

**SOUTH OLD KINGS ROAD  
MASTER PLAN DEVELOPMENT AGREEMENT  
(version Jan 30, 2020)**

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**THIS Master Plan Development Agreement (the “DA”)**

effective this \_\_\_\_ day of \_\_\_\_\_ 2020 by and between  
**Bulow Creek, LLC**, a Florida limited liability company (the  
"Developer") and the **City of Palm Coast**, a municipal  
corporation organized and existing under the laws of the  
State of Florida (the "City").

**WHEREAS**, Developer filed an Application for Development Approval ("ADA")  
dated July 30, 2014, as amended by ADA First Sufficiency Response dated February 27,  
2015, and ADA Second Sufficiency Response dated May 28, 2015, South Old Kings Road  
Development of Regional Impact ("South Old Kings Road DRI") located on certain real  
property as more specifically described on **Exhibit "A"** hereto (the "Property"); and

**WHEREAS**, on March 6, 2017, the Developer withdrew the DRI application and  
elected to obtain only rezoning approval from the City for a Master Planned Development  
("MPD"); and

**WHEREAS**, the South Old Kings Road MPD ("Project") is a proposed mixed-use  
development on the Property, consisting of approximately 787 acres located along Old  
Kings Road south of SR 100 and consistent with the Master Planned Development  
Agreement (the "DA"); and

**WHEREAS**, pursuant to Chapter 163, *Florida Statutes*, the Planning and Land  
Development Regulation Board, held at a public meeting on \_\_\_\_\_  
and the City Council of the City ("City Council") held public hearings on

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\_\_\_\_\_ and \_\_\_\_\_, for the South Old Kings Road  
MPD and afforded the public and all affected parties an opportunity to be heard and to  
present evidence; and

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

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

**WHEREAS**, additional conditions of approval may also be included within the  
minutes of relevant meetings of the Planning & Land Development Regulation Board and  
City Council. Furthermore, any representations or promises made by the Developer during  
those meetings (whether oral or in writing) shall also be additional conditions of approval  
if deemed appropriate by the City; and

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

**WHEREAS**, all covenants and conditions set forth herein are agreed to by the  
Developer and represent covenants which touch and concern the Property and run with the  
land and are thereby binding upon the transferees, successors and assigns of the Developer;  
and

**WHEREAS**, whenever an action or approval of the City is referred to herein,  
except for actions relating to the City Council, the action shall be taken by the City

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Manager, or designee; and whenever an action or approval by the Developer is referred to herein, the action may be taken by, or the right or eligibility may belong to Old Kings Road Community Development District ("CDD"), if said CDD is properly created and approved by the City under the statutes, but all conditions, covenants and agreements set forth in this DA are the obligation of the Developer; and

**WHEREAS**, the Developer and the City Council desire that this DA act as an agreement to provide zoning, and the City finds that this DA is consistent with the City's Comprehensive Plan (2035) (the "Comp Plan") and Unified Land Development Code (the "LDC"), and that the conditions, terms, restrictions, and requirements set forth herein are necessary for the protection of the public health, safety, and welfare of the citizens of the City; and

**NOW, THEREFORE, BE IT HEREBY ORDERED AND RESOLVED** by the City Council, that based upon the following Findings of Fact and Conclusions of Law, and the consent and agreement of the Developer, and subject to the following terms and conditions, the City Council hereby approves this DA, pursuant to applicable State laws, and the codes and ordinances of the City:

**PART I**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The above Recitals/Whereas clauses are hereby adopted and incorporated into this DA.
2. The Property is not in an area designated as an Area of Critical State Concern pursuant to the provisions of Section 380.05, *Florida Statutes*.

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3. The South Old Kings Road MPD and the DA are consistent with the State's Comprehensive Plan as set forth at Chapter 187, *Florida Statutes*.
4. The South Old Kings Road MPD is consistent with the City's Comprehensive Plan, and will be consistent with the City's Land Development Code.
5. The Developer's authorized representative is Michael Chiumento whose principal place of business is 145 City Place, Ste. 301, Palm Coast, FL, 32176; and whose telephone number is (386) 445-8900.
6. This DA constitutes final approval for the mixed-use Project as more particularly detailed in Part II of the General Conditions, subject to the terms and conditions of this DA; provided, however, that any and all approvals not specifically made or provided for herein are subject to development review.

**PART II**

**GENERAL CONDITIONS**

1. **Land Use Totals.** Pursuant to the South Old Kings Road MPD – Application for Development Approval, the Project is anticipated to be developed up to the following:

<b><u>Land Use Category</u></b>	<b><u>Gross Bldg./Units or Area</u></b>
Residential	2,246 DUs
Commerce	1,721,834 SF

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The South Old Kings Road MPD (the “Project”) is planned as an integrated mixed-use development as generally depicted on the Preliminary Master Plan, **Exhibit “B”**. As a result, land uses will be integrated, rather than specifically assigned to designated areas. The development rights contained above may be utilized only within the Property. The Developer may elect to accelerate the beginning date of a phase or phases provided that all mitigation requirements for the particular phase are met. The Project may include amenities and ancillary uses and facilities.

**2. Land Use Conversion Table.**

- (a) Developer may increase certain land uses and simultaneously decrease other land uses (“Land Use Conversion”) without filing an application to amend the DA, so long as any change is consistent with Table 1 attached as **Exhibit “C”** hereto (the “Conversion Table”), and provided that such changes do not have a substantial adverse effect or impact on public infrastructure facilities, as determined by the Land Use Administrator (the “LUA”). No conversion from non-residential to residential may occur that increases residential units greater than 2500 units or 2,500,000 square feet of Commerce uses (See also, Ex. “C”). No conversion shall take place without demonstration of adequate potable water and related facilities to support the projected water demand associated with the conversion.
- (b) So long as the conversion is consistent with the criteria contained in the Conversion Table and the City Comprehensive Plan, and no substantial

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change, as determined by the LUA, is made to the Preliminary Master Plan,  
no additional approvals shall be required for any land use conversion.

3. **Zoning.** This DA shall grant and bind the Developer and the Property with zoning approvals, entitlements and obligations. In addition to the above, the Property shall incorporate by reference the City's LDC provisions, including, but not limited to, its zoning classifications, and in the event of any conflicts between the LDC and this DA, the DA shall govern to the extent it is not inconsistent with the City's Comprehensive Plan.

- (a) Classifications: Within each Land Use Designation provided in the DA, the following Zoning Classifications shall be a permitted use. The Developer may elect to develop any tract or area consistent with the permitted Zoning Classification as provided by Chapter 3 of the LDC (2018), so long as the Zoning Classification is permitted in the Land Use designation, which are as follows:

<b>LAND USE DESIGNATION (Exhibit "B")</b>	<b>PERMITTED ZONING CLASSIFICATIONS*</b>
Commercial	COM-1; COM-2; COM-3; OFC-1; and OFC-2
Commerce Park	IND-1; IND-2; PSP; COM-2; and COM-3;

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Residential <sup>1</sup>	SFR-1; SFR-2; SFR-3; SFR-4; SFR-5; DPX; MPD; MFR-1; MFR-2; and MHD
Office	OFC-1; and OFC-2
Recreation	PSP; P&G; and PRS.
Environmental	PSP; P&G; and PRS

\*Maximum height in COM-2, COM-3, OFC-1, OFC-2, PSP, IND-1, and IND-2 shall be 60'

- (b) Limitations: Notwithstanding the above Land Use Designation and Zoning Classification limitation, the Developer may develop the Property consistent with the Conversion Table.
- (c) Dimensional Standards: All dimensional standards for each zoning classification as provided in Chapter 3, LDC shall apply, or in the case of a variance, the PLDRB shall resolve. unless otherwise specified in this document.
4. **Phasing, Buildout and Expiration.** The Project is anticipated to be developed in four (4) phases as shown in Section 22. Given the duration of the Project, the Developer shall not be obligated to develop the Project consistent with the following schedule, but shall instead use the following as a guideline which may change at the Developer's discretion so long as it is consistent with the Conversion Table. During Phase I, the Developer may develop any uses so long as it is

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<sup>1</sup> Per City Comp Plan Policy 1.1.1.2 and 1.1.1.3, a maximum of 20% of the total land area within this FLUM designation (citywide) may be zoned or developed for residential use with a maximum of 33% of the residential units occurring at a density equal to or greater than 15 units per acre. Therefore, any portion of the property developed consistent with MFR-2 may be developed at a density equal to or greater than 15 units per acre.

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consistent with the DA, including the flexibility provided for in the Conversion Table.

5. **Effective Date** “Effective Date” of this DA shall mean the date the Developer and City execute the DA.
6. **Downzoning Protection** The Project, as approved in this DA, shall not be subject to downzoning or reduction of land uses before December 31, 2038, unless Developer consents to such change, or the City demonstrates that substantial changes in the conditions underlying the approval of this DA have occurred or that this DA was based on substantially inaccurate information provided by Developer or that the changes are essential to public health, safety and welfare.
7. **Consistency with the Comprehensive Plan, Local Regulations, Concurrency, and Level of Service Standards.** Development shall be consistent with the City’s Comprehensive Plan, Local Regulations, and Land Development Code. The development described in this DA is determined to be consistent with the *Florida Statutes*, the City’s Comprehensive Plan and all City Ordinances and Land Development Codes in effect on the date this DA is adopted. Any future amendment to this DA must be consistent with the City’s Comprehensive Plan and Land Development Codes in effect on the date the amendment is adopted. In light of Developer obligations provided herein including, but not limited to, cash contributions and donations of lands, the rights of the Developer, or its successors



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or assigns, to complete the development described in this DA are hereby vested pursuant to Section 163.3167(8), *Florida Statutes*, and Florida's common law. Nothing in Florida Statutes or the City's ordinances or regulations, including Florida Statutes, ordinances, or regulations currently in effect, or as amended in the future, or later-adopted Florida Statutes, ordinances, or regulations, shall be construed to restrict, alter, amend, modify or abridge the rights of the Developer or its successors or assigns to complete the development authorized herein, or as amended in the future.

8. **Limitations of Approval** The approvals granted by this DA shall not be construed to obviate the duty of the Developer to comply with all other applicable federal, local or state permitting requirements.
9. **Impact Fee Credits** This DA shall not preclude the City from requiring the payment of impact fees for development or construction of the Project, provided that such fees are assessed in accordance with a duly adopted ordinance and are charged to all other similarly situated developers for the same activities within all other areas of the City. The City shall grant to the Developer or a CDD impact fee credits towards any present or future impact fees that may be adopted by the City for any contribution of land, the construction (including design) of improvements, money (including, but not limited to, "pipelining" or "proportionate share" or "fair share contributions") made by or on behalf of the Developer or a CDD, as the case may be from time to time, if in accordance with City Code in effect at the time

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payment is due, unless the Developer elects to proceed under any new or revised Code provisions. In the event that any contributions of land, construction (including design) of improvements, money (including, but not limited to, “pipelining” or “proportionate share” or “fair share contributions”) made by the Developer, or improvements funded or constructed with funds from a CDD are required by then current law to give rise to impact fee credits to the CDD, then such impact fee credit shall be established in the name of either. In addition, the City shall hold all Transportation Impact Fees paid by the Developer (or its assigns) for development within the Project in an interest bearing escrow account (the “Traffic Impact Fees”). The Traffic Impact Fees shall be used by the City or Developer for transportation improvements necessitated by development occurring within the Project. Use of the Traffic Impact Fees on any improvement shall be governed by written agreement executed by the City and Developer.

- 10. Notices.** Any and all notices required, or allowed to be given: in accordance with this Development Agreement shall be mailed or delivered as follows:

**To Developer:** Bulow Creek, LLC  
800 North Highland Ave., Suite 200  
Orlando, Florida 32803  
Attn: Lee Chira  
Telephone: (407) 297-1600

**With a Copy to:** Chiumento Dwyer Hertel Grant & Kistemaker, P.L.  
145 City Place, Ste 301  
Palm Coast, Florida 32164  
Attn: Michael Chiumento III  
Telephone: (386) 445-8900

**To the City:** City of Palm Coast  
160 Lake Avenue

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Palm Coast, Florida 32164  
Attn: City Manager  
Telephone: (386) 986-3702

**With a Copy to:** Garganese, Weiss D'Agresta & Salzman, P.A.  
111 N. Orange Ave., Suite 2000  
P.O. Box 2873  
Orlando, FL 32802-2873  
Attn: Palm Coast City Attorney  
Telephone: (407) 425-9566

- 11. Severability.** In the event any portion of any Section of this DA shall be declared invalid, illegal, or unconstitutional by a court of competent jurisdiction, such adjudication shall in no manner affect the approval granted herein, and other provisions of the affected DA, which shall remain in full force and effect as if the portion or Section thereof so declared invalid, illegal, or unconstitutional, were not originally a part hereof; provided, however, that if the result of the severance of the portion or Section results in harm to the public health, safety or welfare; results in a public harm; or substantially negates a public benefit or imposes a public burden; then the provisions of this DA shall be deemed not severable and this DA shall be reformulated and reconstituted by the City to address said matters.

**12. Other General Conditions.**

(a) Notwithstanding any provision contained in this DA or other agreement, the City shall have no obligation to contribute to or participate in the funding, design, engineering, permitting, and/or construction of improvements to State roads, County roads, or City roads constructed or to be constructed within the Property.

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(b) Development of the Property based upon this DA shall comply with all applicable Federal, State and local laws, codes, ordinances, rules and regulations which are hereby incorporated herein by this reference.

(c) The Developer acknowledges that the requirements and conditions of this DA as set forth herein result from the impacts of development of the Property on public facilities and systems, are reasonably attributable to the development of the Property, are based upon comparable requirements and commitments that the City or other agencies of government would reasonably expect to require a developer to expend or provide, and are consistent with sound and generally accepted land use planning and development practices and principles.

(d) The City has no obligation to fund any public facilities or infrastructure necessitated by the development of the Property, unless specifically agreed to herein, by other agreements or through the City's Comprehensive Plan and Land Development Code.

(e) This DA and its terms and conditions, and all of the promises, commitments, obligations, covenants, liabilities, and responsibilities of the Developer, touch and concern the Property and shall continue to run with, follow and burden the Property. To this end, the promises, commitments, obligations, covenants, liabilities, and responsibilities provided for herein shall inure to the benefit of the City and shall operate as a perpetual burden and servitude upon the Property unless released by the City by means of an appropriate recordable instrument approved and executed by the City. The promises, commitments, obligations, covenants, liabilities, and responsibilities provided for herein shall be

binding upon the Developer and the Developer's heirs, transferees, assigns and successors in interest (specifically including, but not by way of limitation, building permit applicants and any person or entity developing any part of the Property) and shall inure to the benefit of the City and its assigns and successors in interest as to all parts and each part of the Property. The Developer shall pay any and all costs of recording instruments in the public records of the County.

In addition to the foregoing general conditions, the following specific conditions are included in this DA to mitigate identified impacts.

### **PART III**

#### **SPECIFIC CONDITIONS**

**13. Vegetation and Wildlife.**

A wildlife survey (methodology approved by the Florida Fish and Wildlife Conservation Commission) was performed on the Property on December 9-11, 2013 (the "Wildlife Survey"). The Wildlife Survey documented direct observations of wildlife as well as observations of wildlife signs (e.g., tracks and sheds). Forty percent (40%) of the site is intensively managed pine plantation. The gopher tortoise, listed as Threatened by the State of Florida, was observed during the survey. A 100% gopher tortoise survey shall be conducted prior to any clearing or development activities within each phase or Tract, except not before any silviculture activities, as this is not required by FWC or Forestry BMP's. No other State or Federally listed animals or plant species that are known to occur in Flagler County were observed during the Wildlife Survey.

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(a) Impacts to habitats used by wading bird species will be offset by wetland mitigation associated with SJRWMD and USACOE administered wetland regulatory programs. The wetland mitigation will include offsite wetland preservation, onsite wetland enhancement, onsite wetland restoration, onsite and offsite upland preservation and onsite upland buffer enhancement. The upland and wetland preservation areas will be protected by perpetual conservation easements granted to the appropriate regulatory agencies.

(b) The Property shall be developed in full compliance with all applicable laws, rules and regulations. Development related activities on the Property shall not result in a take of wildlife species classified as endangered, threatened, or a species of special concern by either the State (68A-27.003 to 27.005, Florida Administrative Code) or Federal (16 USC 1531-1544) governments. Development related activity shall not pursue, hunt, or harass state and federally listed species without the appropriate permit(s). Development related activities will not result in the capture, possession, sale or transport of listed wildlife species without the appropriate permit(s).

(c) No construction shall commence within areas of the Property which are occupied by gopher tortoises until the Developer has obtained the necessary gopher tortoise permit(s) from the FFWCC and complies with applicable permit conditions. Moreover, a 100% gopher tortoise survey shall be conducted prior to any clearing or development activities within each Tract, excluding existing silviculture activities.

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(d) The Developer shall comply with the requirements of City's Comprehensive Plan regarding wildlife species classified as endangered, threatened, or a species of special concern.

(e) Much of the Property has been used for agricultural and silvicultural purposes. Agricultural and silvicultural activities within a sub parcel re-zoned for development may continue until the commencement of construction, as further described in Specific Condition 29 below. No logging or other similar silvicultural operations shall be conducted within the wetland areas to be conserved or within the required upland buffer areas adjacent to the wetlands to be conserved, except for wetland and upland enhancement purposes or consistent with a mitigation plan. Silvicultural practices must be limited to those areas of the Project where such practices have occurred or are occurring.

(f) The applicant shall preserve up to 263.17 acres, designated as Environmental on the Preliminary Master Plan (**Exhibit "B"**), to be protected by perpetual conservation easements granted to the appropriate regulatory agency. During project permitting, and prior to development activities, a Greenway Management Plan, or its functional equivalent, shall be in place, that, at a minimum, addresses: 1) wildlife habitat and hydrological actions that result in improved habitat quality; 2) long-term conservation assurances via conservation easements or other viable long-term management agreements with appropriate entities as approved by the St. Johns River Water Management District and/or the Army Corps of Engineers; 3) recreation activities and cultural resource protection. A copy of the

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Greenway Plan shall be provided to the City Staff for review prior to the first project application.

(g) Prior to obtaining Preliminary Plat Approval or Site Plan Approval on a given tract or parcel, the Owner shall (i) comply with Section 10.04 L.D.C; and submit an acceptable tree survey for that tract or parcel to the City with the scope of such being agreed to by the parties or their designees.

(h) All activities in areas designated as Greenbelt shall be managed according to all state and federal approvals.

**14. Wetlands.**

(a) The Developer obtained full approval and permits from the State and Federal agencies responsible for regulating/permitting wetland impacts on the Property. Specifically, the St. Johns Water Management District (SJRWMD) and the Army Corps of Engineers (ACOE), determined that the proposed Project, as modified by the Developer, meets their permit issuance criteria.

(b) All onsite preserved wetlands will have 50' wide undisturbed upland buffers. All development shall comply with SJRWMD environmental resource permit requirements and Palm Coast Land Development Regulations.

(c) Consistent with the proposed Mitigation Plan (**Exhibit "D"**), proposed development within and adjacent to wetlands and water bodies must comply with the City's Comprehensive Plan as well as other applicable federal, state, and local laws and regulations. The following permits have been issued for the Project:

(i) SJRWMD Permit # CON-035-134750-1



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(ii) ACOE Permit # SAJ-2011-02925

The Developer shall promptly provide to the City a copy of all Federal and State environmental permits prior to construction activities being undertaken. The Developer, or its assigns, shall be required to comply with all terms and conditions of all such permits.

(d) Subject to permits from the SJRWMD, ACOE, the City, and other applicable agencies, the Developer shall record conservation easements in favor of the SJRWMD and/or the City, or their respective designees, over the proposed preserved wetlands and upland areas within the Property.

(e) As depicted by the proposed Mitigation Plan (**Exhibit "D"**) the Wetland impacts are approximately 56.19 acres of wetlands located within the Property pursuant to the permit issued by the SJRWMD and ACOE, as may be amended.

(f) Development of the Project within and adjacent to wetlands and water bodies complies with the Palm Coast Comprehensive Plan as well as applicable Federal, State, and local laws and regulations.

(g) Prior to commencement of clearing, earth movement and construction or other development within any jurisdictional wetlands, the wetland boundaries shall be approved by the SJRWMD or ACOE, as applicable. Development activities, may only occur in jurisdictional wetlands after the Developer, its successors or assigns, obtains required permits from the SJRWMD or ACOE, as applicable.

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(h) Wetland impacts will be mitigated through the regulatory permitting processes of SJRWMD or ACOE, as provided for by permits issued by each. Elimination and reduction of wetland impacts will be implemented pursuant to said permits. No development activities as defined in Section 380.04, F.S., except for activities permitted by the appropriate environmental permitting agencies, shall be allowed in any wetlands areas within the Property.

(i) The Developer shall promptly provide to the City a copy of all Federal and State environmental permits prior to construction activities being undertaken. The Developer, or its assigns, shall be required to comply with all terms and conditions of all such permits.

(j) Mitigating for ecological functional losses, if any, which may be associated with the permitted impacts, the Developer shall develop an enforceable Mitigation Proposal developed in consultation with the City of Palm Coast, the Army Corps of Engineers, the St. Johns River Water Management District, and the Florida Department of Environmental Protection, as applicable.

**15. Floodplains.**

(a) A master stormwater management system will be designed and constructed as generally depicted on the Preliminary Master Plan (**Exhibit “B”**). The system will be based on pre-development and post-development evaluations of the 100-year floodplain elevations and extents and will be designed to prevent increases to the floodplain elevation for off-site lands or parcels resulting from the design storm event. The project shall not increase the base flood elevation of the

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floodway within the property. Prior to the commencement of Phase II, an engineering analysis prepared with standard engineering practices shall be provided to the City Engineer for review and approval

(b) The stormwater management system will be designed to accommodate the 100-year interval, 24 hour duration design storm event to prevent the increase of elevations of off-site properties. Residential structures shall have their finished floor elevation set at a minimum of one foot above the established applicable base flood elevation.

(c) All major collector and arterial roadways shall be constructed such that the centerline is at or above the 100-year floodplain.

(d) All construction within the 100-year floodplain shall comply with the City of Palm Coast's Comprehensive Plan, as well as with Federal, State, and local laws and regulations. Elevations will be determined based on the most recent and best available datum. Residential and non-residential structures shall have their finished floor elevation set a minimum of one foot above the established applicable base flood elevation. All major collector and arterial roadways shall be constructed such that the centerline is at or above the 100-year floodplain. The development is intended to follow the general pond locations by the Preliminary Master Plan **(Exhibit "B")**.

(e) Prior to approval of a Preliminary Plat or Site Plan for any area east of Old Kings Road (in whole or part), the Developer will submit a Conditional Letter of Map Revision application with City endorsement to FEMA, to confirm

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the elevation and limit of the Special Flood Hazard Area. FEMA documentation verifying the data will be required prior to recording the Final Plat.

(f) The Property encompasses a regulatory floodway associated with Bulow Creek, an Outstanding Florida Waterway. According to the Preliminary Master Plan, the entire extent of the system is comprised within proposed conservation area. As part of the requirements of subsection 13(f), this should be reaffirmed prior to Final Plat submittal of the first phase. No direct impacts shall take place within the associated regulatory floodway or within the associated undisturbed 50-foot buffer. In the event a connecting pedestrian pathway is proposed, the improvement shall consist of a span bridge to ensure that debris or hazards do not adversely affect the floodway maintenance schedule shall be required to ensure that any debris or other hazards adversely affecting the floodway are timely removed. Moreover, the Developer shall grant the City a maintenance easement over the floodway.

- 16. Water Supply.** Pursuant to a prior written agreement, the City shall construct a potable water supply line along OKR (the “Water Line”) sufficient to meet all water supply needs for the Project. Pursuant to an approved Utility Agreement which shall be executed before the first Preliminary Plat approval or Site Plan approval, the Developer shall cause to be constructed a distribution system for reclaimed water concurrent with development of the Project for both residential and non-residential uses. The nonpotable distribution system may be developed parallel to and concurrently with the potable water system for utilization when sufficient quantities

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of reclaimed or surface water are available from the City for irrigation.

Additionally, the Developer shall adhere to the following requirements:

(a) All available lower-quality sources of water, including reclaimed water, storm water, and surface water, must be distributed for use or used throughout the Property in place of higher-quality water sources, when deemed feasible under District rules and applicable State law. Stormwater, surface water, and reclaimed water shall be maximized as nonpotable water sources for irrigation. Irrigation systems shall be designed to accept nonpotable water.

(b) No Floridian aquifer wells or confined surficial aquifer wells shall be used for irrigation, except as authorized by the St. Johns River Water Management District. Until reclaimed water is available, landscaped areas within common areas shall be irrigated with available stormwater as the primary (first) source. Surface water will serve as backup (secondary) source for irrigation. Only lower quality water sources defined in (a) above shall be utilized for surface level maintenance or decorative uses, except as authorized by the St. Johns River Water Management District. Shallow wells shall be prohibited within residential lots.

**17. Groundwater Protection.**

(a) A 500 ft radius buffer zone shall be established around each existing and proposed wellhead where no construction activities involving hazardous materials shall be conducted and no hazardous material and/or waste generation facilities may be constructed. Direct stormwater runoff shall be diverted away from

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these buffer areas to stormwater treatment ponds which shall be located outside of the protection zone, consistent with City Code.

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

(c) The following best management practices shall apply to geotechnical borings:

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

(ii) All borings less than 20 feet deep shall be backfilled with the original drilled soil to the surface to prevent the creation of a sump. Where the boring is advanced through asphalt or concrete it shall be patched at the surface with a similar impervious material.

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

(d) Any discharge of a hazardous substance at regulatory reporting thresholds shall be reported immediately by the facility owner, operator, or responsible party to the City. Such notification shall in no way alleviate the owner, operator, or responsible party from other City, State, and Federal reporting obligations as required by law. All facilities with discharges of any quantity of a

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hazardous substance shall be remediated so that contamination of soil, surface water, or groundwater is brought into compliance with State, local, and/or Federal standards. Clean-up activities shall begin concurrent with or immediately following emergency response activities.

(e) Whenever it is determined by the City or authorized regulatory agency that a discharge of hazardous substances is resulting in imminent threat of contamination of groundwater or danger to life or property from the contamination of groundwater within the Property, or portion thereof, the Developer or its successors and assigns, shall take immediate corrective action as required by the City. In the event the Developer, or its successors or assigns, as an owner of that portion of the Property contaminated with regulated substances, fails to comply with applicable Federal, State, and Local regulations, the City may enter the affected portion of the Property and conduct clean-up activities that are required by Federal, State, and Local regulations, and pass on the cost of clean up activities to the responsible party. Initiation of any required clean-up activities as directed by the City shall commence within 24 hours and shall be completed within the time specified by the City or other regulatory authority. If immediate corrective measures are not taken and there is immediate threat to the City's potable water resources, danger or hardship to the public, the City may enter upon lands, take corrective actions, and place a lien on the real property of such person(s) to recover the costs of the corrective measures. This prohibition, as with all other provisions of this DA, shall act as a deed restriction within the Property.

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- 18. Wastewater Management.** Development within the Project shall occur concurrent with the provision of adequate central sewer service meeting the adopted level of service of the City's Comprehensive Plan. Prior to site plan on preliminary plat, the Developer and the City shall enter into a Utilities Agreement, which addresses the City's provision of central sewer service to the Project.
- 19. Stormwater Management/Stormwater Pollution Prevention.** The surface water management system for the Property shall be designed in accordance with applicable City and SJRWMD requirements and will provide for the effective removal of stormwater from the development areas through a series of stormwater management facilities. A CDD, POA, or its functional equivalent shall be established to maintain the drainage system upon completion of each parcel within the Property. The Developer will be responsible for the maintenance of the drainage system until the CDD, POA, or its functional equivalent is formed and the individual parcels are sold or developed. Development within the Property shall use Best Management Practices for Erosion Control as required by the applicable National Pollutant Discharge Elimination System ("NPDES") permit. Construction activity within the Property shall be conducted in accordance with a stormwater pollution prevention plan developed pursuant to the NPDES permitting program, and consistent with the City Land Development Code. Discharge from stormwater ponds will meet all local, State and Federal surface water quality standards.



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The Project will include “bio-swales” as pre-treatment systems to reduce the rate of post development discharge. Drainage ways constructed by the Developer shall be vegetated or sodded. Sod shall not incorporate non-biodegradable materials, such as netting. The inside detention slopes for stormwater ponds shall be sodded. The berm and outside slopes for stormwater ponds shall be hydroseeded. All slopes steeper than 4:1 (horizontal:vertical) shall be sodded. Only those areas needed for development may be cleared. All cleared development areas shall be hydro-seeded or seeded and mulched once construction activities in such areas cease. All areas which are covered with vegetation or sod or which are seeded and mulched or hydro-seeded shall be maintained after construction consistent with City Code.

The applicant shall construct a stormwater management system that provides treatment and pre-treatment as required by SJRWMD, the FDEP and FAC Chapter 40C-42. Attenuation shall be provided for the 25-year, 24-hr and the 100yr, 24-hr storms, and all discharges in Bulow Creek shall adhere to the SJRWMD and FED water quality standards for stormwater discharge to an Outstanding Florida Water.

The stormwater management system shall be designed as a stormwater reuse system to maximize the amount of surface water that will be available as a backup source for irrigation needs through the development.

Prior to commencement of any construction which will be adjacent to a conserved wetland, the Developer’s contractor (the “Contractor”) shall be required to install and maintain silt fencing on the landward edge of the natural vegetated

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upland buffer, or landward of the natural vegetated upland buffer at the physical limits of construction, to protect the conserved wetlands. The Contractor shall be responsible for inspection of the silt fencing at least once a week or within 24 hours after each rainfall event in excess of one half (1/2) inch, and must repair fallen or damaged sections immediately upon discovery. All contractors working within the Property shall be notified of the requirement for a stormwater pollution plan developed pursuant to the NPDES permit program and shall be advised of the requirements for silt fencing set forth in this section. Copies of the stormwater pollution prevention plans shall be provided to the City and other required regulatory agencies. In addition, the Developer agrees to incorporate into its property management contract practices the use of slow release fertilizer and other Best Management Practices to further improve surface water quality. Stormwater management system, including regulatory floodways within the property, shall be operated and maintained in accordance with FAC 42-42.027, .028, and .029. Perpetual access easement shall be provided allowing reasonable access for City inspection personnel to all stormwater management facilities, including regulatory floodways.

**20. Surface Water/Water Quality Monitoring.** No monitoring program is required.

**21. Solid Waste.**

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(a) Development of the Project shall occur concurrent with provisions of adequate solid waste service meeting the adopted level of service in the City's Comprehensive Plan. The Project shall participate in the City's recycling program.

(b) Development within the Project or individual phases shall not occur until adequate permitted capacity is verified from the identified service provider or a substitute.

(c) All users, generators and operators within the Property shall be required to adhere to all Federal, State and local laws, codes, ordinances, rules and regulations with respect to the use, management and disposal of hazardous waste.

(d) Bear Smart Community principles (<http://myfwc.com/media/2612908/bear-management-plan.pdf>) shall be integrated into design and operations. The intent is to minimize human-animal conflicts from black bear and other species that may be drawn to area attractants. The Developer and City shall cooperate on grant opportunities to supplement cost(s) that the Developer may incur to implement these principles. At no cost to the City, the Developer will allow Project community recreational facilities to be utilized to conduct Florida Black Bear protection educational events for the benefit of the Project residents.

All residential and commercial properties will also be required to utilize bear proof dumpsters and trash cans.

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- 22. Transportation.** The Developer will dedicate right-of-way (“ROW”), construct improvements, and/or make cash payments to mitigate for regional transportation impacts and meet local concurrency requirements, pursuant to Section 163.3180(12), *Florida Statutes*. The Developer acknowledges that the terms of this DA and the City’s Comprehensive Plan require the Developer to provide its proportionate fair-share of costs for improvements needed for traffic impact mitigation. The Developer shall be obligated to make all transportation improvements consistent with the Traffic Impact Report performed by Lassiter Transportation Group previously submitted to the City (the “DRI Traffic Analysis”). The Developer shall coordinate with Flagler County on the location of the eight (8) foot wide multi-use path that is planned along Old Kings Road. Pursuant to the DRI Traffic Analysis, external trip generations impact the adjacent roadways are as follows:

**TABLE 22.A**

Internal/External Split – Vehicle Trips  
South Old Kings Road DRI

Phasing	Daily Trips		P.M. Peak-Hour Trips	
	Internal	External	Internal	External
Phase 1 (2020)	368	6,805	59	1,111
Phase 2 (2026) (Cumulative)	4,443 (4,811)	16,296 (23,101)	622 (681)	2,357 (3,468)
Phase 3 (2032) (Cumulative)	8,755 (13,566)	23,377 (46,478)	1,135 (1,815)	3,144 (6,611)
Phase 4 (2038) (Cumulative)	15,744 (29,310)	32,341 (78,819)	1,954 (3,770)	4,166 (10,777)

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(a) Phase I: Development in Phase I shall not exceed the P.M. Peak-Hour Trips (External) displayed in table above. The Phase 1 impacts will be deemed mitigated when:

i. The Developer constructs or causes to be constructed to FDOT standards the intersection improvements at SR100 and Old Kings Road ("Intersection Improvements"). Construction of the Intersection Improvements shall commence prior to approval of the four hundred (400) residential units or its equivalent as provided in the Conversion Table. Moreover, construction of the Intersection Improvements shall be completed prior to the commencement of Phase II unless otherwise agreed to by the Developer and the City or their designees; and

~~ii. The Developer pays their proportionate share payment of \$21,480 (inflated to 2015 dollars) for the intersection improvements at SR100 and Belle Terre Parkway. The payment shall be made to the FDOT at the time of the first plat approval for residential uses and/or equivalent for non-residential uses. Upon completion of the Intersection Improvements the Developer shall be entitled to Impact Fee credits in an amount equivalent to the actual cost of design and construction of the Intersection Improvements, and in accordance with City Code.~~

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~~iii~~ii. In light of the aforementioned obligations, Phase I of the Project is vested for traffic concurrency not to exceed those vehicle trips identified in Table 22.A.

- (b) Phase II-IV: The Developer, its successor or assigns shall conduct a Traffic Study before proceeding with Phase 2 development but no later than construction of 60% of the development program of Phase I which shall ascertain the Level of Service (LOS) on facilities where the Project is estimated to contribute an amount of traffic greater than or equal to 5% of the adopted LOS service volume. The methodology shall be similar to that required within the ADA but shall be consistent with the requirements of the Palm Coast Concurrency Management System, unless otherwise agreed to by the parties. In the event that the parties cannot come to an agreement on the methodology, FDOT, Flagler County and Palm Coast shall be the final arbiters. City of Palm Coast's decision shall be final as it relates to City Facilities; Flagler County's decision shall be final as it relates to County facilities, FDOT's decision shall be final as it relates to state facilities. The Project shall not commence beyond Phase 1 into Phases 2-4 (based on the Phase or threshold) when service levels are below the adopted level of service and the Project is projected to contribute 5% of the adopted service volume to the roadway, unless mitigation measures and/or improvements are secured.

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- (c) The Developer, its successors or assigns shall reserve the necessary right of way within Parcel S5 for the potential connection from Old Kings Road via the Commerce Park to Citation Parkway extension over Interstate 95.
- (d) In the event Developer fails to commence development activities (including but not limited to, filing a site plan or preliminary plat application prior to Dec. 30, 2020), the Developer shall revise the existing DRI Traffic analysis.

**23. Air Quality.** Developer will be responsible for the work of all Contractors. Developer will ensure that Contractors will utilize the best operating practices for dust control, including the following measures, as necessary, during all construction activities throughout build-out of the MPD:

- (a) Contractors will moisten soil or use resinous adhesives on barren areas, which shall include, at a minimum, all roads, parking lots, and material stockpiles;
- (b) Contractors will use mulch, liquid resinous adhesives with hydro-seeding or sod on all landscape areas;
- (c) Contractors will remove soil and other dust-generating material deposited on paved streets by vehicular traffic, earth moving equipment, or soil erosion; and
- (d) Open burning is prohibited, unless otherwise agreed to by the City.

**24. Low Impact Development Practices.**

1. Site Planning. The Developer will coordinate with the City to implement planning and design practices for the Property through the identification and prioritization of the following ecological site characteristics: wetlands, uplands, wildlife corridors, cultural resources, landscape and soils.

The Developer and the City will coordinate and identify requirements to minimize land disturbance through the following practices: limit topsoil removal and soil compaction on throughout the Property and where practicable stockpile topsoil within the Property for reuse; limit impervious areas through narrow streets and/or higher density home layouts. Limiting of impervious area via the use of narrower streets must comply with minimum traffic engineering and fire safety requirements. Additionally, higher density housing layouts must conform with Comprehensive Plan and Land Development Code requirements pertaining to maximum density.

2. Water conservation. Water conservation strategies, including native, drought-tolerant landscape techniques and low-flow plumbing fixtures shall be incorporated into the construction, operation, and maintenance phases of the Project, and shall be included in the covenants and deed restrictions. The water conservation strategies shall include the following conditions:

(a) All project related construction and development shall meet, at a minimum, Florida WaterStar Design standards, in accordance with the Northeast Florida Regional Council's policy approved on February 7, 2008, unless amended. The covenants, codes, and deed restrictions shall require that only U.S. Environmental Protection Agency WaterSense®-labeled water conserving fixtures



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or equivalent performing fixtures shall be installed in all residential structures and, as appropriate, in nonresidential buildings and structures. The covenants, codes, and deed restrictions shall require that only U.S. Department of Energy and U.S. Environmental Protection Agency ENERGY STAR-labeled appliances or equivalent performing appliances shall be installed in all residential structures and, as appropriate, in nonresidential buildings and structures.

(b) Best management practices cited by the University of Florida in the Institute of Food and Agricultural Sciences' A Guide to Florida-Friendly Landscaping shall be followed for landscape installation, irrigation, and fertilizer and pesticide applications. These best management practices include:

- Landscape design that minimizes the impacts of fertilizer applications
- Preferred plant materials
- Appropriate type of fertilizer to avoid the release of excess nutrients
- Rate and frequency of fertilizer and pesticide applications
- Watering schedules consistent with the District's landscape irrigation rule
- Design and maintenance of drainage control systems

(c) A water-wise approach shall be used throughout the landscaped areas of the Project. Irrigated turf grass shall not exceed 50% of the landscaped area (except for active play areas and parks) and site-appropriate plant species shall be used in landscaped areas. Landscaped area is defined as any pervious area within

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the proposed Project that will be altered due to the development, exclusive of pervious areas within wetlands, wetland buffers, vegetative buffers between land uses, stormwater systems, and required preservation areas. Refer to the SJRWMD's Waterwise Florida Landscapes, available online at [floridaswater.com/waterwise](http://floridaswater.com/waterwise) landscapes, or other comparable guides.

(d) The Developer shall display information on the use of native vegetation and/or drought tolerant vegetation, water conservation guides and IFAS Cooperative Extension Services' "Florida Yards and Neighborhoods" in a prominent location in the Project sales offices. Low-flow plumbing fixtures shall be incorporated into the construction, operation, and maintenance phases of the Project and shall be included in the covenant and deed restrictions.

(e) Except when Bahia Grass is used, separate irrigation zones shall be required for turf and non-turf areas throughout all land uses (residential and non-residential) to avoid irrigation of landscaped areas when irrigating turf zone(s). Landscaped areas shall not be irrigated using a high-volume irrigation system. All irrigation systems shall use a rain shut-off device such as a rain sensor or soil moisture sensor (per Florida Statutes) to override unnecessary irrigation events.

(f) Both the common areas and individual properties within the Project shall be developed and maintained in conformance with the Florida Water Star program, which shall be enforced through covenant or deed restriction. Additionally, both the common areas and individual properties shall adhere to Waterwise Florida Landscapes principles.

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(g) The Developer shall implement a customer and employee water conservation education program as specified in Section 12.2.5.1(e) of the SJRWMD Applicant's Handbook: Consumptive Use of Water. This condition may be satisfied by the water utility provider with approval of the SJRWMD.

(h) Before the end of Phase 2, at least one non-residential demonstration site and one model home shall be landscaped in accordance with the landscape principles described above.

(i) Only high-efficiency or U.S. Environmental Protection Agency Water Sense labeled water conserving devices, fixtures, and appliances shall be installed in all residential and nonresidential buildings and structures.

(j) Water Star literature shall be distributed to all to residents and tenants.

(k) Septic tanks shall be prohibited.

3. Energy Conservation. The Developer will seek to obtain certification from the Florida Green Building Coalition, the U.S. Green Building Council or similar recognized program for two (2) development parcels with the Property.

The Developer shall use traditional energy conservation methods in construction of residential and non-residential facilities. This will include increased insulation, high efficiency mechanical devices, cross ventilation, solar heating and cooling, and low pressure sodium lamps for external lighting. Landscaping will be recommended wherever possible to reduce irrigation and energy needs by relying on plants most suitable to the climate and conditions of central Florida. The Developer shall use reasonable efforts to incorporate these standards at minimum:

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- a. Provision of a bicycle/pedestrian system connecting all land uses
- b. Provision of bicycle racks in recreation, commercial, and residential areas
- c. Cooperation in locating bus stop shelters and other passenger and system accommodations for transit system to serve area
- d. Use of energy-efficient windows
- e. Use of operable windows and ceiling fans (non residential)
- f. Installation of energy-efficient appliances and equipment
- g. Use of low-flush volume water closets and shower heads and faucets with lowered maximum flow rate
- h. Placement of trees to provide needed shade in the warmer months while not overly reducing the benefits of sunlight in the cooler months, consistent with generally acceptable Fire Wise principles.
- i. Orientation of structures, where possible, to reduce solar heat gain by walls and cooling effects of the wind utilize the natural
- j. Provision of structural shading wherever practical when natural shading cannot be used effectively
- k. Inclusion of porch/patio areas in residential units.

The Developer shall endeavor to reserve land for Compressed Natural Gas (CNG) fueling of fleet vehicles within the Commerce Park (Industrial) areas of the project area. The Developer shall endeavor to encourage the construction of a CNG fueling station, unless otherwise agreed to by the City or its designee.

**25. Police and Fire Protection.**

(a) No later than the end of Phase 2, the Developer shall provide one on site Flagler County Sheriff's Office sub-station as a rent or lease free store front. The City and Sheriff's Office shall use its best efforts to co-locate the Sheriff's substation request within its fire station facility constructed by the City. The Developer shall pre-pay \$113,364.88 (in 2014 dollars), adjusted for inflation as provided by the Consumer Price Index (CPI), no later than the end of Phase Two. The Developer shall receive impact fee credits against the prepayment, in accordance with City Code.

(b) The Developer shall reserve one (1) Fire Station Site acceptable to the City and County, containing up to four (4) upland acres in total, or 2.5 acres if the Developer provides for stormwater treatment, which shall be located within the Project. Prior to the commencement of Phase 2, the Developer shall work with the City and County to complete a station capacity and response time analysis. If the study determines a station is needed, the Developer shall then deed the reserved Fire Station Site to the City free of charge in a form acceptable to the City, and shall be free and clear of liens or encumbrances, following a request by the City. The Developer shall receive impact fee credit against Fire and Rescue Impact Fees for the donation of land as described herein, calculated in accordance with City Code.

(c) The Developer, County and City shall use their best efforts to co-locate the Flagler County Sheriff's Office sub-station and City of Palm Coast Fire Services.

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**26. Recreation and Open Space.** Based on the City's Comprehensive Plan, the Developer shall provide a minimum of **43.12** acres of recreation and park space, calculated at eight (8) acres per 1,000 persons (i.e., 5 acres/1,000 for activity-based and 3 acres/1,000 for passive-based recreation). The Developer agrees to exceed its minimum requirement and provide the following:

(a) Upon the Developer's removal of the existing coquina rock stockpiles but no later than the expiration of Phase I, the Developer shall deed marketable title to the City through a warranty deed acceptable to the City, to a total of 43.12 acres of land to serve as a Community Park site, as identified on the Preliminary Master Plan (**Exhibit "B"**) and generally shown in Exhibit I ("Community Park site"), as activity-based recreation to serve the population of the Project. The conveyance will be at no cost to the City. The acreage shall consist of at least 26.2 acres of uplands which can be used by the City as an active park. Prior to the first Residential Final Plat or Site Plan approval, the Developer shall convey title to the Community Park site to the City. The conveyance will be free from all encumbrances except easements, reservations, and restrictions acceptable to the City, together with all appurtenances pertaining to the conveyance. Developer will prepay taxes for the year of closing pursuant to Fla. Stat. 196.295, and all special assessments which have been levied or certified prior to closing. One hundred and twenty days before Closing, the Developer will cause the title company of its choice to issue and deliver to City an ALTA title commitment to issue a policy in the amount of the assessed value of the Community Park site, accompanied by one copy of each document supporting any exceptions to the title

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commitment. Developer will execute a standard form owner's affidavit and such other affidavits as may be reasonably required by the City, the Title Company, or the Closing Agent. The Developer will also execute an Affidavit of interest in Real Property pursuant to Fla. Stat. 286.23. Developer warrants to City that to the knowledge of the Developer, the Community Park site does not currently contain any Hazardous Substances in violation of any applicable environmental laws or regulations, including but not limited to Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., any "superlien" laws, any superfund laws, or similar federal or state laws, or any successor statutes ("Environmental Laws"), nor to Developer's knowledge has any clean-up of the Community Park site occurred pursuant to the Environmental Laws which could give rise to liability to reimburse any governmental authority for the costs of such clean-up or result in a lien or encumbrance on the Community Park site. Developer shall maintain hazard and liability insurance on the Community Park site until closing.

(b) The Developer shall endeavor to construct a multi-purpose trail system connecting commercial areas with residential areas and recreational amenities within the Property and to adjacent sidewalks and trails. The Project's internal sidewalk system may be used as connections between trail segments where appropriate. The multi-purpose pathway/trail system shall be identified in future Master Planned Development (MPD) or equivalent zoning district and/or site plans submitted to the City, and shall be consistent with the City's trail plan as provided in the City's Comprehensive Plan. The Developer shall provide a connection to the

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existing multi use path along Old Kings Road to complete the northern extension to and over SR100, which may be constructed by others.

(c) The Developer shall receive an impact fee credit against the Park

System Impact Fees pursuant to City Code Chapter 29, Article III for donated land, recreational facilities, equipment and other capital improvements made by the Developer as described herein.

(d) The Developer shall provide the City access to the park facility at the time it is conveyed to the City through an acceptable easement.

(e) In the event the Developer exceed 2,246 residential units, it shall be required to provide additional recreational facilities as required by the City Comprehensive Plan. In addition, it will be required to obtain Flagler County School Board approval for the additional impacts.

(f) Prior to the Developer's conveyance of Community Park Site to the City the Developer shall remove the existing coquina rock stockpile from such property to the satisfaction of the City.

**27. Education.** The Developer shall be responsible for mitigating impacts to Flagler County Public Schools for the 2,246 units that could be developed within the Property. The Developer and the Flagler County School District (FCSD) have agreed to the following commitments in order to satisfy their Proportionate Share:

(a) Developer to donate approximately 15 acres of buildable property adjacent to the south of Old Kings Elementary School prior to the first residential Final Plat approval or Site Plan approval.



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- (b) Developer to properly mitigate wetlands with FCSD support.
- (c) FCSD to accept this property in exchange for impact fee credit and/or guaranteed school capacity reservations, to be agreed upon by both the Developer and FCSD during future discussions.
- (d) Developer to provide and place adequate fill on the property conveyed to FCSD (filling may be staged or delayed, as agreed upon by both the Developer and FCSD during future discussions).
- (e) Developer to provide a two-way access roadway directly to State Road 100 from the parcel conveyed to FCSD.
  - i. Location and alignment of roadway to be finalized during future discussions.
  - ii. Configuration of intersection at State Road 100 (right turn only, left in/right out, fully signalized, etc.) to be finalized during future discussions.

Such Proportionate Share Mitigates and satisfies school concurrency requirements under Section 163.3180(13)(e), Florida Statutes.

- 28. Historical and Archaeological Sites.** Pursuant to Dr. Dana Ste.Claire's report dated February 2013 (the "Ste.Claire Report") and incorporated herein by reference, there are no known historical or archeological sites within the areas of the property to be developed. The Ste.Claire Report, however, provides that the Kings Road Mound site, an area with no archaeological significance, is located in Tract "E16". Nonetheless, the Developer will not disturb the area in any way.

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Regardless, the Developer's construction personnel shall be notified by the Developer, through posted advisories and other methods, of the potential for artifact discovery and to report any discoveries to the Construction Project Manager.

Should any regionally significant historical and archaeological resources be discovered in the course of development, the Developer shall immediately stop construction and notify the Florida Division of Historical Resources ("DHR") and the City. From the date of notification, construction shall be suspended within a 100' radius of the site of discovery for a period of up to 120 days to allow for evaluation of the site. No disruption of the findings shall be permitted until the investigation is complete, the DHR has rendered a recommendation, and a mitigation plan has been agreed upon by the Developer and DHR.

The Developer shall submit an Historic Resource Management Plan for the area proposed to be preserved through the Environmental parcel designation shown on the Preliminary Master Plan. The plan may include preservation techniques, signage and cultural interpretation monuments/placards. The Developer may help the City and State Historic Preservation Officer (SHPO) with information to achieve national registration.

- 29. Silviculture.** The City recognizes that the development of the Property will occur over time and in phases, and that various portions of the Property, which are not required by Developer for active development in accordance with an approved Rezoning, may continue in agricultural use; such as, but not limited to, silviculture, including timber production. The City has no objection to a continued agricultural

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exemption for ad valorem tax purposes for any portion of the Property used for agricultural purposes prior to non-agricultural development. Moreover, nothing contained herein shall prohibit or preclude the use of the Property or any portion thereof for agricultural/silvicultural or agricultural/silvicultural related purposes, whether prior to or after approval of the Property as master planned community, or vertical development of portions of the Property in accordance with any land use approvals that may be granted relative to the Property. The City has no objection to such agricultural/silvicultural uses or the undeveloped portions of the Property being classified by the Flagler County Property Appraiser as agricultural lands under the provisions of Section 193.461, *Florida Statutes*, during the period when the Property is being used for such agricultural/silvicultural purposes. Nothing in this Agreement requires Developer to develop the Property, and the parties recognize that Developer may determine to continue its existing agricultural/silvicultural uses on all or part of the Property for an extended period of time. The City agrees that Developer may conduct construction and operation activities within the Property associated with wetland mitigation and/or a wetland mitigation bank, if Developer obtains necessary authorizations from the SJRWMD, ACOE, and other applicable state and federal agencies.

Silviculture shall be prohibited in that portion of the Property which consists of wetland areas to be preserved, and those areas immediately adjacent to wetlands which will be used as buffers to the wetland areas, except for wetland and upland enhancement purposes and mitigation approved by the SJRWMD.

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- 30. Community Development District.** The Developer may request that one or more CDDs be formed over the Property in order to facilitate the implementation of the Project. The City agrees to expeditiously process a request to establish one or more CDDs to provide services to any portion of the Property subject to meeting the statutory prerequisites of Chapter 190, *Florida Statutes*, and the City's final approval of an ordinance establishing a CDD. Upon an application for a CDD being submitted to the City, the City will engage in the appropriate statutory review and analysis of the proposal. Any such CDD established by Developer may plan, finance, acquire, construct, and operate community infrastructure that may benefit all or portions of the Property, in accordance with statute. The City further agrees that it is appropriate to grant any CDD that may hereafter be established with respect to the Property the right to exercise the powers granted to it by Chapter 190, *Florida Statutes*, with the exception of the establishment of wastewater treatment or potable water plants; unless the City is unable to provide such services when the services are needed, in which case the CDD would be accorded the right to do so. Pursuant to Specific Conditions 16 and 18 of this DA, the City will be the provider of the Sewer and Water Service to the Property. The City retains the right to purchase any and all utility treatment systems from the CDD, in accordance with the requirements of Chapter 190. Further, no CDD established hereunder shall be in the business of resale of bulk potable water or bulk wastewater services. If Developer elects or is required to apply for CDD approval from the Florida Land and Water Adjudicatory Commission, City agrees to support the application if the

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City has previously agreed to the formation of the CDD, as set forth in this subparagraph.

If the Developer is required by this DA to provide, pay for or otherwise cause to be provided, infrastructure, projects, systems or facilities set forth in Chapter 190 *Florida Statutes*; including, without limitation, those in Section 190.012(1) and (2), *Florida Statutes*; then a CDD, if properly formed and approved under the statutes, may independently satisfy such obligations. To the extent provided by law, when any such obligation under this DA is met or performed by the CDD, then the Developer shall no longer be subject to the obligation. The Developer proposes and the City agrees that, in the event that any contributions of land, money (including contributions or construction pursuant to “pipelining” responsibilities), or improvements funded or constructed with funds from a CDD are required by law to be credited to the CDD, then such impact fee credits shall be credited to the CDD, if City Code requirements are met.

Additionally, the CDD shall be responsible for the long-term land management associated with on and off-site habitat, land management activities, and any additional activities associated with the Greenway Plan and/or Wetland Mitigation Plan.

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

**ATTEST:**

**CITY OF PALM COAST**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
By: Milissa Holland  
Its Mayor

**DEVELOPER'S COVENANT AND AGREEMENT**

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

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**WITNESSES:**

**Bulow Creek, LLC., a  
Florida Limited Liability Company**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Lee Chira  
Its Manager

\_\_\_\_\_  
Signature

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Lee Chira of Bulow Creek LLC, a Florida limited liability company, who is personally known to me and who did not take an oath.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**SOUTH OLD KINGS ROAD  
MASTER PLAN DEVELOPMENT AGREEMENT  
(version Jan 30, 2020)**

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NOTARY PUBLIC

(SEAL)

DRAFT

**SOUTH OLD KINGS ROAD  
MASTER PLAN DEVELOPMENT AGREEMENT  
(version Jan 30, 2020)**

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

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**WITNESSES:**

**Bulow Creek, LLC., a  
Florida Limited Liability Company**

\_\_\_\_\_  
Signature  
Print Name:

\_\_\_\_\_  
Mary Demetree  
Its

\_\_\_\_\_  
Signature  
Print Name:

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Mary Demetree of Bulow Creek LLC, a Florida limited liability company, who is personally known to me and who did not take an oath.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
(SEAL)



**Exhibit “A”**

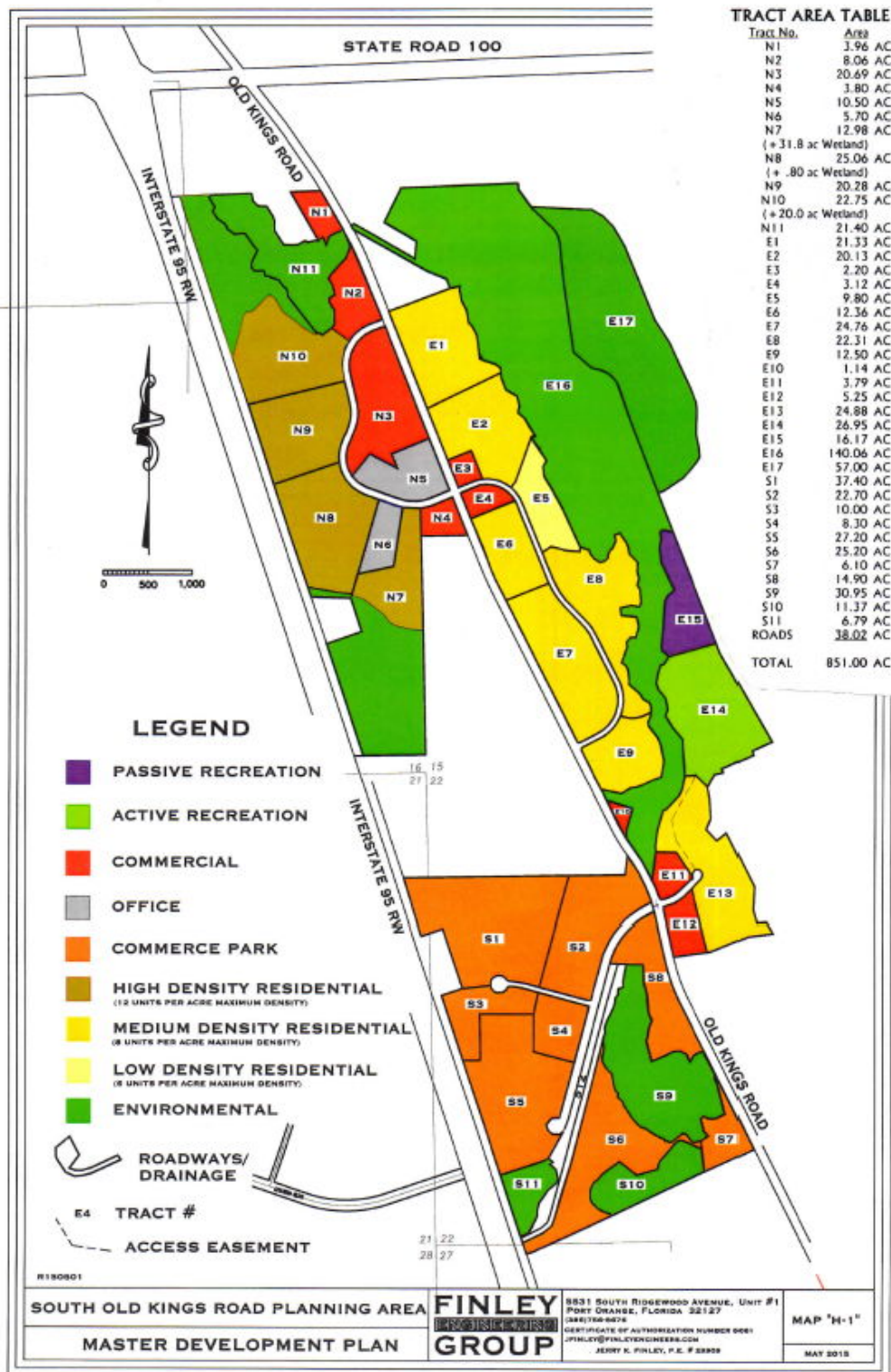
**Legal Description of Property**

(see attached)

DRAFT

**SOUTH OLD KINGS ROAD  
MASTER PLAN DEVELOPMENT AGREEMENT  
(version Jan 30, 2020)**

**Exhibit "B"**



**SOUTH OLD KINGS ROAD  
MASTER PLAN DEVELOPMENT AGREEMENT  
(version Jan 30, 2020)**

**Exhibit “C”**

**Land Use Conversion Table**

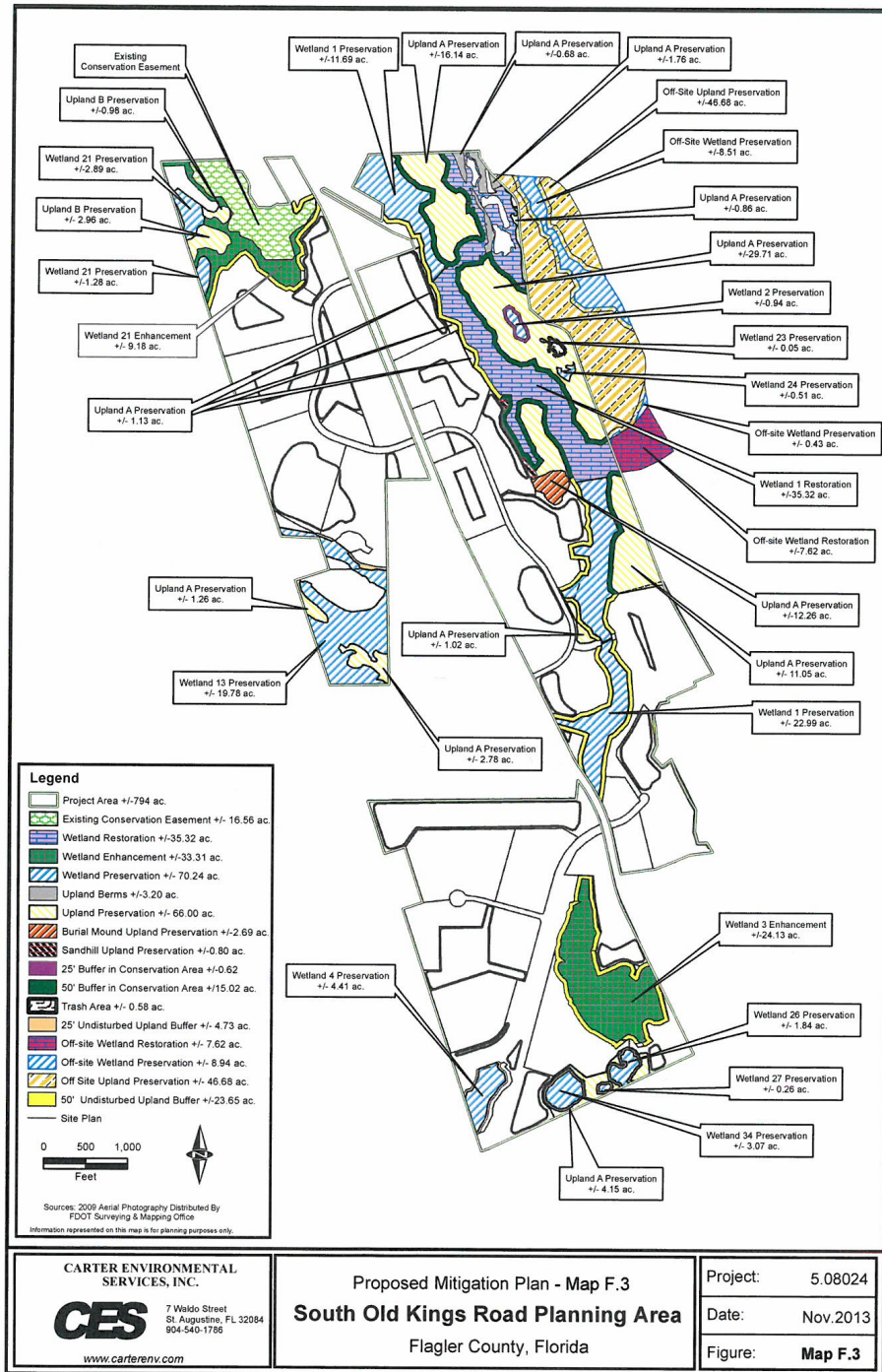
This exhibit may be used to convert one land use to another within the DA as defined in Development Order General Condition. No conversion from non-residential to residential may occur that increases residential units greater than 2,500 and 2,500,000 square feet of non-residential. No conversion shall take place without demonstration of adequate potable water and related facilities to support the projected water demand associated with the conversion. In no case shall the combined total between single family and multi-family units exceed 2,500 without adequate demonstration of education and recreation facilities.

**LAND USE CONVERSION TABLE**

F R O M	TO		SF Detach DU	Senior Ad DU	MF DU	TH DU	Shop Cent SF	Gen Off SF	Indust SF
			1	0.27	0.62	0.52	0.00371	0.00149	0.00097
	SF Detach DU	1	1	3.703703704	1.612903226	1.923076923	269.541779	671.1409396	1030.927835
	Senior Ad DU	0.27	0.27	1	0.435483871	0.519230769	72.77628032	181.2080537	278.3505155
	MF DU	0.62	0.62	2.296296296	1	1.192307692	167.115903	416.1073826	639.1752577
	TH DU	0.52	0.52	1.925925926	0.838709677	1	140.1617251	348.9932886	536.0824742
	Shop Cent SF	0.00371	0.00371	0.013740741	0.005983871	0.007134615	1	2.489932886	3.824742268
	Gen Off SF	0.00149	0.00149	0.005518519	0.002403226	0.002865385	0.401617251	1	1.536082474
	Indust SF	0.00097	0.00097	0.003592593	0.001564516	0.001865385	0.261455526	0.651006711	1
Example 1	How many MF units can be built instead of 19,200sf of Shop Cent								
	From Shop Center to MF Units	19200 X				0.005983871 =		114.8903226	
Example 2	How many SF Detach units can be built instead of 890,092sf of Industrial								
	From Industrial to SF Detached Units	890,092 X				0.00097 =		863.38924	

**SOUTH OLD KINGS ROAD  
MASTER PLAN DEVELOPMENT AGREEMENT  
(version Jan 30, 2020)**

**Exhibit "D"**



**SOUTH OLD KINGS ROAD  
MASTER PLAN DEVELOPMENT AGREEMENT  
(version Jan 30, 2020)**

**Exhibits "E"**

**Transportation Exhibits**

Table 21.F.1 - Revised - Second Sufficiency  
Phase 1 (2020) Projected Intersection Improvements and Estimated Costs  
South Old Kings Road DRI

Intersection	Improvements	Total Intersection Project Trips	Capacity Before Improvement	Capacity After Improvement	Change (After - Before)	PFS %	Cost (\$1,000s)	PFS (\$1,000)
SR100 at Belle Terre Pkwy	2nd Eastbound Left-Turn Lane	135	5622	6766	1144	11.8%	\$ 255	\$ 30.09
	Separate Northbound Right-Turn Lane						\$ 170	\$ 20.06
	Signal Modifications (add heads)						\$ 10	\$ 1.18
	Timing Modification (add overlap)						\$ 2	\$ 0.24
Total							\$ 437	\$ 51.57
SR 100 at S. Old Kings Rd	2nd Northbound Left-Turn Lane	727	14419	6182	-8237	100%	\$ 255	\$ 255
	Signal Modifications						\$ 10	\$ 10
	Timing Modifications (add overlap)						\$ 2	\$ 2
Total							\$ 267	\$ 267
GRAND TOTAL							\$	318.57