

City of Palm Coast, Florida Agenda Item

Agenda Date: 10/30/2018

Department	PLANNING	Amount	
Item Key	4627	Account	
		#	
Subject RESOLUTION 2018-XX APPROVING THE AIRPORT COMMONS DEVELOPMENT PRE-ANNEXATION AND JOINT PLANNING AGREEMENT			
<p>Background : The Pre-Annexation, Economic Development and Joint Planning Agreement (Agreement) proposed between the City, Flagler County (County) and Airport Commons concerns the property located on the corner of Aviation Drive and S.R. 100 (Property). The Property is currently in Flagler County, however, is adjacent to the City’s jurisdictional boundary. Airport Commons is requesting that the City provide water service to the Property and is agreeing to annex the Property into the City once a certificate of occupancy is issued or, if developed in phases, development of the first phase of the project is complete. The proposed project is intended to be a shopping center.</p> <p>This Agreement is a subsequent agreement to the Settlement Agreement between the City, County and other parties concerning the provision of utility service in Flagler County. Section 5.1 of the Settlement Agreement allows the parties to enter into subsequent agreements to the Settlement Agreement “in order to provide efficient and cost effective utility service to the public”.</p> <p>The following summarizes the most notable terms of the Agreement:</p> <ul style="list-style-type: none"> • It includes a conceptual site plan of the Project that has been reviewed by City and County staff. • It sets out the terms and timing of the proposed voluntary annexation. The Property will be considered for annexation by the City Council at the time Airport Commons requests water service and if approved, the annexation will become effective after the certificate of occupancy is issued by the County for development on the Property. • It allows for the County to continue permitting development on the Property, with the City’s review and comment, pursuant to the Interlocal Agreement Between the City and County Relating to the Development of Unincorporated and Incorporated Lands in and Around the County Airport. • It requires Airport Commons to connect to the City’s water service and enter into the City’s Utility Agreement prior to annexation. • It states that the City will provide solid waste collection to the Property concurrent with annexation. • It provides that when City sewer service become available immediately adjacent to the 			

Property, Airport Commons will connect and sets out a process for the transfer of sewer capacity between the City and the County.

- It gives Airport Commons the ability to connect to the City's reclaimed water facilities.
- It requires Airport Commons to adhere to an architectural and landscape concept, generally, consistent with the City.
- After annexation, it requires that the City initiate and process applications for a comprehensive plan amendment, rezoning and variance within 36 months.
- It requires the payment of transportation impact fees to the City or, in the alternative, construction of transportation improvements to the Aviation Drive and S.R. 100.

Recommended Action :

Adopt Resolution 2018-XX approving the Airport Commons Development Pre-Annexation and Joint Planning Agreement

RESOLUTION 2018 - ____
AIRPORT COMMONS, LLC AND FLAGLER COUNTY
PRE-ANNEXATION, ECONOMIC DEVELOPMENT
AND JOINT PLANNING AGREEMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING THE PRE-ANNEXATION, ECONOMIC DEVELOPMENT AND JOINT PLANNING AGREEMENT WITH AIRPORT COMMONS, LLC AND FLAGLER COUNTY; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Flagler Pines Properties, LLC (“Flagler Pines”) owns certain real property in the unincorporated area of Flagler County, Florida; and

WHEREAS, the Property is adjacent to the Flagler Executive Airport, which is owned/operated and under the jurisdiction of the County; and

WHEREAS, Airport Commons is under contract to purchase the property from Flagler Pines contingent upon site plan development approval and the issuance of building permits permitting a commercial development thereon to be known as Airport Commons; and

WHEREAS, the Property is contiguous to an existing boundary of the City and is within the City’s Chapter 180 water and sewer utility service area, which is subject to that Settlement Agreement to which both the City and County are parties as recorded in Official Records Book 1560, Page 471 of the Public Records of Flagler County, Florida, where in the parties to that Agreement agreed to certain stipulations regarding retail water, wastewater, and reclaimed water service areas; and

WHEREAS, pursuant to Section 5.1 of that Settlement Agreement, the City expressly consents to the County providing wastewater service to the property from Flagler Executive Airport’s wastewater service system and the City and County agree that this undertaking provides efficient and cost effective utility service to the public.

WHEREAS, this Agreement serves as a subsequent agreement between City and the County pursuant to Section 5.1 of that Settlement Agreement for the provision of wastewater service to the Property; and

WHEREAS, the City of Palm Coast desires to approve the Pre-Annexation, Economic Development and Joint Planning Agreement with Airport Commons, LLC and Flagler County.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AS FOLLOWS:

SECTION 1. APPROVAL OF THE PRE-ANNEXATION AND ECONOMIC DEVELOPMENT AGREEMENT. The City Council of the City of Palm Coast hereby approves the terms and conditions of the Pre-Annexation, Economic Development and Joint Planning Agreement with Airport Commons, LLC and Flagler County, as attached hereto and incorporated herein as Exhibit “A.”

SECTION 2. AUTHORIZATION TO EXECUTE. The Mayor is hereby authorized to execute the necessary documents.

SECTION 3. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption by the City Council.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 20th day of November 2018.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Attachment: Exhibit "A" – Pre-Annexation, Economic Development and Joint Planning Agreement with Airport Commons, LLC and Flagler County

Approved as to form and legality

William E. Reischmann, Jr., Esq.
City Attorney

Prepared By:

**Jay W. Livingston, Esq.
Livingston & Sword, P.A.
393 Palm Coast Parkway SW #1
Palm Coast, Florida 32137**

**PRE-ANNEXATION,
ECONOMIC DEVELOPMENT AND JOINT PLANNING AGREEMENT**

THIS PRE-ANNEXATION, ECONOMIC DEVELOPMENT AND JOINT PLANNING AGREEMENT (“Agreement”) made this ___ day of November, 2018, by and between the **City of Palm Coast**, a municipal corporation organized and existing under the laws of the State of Florida (the “City”), whose address is 160 Lake Avenue, Palm Coast, Florida 32164; the **Board of County Commissioners of Flagler County, Florida**, a political subdivision of the State of Florida, whose address is 1769 E. Moody Blvd., Bldg. 2, Bunnell, Florida 32110 (the “County”); and **Airport Commons, LLC**, a Florida limited liability company, whose address is 3700 Airport Road, Suite #302, Boca Raton, FL 33431 (“Airport Commons”). Collectively, the City, County and Airport Commons shall be referred to as the “Parties”.

RECITALS

- A. Flagler Pines Properties, LLC (“Flagler Pines”) owns certain real property in the unincorporated area of Flagler County, Florida, which is described on Exhibit “A” hereto (individually the “Property”);
- B. The Property is adjacent to the Flagler Executive Airport, which is owned/operated and under the jurisdiction of the County;
- C. Airport Commons is under contract to purchase the Property from Flagler Pines contingent upon site plan development approval and the issuance of building permits permitting a commercial development thereon to be known as Airport Commons as depicted in the conceptual site plan attached hereto as Exhibit “B” (the “Project”);
- D. Airport Commons has obtained authorization from the owner of the Property and is empowered to enter into this Agreement;
- E. The Property is contiguous to an existing boundary of the City and is within the City’s Chapter 180 water and sewer utility service area;
- F. The Property is subject to that certain Settlement Agreement to which both the City and County are parties as recorded in Official Records Book 1560, Page 471 of the Public Records of Flagler County, Florida (the “Settlement Agreement”);
- G. Section 5.1 of the Settlement Agreement provides:

“5.1 Service Area Agreements. PALM COAST and COUNTY agree that the retail water, wastewater, and reclaimed water service areas as depicted on the Map, and shall not offer to serve or service within the service area of another without the express written consent of the other. PALM COAST may serve within its current and future City Limits; provided, however, it may not serve within COUNTY’s service area as depicted on the Map, subject, however, to the provisions of Section 5.3 of this Agreement *PALM COAST and the COUNTY may enter into subsequent agreements in order to provide efficient and cost effective utility service to the public.*” (Emphasis added.)

- H. The Property is within City’s retail water, wastewater, and reclaimed water service areas and the County is prohibited from offering service to the Property without the express written consent of Palm Coast;
- I. The Property is proximate to the County’s existing sewer lift station servicing the Flagler Executive Airport;
- J. Pursuant to Section 5.1 of the Settlement Agreement, City expressly consents to the County providing wastewater service to the Property from Flagler Executive Airport’s wastewater service system and the City and County agree that this undertaking provides efficient and cost effective utility service to the public. This Agreement serves as a subsequent agreement between City and the County pursuant to Section 5.1 of the Settlement Agreement for the provision of wastewater service to the Property.
- K. The Property is also subject to that certain Interlocal Agreement Between the City and County Relating to the Development of Unincorporated and Incorporated Lands in and Around the County Airport as recorded in Official Records Book 2088, Page 124 of the Public Records of Flagler County, Florida (the “JPA”);
- L. Section 2 of the JPA provides:

“SECTION 2. REVIEW OF DEVELOPMENT PLANS. The COUNTY and the CITY both understand the importance of coordination on development and ensuring an aesthetically pleasing appearance of the properties in and around the Airport. Additionally, each party is bound within its respective Comprehensive Plan to work jointly together for the public good. To that end, the Parties agree to cooperate on any building / site plan development approvals within the area [DEFINED AS] the ‘Joint Development Review Area’.

“Such cooperation shall consist of the non-jurisdictional party’s review and comment on submitted development plans, but with the ultimate approval and permitting authority being vested with the jurisdictional permitting authority. In addition, each party agrees to make staff available on an as needed basis to help coordinate and provide input

on any differences in the other's land development regulations for internal COUNTY and CITY joint planning and projects in the Joint Development Review Area.”

M. The Property is within the Joint Development Review Area as defined in the JPA;

N. The County is the jurisdictional permitting authority for the Property under the JPA;

O. Section 163.3171(4), Florida Statutes, provides as follows:

“Local governments may enter into agreements with each other and with a landowner, developer, or governmental agency as may be necessary or desirable to effectuate the provisions and purposes of ss. 163.3177(6)(h)...It is the Legislature's intent that joint agreements entered into under the authority of this section be liberally, broadly, and flexibly construed to facilitate intergovernmental cooperation between cities and counties and to encourage planning in advance of jurisdictional changes. Joint agreements, executed before or after June 2, 2011, include, but are not limited to, agreements that contemplate municipal adoption of plans or plan amendments for lands in advance of annexation of such lands into the municipality, and may permit municipalities and counties to exercise nonexclusive extrajurisdictional authority within incorporated and unincorporated areas. The state land planning agency may not interpret, invalidate, or declare inoperative such joint agreements, and the validity of joint agreements may not be a basis for finding plans or plan amendments not in compliance pursuant to chapter law.”

P. Airport Commons has requested that the City annex the Property into the City;

Q. Section 171.062(2), Florida Statutes, provides that:

“[i]f the area annexed was subject to a county land use plan and county zoning or subdivision regulations, these regulations remain in full force and effect until the municipality adopts a comprehensive plan amendment that includes the annexed area.”

R. Section 171.062(1), Florida Statutes, provides that:

“An area annexed to a municipality shall be subject to all laws, ordinances and regulations in force in that municipality and shall be entitled to the same privileges and benefits as other parts of that municipality upon the effective date of the annexation.”

S. The City desires to insure that adequate public facilities exist concurrent with the impact of development on the Property and that such development and the City's Comprehensive Plan are or will be consistent;

- T. The Property is designated Commercial High Intensity on the County’s Future Land Use Map (“County FLUM”) and is in the C-2 zoning district as depicted on Flagler County’s Official Zoning Map;
- U. The purpose of this Agreement is to set forth the understandings and agreements of the parties with respect to the foregoing, and other matters as set forth herein; and
- V. This Agreement is authorized by, permitted by, and consistent with the provisions of the City’s Home Rule Charter; the City’s Comprehensive Plan; Chapter 163, Florida Statutes; Chapter 166, Florida Statutes; the County’s Home Rule Power under Chapter 125, Florida Statutes; the State Comprehensive Plan (Chapter 187, Florida Statutes); Article VIII, Section 2(b), Constitution of the State of Florida; the Settlement Agreement; the JPA; the legal authorities referenced above; and other applicable law and this Agreement serves and advances a vital public purpose;

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration each to the other provided, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals.

- a. The above Recitals are adopted as the findings of the City Council and the County.
- b. The above recitals are true and correct, are incorporated into this Agreement by reference thereto, and form a material part of this Agreement upon which the parties have relied, including but not limited to, that Flagler Pines owns the Property and that Airport Commons is empowered to enter into this Agreement and make binding determinations to the City and the County.

2. Petition for Voluntary Annexation.

- a. Airport Commons hereby agrees it shall petition for voluntary annexation of the Property into the City pursuant to Chapter 171.044, Florida Statutes. Once Airport Commons closes on and obtains title to the Property, Airport Commons will file a Petition for Voluntary Annexation with the City. The City will consider adopting an ordinance in accordance with Chapter 171.044, Florida Statutes, thereby annexing the Property to the City and redefining the boundaries to the City to include the Property. A proposed draft of the annexation ordinance is attached as Exhibit “C” hereto.
- b. The proposed annexation ordinance will be considered for approval by the Palm Coast City Council when Airport Commons, its successors or assigns, requests to connect the Project to the City’s water services. Should the City Council approve the annexation ordinance, the effective date set forth in that ordinance will be a date certain past the anticipated date for issuance of a certificate of occupancy by the County for the Project; or, if the Project is constructed in phases, when a certificate

of occupancy is issued by the County for the first phase (the “Annexation Effective Date”).

- c. No fees, costs or expenses will be charged to or become due from Airport Commons to the City or any other governmental authority, private individual or entity on account of or in connection with the City’s review and processing of the Annexation Petition or the annexation of the Property into the corporate limits of the City; provided, however, that Airport Commons will pay its own attorney fees and consulting fees.

3. Public Facilities.

- a. Solid waste collection services are available to serve the demands generated by the Property and will be provided as it is to any other owner of land within the City and will be available concurrent with annexation of the Property into the City.
- b. All drainage issues will be appropriately addressed in the development approvals pertaining to the Property as issued by the County and the impacts of stormwater drainage will be addressed in accordance with state law and other applicable regulatory requirements.
- c. The parties acknowledge that fire, and EMS facilities, equipment and services as necessary to serve the Property will be provided pursuant to the mutual aid agreement(s) between the City and the County. All such public services will be available to support the development of the Property.
- d. The City will provide water services to the Property, subject to standard City utility requirements related to Airport Commons’ contributions-in-aid-of-construction, payment of connection fees, granting of appropriate easements, and dedication of other facilities as necessary or appropriate. Airport Commons will execute the City’s standard Utility Agreement, with any necessary revisions as determined by the City, before work on the water main extension and/or vertical construction commences, whichever occurs first, and connect to water service as soon as it is available.
- e. The County will provide sewer services to the Property through the Flagler Executive Airport’s (“Airport”) onsite wastewater collection system (as a customer of the City’s wastewater system), utilizing the existing sewer infrastructure located on the Airport property, and subject to standard City utility requirements related to Airport Commons’ contributions-in-aid-of-construction, payment of connection fees, granting of appropriate easements, and dedication of other facilities as necessary or appropriate. Airport Commons will execute the necessary standard County Agreements, if any, at the appropriate time and connect to the sewer system as it is available. Airport Commons acknowledges that if the City's sewer services are expanded so that they are available and immediately adjacent to the Project's existing utility connections and allow a connection to the City's sewer services without the need for additional sewer infrastructure improvements, including, without limitation, a lift station, and without interruption of service or disruptions of the businesses and other activities on the Property, then Airport Commons shall

connect to the City's sewer services. Future connection to the City's sewer service shall be accomplished by Airport Commons within 120 days of sewer service being made available to the Property as provided for above. There will be no additional connection charge or other costs to Airport Commons to connect to the City's sewer service in the future if and when that connection is made.

- f. Prior to a building permit being issued by the County for each structure, Airport Commons shall remit to the County the applicable wastewater sewer capacity charges that the project would have paid had the project been initially connected to City's Wastewater system. The County will then remit the wastewater sewer charges payment to the City and the City shall in turn credit the County the equivalent number of gallons of wastewater capacity that the wastewater sewer charges would have purchased in the City and record such a wastewater capacity credit to the County in the Official Records of Flagler County, Florida, a copy of which shall be provided to the County. The recorded document shall contain the amounts paid and the wastewater gallon capacity allocation. In the event that a use on the Property requires more wastewater than allocated to the County as provided above, the City and Airport Commons shall provide written notice of the need for additional capacity and Airport Commons shall remit to the County the applicable wastewater sewer charges required for the additional capacity. The County will then remit the additional wastewater sewer charges payment to the City and the City shall record an additional wastewater capacity credit to provide for the additional allocation of capacity in the Official Records of Flagler County, Florida, a copy of which shall be provided to the County. No building permit shall be issued for the use requiring the additional capacity until such time as Airport Commons pays the additional wastewater sewer charges as provided for above. Such capacity allocation shall remain with the County indefinitely until Airport Commons, connects directly to the City wastewater system. At that time of the connection, the County's wastewater allocation with the City shall be reduced by the amount that is the current gallonage allocation for the City water capacity for the Property. Such allocations shall transition to correspond to the appropriate billing cycle to avoid any disparities between the City and County usage agreements. Upon transfer, the City will record a wastewater capacity reduction in the Official Records of Flagler County, Florida for the amount of capacity deducted from the County's allocation. Copies of all wastewater capacity credits and reductions shall be copied to the County and shall be numerically equal.
- g. The City shall provide reclaimed water service to the Property upon request. Airport Commons shall be responsible for the installation of all connections, extensions, improvements and facilities required to connect the Property to the City's existing reclaimed water facilities. Airport Commons shall bear the cost and expense of connecting to the City's reclaimed water facilities.

4. Land Use and Development Approvals.

- a. The City has reviewed the Project and provided comments to the County and Airport Commons pursuant to the JPA. The conditions of any County development approval(s) set forth on the County FLUM, Official Zoning Map, development orders and development permits for the Project, relating to the Property, will continue to be in full force and effect upon and after annexation of the Property into the City and the development rights and entitlements relating to such approvals will carry forward as approvals for the Property until the City amends the comprehensive plan designation and zoning of the Property as per Section 4(c)
 - b. The entire Project and all buildings constructed on the Property will incorporate architectural themes consistent with the architectural elevations attached hereto as Exhibit “D”.
 - c. The parties acknowledge that the City cannot contract to approve specific comprehensive plan or zoning amendments. The City’s only obligation with respect to comprehensive plan, zoning amendments, and variance approvals is to initiate and timely process the applications, consistent with the uses and improvements approved by the County pursuant to the provisions of the JPA, consider all evidence presented in support of and in opposition to the amendments and approvals and make decisions to approve or deny the amendments and approvals based upon the legal standards that govern actions by local governments when considering comprehensive plan, zoning amendments and variance approvals. In partial consideration for Airport Commons entering into this Agreement, the City will initiate and process applications for a comprehensive plan amendment, rezoning and variances within a time frame of thirty six (36) months of the date of adoption of the Annexation Ordinance consistent with Airport Commons proposed use for the Property at no cost to Airport Commons; provided, however, Airport Commons will cooperate with the City by timely providing the City with all necessary and desirable data and analysis in connection with the comprehensive plan amendments, rezoning, and variance approvals.
 - d. Airport Commons shall, during the development approval process with the County pursuant to the JPA, comply with all necessary local, state and federal permits, as applicable, and acquire all necessary development orders, permits, licenses, easements and other approvals or rights in connection with the development of the Project in accordance with the County’s applicable land use, zoning, land development, building and construction regulations, and the JPA; provided, however, neither the County nor the City will incur costs relative to such matters and Airport Commons will bear any and all costs.
5. Transportation Impact Fees. The City has determined that the transportation impact fee that would be due for the Project if the Property was in the municipal boundaries of the City is \$111,326 based on the Shopping Center classification for the calculation of transportation impact fees. This calculation is based on the current development plan of 26,096 square feet of shopping center commercial development. If, prior to the application

for a building permit, Airport Commons proposes changes to the Project that are approved by the County, after review and comment by the City pursuant to the JPA, and those changes result in an increase or decrease of the intensity and uses on the shopping center commercial development then the amount due for the transportation impact fee shall be modified based on the changes in intensity and use and such modification shall be confirmed by a written notice from the City's City Manager to the County and Airport Commons. Except as providing for herein, Airport Commons shall pay to the City the above transportation impact fee within thirty (30) days of the Annexation Effective Date. In lieu of the payment of transportation impact fees that would be due, Airport Commons may construct, cause to be constructed, or guarantee the construction (to include construction by Flagler County) a west bound deceleration lane on SR 100 into the site and a northbound, right-hand turn lane from Aviation Drive onto SR 100. The final configuration and layout of the County roadway shall be determined by the County and shall be permitted through the County and the Florida Department of Transportation FDOT with the City's review and comment on such improvements. The improvements shall generally be in accordance with the conceptual layouts depicted in Exhibit "E" (the "Transportation Improvements"). The Transportation Improvements are considered capacity improvements to Aviation Drive and S.R. 100. The estimated construction costs for the Transportation Improvements are anticipated to be in excess of the transportation impact fee due for the project. . If Airport Commons chooses to construct, cause or guarantee the Transportation Improvements to be constructed (to include construction by Flagler County), the City agrees to provide a credit up to the full amount of the transportation impact fees that would be due for the Project if constructed in the City. No other transportation impact fees would be due once annexed into the City, unless the transportation impact fees due for the Project exceed the final costs of the Transportation Improvements constructed. Such Transportation Improvement costs shall include all design, construction, and post construction costs, an accounting of which shall be made to the City upon completions of the Transportation Improvements by Airport Commons.

6. Further Assurances. In addition to the acts recited in or set forth in this Agreement, the City, the County, and Airport Commons, will perform or cause to be performed, in a timely manner, any and all further acts as may be reasonably necessary to implement the provisions of this Agreement including, but not limited to, the execution and or recordation of further instruments; provided, however, that the City's and the County's obligations will be subject to such limitations as required by applicable law.
7. Limitation of Remedies. The parties will not pursue an award of monetary damages for a breach of or non-performance of this Agreement, except to the extent any action by the City or the County interferes with Airport Commons' vested rights in the Project as provided for herein or as established and acquired upon issuance of a building permit by the County and the commencement of construction of the Project pursuant to the JPA. The only remedies available against the non-performing party will be either to withhold further performance under this Agreement until the non-performing party cures the non-

performance or seek a court order from the Circuit Court of the Seventh Judicial Circuit in and for Flagler County, Florida requiring the non-performing party to fulfill its obligations under this Agreement. The Parties hereby waive any requirement for a bond that may be applicable in the event of any such legal action. Neither the City nor the County will be deemed to have waived sovereign immunity in any manner or respect except as provided in Section 70.001 and 768.28, Florida Statutes. Notwithstanding the forgoing, the City and County retain their right to enforce their respective codes through the applicable enforcement process.

8. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties, and no right or cause of action will accrue by reason hereof to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement, expressed or implied, is intended or will be construed to confer upon or give any person or entity any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the parties hereto and their respective representatives, successors and assigns.
9. Effectiveness of Agreement. This Agreement will become effective upon it being duly executed by all parties hereto. If, for any reason, Airport Commons does not close on the contract and complete the purchase of the Property by December 31, 2019, or prior to this date provides written notice to the other parties that the contract has been terminated, then this Agreement shall automatically terminate and the County will be entitled to record, at the County's expense, a Notice of Termination of this Agreement in the Public Records of Flagler County, Florida. Further, if, for any reason, the City does not annex the Property by December 31, 2021, then the City may terminate this Agreement by notice to the other parties in which event this Agreement will terminate and be no further force or effect, and Airport Commons will be entitled to record, at the City's expense, a Notice of Termination of this Agreement in the Public Records of Flagler County, Florida. However, no termination of this Agreement pursuant to this paragraph shall relieve the City from providing water services to the Project, which is within the City's service area pursuant to the Settlement Agreement.
10. Time of the Essence. Time is of the essence of the lawful performance of the duties and obligations contained in this Agreement. The parties covenant and agree that they will diligently and expeditiously pursue their respective obligations set forth in this Agreement.
11. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties, and their respective successors in interest.
12. Applicable Law. This Agreement will be construed, controlled and interpreted according to the laws of the State of Florida. Further, to the extent permissible under the laws of the State of Florida, if there is a conflict between this Agreement and the terms of the City's land development regulations, the terms of this Agreement will control.

13. Binding Effect. Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it.
14. Recording. The City will, within five (5) business days following full execution of this Agreement, at the City's sole cost and expense, record a fully executed counterpart of this Agreement in the Public Records of Flagler County, Florida.
15. Choice of Law and Venue. Florida law will govern the interpretation and enforcement of this Agreement. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue will be in the Seventh Judicial Circuit in and for Flagler County, Florida.
16. Effect of Change in Law. If state or federal laws are enacted after execution of this Agreement which are applicable to and preclude the party's compliance with the terms of this Agreement, this Agreement will be modified or revoked as is necessary to comply with the relevant state or federal laws and the intent of the parties hereto.
17. Construction or Interpretation of the Agreement. This Agreement is the result of bona fide arms-length negotiations between the City, the County, and Airport Commons. All parties have contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement will not be construed or interpreted more strictly against any one party than against any other party.
18. Attorneys' Fees and Costs. In the event of any action to enforce the terms of this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.
19. Caption/Exhibits.
 - a. The headings or captions of the sections and subsections contained in this Agreement are used for convenience and reference only, and do not, in themselves, have any legal significance and will not be afforded any.
 - b. The exhibits to this Agreement are hereby incorporated into this Agreement and are an integral part of this Agreement.
20. Parties Bound. Following the recordation of this Agreement, the benefits and burdens of this Agreement will become a covenant running with the title to the Property, and all parts and parcels thereof, and this Agreement will be binding upon and inure to the benefit of the City, the County, and Airport Commons and their assigns and successors in interest to the Property, and all parts and parcels thereof.

21. Severability. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party to the Agreement or substantially increase the burden of any party to the Agreement, is held to be unconstitutional, invalid or unenforceable to any extent by a court of competent jurisdiction, such portion will be deemed a separate, distinct and independent provision and the same will not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

22. Notices. Any notice that is to be delivered hereunder will be in writing and will be deemed to be delivered (whether or not actually received) when (i) hand delivered to the official hereinafter designated, or (ii) upon receipt of such notice when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the parties as follows (facsimile transmittal is not acceptable as a form of notice in this Agreement):

To the City: City of Palm Coast
 Attn: City Manager
 City Hall
 160 Lake Ave.
 Palm Coast, Florida 32164

To the County: Flagler County
 Attn: County Administrator
 1769 E. Moody Blvd. #2, Suite 301
 Bunnell, Florida 32110

To Airport Commons Airport Commons, LLC
 ATTN: Martin Heise
 3700 Airport Road #302
 Boca Raton, FL 33431

23. Entire Agreement. This Agreement constitutes the complete and entire agreement between the City, the County, and Airport Commons with respect to the development and construction of the Project and the annexation of the Property, and supersedes any and all prior agreements, arrangements, or understandings, whether oral or written, between the parties relating thereto, all of which have been integrated herein.

24. Modification. This Agreement may not be amended, changed, or modified, and material provisions hereunder may not be waived, except by a written document, of equal dignity herewith, approved by the City Council, the Board of County Commissioners, and Airport Commons, and signed by all parties to this Agreement.

25. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, will constitute one and the same document.

{ This Space Intentionally Left Blank }

WHEREFORE, the parties have executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF PALM COAST

City Clerk

Milissa Holland, Mayor

STATE OF FLORIDA)

COUNTY OF FLAGLER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2018 by Milissa Holland as Mayor of the City of Palm Coast, on its behalf, who is personally known to me.

(Seal)

NOTARY PUBLIC

Printed Name

For the use and reliance of the City of Palm Coast only. Approved as to form and legal sufficiency.

City Attorney

ATTEST:

**FLAGLER COUNTY BOARD OF
COUNTY COMMISSIONERS**

Tom Bexley, Clerk and Ex Officio Clerk
to the Board

Gregory Hansen, Chairman

Approved as to form:

Albert Hadeed
County Attorney

WITNESSES:

AIRPORT COMMONS, LLC
A Florida limited liability company

Signature

By: _____
Martin Heise, Manager

Print Name

Signature

Print Name

STATE OF FLORIDA)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2018, by Martin Heise as Manager of Airport Commons, LLC, a Florida limited liability company. He ___ is personally known to me or ___ has produced _____ as identification.

(Seal)

NOTARY PUBLIC

Printed Name

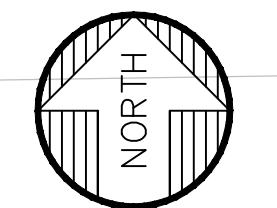
ATTACHMENT A – LEGAL DESCRIPTION

LEGAL DESCRIPTION - 3.83 AC. PARCEL

A PARCEL OF LAND IN GOVERNMENT SECTION 8, TOWNSHIP 12 SOUTH, RANGE 31 EAST, BEING A PORTION OF PARCEL 412 RECORDED IN OFFICIAL RECORD BOOK 601, PAGES 1989 THROUGH 2025, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: AS A POINT OF REFERENCE BEING THE WEST QUARTER CORNER OF SAID SECTION 8, TOWNSHIP 12 SOUTH, RANGE 31 EAST, THENCE SOUTH 01°13'43" EAST ALONG THE WEST LINE OF SECTION 8 A DISTANCE OF 161.99 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE ROAD 100, SAID POINT BEING THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE DEPARTING THE WEST LINE OF SAID SECTION 8 NORTH 89°09'05" EAST ALONG THE SOUTH RIGHT-OF-WAY LINE OF STATE ROAD 100 A DISTANCE OF 529.36 FEET TO THE NORTHWEST CORNER OF THE PARCEL OF LAND RECORDED IN OFFICIAL RECORDS BOOK 363, PAGES 319 AND 320, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA; THENCE DEPARTING SAID RIGHT-OF-WAY LINE SOUTH 00°50'55" EAST, ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 316.05 FEET; THENCE DEPARTING THE WEST LINE OF SAID PARCEL SOUTH 89°09'05" WEST A DISTANCE OF 527.26 FEET TO A POINT ON SAID WEST LINE OF SECTION 8, TOWNSHIP 12 SOUTH, RANGE 31 EAST; THENCE ALONG THE WEST LINE OF SAID SECTION 8 NORTH 01°13'43" WEST A DISTANCE OF 316.06 FEET TO THE AFOREMENTIONED POINT OF BEGINNING OF THIS DESCRIPTION. THE ABOVE DESCRIBED PARCEL CONTAINS 3.83 ACRES, MORE OR LESS.

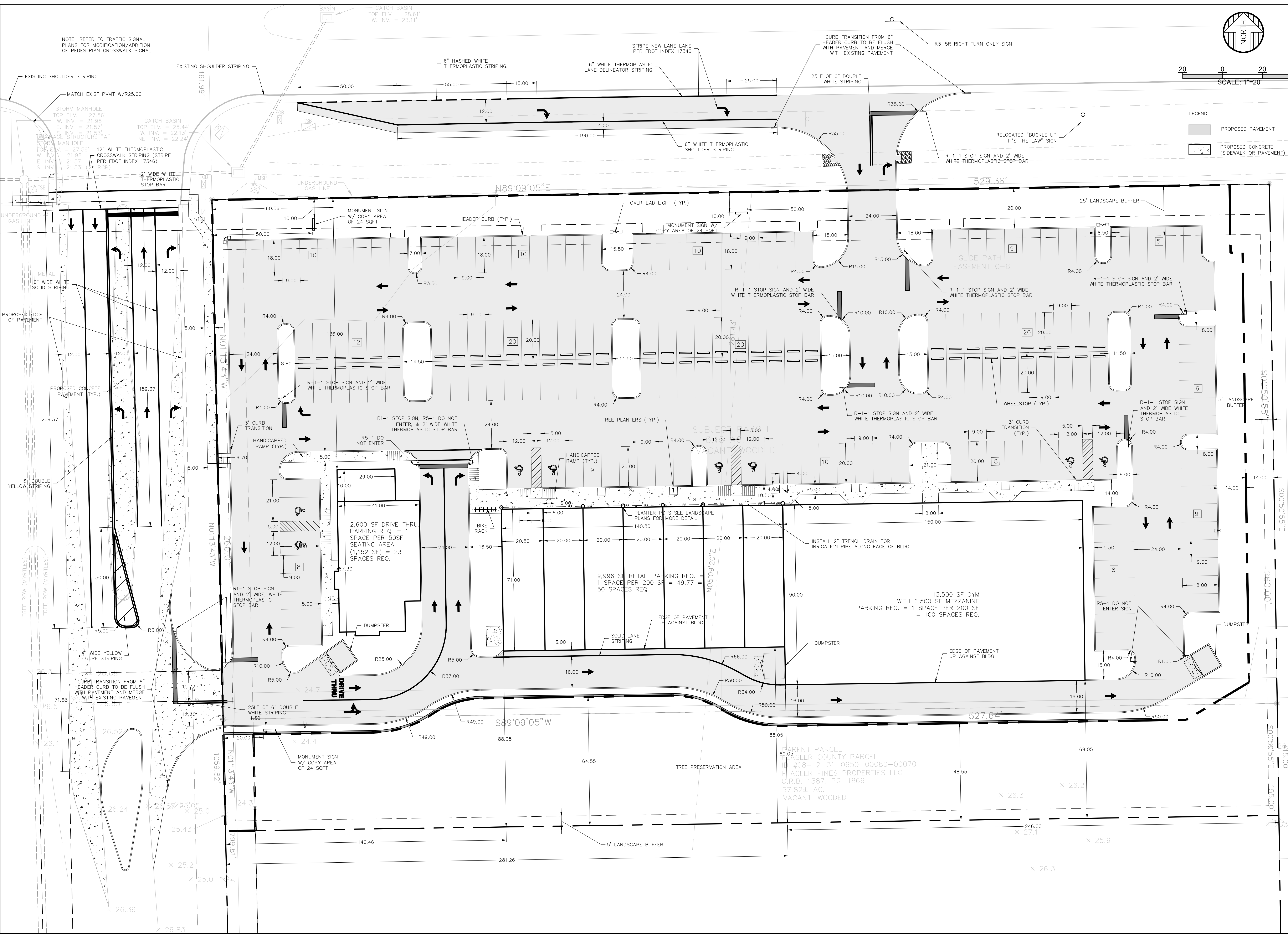
P:\1722-1 Heise\Design\1722-1 Base_V2_CURRENT.dwg, C004 DIMENSION PLAN, 10/17/2018 5:18:53 PM

NOTE: REFER TO TRAFFIC SIGNAL PLANS FOR MODIFICATION/ADDITION OF PEDESTRIAN CROSSWALK SIGNAL



SCALE: 1"=20'

ALANN ENGINEERING GROUP, INC.
 CONSULTING ENGINEERS
 CERTIFICATE NO. EB5479
 880 AIRPORT ROAD, SUITE 113
 ORMOND BEACH, FL 32174
 TEL: (386) 673-7640
 FAX: (386) 673-3927



**AIRPORT COMMONS
 FLAGLER COUNTY, FL
 DIMENSION PLAN**

NO	DATE	REV. PER COUNTY COMMENTS	KAB	BY
5	10-17-18	REV. PER CITY COMMENTS	KAB	
4	10-9-18	REV. PER CLIENT AND CITY COMMENTS	KAB	
3	8-29-18	REV. PER COUNTY COMMENTS	KAB	
2	6-29-18	REV. PER COUNTY COMMENTS	KAB	
1	5-31-18	REV. PER COUNTY COMMENTS	KAB	

DESIGNER	FILE	DATE	SCALE	AS NOTED
KAB	1722-1	03-28-2016		
DRAWN BY	PROJECT	SCALE	AS NOTED	
CTB	1722-1			

NOT VALID UNLESS SIGNED AND SEALED
 KIMBERLY A. BUCK P.E. 18845

ORDINANCE NO. 2018-_____
AX-VOL-___-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, TO ANNEX PROPERTY TO BE INCLUDED WITHIN THE CORPORATE AREA AND CITY LIMITS OF THE CITY OF PALM COAST, UPON ADOPTION OF THIS ORDINANCE; PROVIDING FOR THE ANNEXATION OF APPROXIMATELY _____ ACRES OF PROPERTY DESCRIBED IN EXHIBIT “A” TO THIS ORDINANCE AND LYING IN THE AREAS PROXIMATE TO THE EXISTING CITY LIMITS OF THE CITY OF PALM COAST, FLAGLER COUNTY, FLORIDA; PROVIDING FOR ANNEXATION IN ACCORDANCE WITH THE VOLUNTARY ANNEXATION PROVISIONS OF SECTION 171.044, *FLORIDA STATUTES*; PROVIDING FOR ANNEXATION OF REAL PROPERTY/AMENDMENT OF CORPORATE/CITY LIMITS; PROVIDING FOR RIGHTS AND PRIVILEGES RESULTING FROM ANNEXATION/EFFECT OF ANNEXATION UPON LAND USES; PROVIDING FOR EFFECT ON AD VALOREM TAXES; PROVIDING FOR EFFECT ON BUSINESSES AND OCCUPATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, a Petition for Annexation has been filed with the City Clerk of the City of Palm Coast, Florida, which petition contains the name of the property owner of the area described in Exhibit “A”, and requests annexation into the incorporated area and City Limits of the City of Palm Coast, Florida; and

WHEREAS, the City’s staff has certified that the property owner has signed the petition for Annexation; and

WHEREAS, the City Council hereby finds that the property described hereinafter is reasonably compact and contiguous to the corporate areas of the City of Palm Coast, Florida, and it is further determined that the annexation of said property will not result in the creation of any enclaves, and it is further determined that the property otherwise fully complies with the requirements of State law; and

WHEREAS, the City of Palm Coast, Florida, is in a position to provide municipal services to the property described herein, and the City Council of the City of Palm Coast, Florida, deems it in the best interest of the City to accept said Petition for Annexation and to annex said property; and

WHEREAS, pursuant to, and in compliance with the law, notice has been given by publication once a week for two consecutive weeks in a newspaper of general circulation notifying the public of this proposed Ordinance and of public hearings to be held at City Hall in the City of Palm Coast; and

WHEREAS, the provisions of this ordinance and the actions taken herein are consistent with the City’s Comprehensive Plan and State law; and

WHEREAS, public hearings were held pursuant to the requirements of State law and in conformity with the published notice described above at which hearings the parties in interest and all others had an opportunity to be, and were in fact, heard; and

WHEREAS, it is the City’s best interest to annex property which provides economic and other benefits to the City wherever possible.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF PALM COAST, FLORIDA:

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.

(a) The property that is the subject of this Ordinance and the Petition for Annexation is described in Section 2 of this Ordinance.

(b) The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council of the City of Palm Coast. The City Council of the City of Palm Coast finds and determines that there is competent substantial evidence to support the findings and determinations made in this Section.

(c) The City Council of the City of Palm Coast adopts as legislative and administrative findings the fact that the land area described in Section 2 of this Ordinance (hereinafter referred to as the “Area”) is reasonably compact and contiguous to the present Corporate Limits of the City of Palm Coast, and that no part of the Area is within the boundary of another municipality or the County in any manner or configuration that would contravene the provisions of Florida law or be contrary to sound and generally accepted land use planning practices and principles. The City Council of the City of Palm Coast finds that the annexation of the Area does not create an enclave and that the Area otherwise fully meets the criteria established in Chapter 171, *Florida Statutes*.

(d) The City Council of the City of Palm Coast has applied the laws of the State of Florida, Chapter 171, *Florida Statutes*, as well as the case law analyzing, construing and applying said statutory provisions, and the legislative intent pertaining to said statutory provisions as set forth in legislative staff reports.

(e) The City Council of the City of Palm Coast finds and determines that there is competent substantial evidence to support the findings and determinations made in this Section and that no other action of the City is required to fully implement an annexation of the Area as set forth herein.

SECTION 2. ANNEXATION OF PROPERTY/AMENDMENT OF CORPORATE/CITY LIMITS. The lands described in Exhibits “A” and shown on the map in Exhibit “B”, attached hereto, (“Area”) be and they are hereby annexed to and included within the corporate limits of the City of Palm Coast, Florida.

SECTION 3. RIGHTS AND PRIVILEGES RESULTING FROM ANNEXATION/EFFECT OF ANNEXATION UPON LAND USES.

(a) Upon this Ordinance becoming effective, the property owner shall be entitled to all the rights and privileges and immunities as are from time to time granted to property owners of the City of Palm Coast, Florida, as further provided in Chapter 171, *Florida Statutes*, and shall further be subject to the responsibilities of ownership as may from time to time be determined by the City Council of the City of Palm Coast, Florida, and the provisions of Chapter 171, *Florida Statutes*.

(b) Upon annexation, the Area shall retain the zoning classification established by the Land Development Code of Flagler County, the land development approvals granted by Flagler County, and a land use designation as assigned by the Flagler County Comprehensive Plan in accordance with the provisions of Section 171.062, *Florida Statutes*, until otherwise changed or amended by an appropriate ordinance or by a number of ordinances as may be enacted by the City Council of the City of Palm Coast, Florida.

SECTION 4. EFFECT ON AD VALOREM TAXES. All property lying within the boundaries of the Corporate/City Limits of the City of Palm Coast, Florida, as hereby revised, shall hereafter be assessed for payment of municipal ad valorem taxes pursuant to law.

SECTION 5. EFFECT ON BUSINESSES AND OCCUPATIONS. All persons who are lawfully engaged in any occupation, business, trade or profession, within the Area upon the effective date of this Ordinance, under a valid license or permit issued by Flagler County, Florida, shall have right to continue such occupation, business, trade or profession within the corporate limits of the City of Palm Coast, as revised, upon the securing of a valid business tax receipt from the City of Palm Coast, which receipt shall be issued upon payment of the appropriate fee there, without the necessity of taking or passing any additional examination or test relating to the qualifications of such licenses.

SECTION 6. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 7. CONFLICTS. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 8. EFFECTIVE DATE. This Ordinance shall become effective on _____, 201__.

APPROVED on first reading the ____ day of _____ 201__.

ADOPTED on second reading after due public notice and public hearing this ____ day of _____ 201__.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA SMITH, CITY CLERK

APPROVED AS TO FORM AND LEGALITY

WILLIAM E. REISCHMANN, JR., ESQ.
CITY ATTORNEY

G:\Docs\Cities\Palm Coast\Flagler County issues\Airport Commons-Drinking Water System\DRAFT Annexation Ord.docx

DRAFT



AIRPORT COMMONS

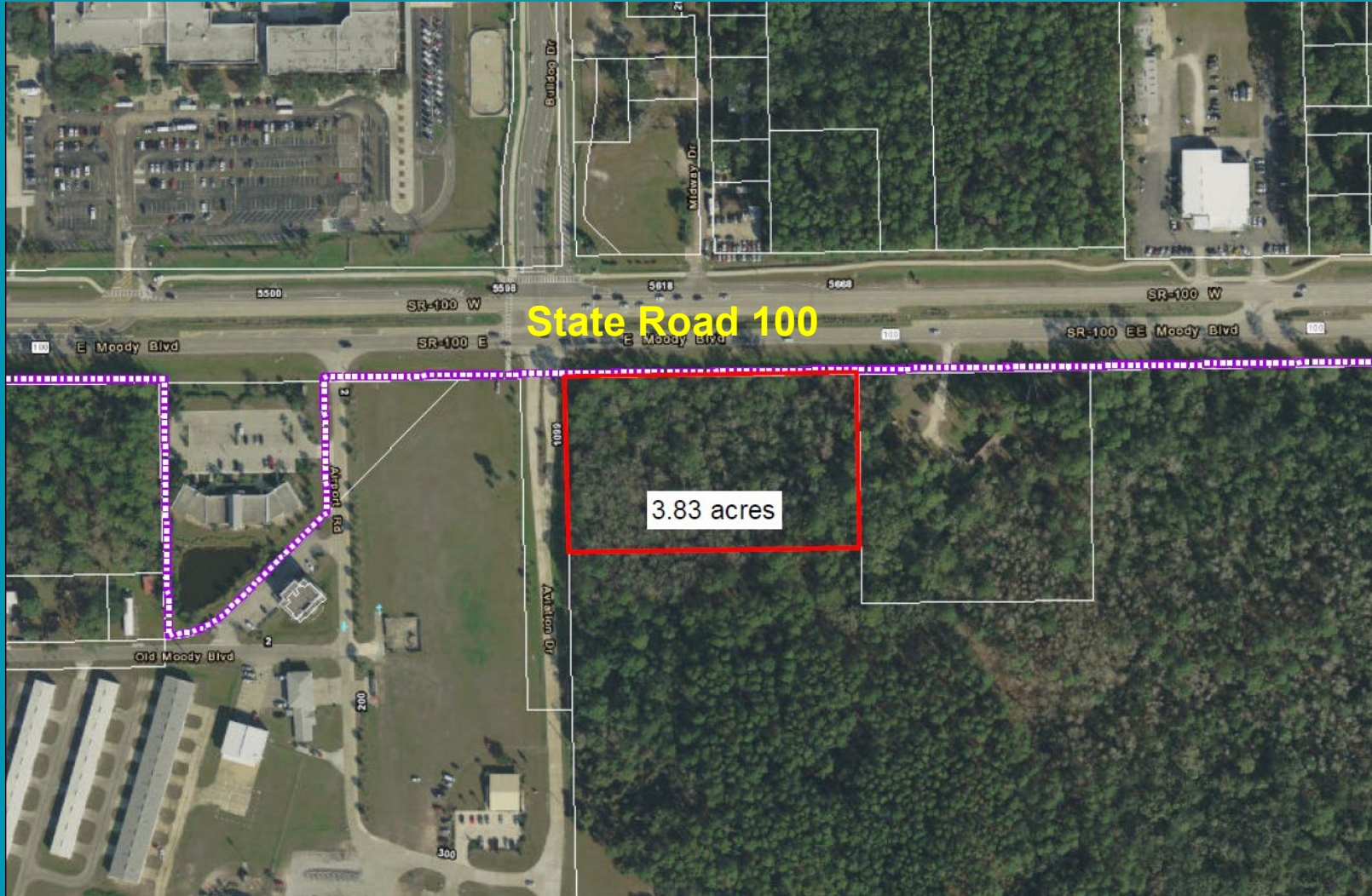
Pre-Annexation, Economic Development &
Joint Planning Area Agreement
November 13, 2018

Community Development Department




LOCATION

- 3.8 acre site.
- Adjacent to the City's boundary on SR 100.
- Across from Town Center MPD & CRA.
- Adjacent to Flagler Executive Airport & Aviation Drive



Location Map

-  Palm Coast City Limits
-  Airport Commons

0 150 300
Feet



Map Provided by the GIS Division



Overview

- Airport Commons site is 3.8 acres in the Joint Planning Area City has with County.
- County designates area as Commercial High Intensity on FLUM, and C-2 zoning district.
- Location is within the City's water and sewer utility service area.
- Site plan resulted in questions regarding water and wastewater utility connections and service.



Pre-annexation, Economic & Joint Planning Area Agreement

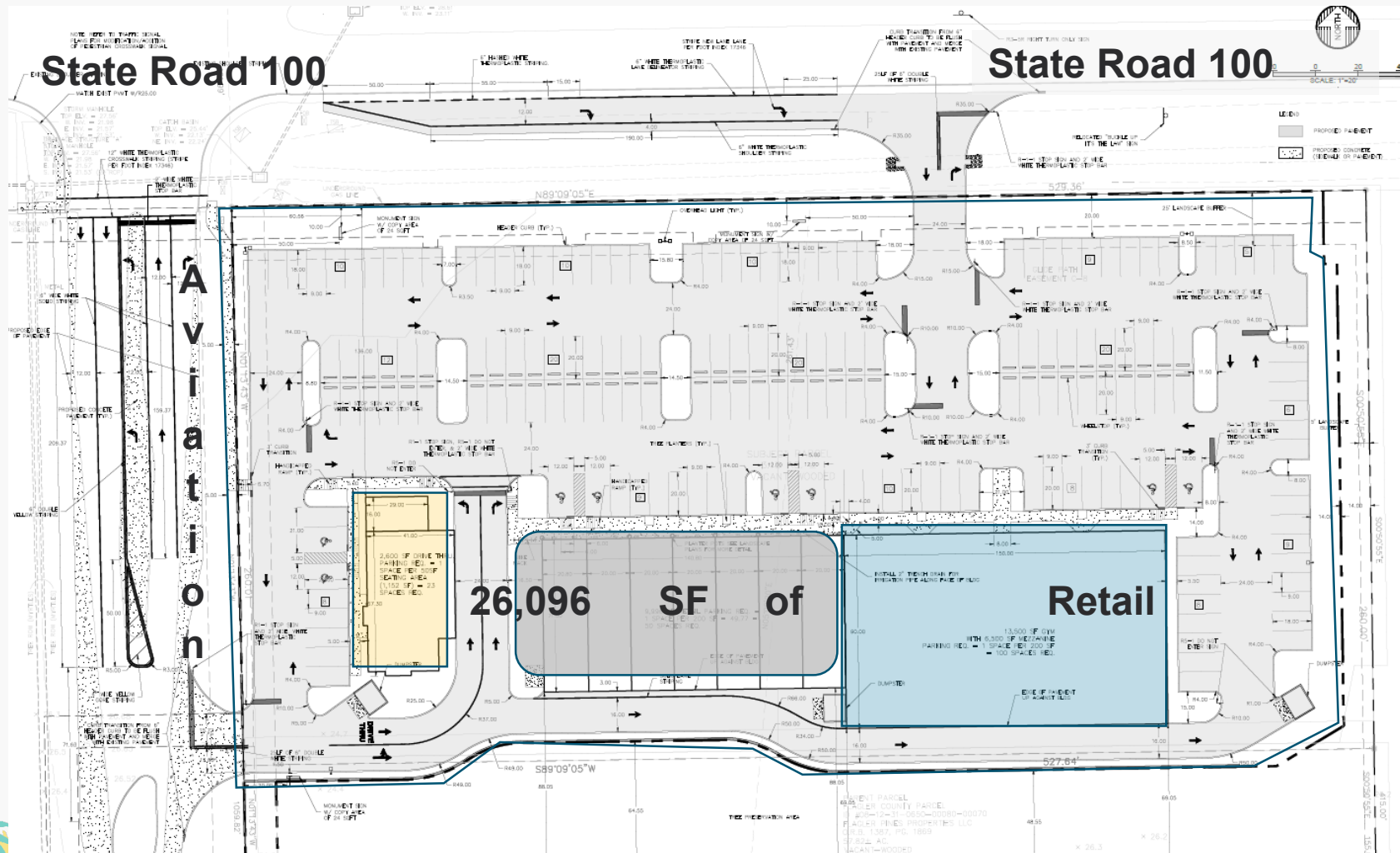


Key Elements –

- Establishes terms for voluntary annexation into the City.
- Requires Airport Commons to connect to City water and enter utility agreement.
- When sewer becomes available, sets forth a process for transfer of capacity between City and the County.
- Requires Airport Commons to pay transportation impact fees, or construct or guarantee the identified improvements to Aviation and 100.



Airport Commons Site Plan



- Proposed retail, restaurant, and fitness center uses.
- Access off SR 100 & Aviation Drive.
- Includes City's landscaping and architecture recommendations.



Architectural Concept



Next Steps

- Approve pre-annexation agreement November 20th.
- Annexation effective after the Certificate of Occupancy is issued by the County.
- City will receive payment of transportation impact fees or receive guarantee re: SR 100 roadway capacity improvements 30 days after the annexation date.
- Applicant will adhere to architectural and site plan theme.
- City will initiate comprehensive plan amendment and rezone within 36 months of adopted annexation ordinance.

