area shall also be required immediately adjacent to Palm Coast Parkway ROW. The applicant should consider, and the Architectural Committee may require, property abutting Palm Coast Parkway ROW to be bermed in a manner that blocks direct visibility from Palm Coast Parkway ROW, especially to parking areas of the Project and areas designated for future expansion. Alternatively, these landscaped areas could be planted with a shrub tree screen of at least fifty (50%) percent opacity, with a minimum height of six (6') feet attained within one (1) year of planting. In the event planted material does not reach the required height within one (1) year, it shall be immediately replaced with mature plants that satisfy the height criteria. Some recommended shrubs and spacing are as follows:

- (1) Wax Myrtle 6' O.C.
- (2) Leylandii Cypress 6' O.C.
- (3) Southern Red Cedar 6' O.C.

A minimum width of ten (10') feet of landscaped area shall be maintained on out parcels of the Project abutting Palm Coast Parkway ROW in lieu of the 15' foot requirement. This area shall have the same screening requirements (e.g. 50% opacity at 6 feet within one (1) year of planting) as outlined above, with the remaining perimeter landscaping designed according to the Flagler County Land Development Code landscaping and buffer yard requirements and specifications.

(i) When a swale or retention area is located adjacent to the boundary line of a dedicated right-of-way or the parking/vehicular service area, the landscape treatment shall increase to create a level planting area at least six feet (6') in width measured from the top of slope of the swale or retention area to the pavement edge. If drainage is designed to sheet across the pavement into this area, it may be necessary to install concrete curbs and flumes or other alternative solutions to provide for adequate maintenance of the landscaped area.

(j) The minimum number and sizes of trees to be planted on a site shall be calculated as follows:

- (1) 1 canopy tree/each thirty-five (35') of road frontage - along all road ROW's
- (2) Other trees may be substituted at the following rate:
  - 3 Palms - 1 canopy tree
  - 2 small trees - 1 canopy tree

When substitutions are made, at least 50% of all required trees shall be canopy trees.

- (3) Minimum tree sizes shall be as follows:

Canopy tree: 3" - 3 1/2" caliper by 16' height  
Small tree: 1-1/2" - 2" caliper by 8' height  
Palms: 8' clear trunk

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All of the required trees shall be fully visible from the street but are not necessarily intended to be planted in a line across the front of the property.

(k) Immediately following initial site clearing, all pine trees of 10" caliper and over within 6 feet of cleared ground shall be sprayed with Lindane to prevent Pine Borer infestation. Any pine tree over 10" caliper that dies and was not sprayed as required shall be replaced by three (3) pine trees at least 12' high.

(l) The area between the building and parking edge shall be a minimum of 10' wide with a 3' wide minimum planting area unless otherwise approved by the Committee. Planting in this area shall include shrubs and a minimum of 1 canopy tree or 2 small trees or 3 palm trees for every 50' of the building facing the property lines.

(m) Vehicular use areas (driveways and paved parking) that are 4,000 or more square feet in size shall have at least one (1) square foot of interior landscaping for each twenty (20) square feet of vehicular use area. Each separate landscaped island shall contain a minimum of fifty (50') square feet of area and shall be at least six feet wide and six feet deep in all locations. This interior landscaping shall include an average of at least one canopy tree for each one hundred (100') square feet of required landscaped area. The remainder of the required landscaped area shall be landscaped with grass, ground cover or other landscaped treatment. Such landscaped areas shall be located in such a manner as to divide and break up the vehicular use area.

(n) Retention areas shall at all times be clean and well manicured. Side slopes and bottoms shall be sodded and mowed; mud bottoms are unacceptable.

(o) Once written approval is granted by the Committee for a final landscape plan, the person or entity with possessory interest in the property shall be responsible for ensuring that the landscape plan is executed in accordance with the plans and for the replanting of any plant material or tree that, regardless of cause, dies or is damaged.

(p) All landscaping shall be complete within eighteen (18) months from the commencement of construction or by the time the commercial enterprise is open for business, whichever occurs earlier.

##### 5. Construction and Exterior Standards

(a) All structures on the property shall be of permanent type construction with a fire retardant roof. In no instance shall trailers, mobile shelter units or similar structures be considered as permanent-type construction.

(b) Subject to labor disputes, unavoidable casualties, adverse weather conditions or other reasons beyond the control of the person or entity in possession of the property, all construction shall be completed within eighteen (18) months from commencement of construction.

(c) The company or the Committee may conduct inspections of the property and improvements thereon during the construction period to determine conformance with plans approved by the Committee.

(d) If any building or structure is extended, enlarged, repainted or reconstructed, the standards herein set forth shall apply with respect to such extended, enlarged, repainted or reconstructed portion or portions of such building or structure. No existing building or structure may be extended, enlarged, repainted or reconstructed without the prior written approval of the Committee. Special architectural attention shall be given to any building facade visible along Palm Coast Parkway.

(1) Notwithstanding the above paragraph, any repainting using the color previously approved by the Committee shall not require any additional approvals.



- (e) the following matters must be included in the design:
- (1) architectural treatment of exterior walls and roof material,
  - (2) screening of all mechanical equipment, including but not limited to roof mounted equipment and
  - (3) retention of existing vegetation where possible.

(f) Outside storage - see Section D.1.(e)(2) below.

#### 6. Signage

(a) No sign of any nature shall be erected or displayed on the property or on any structure on the property without the prior written approval of the Committee. All sign plans indicating type, location, size material and color shall be submitted to the Committee for written approval prior to installation. All signs shall be prepared in a professional manner.

(b) Subject to the preceding paragraph, directional signs shall be permitted.

(c) The Project may have one main entry identification sign facing the primary road frontage along Palm Coast Parkway ROW. Said sign shall consist of a single, regular geometric shape with area not in excess of ninety-six (96') square feet. Additionally, out parcels may have one (1) site identification sign with a maximum of thirty-two (32') square feet of area for buildings less than 10,000 square feet and a maximum sign area of forty-eight (48') square feet for buildings in the 10,000-to-50,000 square foot range. Identification signs shall be mounted on a fully skirted base clad in material compatible with the architecture of the building not to exceed eight (8') feet in height (as measured from crown of roadway to top of sign panel). Special consideration for sign placement is necessary to avoid a traffic visibility or hazard problem. The minimum property line setback is ten (10') feet.

(d) Subject to Paragraph 6.(c) above, one architecturally integrated wall sign may be placed upon the exterior wall for each business in the Project. No wall sign shall be permitted above the first floor. The sign area shall be limited to one (1) square foot for each horizontal, linear foot of business frontage with maximum limits as follows:

<u>Bldg Size (Sq. Ft.)</u>	<u>Maximum Sign Area (Sq. Ft.)</u>
50,000+	72
10,000 - 49,999	48
up to 9,999	32

The above provisions also apply to out parcel building wall signs.

(e) Signs shall not be placed or installed in a manner which creates a nuisance, casts glare or is otherwise detrimental to any person or the safe movement of traffic. Signs may be either internally lit or illuminated by shielded, ground-mounted fixtures concealed by landscaping.

(f) Flashing signs, advertising signs, billboards, portable signs, pylon signs, neon signs and moving signs are prohibited.

#### 7. Utilities

(a) All electrical and telephone lines shall be brought underground to the buildings on the property from the nearest available source. The person or entity with possessory interest in the improvements so served will be responsible for the cost of such service. Pad mounted electrical transformers shall be located and screened so as to prevent viewing from any public street or adjacent land.

(b) Easements shall be obtained for all utilities crossing the Company's land, including but not limited to sanitary sewer, storm sewer, water, gas, electricity and telephone. The Company agrees that it will grant all utility easements necessary for the development of the property, which easements shall allow the owners of any property within the Project to connect to and utilize the utility facilities that serve the Master

Development (as hereinafter defined). Conditions for such easements are as follows:

- (1) all utilities shall be underground,
- (2) any interruption in the service of a facility of the Company shall be coordinated with the Company,
- (3) backfilling, compaction and surface finish on and in land of the Company shall be in conformance with the Company's specifications,
- (4) as-built drawings of the underground utilities within the easement area shall be furnished to the Company after completion of installation and

(5) the Company and its subsidiaries, their agents, servants and employees shall be indemnified from any and all claims or damages which may arise directly or indirectly from the use of the easement area.

(c) Within ninety (90) days of central sewer and central water facilities becoming available to property within the Project, the owner of such property shall connect the improvements on such property to the central sanitary sewer and central water facilities and pay to Palm Coast Utility Corporation (the "Utility") or any other public or private water or sewer utility serving the property (or its designee) all costs arising therefrom, including but not limited to contribution in aid of construction and all rates, fees and charges for the connection and the use thereof. All water and sanitary sewer lines installed in the common areas of the Project, as herein defined, shall be maintained by the Utility.

(d) Process or other water uses that could contaminate the Utility's central water system shall be installed with the necessary appurtenances and equipment to protect said system from backflow or back siphonage.

(e) Fire protection systems, including but not limited to sprinkler standpipes and hydrants, if required, shall be designed and installed according to the codes of the National Board of Fire Underwriters and shall be connected to the central water system at locations separate from the domestic water tap. No connections shall be made to the fire protection system for uses other than fire protection.

(f) The central sewer system is designed to collect domestic type wastes at the property line. Should special treatment of waste be required by the Utility or any governmental authority having jurisdiction thereof, the owner of property within the Project so affected must obtain the prior written approval of the Utility, and, at his/its own expense, secure any permits or licenses that may be required from said governmental authority for said treatment.

(g) The owner of any property within the Project shall pay to the Palm Coast Community Service Corporation, a Florida not-for-profit corporation (hereinafter "PCCSC") that owner's share of the cost of maintenance of the community wide drainage system. Each owner's share is initially fixed at \$2.00 per month for property up to one acre in size and \$2.00 per month times the number of acres in each owner's property, rounded to the next highest acre, for property over one acre in size. This amount shall be billed to the owner of record by the PCCSC annually, in advance, and payable on January 1 of each calendar year. The amount of the assessment shall be subject to adjustment by the Board of Directors of the PCCSC on an annual basis. If adjusted, the rate of assessment for property of one acre or less shall be the same as that year's rate of assessment for residential Lots or Dwelling Units assessed by the PCCSC and the rate of assessment for property greater than one acre in size shall be the same as that year's rate for residential Lots or Dwelling Units, times the number of acres in the property, rounded to the next highest acre.

8. Parking and Access

(a) Adequate off-street parking shall be provided to accommodate all parking needs for employees, visitors and company vehicles on the site. No on-street parking is permitted. When a change in use or number of employees occurs, the Committee shall determine the number of additional off-street parking spaces to be provided in order to satisfy the intent of this section.

(b) The minimum parking standard shall be the total of the following unless specific approval to the contrary is granted in writing by the Company or Committee:

(1) One (1) parking space for each 200 square feet of gross leasable floor area used for office space, business, or professional service establishments;

(2) One (1) parking space for each 200 square feet of gross floor area used for general retail;

(3) One (1) parking space for each 50 square feet of gross seating area, plus one (1) space for each employee per shift for restaurants; and

(4) One (1) parking space for each 150 square feet of gross floor area used for convenience goods establishments, plus one (1) space for each employee.

(c) Adequate off-street loading areas shall be provided. Each area shall be at least twelve (12) feet wide and thirty-five (35') feet deep with a minimum vertical clearance of at least fourteen (14') feet, and shall be properly marked.

(d) All handicapped parking shall meet federal, state and local guidelines and regulations.

(e) All areas of the property permitted for vehicular use shall be adequately screened from the public's view pursuant to Paragraph C.4. above.

(f) Vehicular use areas (parking stalls and aisle width) that are 4,000 or more square feet in size shall meet the landscaping requirements of C.4.(m).

(g) All off-street parking shall be surfaced with asphalt and/or equal and shall be maintained in good condition at all times.

(h) Plans for the configuration of the parking areas on the property shall be submitted to the Committee for prior written approval.

(i) The edge of a driveway apron shall be no closer than ten (10) feet from the nearest adjacent property line unless a common driveway is utilized.

(j) Direct access to any out parcel off of Palm Coast Parkway is strictly prohibited.

9. Hazardous Storage

No material of a hazardous characteristic shall be stored on the property or in any building on the property, except in strict compliance with requirements of the National Board of Fire Underwriters and in compliance with local, State and Federal regulations concerning storage of hazardous materials.

10. Antennas and Towers

(a) Unless prior written approval has been obtained from the Committee, no antenna, dish or other similar or non-similar electronic device ("dish") may be erected or maintained anywhere upon the property, provided, however, two (2) antennas (excluding towers and dishes) may be erected on



the property without said prior written approval provided it does not project above the highest point of the roof of the building.

(b) In the event cable or cablevision should become available to the property, within thirty (30) days of such availability, the person or entity with possessory interest in any property within the Project shall:

(1) remove all tower antennas, dishes or other similar or non-similar electronic devices from the property, whether approved or not, and

(2) connect to said cable or cablevision.

(c) Notwithstanding Paragraph 10(a) above, an owner of or person with possessory interest in property within the Project may install or cause to be installed a dish on the roof of a building within the Project, provided the dish is completely shielded from public view.

#### 11. Drilling and Mining

No water, oil or other well drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon the property, nor shall wells, tunnels, mineral excavations or shafts be permitted upon said property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the property.

#### 12. Animals

No livestock or poultry of any kind shall be raised, bred, or kept for commercial purposes on the property or in the buildings.

#### 13. Easements

(a) Easements of record in and over the property are hereby reserved to the Company and its designees in perpetuity for the installation, construction, reconstruction, maintenance, repairs, operations and inspections of all utilities and facilities, including but not limited to sewer, water, drainage, cablevision, electric, gas or telephone. No building or structure shall be erected, nor any paving laid nor any filling or excavation done within the easement areas occupied by or reserved for such facilities without the prior written consent of the Company. No action shall be taken that would restrict or obstruct the use of any easements.

(b) Additionally, easements are hereby reserved by the Company for it and its designee for the construction, installation and maintenance of any and all utilities, inclusive of electricity, gas, cable television, cablevision, telephone, water, sidewalks, drainage, sewer and waterways. Such easements shall be confined to a ten (10) foot width along the rear and side lines of the property and along every street, waterway, road or highway abutting the property.

(c) The Company and its designee shall at all times have the right of ingress and egress over the property for the purpose of access to the easements described in Paragraph 13(a) and Paragraph 13(b) above.

#### 14. Solid Waste and Refuse Disposal

The disposal of solid waste and refuse must be in conformance with the system of disposal used in the area and must comply with the requirements of all local, county, state and federal authorities, agencies or bureaus having jurisdiction thereof. There shall be no on-site disposal of solid waste or refuse. Enclosed compactors are permitted.

#### 15. Maintenance

(a) The person or entity with possessory interest in the property must, at all times, keep the site, buildings, improvements and appurtenances in a safe, clean, wholesome condition, and comply in all respects with all government, health and policy requirements; and any such person or entity, at his/its own expense, on demand by the Company,

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shall immediately remove any trash or garbage of any character whatsoever which may accumulate on said property. All landscaping and exterior portions of structures shall be maintained and kept in good appearance. The Committee shall be the judge as to whether the property and/or the buildings or structures thereon are being maintained in accordance with this paragraph.

(b) If the improvements on any property, or any part thereof, shall be damaged or destroyed by fire, the elements or other casualty, said improvements, or part thereof, shall promptly be repaired or restored to substantially the same condition as said improvements were immediately prior to the casualty. The repair or restoration shall not commence until the plans and specifications have been approved in writing by the Committee as provided in these Restrictive Covenants. In the event an election is made not to repair or restore said improvements, or portions thereof, then, within ninety (90) days of the casualty, the property or portions thereof, shall be cleared and landscaped. All plans for clearing and landscaping as described in this paragraph shall have the prior written approval of the Committee.

(c) The Company shall perform or cause to be performed the maintenance of the "common areas" (as hereinafter defined) in a clean, safe, slightly and serviceable condition.

(d) "Common areas" as used in this Paragraph 15 shall mean the internal roads within the Project, the retention ponds and storm water drainage facilities within the Project, any Project identification signs and any improvements directly related thereto. In this Declaration, any reference to "common areas" within the Project shall have the meaning of common areas as defined in this Paragraph.

(e) Subject to Paragraph 16(e) hereinbelow, the owner of any land within the Project shall pay the Company a pro rata share of the Company's cost of maintenance of the common areas. The pro rata maintenance obligation of each such owner shall be computed by multiplying the cost of such maintenance by a fraction, the numerator of which shall be the acreage of the land owned by such owner, and the denominator of which shall be the total acreage in the Project, exclusive of common areas in the Project which are owned and maintained by the Company. Any such owner's pro rata share of the maintenance cost for the common area shall be paid to the Company within thirty (30) days of receiving a written statement from the Company of the costs and expenses thereof, accompanied by reasonably sufficient supporting documentation and/or invoices.

#### 16. Owner's Property Association

(a) In order to effectively and efficiently provide for the administration, operation, management and maintenance of the common areas within the Project and any common areas within the Master Development (as hereinafter defined), the Company may form non-profit corporations such as a Project Association and a Master Association for the Master Development (collectively "Associations"), respectively. The Associations shall administer, operate, manage and maintain the common areas subject thereto and, pursuant to this Declaration of Restrictive Covenants and Easements and Articles of Incorporation and By-Laws of the Associations, perform all acts and duties necessary and incident to such duties. Master Development as used herein shall mean that property owned by the Company as more particularly depicted on Exhibit B, attached hereto and incorporated herein by reference.

(b) The Owner of any property within the Project shall automatically become a member of the Associations upon acquisition of fee simple ownership interest in any property within the Project. The membership of such Owner shall terminate automatically at the time that such Owner divests itself or is divested of such ownership interest to such property.

(c) In order for the Associations to administer, operate, manage and maintain the common areas within the Project, the Associations shall have full power and authority to enforce all the provisions of this Declaration of Restrictive Covenants and Easements, to levy and collect assessments in accordance herewith, to file and record liens for the non-payment of such assessments and to adopt, promulgate and enforce



such rules and regulations governing the use and enjoyment of the common areas as the Associations may from time to time deem appropriate.

(d) Notwithstanding anything contained herein to the contrary, outside the Project and within the Master Development, the Master Association shall only have the power to levy and collect assessments from the owners of land within the Project for the maintenance (excluding capital costs) of the landscaping, the irrigation, signage and electricity for the lighting within the right of way of Cypress Point Parkway (which is an extension of Boulder Rock Drive and is more fully depicted and labelled as such on Exhibit C) and the Master Development entrance signs (together with associated landscaping, irrigation, lighting and electricity) to be constructed adjacent to the right of way of Cypress Point Parkway at its intersections with Palm Coast Parkway and Belle Terre Parkway (as generally depicted on Exhibit C). The owner of any land within the Project shall pay the Master Association a pro rata share of the Master Association's costs specified in this Paragraph 16(d). The pro rata obligation of each such owner of land within the Project shall be computed by multiplying such costs by a fraction, the numerator of which shall be the acreage of the land within the Project owned by such owner, and the denominator of which shall be the total acreage in the Master Development, exclusive of common areas which are owned or maintained by the Master Association and areas which are dedicated to the public or a governmental entity. Notwithstanding anything contained herein to the contrary, the number of the denominator calculated as set forth in this Paragraph 16 (d) shall never be less than 155.

(e) In the event the Company forms the Associations and implements the administration, operation, management and maintenance of the common areas within the Project as provided in Paragraph 16(a) above, the rights of the Company may be assigned to the Associations.

(f) The liens for assessments provided for herein shall be subordinate to the lien of any mortgage which shall be recorded prior to the date any such assessment becomes due.

(g) No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any one provision herein, shall affect, impair, defeat, or render invalid the lien or charge of any mortgage made in good faith and for value encumbering the property.

(h) The Association does hereby agree to deliver to any such mortgagee a copy of any notice required to be delivered by the Association to the Owner pursuant to the terms of these Restrictive Covenants and Easements provided, however, the Mortgagee shall not be entitled to receive a copy of any such notice unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Association a written notice stating that such Mortgagee is a holder of a mortgage encumbering the property and identifying an address to which future correspondence should be addressed.

#### D. PERFORMANCE STANDARDS

##### 1. Performance Standards

All uses within the jurisdiction of these Restrictive Covenants shall conform to the following performance standards:

##### (a) Noise Standards

(1) Method of Measurement: Sound levels shall be measured with a sound level meter and associated octave band filter manufactured according to standards prescribed by the American Standards Association (American Standards Sound Level Meters for Measurement of Noise and Other Sounds Z24.3-1944, American Standards Association, Inc. New York, New York, and American Standard Specification for an Octave-Band Filter Set for the Analysis of Noise and Other Sounds, Z24.10-1953, American Standards Association, Inc., New York, New York).

(2) Locational Requirement for Measurement: Sound levels shall be measured along the boundaries of the property.

(3) Permitted Sound Levels:

Maximum Sound Pressure Level (In Decibels 0.0002 dynes per sq. centimeter)	
	8:00 a.m.
Octave Band	to
(Cycles per Second)	6:00 p.m.
0-75	72
75-150	67
150-300	59
300-600	52
600-1200	46
1200-2400	40
2400-4800	34
Above 4800	32

These standards shall apply to all noises due to intermittence, beat frequency or shrillness.

(b) Smoke and Particulate Matter Standards

(1) Shall comply with the standards as set forth in the rules and regulations of any governmental authority having jurisdiction thereof.

(2) No open burning shall be permitted.

(c) Vibration Standards

(1) Requirements: every use shall be permitted provided that ground vibration is not perceptible without instruments.

(2) Method of Measurement: any vibration recurrently generated that is perceptible to the normal senses, without instruments, is prohibited.

(3) Locational Requirement: vibration shall be determined along the property line of the site on which the use is located.

(d) Glare and Lighting Standards:

(1) Requirements: any lighting elements or structural materials installed on the site shall be prevented from casting or reflecting, glare or light beyond the property lines of the property, as a consequence of such glare or light.

(e) Prohibited Practices

(1) No noxious or offensive trade, business or activity shall be conducted within the Project, nor shall anything be done therein which may be or become a nuisance to the occupants of the Project or owners or tenants outside of the Project.

(2) Permanent display or storage of goods or merchandise outside of any building. Notwithstanding the foregoing, a garden center by a major retailer is hereby specifically permitted without the need for any approval other than normal review required by Section B, above, and additional garden centers may be approved subject to criteria and/or conditions set forth by the Committee when submitted as part of the overall site plan for the property where such display is to be located.

(f) Construction Requirements

The owner of any property within the Project shall:

(1) Within twelve (12) months from the closing of the transaction and conveyance of title of the property from the Company to its Grantee, commence construction of the structure described in the Conceptual Plan approved in writing by the Architectural Control Committee.

(2) Complete all building exteriors within twelve (12) months from commencement of construction.

(3) Fully complete, occupy and use the structure described in the Conceptual Plan within eighteen (18) months from the date of commencement of construction.

(4) All landscaping shall be completely installed in accordance with Section C.4. of these covenants and restrictions either eighteen (18) months from date of construction commencement or at the time the Purchaser opens for business, whichever occurs first.

(5) The property coverage limitations shall be those set forth in Paragraph C.3. herein.

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REC  
E. VIOLATIONS AND ENFORCEMENT

1. If a violation of the Restrictive Covenants and Easements of record is not cured within thirty (30) days written notice of such violation, or if the violation cannot be cured within thirty (30) days and the violator is not diligently pursuing the curing of said violation, then the Company, its designee, the Project Association, Master Association or any person or entity with ownership or possessory interest in the property ("enforcer") shall have the right to enter upon the property and remedy any violation of these Restrictive Covenants and Easements, and such entry shall not be deemed a trespass. A lien shall arise in favor of the enforcer to the extent of the expense necessary to remedy any violation. If such lien is allowed to remain unsatisfied for more than thirty (30) days, it shall bear annual interest at the highest rate permitted by law. Each owner of property within the Project hereby agrees that the PCCSC shall have a lien, to the same extent as the lien provided for in this Paragraph E upon such owner's property for the monies due the PCCSC until such amount is paid. In the event that monies due the PCCSC remain unpaid for a period of thirty (30) days after billing by the PCCSC, the PCCSC shall have all the rights and privileges accorded to an "enforcer", as defined in this Paragraph E, with respect to the collection thereof.

2. Enforcement shall be by proceedings at law or in equity brought by the Company, its successors, assigns or any person or entity adversely affected by the violation or attempted violation of these Restrictive Covenants and Easements.

3. The failure to enforce any covenant or easements herein or to remedy any violation thereof, at any time, or from time to time, shall not constitute a waiver of those or other provisions of these Restrictive Covenants and Easements.

F. ESTOPPEL

Within ten (10) days written request by a person or entity in possession, the Company shall provide a written statement, if such is the case, that said person or entity in possession:

1. is not in default of these covenants and restrictions, or, if a default or defaults exist,

2. that the person or entity in possession is in default of the covenants and restrictions, delineating the default or defaults.

G. COMPLIANCE

Any person or entity with a possessory interest in a property shall obey and comply with all laws, ordinances, rules, regulations, requirements, and orders of the Federal, State, County and City governments, or any of them, and of any and all of their departments and bureaus, or of any other competent authority that may have jurisdiction over the property.



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H. AMENDMENT

1. The Company hereby reserves the right to amend, modify or rescind such parts of these Restrictive Covenants and Easements if the Company deems the same to be necessary or desirable so long as such amendment, amendments, or modifications does not materially change the character, use, nature or general scheme of the site, interfere with the business of the person or entity in possession or impose any financial obligations on said person or entity.

2. Any amendment, modification to, or rescission of these Restrictive Covenants and Easements made by the Company in accordance with Paragraph H (1), above, shall not require the consent of any person or entity and said amendment or modification shall only be required to be executed by the Company and recorded in the public records of Flagler County, Florida.

I. SEVERABILITY - CONFLICT

1. Invalidation of any of the covenants and restrictions contained herein by judgment, court order or otherwise, shall in no way affect any of the other covenants and restrictions which shall remain in full force and effect.

2. In the event these covenants and restrictions should conflict with county ordinance or regulation so as to prevent development of the property, the county ordinance or regulation shall prevail.

J. NOTICES

All notices, applications and requests provided for herein shall be in writing and hand delivered or sent via United States Certified Mail, return receipt requested, postage prepaid, to the Committee, ITT Community Development Corporation, One Corporate Drive, Palm Coast, Florida 32151, with a copy thereof to the Legal Department, ITT Community Development Corporation, One Corporate Drive, Palm Coast, Florida 32151. All such notices, applications and requests are deemed to be received on the date set forth on the return receipt.

IN WITNESS WHEREOF, the said ITT COMMUNITY DEVELOPMENT CORPORATION, a Delaware corporation, has hereunto caused its presents to be signed in its name by its proper officers and its corporate seal to be affixed, attested by its Secretary this 7th day of December, 1992.

Signed, sealed and delivered  
in the presence of:

ITT COMMUNITY DEVELOPMENT CORP.

Pamela Thompson  
Pamela Thompson

By: James E. Gardner  
James E. Gardner President

Marie Di Giulio  
Marie Di Giulio

Attest: Richard Braunstein  
Assistant Secretary  
Richard Braunstein

STATE OF FLORIDA SS:  
COUNTY OF FLAGLER

I HEREBY CERTIFY that on this 7th day of December, 1992, before me, an person authorized to take acknowledgments of deeds and other instruments, personally appeared James E. Gardner and Richard Braunstein, XXXXXXX President and Assistant Secretary respectively, of ITT COMMUNITY DEVELOPMENT CORPORATION, a Delaware corporation, on behalf of the corporation. They are known to me and did not take an oath.  
WITNESS MY SIGNATURE and official seal in the County of Flagler, and State of Florida, on the day and year last aforesaid.

Victoria P. Gard  
Notary Public  
My Commission Expires:

16

VICTORIA P. GARD  
MY COMMISSION # CC 207009 EXPIRES  
JUNE 1, 1996  
DONOR THRU TRU FARM INSURANCE, INC.

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REC 0479

LEGAL DESCRIPTION

(1) Lots 1 through 7, inclusive; (2) Roads "A", "B" and "C"; and (3) Reserved Parcel "A" of Southwest Quadrant Phase I, according to the plat thereof recorded in Map Book 29, Pages 94 and 95 of the Public Records of Flagler County, Florida.

Exhibit A

UNOFFICIAL DOCUMENT



NORTH  
SCALE:  
1" = 500 FEET

INTERSTATE-95

FOOT  
ORB 133, PAGES 379-381  
LIMITED ACCESS RIGHT-OF-WAY LINE  
OF INTERSTATE-95

GOV. SECTION 18  
GOV. SECTION 13

SERVICE  
STATION

ELDER ROCK OR  
CANAL

BELLEFAIRE WATERWAY

CYPRESS POINT  
PARKWAY

31.0266 ACRES  
PROJECT

MASTER DEVELOPMENT

194.3986 ACRES

7.7189 ACRES

PINE CONE DRIVE  
US POSTAL SERVICE

11.3202 ACRES

CATHOLIC  
CHURCH

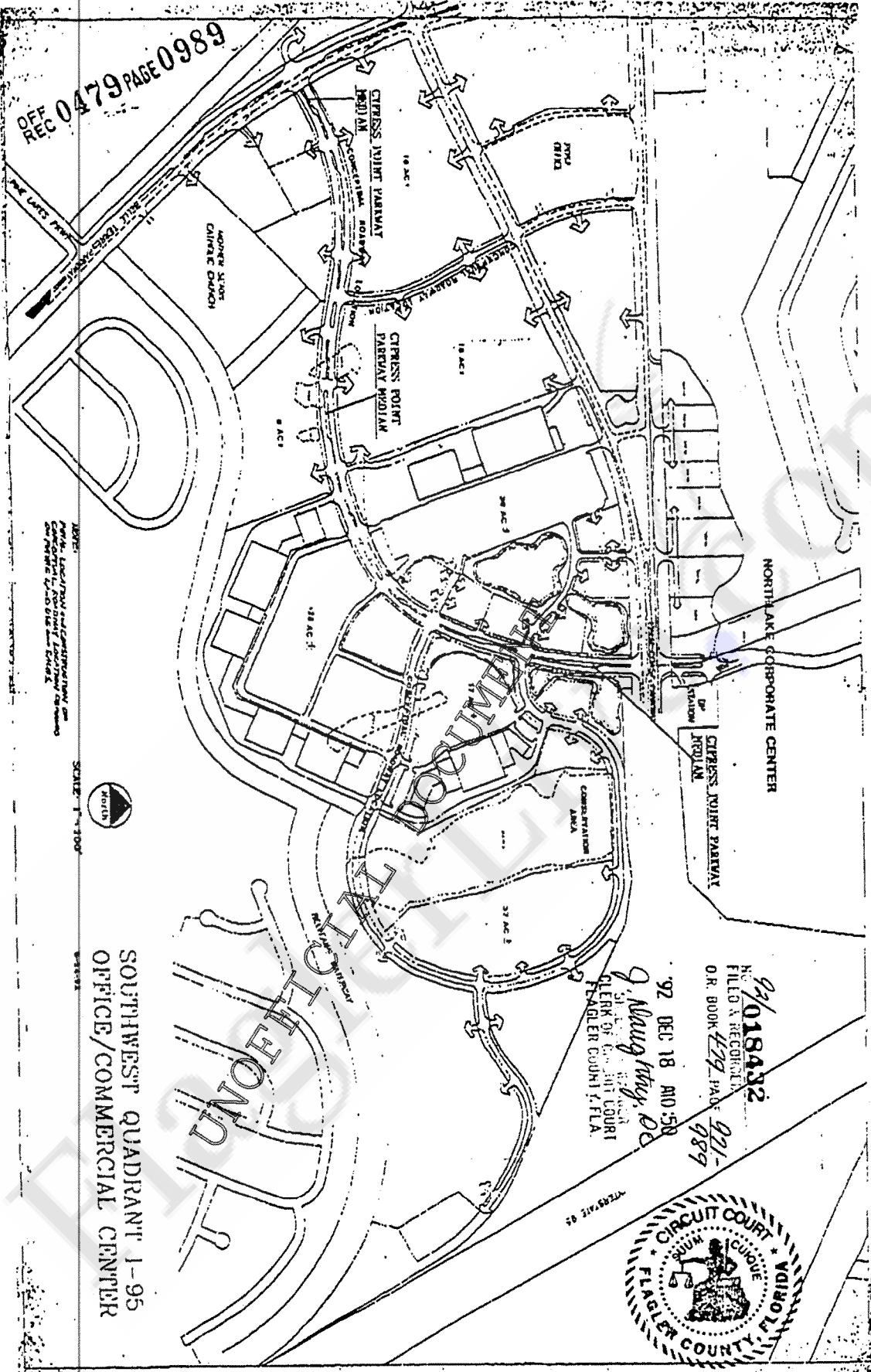
BELLE TERRE PARKWAY

MASTER DEVELOPMENT  
EXHIBIT "B"

UNO BEL PALM COAST PARKWAY (EAST BOUND)

PARKVIEW STREAM (CANAL)

OFF REC 0479 PAGE 0989



NOTICE: THIS PLAN IS A PRELIMINARY PLAN AND IS NOT A FINAL PLAN. IT IS SUBJECT TO CHANGE WITHOUT NOTICE. THE OWNER ASSUMES ALL RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED HEREON.

SCALE: 1"=100'



SOUTHWEST QUADRANT 1-95  
OFFICE/COMMERCIAL CENTER

92/018432  
FILED & RECORDED  
O.R. BOOK 429 PAGE 989  
92 DEC 18 AM 5:50  
J. Mangrudy, Jr.  
CLERK OF CIRCUIT COURT  
FLAGLER COUNTY, FLA.

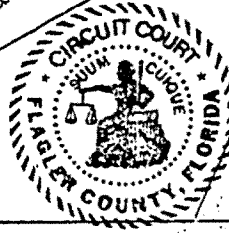


EXHIBIT C

Prepared By:  
Community Development Department  
City of Palm Coast  
160 Cypress Point Parkway, Suite B-106  
Palm Coast, FL 32164

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

**CITY OF PALM COAST**  
**DEVELOPMENT ORDER APPROVAL OF**  
**DUNKIN DONUTS DIMENSIONAL**  
**VARIANCE IN CONNECTION WITH AGREEMENT TO CONVEY PROPERTY**

On February 20, 2013, City of Palm Coast issued this City initiated Development Order, relating to and touching and concerning the following described property (the "Owner's Residual Property"):

A portion of Parcel ID: 07-11-31-7025-000A0-0030, more fully described in Exhibit "A" attached hereto and made a part hereof.

The Owner's Residual Property description is also known as 1310 Palm Coast Parkway SW and is the property owned by Owner after the conveyance of a portion of property to the City by Owner as described herein. The "Owner's Parent Tract" (of which the Owner's Residual Property is a part) is the legal description of the property owned by Owner before the conveyance of a portion thereof as described herein to the City and is more particularly described on Exhibit "B" attached hereto and made a part hereof.

**FINDINGS OF FACT**

Property Owner: Peggy Lane, LLC, a Florida limited liability company ("Owner")

Project Name: Dunkin Donuts

Application: City Initiated

Requested  
Development Approval: DIMENSIONAL VARIANCE DUE TO CONVEYANCE OF PROPERTY TO CITY OF  
PALM COAST

Zoning Classification: COM-2

1. The City has requested a conveyance of a portion of the Owner's Parent Tract, more particularly described in Exhibit "C" attached hereto and made a part hereof (the "Parkway Parcel"), for the Palm Coast Parkway Improvements Project, which Owner has agreed, under threat of condemnation, to convey to the City, instead of requiring the City to take the Parkway Parcel through condemnation.

2. Other than as agreed to in the agreement between the City and Owner in connection with the conveyance of the Parkway Parcel, in order to save the City from having to pay business

"B"

damages or any other damages (including severance), attorneys' fees, expert costs or any other costs to which Owner might have been entitled, the impact of this conveyance can be mitigated through the issuance of this Development Order, granting setback and other entitlements pertaining to the development of the Owner's Residual Property based on the Owner's Parent Tract land area and building configuration before the conveyance of the Parkway Parcel through recognizing the Owner's Residual Property, following the conveyance of the Parkway Parcel, in the same manner as the Owner's Parent Tract in the application of development standards.

#### CONCLUSIONS OF LAW

1. The Development Approval sought is consistent with the City Comprehensive Plan and will be developed consistent with and in compliance with applicable land development regulations and all other applicable regulations and ordinances as set forth in the Code of Ordinances of the City of Palm Coast.
2. The City is authorized pursuant to its home rule power to enter into development agreements and orders to establish guidelines for the use of property within the City.
3. The variance described in this Development Order does not adversely affect the health, safety and welfare of the public; the plan is the minimum necessary for the reasonable use of the land and improvements; the plan does not adversely affect the rights or enjoyment of property of adjacent property owners; and the plan is the result of a hardship imposed by the conveyance of the Parkway Parcel to the City.
4. The variance conditions and commitments stated herein shall run with, follow and benefit perpetually the Owner's Residual Property.

#### ORDER

NOW, THEREFORE, IT IS ORDERED AND AGREED THAT:

- (1) The aforementioned application for Development Approval for a dimensional variance is GRANTED.
- (2) The Owner's Residual Property, including, but not limited to, the structures, parking and entranceways and exits and all other improvements located thereon, following the conveyance of the Parkway Parcel by Owner to the City, is hereby deemed to be lawfully conforming and in compliance with all applicable Code dimensional development standards, including, but not limited to, distance between structures, parcel dimensions, lot area, parking and other improvements, buffers, landscaping and setbacks.
- (3) All future development of the Owner's Residual Property shall fully comply with all of the codes and ordinances in effect in the City at the time of issuance of a development order or a development permit; provided, however, all determinations of compliance with Code dimensional development standards shall be based upon the boundary of the Owner's Parent Tract as existed prior to the conveyance of the Parkway Parcel.



(4) This Development Order is issued in connection with and as a condition of Owner's conveyance of the Parkway Parcel to the City for the Palm Coast Parkway Improvements Project.

(5) This Development Order touches and concerns the Owner's Residual Property and the conditions, commitments and provisions of this Development Order shall perpetually benefit, run with and follow the Owner's Residual Property and be a benefit to and binding upon the Owner's Residual Property.

(6) The undersigned representatives of the Planning and Land Development Regulation Board (PLDRB) represent and warrant that he/she has been duly authorized to execute this Development Order on behalf of the City.

Done and Ordered on the date first written above.

As approved and authorized for execution by the Planning and Land Development Regulation Board (PLDRB) of the City of Palm Coast, at their regularly scheduled meeting of February 20, 2013.

Attest:

PLDRB Clerk

CITY OF PALM COAST, FLORIDA

PLDRB Chairperson

☐ Sign and Return

☒ Sign and Record

G:\docs\Cities\Palm Coast\Palm Coast Parkway Widening\Dunkin Donuts\Variance\Dunkin Donuts Administrative Variance 2-12-13.docx



**EXHIBIT "A"**

**(OWNER'S RESIDUAL PROPERTY)**

LOT 3 OF SOUTHWEST QUADRANT PHASE I, ACCORDING TO THE PLAT THEREOF RECORDED IN MAP BOOK 29, PAGES 94 THROUGH 95, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, AS AMENDED BY THAT CERTAIN AFFIDAVIT, RECORDED IN OFFICIAL RECORD BOOK 479, PAGE 960, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA.

TOGETHER WITH easements for roads, ingress and egress, utilities and drainage appurtenant thereto, created by the following instruments:

1. Access Easement Agreement between ITT Community Development Corporation, a Delaware corporation and Palm Coast Corners Associates, L.P., a Georgia limited partnership, dated December 7, 1992, recorded December 18, 1992, in Official Record Book 479, Page 1044, Public Records of Flagler County, Florida.
2. Sanitary Sewer and Water Easement Agreement between ITT Community Development Corporation, a Delaware corporation and Palm Coast Corners Associates, L.P., a Georgia limited partnership, dated December 7, 1992, recorded December 18, 1992 in Official Record Book 479, Page 1063, Public Records of Flagler County, Florida.
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5. Easements, dedications, and reservations as shown on the plat of Southwest Quadrant Phase I, as recorded in Plat Book 29, Pages 94 and 95, Public Records of Flagler County, Florida, as amended by Affidavit recorded December 18, 1992 in Official Records Book 479, Page 960, Public Records of Flagler County, Florida, and as amended by Rules, Regulations and Conditions with respect to Reservation of Utility Easements, by ITT Community Development Corporation, a Delaware corporation, dated December 7, 1992, recorded December 18, 1992, in Official Record Book 479, Page 962, Public Records of Flagler County, Florida.

**LESS AND EXCEPT THE FOLLOWING:**

COMMENCE AT A POINT ON THE NORTHERLY RIGHT OF WAY OF ROAD "B", SAID POINT BEING A 1/2" IRON PIPE WITH CAP STAMPED "MILLER LB 5189 MARKING THE SOUTHEAST CORNER OF LOT 3, SOUTHWEST QUADRANT PHASE I, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 29, PAGE 94 THROUGH 95, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA; THENCE RUN ALONG THE EASTERLY LINE OF SAID LOT 3, NORTH 23°04'04" EAST A DISTANCE OF 126.72 FEET; THENCE CONTINUE ALONG THE EASTERLY LINE OF SAID LOT, NORTH 00°50'23" WEST A DISTANCE OF 176.81 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF PALM COAST PARKWAY, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID LOT 3, FOR A POINT OF BEGINNING; THENCE RUN ALONG THE EASTERLY LINE OF SAID LOT 3, SOUTH 00°50'23" EAST A DISTANCE OF 15.01 FEET; THENCE DEPARTING SAID LOT LINE RUN SOUTH 89°07'43" WEST A DISTANCE OF 187.49 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 3; THENCE RUN NORTH 04°16'45" WEST ALONG SAID WESTERLY LOT LINE A DISTANCE OF 8.84 FEET TO THE NORTHWEST CORNER OF SAID LOT 3 AND A POINT LYING ON THE SOUTHERLY RIGHT OF WAY LINE OF PALM COAST PARKWAY, SAID POINT ALSO BEING A POINT ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 2239.83 FEET AND A CHORD DISTANCE OF 108.38 FEET; THENCE FROM A CHORD BEARING OF NORTH 87°44'48" EAST RUN EASTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF PALM COAST PARKWAY, THROUGH A CENTRAL ANGLE OF 92°46'22", AN ARC DISTANCE OF 108.39 FEET TO END OF CURVE; THENCE CONTINUE ALONG SAID RIGHT OF WAY LINE, NORTH 01°55'55" WEST A DISTANCE OF 3.66 FEET; THENCE CONTINUE ALONG SAID RIGHT OF WAY LINE, NORTH 89°12'11" EAST A DISTANCE OF 79.74 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINING 2,343 SQUARE FEET, MORE OR LESS

**EXHIBIT "B"**

**(OWNER'S PARENT TRACT)**

LOT 3 OF SOUTHWEST QUADRANT PHASE I, ACCORDING TO THE PLAT THEREOF RECORDED IN MAP BOOK 29, PAGES 94 THROUGH 95, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, AS AMENDED BY THAT CERTAIN AFFIDAVIT, RECORDED IN OFFICIAL RECORD BOOK 479, PAGE 960, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA.

TOGETHER WITH easements for roads, ingress and egress, utilities and drainage appurtenant thereto, created by the following instruments:

1. Access Easement Agreement between ITT Community Development Corporation, a Delaware corporation and Palm Coast Corners Associates, L.P., a Georgia limited partnership, dated December 7, 1992, recorded December 18, 1992, in Official Record Book 479, Page 1044, Public Records of Flagler County, Florida.
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**EXHIBIT "C"**

**(PARKWAY PARCEL)**

PARCEL 104  
FEE SIMPLE

THAT PART OF:

"LOT 3 OF SOUTHWEST QUADRANT PHASE I, ACCORDING TO THE PLAT THEREOF RECORDED IN MAP BOOK 29, PAGES 94 THROUGH 95, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, AS AMENDED BY THAT CERTAIN AFFIDAVIT, RECORDED IN OFFICIAL RECORD BOOK 479, PAGE 960, OF THE PUBLIC RECORDS OF FLAGLER COUNTY FLORIDA."

BEING A PORTION OF THE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1701, PAGE 611, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA.

DESCRIBED AS FOLLOWS:

COMMENCE AT A POINT ON THE NORTHERLY RIGHT OF WAY OF ROAD "B", SAID POINT BEING A 1/2" IRON PIPE WITH CAP STAMPED "MILLER LB 5189 MARKING THE SOUTHEAST CORNER OF LOT 3, SOUTHWEST QUADRANT PHASE I, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 29, PAGE 94 THROUGH 95, PUBLIC RECORDS OF FLAGLER COUNTY FLORIDA; THENCE RUN ALONG THE EASTERLY LINE OF SAID LOT 3, NORTH 29°04'04" EAST A DISTANCE OF 126.72 FEET; THENCE CONTINUE ALONG THE EASTERLY LINE OF SAID LOT, NORTH 00°50'23" WEST A DISTANCE OF 176.81 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF PALM COAST PARKWAY, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID LOT 3, FOR A POINT OF BEGINNING; THENCE RUN ALONG THE EASTERLY LINE OF SAID LOT 3, SOUTH 00°50'23" EAST A DISTANCE OF 15.01 FEET; THENCE DEPARTING SAID LOT LINE RUN SOUTH 89°07'43" WEST A DISTANCE OF 187.49 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 3; THENCE RUN NORTH 04°16'45" WEST ALONG SAID WESTERLY LOT LINE A DISTANCE OF 8.84 FEET TO THE NORTHWEST CORNER OF SAID LOT 3 AND A POINT LYING ON THE SOUTHERLY RIGHT OF WAY LINE OF PALM COAST PARKWAY, SAID POINT ALSO BEING A POINT ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 2239.83 FEET AND A CHORD DISTANCE OF 108.38 FEET; THENCE FROM A CHORD BEARING OF NORTH 87°44'48" EAST RUN EASTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF PALM COAST PARKWAY, THROUGH A CENTRAL ANGLE OF 02°46'22", AN ARC DISTANCE OF 108.39 FEET TO END OF CURVE; THENCE CONTINUE ALONG SAID RIGHT OF WAY LINE, NORTH 01°55'55" WEST A DISTANCE OF 3.68 FEET; THENCE CONTINUE ALONG SAID RIGHT OF WAY LINE, NORTH 89°12'11" EAST A DISTANCE OF 79.74 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINING 2,343 SQUARE FEET, MORE OR LESS

I HEREBY CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE ATTACHED SKETCH AND LEGAL DESCRIPTION IS TRUE, ACCURATE, AND WAS PREPARED UNDER MY DIRECTION.

I FURTHER CERTIFY THAT SAID LEGAL DESCRIPTION IS IN COMPLIANCE WITH THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, IN CHAPTER SJ-17 FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.023, FLORIDA STATUTES.

GLENN J. LUSINK

DATE

2/13/2013

FLORIDA PROFESSIONAL SURVEYOR AND MAPPER NO. 5977

NOT VALID WITHOUT SIGNATURE AND ORIGINAL RAISED SEAL

				CITY OF PALM COAST, FLORIDA			
				SKETCH OF DESCRIPTION - NOT A FIELD SURVEY			
				PALM COAST PARKWAY - PARCEL 104			
				FLAGLER COUNTY			
		BY	DATE	PREPARED BY: DRMP, INC. 941 LAKE BALDWIN LANE ORLANDO, FL 32803		DATA SOURCE:	
REVISE TO PARCEL 104	J. ANDERBERG	11-06-12	DRAWN	J. CHENEY	02/17/12		
REVISION	BY	DATE	CHECKED	J. ANDERBERG	02/17/12	F.P. NO. 415963-1	SECTION N/A SHEET 1 OF 3



# LEGEND AND ABBREVIATIONS

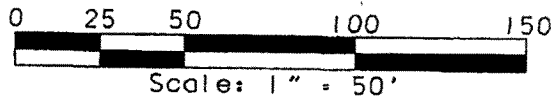
(C)	- CALCULATED	LB	- LICENSED SURVEY BUSINESS
CB	- CHORD BEARING	LS	- LICENSED SURVEYOR
CH	- LONG CHORD	ORB	- OFFICIAL RECORDS BOOK
(F)	- FIELD MEASURED	(P)	- PLAT DATA
FND.	- FOUND	PB	- PLAT BOOK
ID.	- IDENTIFICATION	PG	- PAGE
IP	- IRON PIPE	POB	- POINT OF BEGINNING
IPC	- IRON PIPE & CAP	POC	- POINT OF COMMENCEMENT
I.R.	- IRON ROD	PL	- PROPERTY LINE
IRC	- IRON ROD & CAP	R	- RADIUS
L	- ARC DISTANCE	R/W	- RIGHT OF WAY
		Δ	- DELTA (CENTRAL ANGLE)

BEARING STRUCTURE SHOWN HEREON IS BASED ON THE SOUTH RIGHT OF WAY LINE OF PALM COAST PARKWAY BEING N 89°12'11" E (ASSUMED)

## ENCUMBRANCES

1. COVENANT EXECUTED BY ITT COMMUNITY DEVELOPMENT CORPORATION, ET AL, PER ORB 130, PG 19
2. PLAT AGREEMENT PER ORB 478, PG 349, ORB 478, PG 353 & ORB 483, PG 1405
3. DECLARATION OF RESTRICTIVE COVENANTS AND EASEMENTS BY ITT COMMUNITY DEVELOPMENT CORPORATION PER ORB 479, PG 971; PARTIAL ASSIGNMENT PER ORB 553, PG 1847; AMENDED PER ORB 572, PG 1415; ASSIGNMENT AND ASSUMPTION OF DECLARANTS RIGHTS PER ORB 602, PG 7
4. SANITARY SEWER AND WATER EASEMENT AGREEMENT IN FAVOR OF PALM COAST CORNERS ASSOCIATES, LP PER ORB 479, PG 1063
5. STORMWATER DRAINAGE EASEMENT AGREEMENT IN FAVOR OF PALM COAST CORNERS ASSOCIATES, LP PER ORB 479, PG 1081, ASSIGNMENT OF EASEMENT PER ORB 602, PG 12
6. DECLARATION OF RESTRICTIONS BY PALM COAST CORNERS ASSOCIATES, L.P. PER ORB 479, PG 1106
7. MAIN EXTENSION AGREEMENT BETWEEN ITT LAND AND PALM COAST UTILITY CORP. PER ORB 480, PG 384
8. DECLARATION OF RESTRICTIVE COVENANTS BY PALM COAST CORNERS ASSOCIATES, L.P. PER ORB 504, PG 1773; ORB 504, PG 1784 & ORB 504, PG 1801
9. UTILITY AGREEMENTS PER ORB 505, PG 912 & ORB 509, PG 1862

				CITY OF PALM COAST, FLORIDA	
				SKETCH OF DESCRIPTION - NOT A FIELD SURVEY	
				PALM COAST PARKWAY - PARCEL 104	
				FLAGLER COUNTY	
		BY	DATE	PREPARED BY: DRUP, INC. 941 LAKE BALDWIN LANE ORLANDO, FL 32803	DATA SOURCE:
REVISE TO PARCEL 104	J. ANDERBERG	11-06-12	DRAWN	J. CHENEY	02/17/12
REVISION	BY	DATE	CHECKED	J. ANDERBERG	02/17/12
				F.P. NO. 415963-1	SECTION N/A
				SHEET 2 OF 3	



# PALM COAST PARKWAY

R/W RECORDED IN ORB 305, PG. 184

FND. 1/2" IP  
NO ID.  
S23°38'48"E  
0.25'(F)

FND. 5/8" IRC  
ILLEGIBLE

POB

FND. X-CUT  
N 00°50'23" W  
0.16'(F)

N 89°12'11"E  
79.74'(F)

79.56'(P)

C4

187.49'(C)  
S 89°07'43" W

WIDTH VARIES

FND. 1/2" IPC  
ILLEGIBLE

LOT 3

SOUTHWEST QUADRANT PHASE I  
PB 29, PG 94

LOT 2

ROAD "A" 50' R/W (P)

N 04°16'45" W 179.25'(P)(F)

RESERVED PARCEL "A"

C2

Δ = 18°51'02"(F)  
18°51'05"(P)  
R = 375.00'(F)(P)  
L = 123.38'(F)(P)  
CH = 122.82'(F)  
122.83'(P)  
CB = N 69°49'35" W

C3

Δ = 08°01'39"(F)  
08°00'55"(P)  
R = 410.00'(F)(P)  
L = 57.44'(F) 57.36'(P)  
CH = 57.40'(F) 57.31'(P)  
CB = N 00°15'55" W

C1

Δ = 14°44'29"(F)  
14°41'44"(P)  
R = 375.00'(F)(P)  
L = 96.48'(F)  
96.18'(P)  
CH = 96.22'(F)  
95.92'(P)  
CB = N 53°01'49" W

C4

Δ = 02°46'22"(F)(P)  
R = 2239.83'(F)(P)  
L = 108.39'(F)(P)  
CH = 108.38'(F)(P)  
CB = N 87°44'48" E

L1 N 01°55'55" W 3.68'(F)

3.82'(P)

L2 S 00°50'23" E 15.01'(C)

L3 N 04°16'45" W 8.84'(C)

FND. 5/8" I.R.  
NO ID.

POC  
FND. 1/2" IPC  
"MILLER LB \*5189"

ROAD "B"  
50' R/W (P)

FND. 5/8" IRC  
"STEPHENSON  
LS \*2379"

CITY OF PALM COAST, FLORIDA

## SKETCH OF DESCRIPTION - NOT A FIELD SURVEY

PALM COAST PARKWAY - PARCEL 104

FLAGLER COUNTY

EAST LINE QUADRANTS	J. ANDERBERG	02-13-13	BY	DATE	PREPARED BY: DRMP, INC. 941 LAKE BALDWIN LANE ORLANDO, FL 32803	DATA SOURCE:
REVISE TO PARCEL 104	J. ANDERBERG	11-06-12	DRAWN	J. CHENEY	02/17/12	
REVISION	BY	DATE	CHECKED	J. ANDERBERG	02/17/12	F.P. NO. 415963-1 SECTION N/A SHEET 3 OF 3



**AFFIDAVIT OF CORPORATE IDENTITY / AUTHORITY**

STATE OF Florida

COUNTY OF Flagler

COMES NOW, Gary Heckel, being first duly sworn, who deposes and says:

(1) That he/she is the Manager, an officer of Peggy Lake LLC corporation existing under the laws of the State of Florida.

(2) That he/she is authorized to execute the following deeds or instruments on behalf of the above named corporation: Peggy Lake LLC relating to the following described real property: 07-11-31-7025-000AU-0030

(3) That this affidavit is made to induce the City of Palm Coast to accept the above described property.

Signature of owner OR person authorized to represent this application

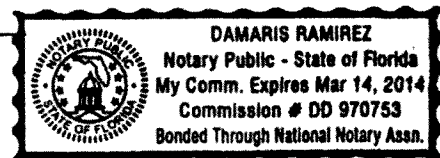
GARY HECKEL  
Signature  
Print name  
MGR PEGGY LAKE LLC

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print name

NOTARY: This instrument was acknowledged before me on this 21<sup>st</sup> day of February, 2009 by Gary Heckel who is/are personally known to me, or who has/have produced DL as identification.

(SEAL)

Damaris Ramirez  
Signature of Notary Public, State of Florida





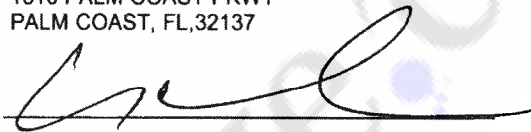
**Development Order Affidavit**

**OWNER'S/APPLICANT'S CONSENT AND COVENANT:**

**COMES NOW**, PEGGY LANE LLC, the Owner on behalf of itself and its successors, assigns and transferees of any nature, whatsoever, and consents to and agrees with the covenants to perform and fully abide by the provisions, terms, and conditions, and commitments set forth in this Development Order. Affiant states that he/she accepts the findings, as outlined in this Development Order, and further states that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission, or refund for the purpose of securing the said Development Order for DUNKIN DONUTS/ BASKIN ROBBINS / LOT 3:

ATTEST:

PEGGY LANE LLC  
1310 PALM COAST PKWY  
PALM COAST, FL, 32137

  
Authorized Signer  
GARY HECKEL MGR PEGGY LANE LLC

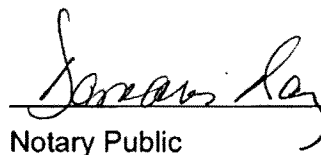
\_\_\_\_\_  
Attesting Corporate Official

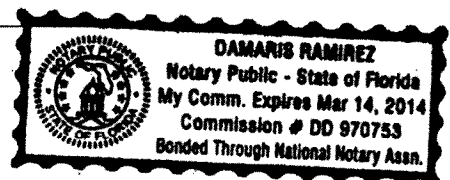
**ACKNOWLEDGEMENT**

STATE OF Florida  
COUNTY OF Flagler

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of February, 2013, by Gary Heckel of PEGGY LANE LLC who is personally known to me or has produced DL (type of identification) as identification and did/did not take an oath.

February **WITNESS** my hand and official seal in the County and State last aforesaid this 21<sup>st</sup> day of February, 2013.

  
Notary Public





**JOINDER AND CONSENT AFFIDAVIT**

JOINDER AND CONSENT BY Prosperity Bank  
Name of Lending Institution / Mortgage Holder

COME NOW, PROSPERITY BANK and Joins and Consents to the  
covenants and conditions set forth herein and hereunto sets his hand and seal this 21<sup>st</sup> day  
of February, 2013.

ATTEST:

Corporate:

Vice-President

Maria Lavin Sanhudo  
Printed Name

PROSPERITY BANK

Name of Lending Institution

Corporate:

Senior Vice-President

GARRY R. LUBI  
Printed Name

**ACKNOWLEDGEMENT**

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of February, 2013, by

GARRY R. LUBI, who is/are personally known to me or who

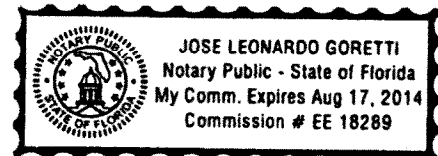
has produced \_\_\_\_\_ as identification and who did execute said

instrument for the purpose therein expressed.

WITNESS my hand and official seal the day month and year aforesaid.

  
NOTARY PUBLIC SIGNATURE

NOTARY PUBLIC (SEAL)



Prepared By:  
Community Development Department  
City of Palm Coast  
160 Cypress Point Parkway, Suite B-106  
Palm Coast, FL 32164

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

**CITY OF PALM COAST**  
**DEVELOPMENT ORDER APPROVAL OF**  
**DUNKIN DONUTS DIMENSIONAL**  
**VARIANCE IN CONNECTION WITH AGREEMENT TO CONVEY PROPERTY**

On February 20, 2013, City of Palm Coast issued this City initiated Development Order, relating to and touching and concerning the following described property (the "Owner's Residual Property"):

A portion of Parcel ID: 07-11-31-7025-000A0-0030, more fully described in Exhibit "A" attached hereto and made a part hereof.

The Owner's Residual Property description is also known as 1310 Palm Coast Parkway SW and is the property owned by Owner after the conveyance of a portion of property to the City by Owner as described herein. The "Owner's Parent Tract" (of which the Owner's Residual Property is a part) is the legal description of the property owned by Owner before the conveyance of a portion thereof as described herein to the City and is more particularly described on Exhibit "B" attached hereto and made a part hereof.

**FINDINGS OF FACT**

Property Owner: Peggy Lane, LLC, a Florida limited liability company ("Owner")  
Project Name: Dunkin Donuts  
Application: City Initiated  
Requested  
Development Approval: DIMENSIONAL VARIANCE DUE TO CONVEYANCE OF PROPERTY TO CITY OF PALM COAST  
Zoning Classification: COM-2

1. The City has requested a conveyance of a portion of the Owner's Parent Tract, more particularly described in Exhibit "C" attached hereto and made a part hereof (the "Parkway Parcel"), for the Palm Coast Parkway Improvements Project, which Owner has agreed, under threat of condemnation, to convey to the City, instead of requiring the City to take the Parkway Parcel through condemnation.

2. Other than as agreed to in the agreement between the City and Owner in connection with the conveyance of the Parkway Parcel, in order to save the City from having to pay business



(3) All future development of the Owner's Residual Property shall fully comply with all of the codes and ordinances in effect in the City at the time of issuance of a development order or a development permit; provided, however, all determinations of compliance with Code dimensional development standards shall be based upon the boundary of the Owner's Parent Tract as existed prior to the conveyance of the Parkway Parcel.

(2) The Owner's Residual Property, including, but not limited to, the structures, parking and entrances and exits and all other improvements located thereon, following the conveyance of the Parkway Parcel by Owner to the City, is hereby deemed to be lawfully conforming and in compliance with all applicable Code dimensional development standards, including, but not limited to, distance between structures, parcel dimensions, lot area, parking and other improvements, buffers, landscaping and setbacks.

(1) The aforementioned application for Development Approval for a dimensional variance is GRANTED.

NOW, THEREFORE, IT IS ORDERED AND AGREED THAT:

#### ORDER

4. The variance conditions and commitments stated herein shall run with, follow and benefit perpetually the Owner's Residual Property.

3. The variance described in this Development Order does not adversely affect the health, safety and welfare of the public; the plan is the minimum necessary for the reasonable use of the land and improvements; the plan does not adversely affect the rights or enjoyment of property of adjacent property owners; and the plan is the result of a hardship imposed by the conveyance of the Parkway Parcel to the City.

2. The City is authorized pursuant to its home rule power to enter into development agreements and orders to establish guidelines for the use of property within the City.

1. The Development Approval sought is consistent with the City Comprehensive Plan and all other applicable regulations and ordinances as set forth in the Code of Ordinances of the City of Palm Coast.

#### CONCLUSIONS OF LAW

Parent Tract in the application of development standards. issuance of this Development Order, granting setback and other entitlements pertaining to the development of the Owner's Residual Property based on the Owner's Parent Tract land area and building configuration before the conveyance of the Parkway Parcel through recognizing the Owner's Residual Property, following the conveyance of the Parkway Parcel, in the same manner as the Owner's damages or any other damages (including severance), attorneys' fees, expert costs or any other costs to

(4) This Development Order is issued in connection with and as a condition of Owner's conveyance of the Parkway Parcel to the City for the Palm Coast Parkway Improvements Project.

(5) This Development Order touches and concerns the Owner's Residual Property and the conditions, commitments and provisions of this Development Order shall perpetually benefit, run with and follow the Owner's Residual Property and be a benefit to and binding upon the Owner's Residual Property.

(6) The undersigned representatives of the Planning and Land Development Regulation Board (PLDRB) represent and warrant that he/she has been duly authorized to execute this Development Order on behalf of the City.

Done and Ordered on the date first written above.

As approved and authorized for execution by the Planning and Land Development Regulation Board (PLDRB) of the City of Palm Coast, at their regularly scheduled meeting of February 20, 2013.

Attest:

PLDRB Clerk

CITY OF PALM COAST, FLORIDA

PLDRB Chairperson

☐ Sign and Return

☒ Sign and Record

G:\docs\Cities\Palm Coast\Palm Coast Parkway Widening\Donkin Donuts\Variances\Donkin Donuts Administrative Variance 2-12-13.docx

[illegible]



**EXHIBIT "B"**

**(OWNER'S PARENT TRACT)**

LOT 3 OF SOUTHWEST QUADRANT PHASE I, ACCORDING TO THE PLAT THEREOF RECORDED IN MAP BOOK 29, PAGES 94 THROUGH 95, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, AS AMENDED BY THAT CERTAIN AFFIDAVIT, RECORDED IN OFFICIAL RECORD BOOK 479, PAGE 960, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA.

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1. Access Easement Agreement between ITT Community Development Corporation, a Delaware corporation and Palm Coast Corners Associates, L.P., a Georgia limited partnership, dated December 7, 1992, recorded December 18, 1992, in Official Record Book 479, Page 1044, Public Records of Flagler County, Florida.
2. Sanitary Sewer and Water Easement Agreement between ITT Community Development Corporation, a Delaware corporation and Palm Coast Corners Associates, L.P., a Georgia limited partnership, dated December 7, 1992, recorded December 18, 1992 in Official Record Book 479, Page 1063, Public Records of Flagler County, Florida.
3. Storm Water Drainage Easement Agreement between ITT Community Development Corporation, a Delaware corporation and Palm Coast Corners Associates, L.P., a Georgia limited partnership, dated December 7, 1992, recorded December 18, 1992 in Official Record Book 479, Page 1081, Public Records of Flagler County, Florida; as assigned in the Assignment of Storm Water Drainage Easement to Palm Coast Holdings, Inc., a Florida corporation, dated December 10, 1997, recorded December 30, 1997 in Official Records Book 602, Page 12, Public Records of Flagler County, Florida.
4. Declaration of Restrictive Covenants and Easements by ITT Community Development Corporation, a Delaware corporation, dated December 7, 1992, recorded December 18, 1992, in Official Record Book 479, Page 94, and further amended in Official Record Book 553, Page 1847, Public Records of Flagler County, Florida, and Official Record Book 572, Page 1415, Public Records of Flagler County, Florida; and as assigned in the Assignment and Assumption of Declaratory Rights, dated December 10, 1997, recorded December 30, 1997, in Official Records Book 602, Page 7, Public Records of Flagler County, Florida.
5. Easements, dedications, and reservations as shown on the plat of Southwest Quadrant Phase I, as recorded in Plat Book 29, Pages 94 and 95, Public Records of Flagler County, Florida, as amended by Affidavit recorded December 18, 1992 in Official Records Book 479, Page 960, Public Records of Flagler County, Florida, and as amended by Rules, Regulations and Conditions with respect to Reservation of Utility Easements, by ITT Community Development Corporation, a Delaware corporation, dated December 7, 1992, recorded December 18, 1992, in Official Record Book 479, Page 962, Public Records of Flagler County, Florida.

EXHIBIT "C"

THAT PART OF:

BEING A PORTION OF THE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 170, PAGE 611, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA.

DESCRIBED AS FOLLOWS:

COMMENCE AT A POINT ON THE NORTHERLY RIGHT OF WAY OF ROAD "B", SAID POINT BEING A 1/2" IRON PIPE WITH CAP STAMPED "WILLER LB. 5189 MARKING THE SOUTHEAST CORNER OF LOT 3, SOUTHWEST QUADRANT PHASE I, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 29, PAGE 54 THROUGH 95, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA; THENCE RUN ALONG THE EASTERLY LINE OF SAID LOT 3, NORTH 29°04'.04" EAST A DISTANCE OF 126.72 FEET; THENCE CONTINUE ALONG THE EASTERLY LINE OF SAID LOT 3, NORTH 00°50'.23" WEST A DISTANCE OF 176.81 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF PALM COAST PARKWAY; SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID LOT 3, FOR A POINT OF BEGINNING; THENCE RUN ALONG THE EASTERLY LINE OF SAID LOT 3, SOUTH 00°50'.23" EAST A DISTANCE OF 15.10 FEET; THENCE DEPARTING SAID LOT LINE RUN SOUTH 89°07'.43" WEST A DISTANCE OF 187.49 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 3; THENCE RUN NORTH 04°16'.45" WEST ALONG SAID WESTERLY LINE A DISTANCE OF 9.84 FEET TO THE NORTHWEST CORNER OF SAID LOT 3 AND A POINT LYING ON THE SOUTHERLY RIGHT OF WAY LINE OF PALM COAST PARKWAY, SAID POINT ALSO BEING A POINT ON A BEAVE TO THE RIGHT, HAVING A RADIUS OF 2239.83 FEET AND A CHORD DISTANCE OF 108.39 FEET; THENCE FROM A CHORD BEARING OF NORTH 87°44'.48" EAST RUN EASTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF PALM COAST PARKWAY THROUGH A CENTRAL ANGLE OF 02°46'.22" AN ARC DISTANCE OF 108.39 FEET TO END OF CURVE; THENCE CONTINUE ALONG SAID RIGHT OF WAY LINE, NORTH 01°55'.55" WEST A DISTANCE OF 3.68 FEET; THENCE CONTINUE ALONG SAID RIGHT OF WAY LINE, NORTH 01°55'.55" EAST A DISTANCE OF 79.74 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 2,343 SQUARE FEET, MORE OR LESS

I HEREBY CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE ATTACHED SKETCH AND LEGAL DESCRIPTION IS TRUE, ACCURATE, AND WAS PREPARED UNDER MY DIRECTION.

I FURTHER CERTIFY THAT SAID LEGAL DESCRIPTION IS IN COMPLIANCE WITH THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, IN CHAPTER 46-17 FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 412.02, FLORIDA STATUTES.

GLINN J. LUSINK  
DATE \_\_\_\_\_  
FLORIDA PROFESSIONAL SURVEYOR AND MAPPER NO. 5977

NOT VALID WITHOUT SIGNATURE AND ORIGINAL RAISED SEAL

CITY OF PALM COAST, FLORIDA	SKETCH OF DESCRIPTION - NOT A FIELD SURVEY	PALM COAST PARKWAY - PARCEL 104	FLAGLER COUNT
-----------------------------	--	---------------------------------	---------------

## LEGEND AND ABBREVIATIONS

(C) - CALCULATED	LB - LICENSED SURVEY BUSINESS
CB - CHORD BEARING	LS - LICENSED SURVEYOR
CH - LONG CHORD	ORB - OFFICIAL RECORDS BOOK
(F) - FIELD MEASURED	(P) - PLAT DATA
FND. - FOUND	PB - PLAT BOOK
ID. - IDENTIFICATION	PG - PAGE
IP - IRON PIPE	POB - POINT OF BEGINNING
IPC - IRON PIPE & CAP	POC - POINT OF COMMENCEMENT
I.R. - IRON ROD	PL - PROPERTY LINE
IRC - IRON ROD & CAP	R - RADIUS
L - ARC DISTANCE	R/W - RIGHT OF WAY
	$\Delta$ - DELTA (CENTRAL ANGLE)

BEARING STRUCTURE SHOWN HEREON IS BASED ON THE SOUTH RIGHT OF WAY LINE OF PALM COAST PARKWAY BEING N 89°12'11" E (ASSUMED)

## ENCUMBRANCES

1. COVENANT EXECUTED BY ITT COMMUNITY DEVELOPMENT CORPORATION, ET AL, PER ORB 130, PG 19
2. PLAT AGREEMENT PER ORB 478, PG 349, ORB 478, PG 455 & ORB 483, PG 1405
3. DECLARATION OF RESTRICTIVE COVENANTS AND EASEMENTS BY ITT COMMUNITY DEVELOPMENT CORPORATION PER ORB 479, PG 971; PARTIAL ASSIGNMENT PER ORB 553, PG 1847; AMENDED PER ORB 572, PG 1415; ASSIGNMENT AND ASSUMPTION OF DECLARANTS RIGHT PER ORB 602, PG 7
4. SANITARY SEWER AND WATER EASEMENT AGREEMENT IN FAVOR OF PALM COAST CORNERS ASSOCIATES, LP PER ORB 479, PG 1063
5. STORMWATER DRAINAGE EASEMENT AGREEMENT IN FAVOR OF PALM COAST CORNERS ASSOCIATES, LP PER ORB 479, PG 1081, ASSIGNMENT OF EASEMENT PER ORB 602, PG 12
6. DECLARATION OF RESTRICTIONS BY PALM COAST CORNERS ASSOCIATES, L.P. PER ORB 479, PG 1106
7. MAIN EXTENSION AGREEMENT BETWEEN ITT LAND AND PALM COAST UTILITY CORP. PER ORB 480, PG 384
8. DECLARATION OF RESTRICTIVE COVENANTS BY PALM COAST CORNERS ASSOCIATES, L.P. PER ORB 504, PG 1773; ORB 504, PG 1784 & ORB 504, PG 1801
9. UTILITY AGREEMENTS PER ORB 505, PG 1812 & ORB 509, PG 1862

				CITY OF PALM COAST, FLORIDA	
				SKETCH OF DESCRIPTION - NOT A FIELD SURVEY	
				PALM COAST PARKWAY - PARCEL 104	
				FLAGLER COUNTY	
		BY	DATE	PREPARED BY: DRMP, INC. 941 LAKE BALDWIN LANE ORLANDO, FL 32803	DATA SOURCE:
REVISE TO PARCEL 104	J. ANDERBERG	11-06-12	DRAWN	J. CHENEY	02/17/12
REVISION	BY	DATE	CHECKED	J. ANDERBERG	02/17/12
				F.P. NO. 415963-1	
				SECTION N/A	
				SHEET 2 OF 3	





**Development Order Affidavit**  
**OWNER'S/APPLICANT'S CONSENT AND COVENANT:**

**COMES NOW**, PEGGY LANE LLC, the Owner on behalf of itself and its successors, assigns and transferees of any nature, whatsoever, and consents to and agrees with the covenants to perform and fully abide by the provisions, terms, and conditions, and commitments set forth in this Development Order. Affiant states that he/she accepts the findings, as outlined in this Development Order, and further states that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission, or refund for the purpose of securing the said Development Order for DUNKIN DONUTS/ BASKIN ROBBINS / LOT 3:

ATTEST:

PEGGY LANE LLC  
1310 PALM COAST PKWY  
PALM COAST, FL 32137

\_\_\_\_\_  
Attesting Corporate Official

\_\_\_\_\_  
Authorized Signer

*GRACE HECKEL* MGR PEGGY LANE LLC

**ACKNOWLEDGEMENT**

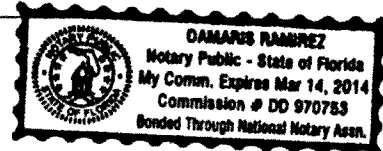
STATE OF Florida

COUNTY OF Flagler

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of February, 2013, by Grace Heckel of PEGGY LANE LLC who is personally known to me or has produced DL (type of identification) as identification and did/did not take an oath.

Witness my hand and official seal in the County and State last aforesaid this 21<sup>st</sup> day of February, 2013.

\_\_\_\_\_  
Notary Public



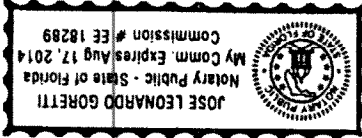
VIII-140

October 1, 2009 (Revised 4-9-2010)

NOTARY PUBLIC SIGNATURE

*[Signature]*

NOTARY PUBLIC (SEAL)



WITNESS my hand and official seal the day month and year aforesaid.

Instrument for the purpose therein expressed.

has produced \_\_\_\_\_ as identification and who did execute said

\_\_\_\_\_ who is/are personally known to me or who

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of February, 2013, by

ACKNOWLEDGEMENT

Printed Name \_\_\_\_\_  
Senior Vice-President  
Corporate \_\_\_\_\_  
Name of Lending Institution  
PROSPERITY BANK

Printed Name \_\_\_\_\_  
Vice-President  
Corporate \_\_\_\_\_  
Name of Lending Institution  
PROSPERITY BANK

ATTEST:

of \_\_\_\_\_, 2013,  
covenants and conditions set forth herein and hereunto sets his hand and seal this 21<sup>st</sup> day  
COME NOW, \_\_\_\_\_ and joins and Consents to the  
PROSPERITY BANK

JOINDER AND CONSENT BY \_\_\_\_\_  
Prosperity Bank  
Name of Lending Institution / Mortgage Holder

JOINDER AND CONSENT AFFIDAVIT





**AFFIDAVIT OF CORPORATE IDENTITY / AUTHORITY**

STATE OF Florida

COUNTY OF Flagler

COMES NOW, Gary Heckel, being first duly sworn, who deposes and says:

(1) That he/she is the Manager, an officer of Peggy Lane, LLC corporation existing under the laws of the State of Florida.

(2) That he/she is authorized to execute the following deeds or instruments on behalf of the above named corporation: Peggy Lane LLC relating to the following described real property: 07-11-31-7000-0000-0000

(3) That this affidavit is made to induce the City of Palm Coast to accept the above described property.

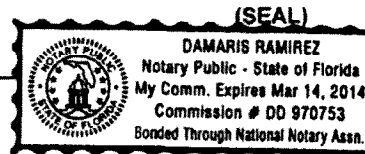
Signature of owner OR person authorized to represent this application

GARY HECKEL  
Signature  
Print name  
MR PEGGY LANE LLC

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print name

NOTARY: This instrument was acknowledged before me on this 21<sup>st</sup> day of February, 2009 by Gary Heckel who is/are personally known to me, or who has/have produced DL as identification.

Damaris Ramirez  
Signature of Notary Public, State of Florida





Prepared By:  
Community Development Department  
City of Palm Coast  
160 Cypress Point Parkway, Suite B-106  
Palm Coast, FL 32164

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

**CITY OF PALM COAST**  
**MINOR DEVELOPMENT ORDER APPROVAL OF**  
**ADMINISTRATIVE DEVIATIONS IN CONNECTION WITH CONVEYANCE OF PROPERTY TO THE CITY**  
**Wells Fargo Bank, National Association**

On March 19, 2013, City of Palm Coast City Manager, acting as the City's Land Use Administrator, issued this City initiated, Minor Development Order, relating to and touching and concerning the following described property (the "Owner's Residual Parcel"):

See Exhibit "A" attached hereto. The Owner's Residual Parcel is located at 222 Palm Coast Parkway NE.

**FINDINGS OF FACT**

Property Owner: Wells Fargo Bank, N.A., successor by merger to Wachovia Bank ("Owner")

Project Name: Wells Fargo  
Application: City Initiated

Requested  
Development Approval: ADMINISTRATIVE VARIANCE DUE TO CONVEYANCE  
OF PROPERTY TO CITY OF PALM COAST

Parcel Acreage:  
Zoning Classification: COM-2

1. The City has requested a conveyance of that certain portion of Parcel ID: 07-11-31-7001-ORPAB-0004 (See Exhibit "B" attached hereto) (the "Owner's Parent Tract"),, as more particularly described in Exhibit "C "attached hereto (the "Parkway Parcel"), for the Palm Coast Parkway Improvements Project, which Owner has agreed, under threat of condemnation, to convey to the City, instead of requiring the City to take the Parkway Parcel through condemnation.

2. In order to save the City from having to pay business damages or any other damages (including severance), attorney's fees, expert costs, or any other costs to which the Owner might have been entitled the impact of this conveyance can be mitigated through the issuance of this Minor Development Order, granting setback and other entitlements pertaining to use and development of the Owner's Residual Parcel based on the property's land area and building configuration before the conveyance, through recognizing the Owner's Residual Parcel, following the conveyance, in the same manner as the Owner's Parent Tract in the application of development standards. .

3. This Minor Development Order may be issued by the Land Use Administrator under the general authority found in Section 2.13.02 of the City's Unified Land Development Code (the "Code"), and under the City's Home Rule Authority, because the Owner's Residual Parcel is in compliance with all other aspects of the Code.

#### **CONCLUSIONS OF LAW**

1. The Minor Development Order sought is consistent with the City Comprehensive Plan and will be developed consistent with and in compliance with applicable land development regulations and all other applicable regulations and ordinances as set forth in the Code of Ordinances of the City of Palm Coast.

2. The City is authorized pursuant to its home rule power to enter into development agreements and orders to establish guidelines for the use of property within the City.

3. The requirements of Section 2.13.04 (A-C) are met.

4. This Minor Development Order's administrative adjustment in setbacks, lot area calculations and other development standards does not adversely affect the health, safety, and welfare of the public, is the minimum necessary for the reasonable use of the land and improvements, does not adversely affect the rights or enjoyment of property of adjacent property owners; and is the result of a hardship imposed by the conveyance of the Parkway Parcel to the City.

#### **ORDER**

#### **NOW, THEREFORE, IT IS ORDERED THAT:**

(1) The application for Minor Development Order Approval of Administrative Deviations initiated by the City for the Owner's Residual Parcel is **GRANTED**.

(2) The Owner's Residual Parcel, including but not limited to structures located thereon, following conveyance of the Parkway Parcel, is hereby deemed to be lawfully conforming and in compliance with all applicable Code development standards, including but not limited to distance between structures, parcel dimensions, lot area, parking, buffers, landscaping and setbacks.

(3) All future development of the Owner's Residual Parcel shall fully comply with all of the codes and ordinances in effect in the City at the time of issuance of a development order and/or development permit; provided, however, all determinations of compliance with Code development standards shall be based upon the boundary of the Owner's Parent Tract as existed prior to the conveyance of the Parkway Parcel.

(4) This Order is issued in connection with and as a condition of the Owner's conveyance of the Parkway Parcel to the City for the Palm Coast Parkway Improvements Project.

(5) This Order may be appealed to the Planning and Land Development Regulation Board (PLDRB) by an aggrieved person in the manner as set forth in Code Section 2-16.

(6) This Order touches and concerns the Owner's Residual Parcel property and the conditions, commitments, and provisions of this Order shall burden, run with and follow the said property.

(7) The terms and provisions of this Order are not severable and in the event any portion of this Order shall be found to be invalid or illegal then the entire Order shall be null and void, provided, however, upon the Owner's request, the City shall initiate a new application for approval that corrects any such invalidity or illegality, to accomplish the purposes set forth herein.

Done and Ordered on the date first written above.

As approved and authorized for execution by the City Manager, acting as the Land Administrator.

Attest:

Virginia A. Smith  
Virginia A. Smith, City Clerk

City Manager:  
Jim Landon  
Jim Landon, City Manager, acting as the Land Use  
Administrator  
3/19/13

STATE OF FLORIDA  
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of March, 2013, by Jim Landon, who is personally known to me.

Judi D. McCullar  
Notary Public – State of Florida  
Print name: Judi D. McCullar  
My commission expires:  
12-16-16

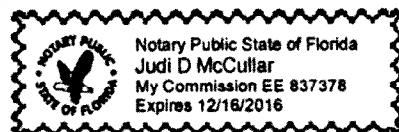


EXHIBIT "A"

Owner's Residual Parcel

A PARCEL OF LAND LYING IN RESERVED PARCEL "A", SECTION 1 AT PALM COAST, AS RECORDED IN MAP BOOK 5, PAGES 87 AND 88 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT OF REFERENCE BEING THE INTERSECTION OF THE NORTHEAST CORNER OF GOVERNMENT SECTION 18 WITH THE WESTERLY BOUNDARY OF SECTION 41, TOWNSHIP 11, SOUTH, RANGE 31 EAST, OF FLAGLER COUNTY: THENCE SOUTH  $14^{\circ}00'13''$  EAST 208.10 FEET ALONG SAID WESTERLY BOUNDARY LINE OF SECTION 41 TO THE NORTHERLY RIGHT-OF-WAY OF PALM COAST PARKWAY (104'R/W): THENCE NORTH  $63^{\circ}20'59''$  EAST 18.14 FEET ALONG SAID RIGHT-OF-WAY TO THE POINT OF BEGINNING OF THIS DESCRIPTION: THENCE DEPARTING SAID RIGHT-OF-WAY NORTH  $03^{\circ}15'50''$  EAST 304.94 FEET TO A POINT ON A CURVE: THENCE SOUTHEASTERLY 109.17 FEET ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 371.11 FEET TO A CENTRAL ANGLE OF  $16^{\circ}51'17''$ , A CHORD OF 108.78 FEET AND A CHORD BEARING OF NORTH  $89^{\circ}09'40''$  EAST TO A POINT: THENCE DEPARTING SAID CURVE SOUTH  $26^{\circ}39'01''$  EAST 216.95 FEET TO A POINT ON THE SAID NORTHERLY RIGHT-OF-WAY OF PALM COAST PARKWAY: THENCE SOUTH  $63^{\circ}20'59''$  WEST 250.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION. BEING THE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 537, PAGE 814, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA;

LESS AND EXCEPT:

THE PARCEL OF LAND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN OFFICIAL RECORDS BOOK 537, PAGE 814, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, RUN THENCE NORTH  $03^{\circ}15'03''$  EAST ALONG THE WESTERLY LINE OF SAID PARCEL A DISTANCE OF 11.55 FEET: THENCE DEPARTING SAID WESTERLY LINE RUN NORTH  $68^{\circ}56'04''$  EAST A DISTANCE OF 102.64 FEET TO A POINT ON THE SOUTH LINE OF SAID PARCEL: THENCE SOUTH  $63^{\circ}20'12''$  WEST ALONG SAID SOUTH LINE A DISTANCE OF 107.92 FEET TO THE POINT OF BEGINNING.



EXHIBIT "B"

Owner's Parent Tract

A PARCEL OF LAND LYING IN RESERVED PARCEL "A", SECTION 1 AT PALM COAST, AS RECORDED IN MAP BOOK 5, PAGES 87 AND 88 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT OF REFERENCE BEING THE INTERSECTION OF THE NORTHEAST CORNER OF GOVERNMENT SECTION 18 WITH THE WESTERLY BOUNDARY OF SECTION 41, TOWNSHIP 11, SOUTH, RANGE 31 EAST, OF FLAGLER COUNTY: THENCE SOUTH  $14^{\circ}00'13''$  EAST 208.10 FEET ALONG SAID WESTERLY BOUNDARY LINE OF SECTION 41 TO THE NORTHERLY RIGHT-OF-WAY OF PALM COAST PARKWAY (104'R/W): THENCE NORTH  $63^{\circ}20'59''$  EAST 18.14 FEET ALONG SAID RIGHT-OF-WAY TO THE POINT OF BEGINNING OF THIS DESCRIPTION: THENCE DEPARTING SAID RIGHT-OF-WAY NORTH  $03^{\circ}15'50''$  EAST 304.94 FEET TO A POINT ON A CURVE: THENCE SOUTHEASTERLY 109.17 FEET ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 371.11 FEET TO A CENTRAL ANGLE OF  $16^{\circ}51'17''$ , A CHORD OF 108.78 FEET AND A CHORD BEARING OF NORTH  $89^{\circ}09'40''$  EAST TO A POINT: THENCE DEPARTING SAID CURVE SOUTH  $26^{\circ}39'01''$  EAST 216.95 FEET TO A POINT ON THE SAID NORTHERLY RIGHT-OF-WAY OF PALM COAST PARKWAY: THENCE SOUTH  $63^{\circ}20'59''$  WEST 250.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

BEING THE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 537, PAGE 814, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA

EXHIBIT "C"

Parkway Parcel

PARCEL 102

FEE SIMPLE RIGHT OF WAY

THAT PART OF:

"A PARCEL OF LAND LYING IN RESERVED PARCEL "A", SECTION 1 AT PALM COAST, AS RECORDED IN MAP BOOK 5, PAGES 87 AND 88 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT OF REFERENCE BEING THE INTERSECTION OF THE NORTHEAST CORNER OF GOVERNMENT SECTION 18 WITH THE WESTERLY BOUNDARY OF SECTION 41, TOWNSHIP 11, SOUTH, RANGE 31 EAST, OF FLAGLER COUNTY: THENCE SOUTH 14°00'13" EAST 208.10 FEET ALONG SAID WESTERLY BOUNDARY LINE OF SECTION 41 TO THE NORTHERLY RIGHT-OF-WAY OF PALM COAST PARKWAY (104'R/W): THENCE NORTH 63°20'59" EAST 18.14 FEET ALONG SAID RIGHT-OF-WAY TO THE POINT OF BEGINNING OF THIS DESCRIPTION: THENCE DEPARTING SAID RIGHT-OF-WAY NORTH 03°15'50" EAST 304.94 FEET TO A POINT ON A CURVE: THENCE SOUTHEASTERLY 109.17 FEET ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 371.11 FEET TO A CENTRAL ANGLE OF 16°51'17", A CHORD OF 108.78 FEET AND A CHORD BEARING OF NORTH 89°09'40" EAST TO A POINT: THENCE DEPARTING SAID CURVE SOUTH 26°39'01" EAST 216.95 FEET TO A POINT ON THE SAID NORTHERLY RIGHT-OF-WAY OF PALM COAST PARKWAY: THENCE SOUTH 63°20'59" WEST 250.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION."

BEING THE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 537, PAGE 814, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA.

DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN OFFICIAL RECORDS BOOK 537, PAGE 814, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, RUN THENCE NORTH 03 °15'03" EAST ALONG THE WESTERLY LINE OF SAID PARCEL A DISTANCE OF 11.55 FEET: THENCE DEPARTING SAID WESTERLY LINE RUN NORTH 68°56'04" EAST A DISTANCE OF 102.64 FEET TO A POINT ON THE SOUTH LINE OF SAID PARCEL: THENCE SOUTH 63°20'12" WEST ALONG SAID SOUTH LINE A DISTANCE OF 107.92 FEET TO THE POINT OF BEGINNING:

SAID PARCEL CONTAINING 540 SQUARE FEET, MORE OR LESS.

Prepared By:  
Community Development Department  
City of Palm Coast  
160 Cypress Point Parkway, Suite B-106  
Palm Coast, FL 32164

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

**CITY OF PALM COAST**

**MINOR DEVELOPMENT ORDER APPROVAL OF**

**ADMINISTRATIVE DEVIATIONS IN CONNECTION WITH CONVEYANCE OF PROPERTY TO THE CITY**  
**Wells Fargo Bank, National Association**

On March 19, 2013, City of Palm Coast City Manager, acting as the City's Land Use Administrator, issued this City initiated, Minor Development Order, relating to and touching and concerning the following described property (the "Owner's Residual Parcel"):

See Exhibit "A" attached hereto. The Owner's Residual Parcel is located at 222 Palm Coast Parkway NE.

**FINDINGS OF FACT**

Property Owner: Wells Fargo Bank, N.A., successor by merger to Wachovia Bank ("Owner")

Project Name: Wells Fargo  
Application: City Initiated

Requested  
Development Approval: ADMINISTRATIVE VARIANCE DUE TO CONVEYANCE  
OF PROPERTY TO CITY OF PALM COAST

Parcel Acreage:  
Zoning Classification: COM-2

1. The City has requested a conveyance of that certain portion of Parcel ID: 07-11-31-7001-ORPAB-0004 (See Exhibit "B" attached hereto) (the "Owner's Parent Tract"), as more particularly described in Exhibit "C" attached hereto (the "Parkway Parcel"), for the Palm Coast Parkway Improvements Project, which Owner has agreed, under threat of condemnation, to convey to the City, instead of requiring the City to take the Parkway Parcel through condemnation.

2. In order to save the City from having to pay business damages or any other damages (including severance), attorney's fees, expert costs, or any other costs to which the Owner might have been entitled the impact of this conveyance can be mitigated through the issuance of this Minor Development Order, granting setback and other entitlements pertaining to use and development of the Owner's Residual Parcel based on the property's land area and building configuration before the conveyance, through recognizing the Owner's Residual Parcel, following the conveyance, in the same manner as the Owner's Parent Tract in the application of development standards.

✓ D 4/18/2013  
(00824493-2)

3. This Minor Development Order may be issued by the Land Use Administrator under the general authority found in Section 2.13.02 of the City's Unified Land Development Code (the "Code"), and under the City's Home Rule Authority, because the Owner's Residual Parcel is in compliance with all other aspects of the Code.

#### **CONCLUSIONS OF LAW**

1. The Minor Development Order sought is consistent with the City Comprehensive Plan and will be developed consistent with and in compliance with applicable land development regulations and all other applicable regulations and ordinances as set forth in the Code of Ordinances of the City of Palm Coast.

2. The City is authorized pursuant to its home rule power to enter into development agreements and orders to establish guidelines for the use of property within the City.

3. The requirements of Section 2.13.04 (A-C) are met.

4. This Minor Development Order's administrative adjustment in setbacks, lot area calculations and other development standards does not adversely affect the health, safety, and welfare of the public, is the minimum necessary for the reasonable use of the land and improvements, does not adversely affect the rights or enjoyment of property of adjacent property owners; and is the result of a hardship imposed by the conveyance of the Parkway Parcel to the City.

#### **ORDER**

#### **NOW, THEREFORE, IT IS ORDERED THAT:**

(1) The application for Minor Development Order Approval of Administrative Deviations initiated by the City for the Owner's Residual Parcel is **GRANTED**.

(2) The Owner's Residual Parcel, including but not limited to structures located thereon, following conveyance of the Parkway Parcel, is hereby deemed to be lawfully conforming and in compliance with all applicable Code development standards, including but not limited to distance between structures, parcel dimensions, lot area, parking, buffers, landscaping and setbacks.

(3) All future development of the Owner's Residual Parcel shall fully comply with all of the codes and ordinances in effect in the City at the time of issuance of a development order and/or development permit provided, however, all determinations of compliance with Code development standards shall be based upon the boundary of the Owner's Parent Tract as existed prior to the conveyance of the Parkway Parcel.

(4) This Order is issued in connection with and as a condition of the Owner's conveyance of the Parkway Parcel to the City for the Palm Coast Parkway Improvements Project.

(5) This Order may be appealed to the Planning and Land Development Regulation Board (PLDRB) by an aggrieved person in the manner as set forth in Code Section 2-16.



(6) This Order touches and concerns the Owner's Residual Parcel property and the conditions, commitments, and provisions of this Order shall burden, run with and follow the said property.

(7) The terms and provisions of this Order are not severable and in the event any portion of this Order shall be found to be invalid or illegal then the entire Order shall be null and void, provided, however, upon the Owner's request, the City shall initiate a new application for approval that corrects any such invalidity or illegality, to accomplish the purposes set forth herein.

Done and Ordered on the date first written above.

As approved and authorized for execution by the City Manager, acting as the Land Administrator.

Attest:

Virginia A. Smith  
Virginia A. Smith, City Clerk

City Manager:

Jim Landon  
Jim Landon, City Manager, acting as the Land Use  
Administrator 3/19/13

STATE OF FLORIDA  
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of March  
2013, by Jim Landon, who is personally known to me.

Judi D. McCullar  
Notary Public - State of Florida  
Print name: Judi D. McCullar  
My commission expires:  
12-16-16

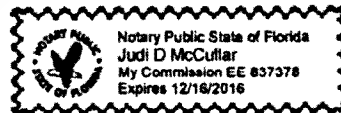


EXHIBIT "A"

Owner's Residual Parcel

A PARCEL OF LAND LYING IN RESERVED PARCEL "A", SECTION 1 AT PALM COAST, AS RECORDED IN MAP BOOK 5, PAGES 87 AND 88 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT OF REFERENCE BEING THE INTERSECTION OF THE NORTHEAST CORNER OF GOVERNMENT SECTION 18 WITH THE WESTERLY BOUNDARY OF SECTION 41, TOWNSHIP 11, SOUTH, RANGE 31 EAST, OF FLAGLER COUNTY: THENCE SOUTH  $14^{\circ}00'13''$  EAST 208.10 FEET ALONG SAID WESTERLY BOUNDARY LINE OF SECTION 41 TO THE NORTHERLY RIGHT-OF-WAY OF PALM COAST PARKWAY (104'R/W): THENCE NORTH  $63^{\circ}20'59''$  EAST 18.14 FEET ALONG SAID RIGHT-OF-WAY TO THE POINT OF BEGINNING OF THIS DESCRIPTION: THENCE DEPARTING SAID RIGHT-OF-WAY NORTH  $03^{\circ}15'50''$  EAST 304.94 FEET TO A POINT ON A CURVE: THENCE SOUTHEASTERLY 109.17 FEET ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 371.11 FEET TO A CENTRAL ANGLE OF  $16^{\circ}51'17''$ , A CHORD OF 108.78 FEET AND A CHORD BEARING OF NORTH  $89^{\circ}09'40''$  EAST TO A POINT: THENCE DEPARTING SAID CURVE SOUTH  $26^{\circ}39'01''$  EAST 216.95 FEET TO A POINT ON THE SAID NORTHERLY RIGHT-OF-WAY OF PALM COAST PARKWAY: THENCE SOUTH  $63^{\circ}20'59''$  WEST 250.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION. BEING THE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 537, PAGE 814, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA;

LESS AND EXCEPT:

THE PARCEL OF LAND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN OFFICIAL RECORDS BOOK 537, PAGE 814, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, RUN THENCE NORTH  $03^{\circ}15'03''$  EAST ALONG THE WESTERLY LINE OF SAID PARCEL A DISTANCE OF 11.55 FEET: THENCE DEPARTING SAID WESTERLY LINE RUN NORTH  $68^{\circ}56'04''$  EAST A DISTANCE OF 102.64 FEET TO A POINT ON THE SOUTH LINE OF SAID PARCEL: THENCE SOUTH  $63^{\circ}20'12''$  WEST ALONG SAID SOUTH LINE A DISTANCE OF 107.92 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

Owner's Parent Tract

A PARCEL OF LAND LYING IN RESERVED PARCEL "A", SECTION 1 AT PALM COAST, AS RECORDED IN MAP BOOK 5, PAGES 87 AND 88 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT OF REFERENCE BEING THE INTERSECTION OF THE NORTHEAST CORNER OF GOVERNMENT SECTION 18 WITH THE WESTERLY BOUNDARY OF SECTION 41, TOWNSHIP 11, SOUTH, RANGE 31 EAST, OF FLAGLER COUNTY: THENCE SOUTH  $14^{\circ}00'13''$  EAST 208.10 FEET ALONG SAID WESTERLY BOUNDARY LINE OF SECTION 41 TO THE NORTHERLY RIGHT-OF-WAY OF PALM COAST PARKWAY (104'R/W): THENCE NORTH  $63^{\circ}20'59''$  EAST 18.14 FEET ALONG SAID RIGHT-OF-WAY TO THE POINT OF BEGINNING OF THIS DESCRIPTION: THENCE DEPARTING SAID RIGHT-OF-WAY NORTH  $03^{\circ}15'50''$  EAST 304.94 FEET TO A POINT ON A CURVE: THENCE SOUTHEASTERLY 109.17 FEET ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 371.11 FEET TO A CENTRAL ANGLE OF  $16^{\circ}51'17''$ , A CHORD OF 108.78 FEET AND A CHORD BEARING OF NORTH  $89^{\circ}09'40''$  EAST TO A POINT: THENCE DEPARTING SAID CURVE SOUTH  $26^{\circ}39'01''$  EAST 216.95 FEET TO A POINT ON THE SAID NORTHERLY RIGHT-OF-WAY OF PALM COAST PARKWAY: THENCE SOUTH  $63^{\circ}20'59''$  WEST 250.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

BEING THE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 537, PAGE 814, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA

EXHIBIT "C"

Parkway Parcel

PARCEL 102

FEE SIMPLE RIGHT OF WAY

THAT PART OF:

"A PARCEL OF LAND LYING IN RESERVED PARCEL "A", SECTION 1 AT PALM COAST, AS RECORDED IN MAP BOOK 5, PAGES 87 AND 88 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT OF REFERENCE BEING THE INTERSECTION OF THE NORTHEAST CORNER OF GOVERNMENT SECTION 18 WITH THE WESTERLY BOUNDARY OF SECTION 41, TOWNSHIP 11, SOUTH, RANGE 31 EAST, OF FLAGLER COUNTY: THENCE SOUTH  $14^{\circ}00'11''$  EAST 208.10 FEET ALONG SAID WESTERLY BOUNDARY LINE OF SECTION 41 TO THE NORTHERLY RIGHT-OF-WAY OF PALM COAST PARKWAY (104' R/W): THENCE NORTH  $63^{\circ}20'59''$  EAST 18.10 FEET ALONG SAID RIGHT-OF-WAY TO THE POINT OF BEGINNING OF THIS DESCRIPTION: THENCE DEPARTING SAID RIGHT-OF-WAY NORTH  $03^{\circ}15'50''$  EAST 304.94 FEET TO A POINT ON A CURVE, THENCE SOUTHEASTERLY 109.17 FEET ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 371.11 FEET, TO A CENTRAL ANGLE OF  $16^{\circ}51'17''$ , A CHORD OF 108.78 FEET AND A CHORD BEARING OF NORTH  $89^{\circ}09'40''$  EAST TO A POINT: THENCE DEPARTING SAID CURVE SOUTH  $26^{\circ}39'01''$  EAST 216.95 FEET TO A POINT ON THE SAID NORTHERLY RIGHT-OF-WAY OF PALM COAST PARKWAY: THENCE SOUTH  $63^{\circ}20'59''$  WEST 250.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION."

BEING THE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 537, PAGE 814, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA.

DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN OFFICIAL RECORDS BOOK 537, PAGE 814, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, RUN THENCE NORTH  $03^{\circ}15'03''$  EAST ALONG THE WESTERLY LINE OF SAID PARCEL A DISTANCE OF 11.55 FEET: THENCE DEPARTING SAID WESTERLY LINE RUN NORTH  $68^{\circ}56'04''$  EAST A DISTANCE OF 102.64 FEET TO A POINT ON THE SOUTH LINE OF SAID PARCEL: THENCE SOUTH  $63^{\circ}20'12''$  WEST ALONG SAID SOUTH LINE A DISTANCE OF 107.92 FEET TO THE POINT OF BEGINNING:

SAID PARCEL CONTAINING 540 SQUARE FEET, MORE OR LESS.