

Return to:
City Clerk
City of Flagler Beach
105 S. Second Street
Flagler Beach, Florida

#11

**SECOND AMENDMENT TO CITY OF FLAGLER BEACH/PALM COAST
INTERLOCAL AGREEMENT RELATING TO BULK POTABLE WATER
SALE AND SHARED UTILITY CUSTOMERS**

THIS SECOND AMENDMENT to the City of Flagler Beach/Palm Coast Interlocal Agreement Relating to Bulk Potable Water Sale and Shared Utility Customers dated August 1, 2006 and recorded at Book 1472, Page 437 in the Official Records of Flagler County, Florida, (the "Agreement") is made and entered this _____ day of _____, 2022.

WITNESSETH:

WHEREAS, Section 3(a) of the Agreement provides that the City of Flagler Beach shall purchase from the City of Palm Coast bulk potable water service to service those customers located within the area identified as Area "B" on the map attached to the Agreement; and

WHEREAS, since the initial adoption of the Agreement, the City of Palm Coast has experienced substantial growth resulting in greater demand upon the City of Palm Coast's water production within its service areas; and

WHEREAS, since the adoption of the Agreement, no customers have existed and no development has occurred within the area identified in said Agreement as "Area B;" and

WHEREAS, the City of Flagler Beach has recently approved new development within the shared service area identified in the Agreement Relating to Bulk Potable Water Sale and Shared Utility Customers as "Area B;" and

WHEREAS, the City of Flagler Beach has available capacity to service new development within "Area B" and the City of Palm Coast has no objection to the City of Flagler Beach providing its own water to said area which is located within the City of Flagler Beach; and

WHEREAS, during the connection of infrastructure to the City of Flagler Beach supply network, the City of Palm Coast is agreeable to providing temporary water service for construction purposes to the City of Flagler Beach in accordance with the Agreement; and

WHEREAS, at the time of original adoption of the Agreement, there were portions of "Area B" which were unincorporated Flagler County causing the Agreement to reference properties within "Area B" "not located within the City of Palm Coast;" and

WHEREAS, there are no longer unincorporated Flagler County portions of "Area B", all of Area "B" is within the jurisdiction of the City of Flagler Beach, thus, causing the original language to be confusing; and

WHEREAS, the parties entered the First Amendment to the Agreement in 2011 to clarify the roles of the parties as it pertains to shared services within “Area A”; and

WHEREAS, by this Second Amendment to the Agreement, the parties intend to no longer treat “Area B” as a shared service area and amend the language of the Agreement to accurately reflect currently existing jurisdictional boundaries.

NOW, THEREFORE, in consideration of the mutual covenants of the parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Section 3 of the Agreement entitled “SALE OF BULK POTABLE WATER SERVICES BY PALM COAST TO FLAGLER BEACH” is hereby amended as follows (note, deletions indicated by ~~striketrough~~ and additions are indicated by underline):

(a). FLAGLER BEACH ~~shall may, on a temporary basis,~~ purchase bulk potable water services from PALM COAST to serve the area located within the City Limits of FLAGLER BEACH within the area depicted as Area “B” on the map attached to this Interlocal Agreement as an exhibit.

(b). FLAGLER BEACH shall pay to PALM COAST the amounts due for bulk potable water services in such amounts as shall be established for such services from time-to-time pursuant to the adoption of rate resolutions or other appropriate actions.

(c). This Section 3 of the Agreement shall sunset and be of no further force and effect as of January 1, 2023, unless extended in writing upon mutual agreement of the parties hereto.

2. Section 4 of the Agreement entitled “SERVICE OF CUSTOMERS; POTABLE WATER BY PALM COAST; WASTEWATER BY FLAGLER BEACH” is hereby amended as follows (note, deletions indicated by ~~striketrough~~, additions are indicated by underline, and portions not reprinted here which remain unchanged are indicated by ellipses (***)):

(a). ~~PALM COAST shall serve potable water services to the utility customers located outside the City Limits of PALM COAST and within the area depicted as Area “BC” on the map attached to this interlocal agreement~~ Second Amendment as an exhibit Exhibit “A” while FLAGLER BEACH shall provide said customers with wastewater services.

(e). ~~Upon receipt of a directive to terminate potable water service for a customer located within the area depicted as Area “BC” on the map attached to this interlocal agreement~~ Second Amendment as an exhibit Exhibit “A” on the basis of nonpayment

~~for wastewater services; PALM COAST shall, as a ministerial matter and action, terminate potable water services to the customer who is the subject of the direction provided by FLAGLER BEACH.~~

3. Exhibit "A" of the original Agreement delineating Areas A and B, is hereby replaced with a new Exhibit "A," attached hereto, which exhibit delineates the new boundaries of Areas A and B intended by the parties as of the effective date of this Second Amendment.
4. This amendment shall be effective as of the date approved and executed by all parties hereto.
5. All other terms of the Agreement as modified by the First Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to the City of Flagler Beach/Palm Coast Interlocal Agreement Relating to Bulk Potable Water Sale and Shared Utility Customers on the dates accompanying their signatures below.

ATTEST:

CITY OF FLAGLER BEACH

Penny Overstreet, City Clerk

Suzie Johnston, Mayor

Date

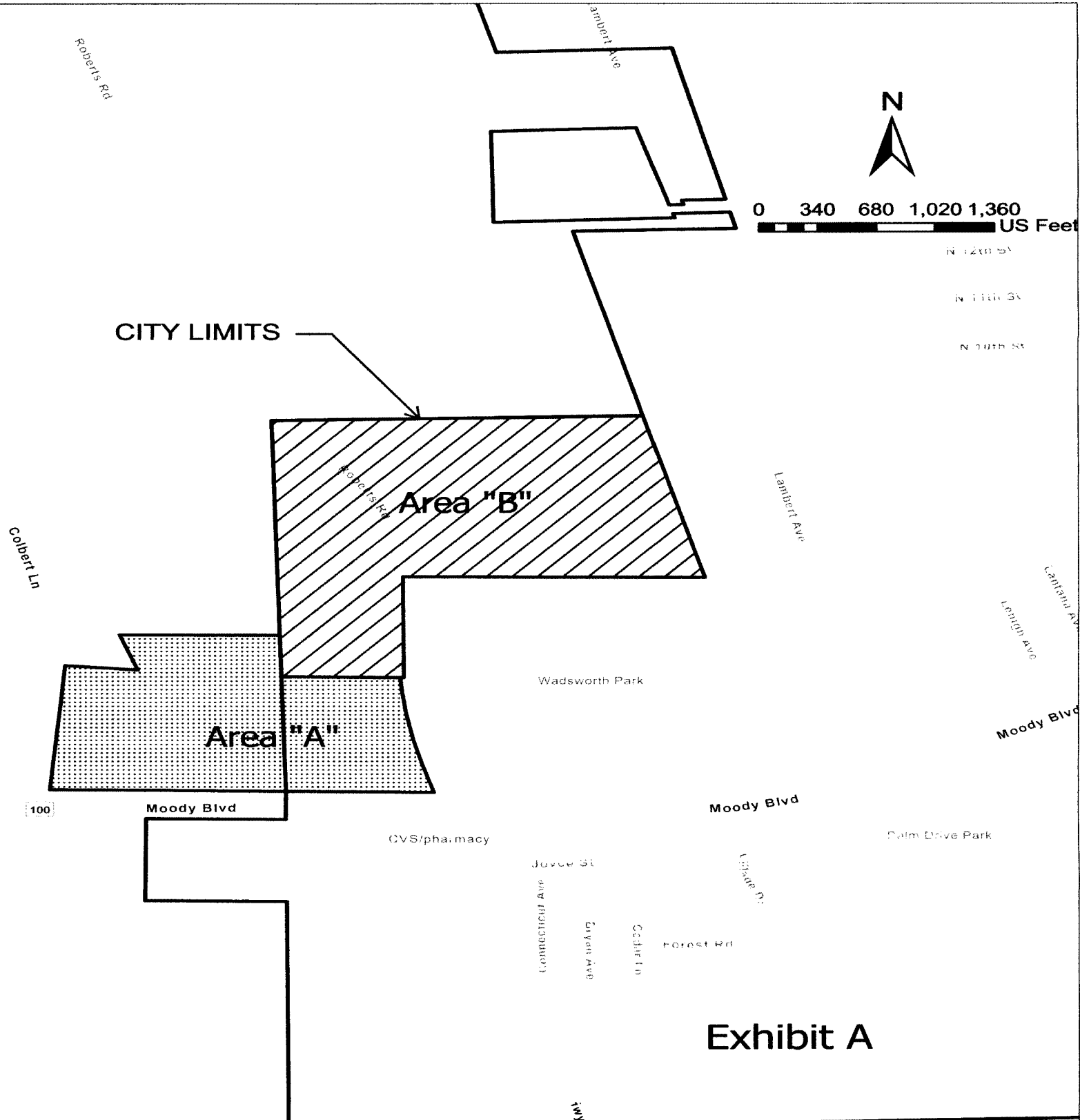
ATTEST:

CITY OF PALM COAST

Virginia Smith, City Clerk

David Alfin

Date



#11a
Revised
6-20-2022

**CONCURRENCY, IMPACT FEE PAYMENT AND IMPACT FEE CREDIT
AGREEMENT**

(Preserve at Flagler Beach)

THIS CONCURRENCY, IMPACT FEE PAYMENT AND IMPACT FEE CREDIT AGREEMENT (“Agreement”) is made as of this ____ day of _____, 2022 (**“Effective Date”**), by and between **PRESERVE AT FLAGLER BEACH LLC**, a Georgia limited liability company (**“Applicant”**), and **CITY OF FLAGLER BEACH**, a Florida municipal corporation (**“City”**).

WITNESSETH:

WHEREAS, the Applicant is the owner of approximately 16 acres described in **Exhibit “A”** attached hereto and incorporated herein by this reference (the **“Property”**), which is subject to the Preserve at Flagler Beach Planned Unit Development Agreement, which is recorded in Official Records Book 2588, Page 225, Public Records of Flagler County, Florida (Ordinance No. 2021-10) (the **“Preserve PUD”**).

WHEREAS, the Preserve PUD allows the Property to be developed with a maximum of 240 multi-family units (the **“Development”**).

WHEREAS, the City has implemented certain public facility impact fees, pursuant to Article V of the City’s Land Development Regulations (the **“Regulations”**), and has adopted a concurrency and proportionate fair share program, as defined in Article III of the Regulations and in Section 163.3180, Florida Statutes, that establishes a method whereby the impacts of development on public facilities can be mitigated by the cooperative efforts of the public and private sectors.

WHEREAS, the Applicant seeks by this Agreement to set forth its obligations regarding payment of certain impact fees to the City related to the Development and construction of certain improvements to the City’s potable water system as a proportionate share obligation in exchange

for receipt of water impact fee credits for such construction to mitigate for the Development's utility impacts.

WHEREAS, the Applicant's payment of applicable City impact fees pursuant to the schedule set forth herein, prior to the City issuance of certificates of occupancy for the Development, will provide funds to the City prior to the Preserve PUD having any impacts on public facilities.

WHEREAS, the Applicant's permitting and construction of an extension of the City's potable water system will provide a significant benefit to such system and advance implementation of the City's long-term utility plan.

WHEREAS, the Regulations and Section 163.3180, Florida Statutes, allow impact fee credits to be granted for utility facility construction by a private party.

WHEREAS, the City deems it to be in the public interest to allow the Applicant to pay its impact fees prior to the City's issuance of certificates of occupancy for the Development and to recognize the Applicant's potable waterline construction described in this Agreement in improving the utility system in the portion of the City in which the Preserve PUD is located.

WHEREAS, the City has determined that Applicant is making commitments binding it and its successors and assigns in the Preserve PUD to the City of Flagler Beach to pay required impact fees and to provide the potable water line construction to mitigate the utility impacts of the Development.

WHEREAS, the Regulations, as amended from time to time, allow the City's execution of this Agreement.

WHEREAS, this Agreement strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the development, encourages private participation and comprehensive planning and reduces the costs of development.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. **Findings of Fact**

The foregoing statements are true and correct and incorporated herein by reference as Findings of Fact.

2. **Purpose.** The Purpose of this Agreement is:

a. To grant any owner of the Preserve PUD, or any portion thereof, public facilities concurrency (except for school concurrency, which is subject to a separate agreement) as required by the City for the construction of the Development authorized by this Agreement at any time during the term of this Agreement, as this Agreement may be amended or extended from time to time, subject to compliance with the terms and conditions of this Agreement; and

b. To recognize the Applicant's construction of certain potable water system improvements as a significant benefit to the impacted utility system in the area of Preserve PUD.

3. **Densities and Intensities Statement.**

The Preserve PUD is to be developed with a maximum of 240 multi-family residential units with related amenities under the existing Comprehensive Plan future land use designation and PUD zoning for Preserve.

4. **Impact Fee Payment Schedule.**

a. The Applicant will be required to pay certain public facility impact fees and utility connection fees to the City related to the Development, as set forth in **Exhibit "B"** attached hereto and incorporated herein by this reference (the "**Development Impact Fee Schedule**"); provided, however, that the Applicant shall not be required to pay water impact fees to the City for the reasons set forth in Section 5 hereof. The Applicant shall pay to the City (i) an amount equal to 35 percent of the total impact fees and utility connection fees due for each category (e.g., sewer, recreation), except water impact fees, which shall be paid in accordance with Section 5

hereof, and school proportionate share and impact fees, which shall be paid pursuant to separate agreement with the Flagler County School Board, prior to the City issuing building permits for the Development; and (ii) the remaining balance of the total impact fees and utility connection fees due for each category, except water impact fees, prior to the City issuing certificates of occupancy for the Development. Impact fees and utility connection fees for the project shall be based on the City's adopted 2022 impact fee and connection fee schedules.

5. **Total Proportionate Share Obligation and Payment Schedule.**

a. The Applicant will permit and construct a potable water line connecting from the City's existing potable water line located near the intersection of State Road 100 and Roberts Road to the Property, as depicted on **Exhibit "C"** attached hereto and incorporated herein by this reference (the "**Water Line Project**"). The City will be responsible for designing the Water Line Project, at the City's expense, prior to the Applicant commencing permitting and construction efforts related thereto. The Applicant will be responsible for (i) obtaining all governmental permits and approvals necessary for the Water Line Project (collectively the "**Permits**"); and (ii) constructing the Water Line Project in conformance with the approved Plans and Permits (the "**Line Construction**"). The City will expedite review and approval of the Permits. The Applicant shall commence Line Construction within 90 days following its receipt of the last governmental approval necessary for the Permits and shall complete such Line Construction within 12 months of commencement.

b. The costs of the Permits and Line Construction related to the Water Line Project are not known at this time and may not be determined for several months. The final determination of Permits and Line Construction costs shall be based on the actual construction contract(s) and/or invoices associated with the Water Line Project, which documentation will be provided to the City prior to the Applicant commencing construction of the Water Line Project; and subsequently, the Applicant shall provide to the City pay invoices and change orders, as applicable, after completion of the Water Line Project construction to determine any additional costs that occurred during construction. Construction cost documentation shall also be provided upon request by the City and included in the As Built review process, as needed to ensure compliance with this condition.

c. Because the Applicant will be responsible for paying costs associated with the Permits and Line Construction for the Water Line Project as its proportionate share obligation for providing potable water service to the Property, the Applicant shall be entitled, under the City's Regulations and Section 163.3180, Florida Statutes, to dollar-for-dollar water impact fee credits in the amount of the total cost of such Water Line Project Permits and Line Construction. Therefore, the Applicant shall not be required to pay water impact fees to the City pursuant to Section 4 hereof, unless the total cost of the Water Line Project Permits and Line Construction is less than the Development's total water impact fees due under the Regulations. In such event, the Applicant shall pay to the City the difference between the actual cost of the Water Line Project Permits and Line Construction and the total water impact fees due for the Development. In the event the cost of the Water Line Project Permits and Line Construction exceeds the Applicant's water impact fees due for the Development, the City shall reimburse the Applicant for the difference between the water impact fees due for the Development and the actual cost of the Water Line Project Permits and Line Construction. Any payment due from the Applicant or the City due under this Section 5 shall be paid to the other party within 60 days following the City's approval of the Water Line Project.

d. Until the Water Line Project has been constructed and is operational within the City's potable water system, the Applicant and the City agree that the Property shall be served with temporary potable water provided by the City of Palm Coast.

6. **Specific Obligations and Rights of Applicant.** The Applicant, its successors and assigns, are solely responsible for paying the impact fees set forth in Section 4 hereof; and for permitting and constructing the Water Line Project pursuant to Section 5 hereof and shall receive water impact fee credits, dollar for dollar, for the cost of permitting and constructing the Water Line Project.

7. **City Obligations.**

a. By executing this Agreement, the City hereby authorizes this Agreement to be used as a basis for providing an impact fee payment schedule and for granting potable water utility concurrency for the Development within the Preserve PUD.

b. The City recognizes that the Applicant's construction of the Water Line Project as significantly benefiting the impacted potable water system.

8. **Authority and Duration.**

This Agreement is made and granted pursuant to the City of Flagler Beach Land Development Regulations and Section 163.3180, Florida Statutes, as they may be amended from time to time, and is effective from the Effective Date through the build-out of the Preserve PUD. In the event the Preserve PUD is extended, the duration of this Agreement shall also be extended.

9. **Extension of Agreement: Subsequent Change.**

The duration of this Agreement may be extended by the City.

10. **Necessity to Obtain Permits.**

The Applicant acknowledges its obligation to obtain all necessary local development permits which may be needed for the Preserve PUD. In the event the Applicant encounters unanticipated delays in obtaining the required permits, or is unable to obtain the required permits, the City will not unreasonably deny, upon a showing of good cause, a request to extend the timeframes contemplated herein.

11. **Impact Fees.**

Pursuant to Regulations Sections 5.03.87 through 5.03.98, the City requires any person who seeks to develop land within the City of Flagler Beach, as evidenced by such person's application for a building permit or certificate of occupancy, to pay impact fees so as to assure that such new development bears a proportional share of the cost of capital expenses necessary to provide public facilities in the City.

a. **Amount.** The Applicant has requested and the City has agreed to provide the Applicant, its successors and assigns, with certain water impact fee credits equal the total cost of ~~designing~~ permitting and constructing the Water Line Project and, if the Applicant incurs additional costs for constructing the Water Line Project, upon the City's approval of pay invoices and change orders, as applicable, as set forth in Section 4 hereof. The total value of the Water Line

Project by the Applicant shall all be eligible for water impact fee credits on a “dollar for dollar” basis. Water impact fee credits shall be awarded to the Applicant, its successors and assigns, immediately upon the posting of a bond for construction of the Water Line Project and, if applicable, the City’s approval of pay invoices and change orders for any additional work required to complete the Water Line Project, as set forth in Section 4 hereof.

b. Sale of Development. In the event Applicant may determine to sell all or part of its Property, Applicant may sell, transfer, assign or convey all or part of its allocation of water impact fee credits to such purchaser, transferee, assignee or grantee for use only within the Preserve PUD for such consideration as the Applicant determines. In such event, Applicant shall execute and deliver to the City a copy of the instrument selling, transferring, assigning or granting its allocation of the water impact fee credit, or portion thereof, to the transferee.

12. **Remedies.**

If any party hereto fails to carry out any of its covenants or obligations contained herein, all parties shall be entitled to all remedies available at law or in equity, including the remedies of specific performance and all forms of injunctive relief. Notwithstanding anything to the contrary herein, Applicant’s obligations are expressly subject to the Applicant commencing development of the Preserve PUD and said development requiring payment of impact fees and for concurrency pursuant to applicable Regulations and Florida law.

13. **Binding Effect.**

The burden of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. The rights and obligations of Applicant may be assigned and delegated to a successor or owner/developer and, in such event, the Applicant shall be relieved of further liability under this Agreement. If the Applicant assigns its rights and obligations hereunder to another party, the Applicant must provide to the City a copy of the instrument transferring or assigning the obligation(s) and specifying which obligation is being transferred and to whom.

14. **Applicable Law; Jurisdiction of Venue.**

This Agreement and the rights and obligations of the parties hereto as they may appear herein, shall be governed by, construed under and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Flagler County, Florida. The parties waive trial by jury. If any provision of this Agreement, or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The fact that this Agreement does not detail all laws, rules, regulations, permits, conditions, terms and restrictions that must be satisfied to complete the Development contemplated by this Agreement shall not relieve any party, or its successors in interest of the obligations to comply with the law governing such permit requirements, conditions, terms and restrictions. Notwithstanding the foregoing, the interests of each party may be mortgaged in connection with a mortgage of any portion of the Property.

15. **Joint Preparation.**

Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

16. **Exhibits.**

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

17. **Captions or Paragraph Headings.**

Captions and paragraphs headings contained in this Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope of intent of this Amended Agreement, nor the intent of any provision hereof.

18. **Counterparts.**

This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Agreement.

19. **Effective Date.** This Agreement shall become effective the date it is executed by all parties (the “**Effective Date**”).

20. **Amendment.**

This Agreement may be amended by mutual written consent of the parties so long as the amendment meets the requirements of the Regulations.

21. **Duration of Permits.**

The Applicant acknowledges that, except for the extension of the concurrency reservation of transportation capacity, this Agreement does not extend the duration of any other permits or approvals.

22. **Further Assurances.**

Each of the parties hereto agrees, to the extent permitted by law, to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts and assurances as shall be reasonable requested by the other party in order to carry out the intent of this Agreement and give effect thereto to the extent allowed and in a manner permitted by law. Without any manner limiting the specific rights and obligations set forth in this Amended Agreement or illegally limiting or infringing upon the governmental authority of the City, the parties hereby declare their intention to cooperate with each other in effecting the terms of this Agreement, and to coordinate the performance of their respective obligations under the terms of this Agreement.

23. **Notices.**

Any notices or reports required by this Agreement shall be sent to the following:

For the City:

City Manager
William Whitson
105 S. 2nd Street
Flagler Beach, Florida 32136

With a copy to:

City Attorney
Drew Smith
P.O. Box 70
Flagler Beach, Florida 32136

For Applicant:

Preserve at Flagler Beach, LLC
3475 Piedmont Rad NE, Suite 1125
Atlanta, Georgia 30305

With a copy to:

Ellen Avery-Smith
Rogers Towers, P.A.
100 Whetstone Place, Suite 200
St. Augustine, Florida 32084

24. **Miscellaneous Provisions:**

a. This Agreement and any exhibits made a part of this Agreement, constitute the entire Agreement and understanding of the parties and shall not be modified or amended except by written agreement duly executed by the parties.

b. This Agreement is made for the sole benefit and protection of the parties (their successors and assigns) and no other persons shall have any right of action under this Agreement.

c. All covenants, agreements, representations and warranties made in this Agreement shall be deemed to be material and relied on by each party to this Agreement.

d. If the Applicant has met all of its obligations under this Amended Agreement, then, the rights granted to Applicant under this Agreement shall survive the

termination of this Agreement and shall continue for so long as there remain any unused water impact fee credits granted hereunder.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Amended Agreement on the day(s) and year set forth below.

WITNESS: _____ Name: _____ _____ Name: _____	CITY OF FLAGLER BEACH By: _____ Name: William Whitson, City Manager Date: _____
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STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument is hereby acknowledged before me this _____ day of _____, 2022, by **WILLIAM WHITSON**, who is the **CITY MANAGER FOR THE CITY OF FLAGLER BEACH, FLORIDA** and is authorized to execute this Agreement on behalf of the City of Flagler Beach, Florida. He/She has produced _____ as identification and (did/did not) take an oath.

NOTARY PUBLIC, State of Florida
Name: _____
My Commission Expires: _____
My Commission Number is: _____

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Agreement on the day(s) and year set forth below.

WITNESS: _____ Name: _____ _____ Name: _____	PRESERVE AT FLAGLER BEACH LLC, a Georgia limited liability company By: _____ Name: _____ Title: _____ Date: _____
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STATE OF GEORGIA
COUNTY OF FULTON

The foregoing instrument is hereby acknowledged before me this _____ day of _____, 2022, by _____ who is the _____ for **PRESERVE AT FLAGLER BEACH LLC**, a Georgia limited liability company, and is authorized to execute this Agreement on behalf of the company. He/She has produced _____ as identification and (did/did not) take an oath.

NOTARY PUBLIC, State of Georgia
Name: _____
My Commission Expires: _____
My Commission Number is: _____

EXHIBIT "A"

Legal Description for Preserve PUD Property

Lands as described and contained within that Old Republic National Title Insurance Company, American Land Title Association Commitment, Commitment Effective Date of: October 1 2020 at 05:00 pm. Revised Date: October 16, 2020 at 6:17 am

A portion of Section 11, Township 12 South, Range 31 East, Flagler County, Florida, being more particularly described as follows:

For a Point of Beginning, commence at the North 1/4 corner of said Section 11; thence North 88°27'05" East, along the North line of said Section 11, a distance of 24.59 feet to a point lying on the Westerly right-of-way line of Roberts Road (an 80 foot right-of-way as now established); said point lying on a curve, concave Northeasterly, having a radius of 1539.72 feet; thence Southeasterly along said Westerly right-of-way line and along the arc of said curve, an arc distance of 345.65 feet, said arc being subtended by a chord bearing of South 39°55'42" East, 344.93 feet to the point of tangency of said curve; thence South 46°21'43" East continuing along said right-of-way line, a distance of 177.58 feet to the point of curvature of a curve, concave Southwesterly, having a radius of 1108.26 feet; thence Southeasterly continuing along said Westerly right-of-way line and along the arc of said curve, an arc distance of 869.36 feet, said arc being subtended by a chord bearing of South 23°53'19" East, 847.27 feet; thence South 01°24'55" East, continuing along said Westerly right-of-way line, a distance of 433.85 feet; thence North 89°29'02" West, leaving said Westerly right of way line, a distance of 682.07 feet to a point on the West line of the Northeast 1/4 of Section 11; thence North 01°40'05" West, along said West line, a distance of 1,589.33 feet to the Point of Beginning.

LESS AND EXCEPT

A part of Section 11, Township 12 South, Range 31 East, Flagler County, Florida, being more particularly described as follows:

Beginning at the Northeasterly corner of Lot 1, BEACH VILLAGE AT FLAGLER BEACH as recorded in Map Book 36, page 77 of the Public Records of Flagler County, Florida, said point being located on the Westerly right-of-way line of Roberts Road, an 80 foot wide, public right-of-way; thence departing said right-of-way line along the Northerly line of said Lot 1, N 89°29'02" W for a distance of 682.07 feet to the Westerly line of said Lot 1, said line also being the Westerly city limits of the City of Flagler Beach, Florida; thence departing said Northerly line along said Westerly line N 01°40'04" W for a distance of 191.63 feet; thence departing said Westerly line S 89°29'02" E for a distance of 682.91 feet to the aforesaid Westerly right-of-way line of Roberts Road; thence along said right-of-way line S 82°29'02" E (*) for a distance of 191.60 feet to the aforesaid Point of Beginning of this description.

(*) This bearing should actually be S 01°24'55" E, in order to mathematically close.

EXHIBIT "B"

Development Impact Fee Schedule

Preserve at Flagler Beach, LLC									
Structure	Building Fees	School Impact	Recreation Fees	Sewer Fees	Sewer Impact	Water Fees	Water Impact	Total Fees	
Building 1	\$ 41,943.79	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$	259,237.29
Building 2	\$ 42,088.62	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$	259,382.12
Building 3	\$ 42,088.62	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$	259,382.12
Building 4	\$ 41,943.79	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$	259,237.29
Building 5	\$ 41,943.79	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$	259,237.29
Building 6	\$ 41,943.79	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$	259,237.29
Building 7	\$ 42,088.62	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$	259,382.12
Building 8	\$ 41,943.79	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$	259,237.29
Garage 1	\$ 1,621.10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$	1,621.10
Garage 2	\$ 1,621.10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$	1,621.10
Garage 3	\$ 1,621.10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$	1,621.10
Garage 4	\$ 1,621.10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$	1,621.10
Garage 5	\$ 1,621.10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$	1,621.10
Clubhouse	\$ 11,488.33	\$ -	\$ -	\$ 960.00	\$ 3,082.50	\$ 2,125.00	\$ 2,509.19	\$	20,165.02
Bike Storage / Pet	\$ 9,133.81	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$	9,133.81
Mail	\$ 1,473.45	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$	1,473.45
Trash	\$ 1,721.82	\$ -	\$ -	\$ 960.00	\$ 3,082.50	\$ -	\$ -	\$	5,764.32
Maintenance	\$ 6,295.33	\$ -	\$ -	\$ -	\$ -	\$ 720.00	\$ 2,509.19	\$	9,524.52
Engineer Pass Thru	\$ 5,218.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$	5,218.00
SUBTOTAL	\$ 379,421.05	\$ 223,440.00	\$ 64,428.00	\$ 9,600.00	\$ 745,965.00	\$ 103,645.00	\$ 607,218.38	\$	2,133,717.43
PER UNIT	\$ 1,580.92	\$ 931.00	\$ 268.45	\$ 40.00	\$ 3,108.19	\$ 431.85	\$ 2,530.08	\$	8,890.49

Proposed Payment Schedule Summary						
Permit Item	100%	35%	65%	TBD	Total	Note
Building Fees	\$ 379,421.05	\$ -	\$ -	\$ -	\$ 379,421.05	Owner will present vouchers demonstrating pre-payment.
School Impact	\$ 223,440.00	\$ -	\$ -	\$ -	\$ 223,440.00	
Recreation Fees	\$ -	\$ 22,549.80	\$ 41,878.20	\$ -	\$ 64,428.00	
Total Sewer Fees	\$ -	\$ 264,447.75	\$ 491,117.25	\$ -	\$ 755,565.00	
Total Water Fees	\$ -	\$ -	\$ -	\$ 710,863.38	\$ 710,863.38	
SUBTOTAL	\$ 602,861.05	\$ 286,997.55	\$ 532,995.45	\$ 710,863.38	\$ 2,133,717.43	
TOTAL UPFRONT INSTALLMENT	\$ 889,858.60					(a) Owner will pay now and permits will be released.
TOTAL REMAINING DUE PRIOR TO C/O				\$ 1,243,858.83		Owner will pay according to agreement.

(a) Owner has paid \$223,540.00 to Flagler County School Board. Owner will present vouchers to cover the \$223,440.00, and provide a check for \$666,418.60

EXHIBIT "C"

Water Line Project

Penny Overstreet

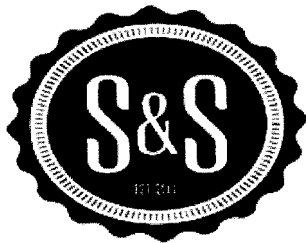
From: Drew Smith
Sent: Thursday, June 9, 2022 12:50 PM
To: Penny Overstreet; William Whitson; David King
Subject: RE: Flagler Beach / Palm Coast
Attachments: Second Amendment to COPC Flagler Beach Bulk Sale Agreement (DAS rev 060822).docx

Yes. The language that the Palm Coast City Attorney and I have settled on is attached if it helpful to see it.

Drew

D. ANDREW SMITH, III | ATTORNEY AT LAW
BOARD CERTIFIED - CITY, COUNTY & LOCAL GOVERNMENT LAW

SHEPARD, SMITH,
KOHLMYER & HAND, P.A.
2300 MAITLAND CENTER PKWY, STE 100
MAITLAND, FL 32751



SHEPARDFIRM.COM



From: Penny Overstreet <POverstreet@CityofFlaglerBeach.com>

Sent: Thursday, June 9, 2022 12:47 PM

To: William Whitson David King Drew Smith

Subject: RE: Flagler Beach / Palm Coast

I assume it will be in an addendum to the agreement?
Penny

From: William Whitson
Sent: Wednesday, June 8, 2022 4:48 PM
To: David King
Cc: Penny Overstreet <POverstreet@CityofFlaglerBeach.com>
Subject: RE: Flagler Beach / Palm Coast

OK.....Penny, any concerns with that?

W W

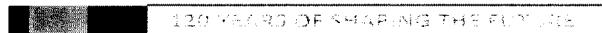
From: David King
Sent: Wednesday, June 8, 2022 2:55 PM
To: Drew Smith
Cc: William Whitson
Subject: RE: Flagler Beach / Palm Coast

Yes, we can do that.

David

DAVID KING, PE
VICE PRESIDENT, BUSINESS UNIT LEADER
Mead & Hunt

meadhunt.com | [LinkedIn](#) | [Twitter](#) | [Facebook](#) | [Instagram](#)



From: Drew Smith
Sent: Wednesday, June 8, 2022 2:53 PM
To: David King
Cc: William Whitson
Subject: Flagler Beach / Palm Coast

David:

I just got off the phone with the attorney for Palm Coast and I think we have the agreement language ironed out. Would it be possible to show Area A on the new Exhibit "A" map? Since we are carving a piece out of old Area A and moving into new Area B, she and I agreed that it would be cleanest to just show both areas on the new exhibit and replace the old map altogether.

I also left you a voicemail, this was all I was calling about.

Thanks!

Drew

D. ANDREW SMITH, III | ATTORNEY AT LAW
BOARD CERTIFIED - CITY, COUNTY & LOCAL GOVERNMENT LAW

#11a

**CONCURRENCY, IMPACT FEE PAYMENT AND IMPACT FEE CREDIT
AGREEMENT**

(Preserve at Flagler Beach)

THIS CONCURRENCY, IMPACT FEE PAYMENT AND IMPACT FEE CREDIT AGREEMENT (“Agreement”) is made as of this ____ day of _____, 2022 (**“Effective Date”**), by and between **PRESERVE AT FLAGLER BEACH LLC**, a Georgia limited liability company (**“Applicant”**), and **CITY OF FLAGLER BEACH**, a Florida municipal corporation (**“City”**).

WITNESSETH:

WHEREAS, the Applicant is the owner of approximately 16 acres described in **Exhibit “A”** attached hereto and incorporated herein by this reference (the **“Property”**), which is subject to the Preserve at Flagler Beach Planned Unit Development Agreement, which is recorded in Official Records Book 2588, Page 225, Public Records of Flagler County, Florida (Ordinance No. 2021-10) (the **“Preserve PUD”**).

WHEREAS, the Preserve PUD allows the Property to be developed with a maximum of 240 multi-family units (the **“Development”**).

WHEREAS, the City has implemented certain public facility impact fees, pursuant to Article V of the City’s Land Development Regulations (the **“Regulations”**), and has adopted a concurrency and proportionate fair share program, as defined in Article III of the Regulations and in Section 163.3180, Florida Statutes, that establishes a method whereby the impacts of development on public facilities can be mitigated by the cooperative efforts of the public and private sectors.

WHEREAS, the Applicant seeks by this Agreement to set forth its obligations regarding payment of certain impact fees to the City related to the Development and construction of certain improvements to the City’s potable water system as a proportionate share obligation in exchange

for receipt of water impact fee credits for such construction to mitigate for the Development's utility impacts.

WHEREAS, the Applicant's payment of applicable City impact fees pursuant to the schedule set forth herein, prior to the City issuance of certificates of occupancy for the Development, will provide funds to the City prior to the Preserve PUD having any impacts on public facilities.

WHEREAS, the Applicant's permitting and construction of an extension of the City's potable water system will provide a significant benefit to such system and advance implementation of the City's long-term utility plan.

WHEREAS, the Regulations and Section 163.3180, Florida Statutes, allow impact fee credits to be granted for utility facility construction by a private party.

WHEREAS, the City deems it to be in the public interest to allow the Applicant to pay its impact fees prior to the City's issuance of certificates of occupancy for the Development and to recognize the Applicant's potable waterline construction described in this Agreement in improving the utility system in the portion of the City in which the Preserve PUD is located.

WHEREAS, the City has determined that Applicant is making commitments binding it and its successors and assigns in the Preserve PUD to the City of Flagler Beach to pay required impact fees and to provide the potable water line construction to mitigate the utility impacts of the Development.

WHEREAS, the Regulations, as amended from time to time, allow the City's execution of this Agreement.

WHEREAS, this Agreement strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the development, encourages private participation and comprehensive planning and reduces the costs of development.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. **Findings of Fact**

The foregoing statements are true and correct and incorporated herein by reference as Findings of Fact.

2. **Purpose.** The Purpose of this Agreement is:

a. To grant any owner of the Preserve PUD, or any portion thereof, public facilities concurrency (except for school concurrency, which is subject to a separate agreement) as required by the City for the construction of the Development authorized by this Agreement at any time during the term of this Agreement, as this Agreement may be amended or extended from time to time, subject to compliance with the terms and conditions of this Agreement; and

b. To recognize the Applicant's construction of certain potable water system improvements as a significant benefit to the impacted utility system in the area of Preserve PUD.

3. **Densities and Intensities Statement.**

The Preserve PUD is to be developed with a maximum of 240 multi-family residential units with related amenities under the existing Comprehensive Plan future land use designation and PUD zoning for Preserve.

4. **Impact Fee Payment Schedule.**

a. The Applicant will be required to pay certain public facility impact fees and utility connection fees to the City related to the Development, as set forth in **Exhibit "B"** attached hereto and incorporated herein by this reference (the "**Development Impact Fee Schedule**"); provided, however, that the Applicant shall not be required to pay water impact fees to the City for the reasons set forth in Section 5 hereof. The Applicant shall pay to the City (i) an amount equal to 35 percent of the total impact fees and utility connection fees due for each category (e.g., sewer, recreation), except water impact fees, prior to the City issuing building

permits for the Development; and (ii) the remaining balance of the total impact fees and utility connection fees due for each category, except water impact fees, prior to the City issuing certificates of occupancy for the Development. Impact fees and utility connection fees for the project shall be based on the City's adopted 2022 impact fee and connection fee schedules.

5. **Total Proportionate Share Obligation and Payment Schedule.**

a. The Applicant will permit and construct a potable water line connecting from the City's existing potable water line located near the intersection of State Road 100 and Roberts Road to the Property, as depicted on **Exhibit "C"** attached hereto and incorporated herein by this reference (the "**Water Line Project**"). The City will be responsible for designing the Water Line Project, at the City's expense, prior to the Applicant commencing permitting and construction efforts related thereto. The Applicant will be responsible for (i) obtaining all governmental permits and approvals necessary for the Water Line Project (collectively the "**Permits**"); and (ii) constructing the Water Line Project in conformance with the approved Plans and Permits (the "**Line Construction**"). The City will expedite review and approval of the Permits. The Applicant shall commence Line Construction within 90 days following its receipt of the last governmental approval necessary for the Permits and shall complete such Line Construction within 12 months of commencement.

b. The costs of the Permits and Line Construction related to the Water Line Project are not known at this time and may not be determined for several months. The final determination of Permits and Line Construction costs shall be based on the actual construction contract(s) and/or invoices associated with the Water Line Project, which documentation will be provided to the City prior to the Applicant commencing construction of the Water Line Project; and subsequently, the Applicant shall provide to the City pay invoices and change orders, as applicable, after completion of the Water Line Project construction to determine any additional costs that occurred during construction. Construction cost documentation shall also be provided upon request by the City and included in the As Built review process, as needed to ensure compliance with this condition.

c. Because the Applicant will be responsible for paying costs associated with the Permits and Line Construction for the Water Line Project as its proportionate share

obligation for providing potable water service to the Property, the Applicant shall be entitled, under the City's Regulations and Section 163.3180, Florida Statutes, to dollar-for-dollar water impact fee credits in the amount of the total cost of such Water Line Project Permits and Line Construction. Therefore, the Applicant shall not be required to pay water impact fees to the City pursuant to Section 4 hereof, unless the total cost of the Water Line Project Permits and Line Construction is less than the Development's total water impact fees due under the Regulations. In such event, the Applicant shall pay to the City the difference between the actual cost of the Water Line Project Permits and Line Construction and the total water impact fees due for the Development. In the event the cost of the Water Line Project Permits and Line Construction exceeds the Applicant's water impact fees due for the Development, the City shall reimburse the Applicant for the difference between the water impact fees due for the Development and the actual cost of the Water Line Project Permits and Line Construction. Any payment due from the Applicant or the City due under this Section 5 shall be paid to the other party within 60 days following the City's approval of the Water Line Project.

d. Until the Water Line Project has been constructed and is operational within the City's potable water system, the Applicant and the City agree that the Property shall be served with temporary potable water provided by the City of Palm Coast.

6. **Specific Obligations and Rights of Applicant.** The Applicant, its successors and assigns, are solely responsible for paying the impact fees set forth in Section 4 hereof; and for permitting and constructing the Water Line Project pursuant to Section 5 hereof and shall receive water impact fee credits, dollar for dollar, for the cost of permitting and constructing the Water Line Project.

7. **City Obligations.**

a. By executing this Agreement, the City hereby authorizes this Agreement to be used as a basis for providing an impact fee payment schedule and for granting potable water utility concurrency for the Development within the Preserve PUD.

b. The City recognizes that the Applicant's construction of the Water Line Project as significantly benefiting the impacted potable water system.

8. **Authority and Duration.**

This Agreement is made and granted pursuant to the City of Flagler Beach Land Development Regulations and Section 163.3180, Florida Statutes, as they may be amended from time to time, and is effective from the Effective Date through the build-out of the Preserve PUD. In the event the Preserve PUD is extended, the duration of this Agreement shall also be extended.

9. **Extension of Agreement: Subsequent Change.**

The duration of this Agreement may be extended by the City.

10. **Necessity to Obtain Permits.**

The Applicant acknowledges its obligation to obtain all necessary local development permits which may be needed for the Preserve PUD. In the event the Applicant encounters unanticipated delays in obtaining the required permits, or is unable to obtain the required permits, the City will not unreasonably deny, upon a showing of good cause, a request to extend the timeframes contemplated herein.

11. **Impact Fees.**

Pursuant to Regulations Sections 5.03.87 through 5.03.98, the City requires any person who seeks to develop land within the City of Flagler Beach, as evidenced by such person's application for a building permit or certificate of occupancy, to pay impact fees so as to assure that such new development bears a proportional share of the cost of capital expenses necessary to provide public facilities in the City.

a. **Amount.** The Applicant has requested and the City has agreed to provide the Applicant, its successors and assigns, with certain water impact fee credits equal the total cost of designing, permitting and constructing the Water Line Project and, if the Applicant incurs additional costs for constructing the Water Line Project, upon the City's approval of pay invoices and change orders, as applicable, as set forth in Section 4 hereof. The total value of the Water Line Project by the Applicant shall all be eligible for water impact fee credits on a "dollar for dollar" basis. Water impact fee credits shall be awarded to the Applicant, its successors and assigns, immediately upon the posting of a bond for construction of the Water Line Project and,

if applicable, the City's approval of pay invoices and change orders for any additional work required to complete the Water Line Project, as set forth in Section 4 hereof.

b. **Sale of Development.** In the event Applicant may determine to sell all or part of its Property, Applicant may sell, transfer, assign or convey all or part of its allocation of water impact fee credits to such purchaser, transferee, assignee or grantee for use only within the Preserve PUD for such consideration as the Applicant determines. In such event, Applicant shall execute and deliver to the City a copy of the instrument selling, transferring, assigning or granting its allocation of the water impact fee credit, or portion thereof, to the transferee.

12. **Remedies.**

If any party hereto fails to carry out any of its covenants or obligations contained herein, all parties shall be entitled to all remedies available at law or in equity, including the remedies of specific performance and all forms of injunctive relief. Notwithstanding anything to the contrary herein, Applicant's obligations are expressly subject to the Applicant commencing development of the Preserve PUD and said development requiring payment of impact fees and for concurrency pursuant to applicable Regulations and Florida law.

13. **Binding Effect.**

The burden of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. The rights and obligations of Applicant may be assigned and delegated to a successor or owner/developer and, in such event, the Applicant shall be relieved of further liability under this Agreement. If the Applicant assigns its rights and obligations hereunder to another party, the Applicant must provide to the City a copy of the instrument transferring or assigning the obligation(s) and specifying which obligation is being transferred and to whom.

14. **Applicable Law; Jurisdiction of Venue.**

This Agreement and the rights and obligations of the parties hereto as they may appear herein, shall be governed by, construed under and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be

exclusively in Flagler County, Florida. The parties waive trial by jury. If any provision of this Agreement, or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The fact that this Agreement does not detail all laws, rules, regulations, permits, conditions, terms and restrictions that must be satisfied to complete the Development contemplated by this Agreement shall not relieve any party, or its successors in interest of the obligations to comply with the law governing such permit requirements, conditions, terms and restrictions. Notwithstanding the foregoing, the interests of each party may be mortgaged in connection with a mortgage of any portion of the Property.

15. **Joint Preparation.**

Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

16. **Exhibits.**

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

17. **Captions or Paragraph Headings.**

Captions and paragraphs headings contained in this Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope of intent of this Amended Agreement, nor the intent of any provision hereof.

18. **Counterparts.**

This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Agreement.

19. **Effective Date.** This Agreement shall become effective the date it is executed by all parties (the “**Effective Date**”).

20. **Amendment.**

This Agreement may be amended by mutual written consent of the parties so long as the amendment meets the requirements of the Regulations.

21. **Duration of Permits.**

The Applicant acknowledges that, except for the extension of the concurrency reservation of transportation capacity, this Agreement does not extend the duration of any other permits or approvals.

22. **Further Assurances.**

Each of the parties hereto agrees, to the extent permitted by law, to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts and assurances as shall be reasonable requested by the other party in order to carry out the intent of this Agreement and give effect thereto to the extent allowed and in a manner permitted by law. Without any manner limiting the specific rights and obligations set forth in this Amended Agreement or illegally limiting or infringing upon the governmental authority of the City, the parties hereby declare their intention to cooperate with each other in effecting the terms of this Agreement, and to coordinate the performance of their respective obligations under the terms of this Agreement.

23. **Notices.**

Any notices or reports required by this Agreement shall be sent to the following:

For the City:

City Manager
William Whitson
105 S. 2nd Street
Flagler Beach, Florida 32136

With a copy to:

City Attorney
Drew Smith
P.O. Box 70
Flagler Beach, Florida 32136

For Applicant:

Preserve at Flagler Beach, LLC
3475 Piedmont Rad NE, Suite 1125
Atlanta, Georgia 30305

With a copy to:

Ellen Avery-Smith
Rogers Towers, P.A.
100 Whetstone Place, Suite 200
St. Augustine, Florida 32084

24. **Miscellaneous Provisions:**

a. This Agreement and any exhibits made a part of this Agreement, constitute the entire Agreement and understanding of the parties and shall not be modified or amended except by written agreement duly executed by the parties.

b. This Agreement is made for the sole benefit and protection of the parties (their successors and assigns) and no other persons shall have any right of action under this Agreement.

c. All covenants, agreements, representations and warranties made in this Agreement shall be deemed to be material and relied on by each party to this Agreement.

d. If the Applicant has met all of its obligations under this Amended Agreement, then, the rights granted to Applicant under this Agreement shall survive the termination of this Agreement and shall continue for so long as there remain any unused water impact fee credits granted hereunder.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Amended Agreement on the day(s) and year set forth below.

WITNESS: _____ Name: _____ _____ Name: _____	CITY OF FLAGLER BEACH By: _____ Name: William Whitson, City Manager Date: _____
---	--

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument is hereby acknowledged before me this _____ day of _____, 2022, by **WILLIAM WHITSON**, who is the **CITY MANAGER FOR THE CITY OF FLAGLER BEACH, FLORIDA** and is authorized to execute this Agreement on behalf of the City of Flagler Beach, Florida. He/She has produced _____ as identification and (did/did not) take an oath.

NOTARY PUBLIC, State of Florida
Name: _____
My Commission Expires: _____
My Commission Number is: _____

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Agreement on the day(s) and year set forth below.

WITNESS: _____ Name: _____ _____ Name: _____	PRESERVE AT FLAGLER BEACH LLC, a Georgia limited liability company By: _____ Name: _____ Title: _____ Date: _____
---	---

STATE OF GEORGIA
COUNTY OF FULTON

The foregoing instrument is hereby acknowledged before me this _____ day of _____, 2022, by _____ who is the _____ for **PRESERVE AT FLAGLER BEACH LLC**, a Georgia limited liability company, and is authorized to execute this Agreement on behalf of the company. He/She has produced _____ as identification and (did/did not) take an oath.

NOTARY PUBLIC, State of Georgia
Name: _____
My Commission Expires: _____
My Commission Number is: _____

EXHIBIT "A"

Legal Description for Preserve PUD Property

Lands as described and contained within that Old Republic National Title Insurance Company, American Land Title Association Commitment, Commitment Effective Date of: October 1 2020 at 05:00 pm. Revised Date: October 16, 2020 at 6:17 am

A portion of Section 11, Township 12 South, Range 31 East, Flagler County, Florida, being more particularly described as follows:

For a Point of Beginning, commence at the North 1/4 corner of said Section 11; thence North 88°27'05" East, along the North line of said Section 11, a distance of 24.59 feet to a point lying on the Westerly right-of-way line of Roberts Road (an 80 foot right-of-way as now established); said point lying on a curve, concave Northeasterly, having a radius of 1539.72 feet; thence Southeasterly along said Westerly right-of-way line and along the arc of said curve, an arc distance of 345.65 feet, said arc being subtended by a chord bearing of South 39°55'42" East, 344.93 feet to the point of tangency of said curve; thence South 46°21'43" East continuing along said right-of-way line, a distance of 177.58 feet to the point of curvature of a curve, concave Southwesterly, having a radius of 1108.26 feet; thence Southeasterly continuing along said Westerly right-of-way line and along the arc of said curve, an arc distance of 869.36 feet, said arc being subtended by a chord bearing of South 23°53'19" East, 847.27 feet; thence South 01°24'55" East, continuing along said Westerly right-of-way line, a distance of 433.85 feet; thence North 89°29'02" West, leaving said Westerly right of way line, a distance of 682.07 feet to a point on the West line of the Northeast 1/4 of Section 11; thence North 01°40'05" West, along said West line, a distance of 1,589.33 feet to the Point of Beginning.

LESS AND EXCEPT

A part of Section 11, Township 12 South, Range 31 East, Flagler County, Florida, being more particularly described as follows:

Beginning at the Northeasterly corner of Lot 1, BEACH VILLAGE AT FLAGLER BEACH as recorded in Map Book 36, page 77 of the Public Records of Flagler County, Florida, said point being located on the Westerly right-of-way line of Roberts Road, an 80 foot wide public right-of-way; thence departing said right-of-way line along the Northerly line of said Lot 1, N 89°29'02" W for a distance of 682.07 feet to the Westerly line of said Lot 1, said line also being the Westerly city limits of the City of Flagler Beach, Florida; thence departing said Northerly line along said Westerly line N 01°40'04" W for a distance of 191.63 feet; thence departing said Westerly line S 89°29'02" E for a distance of 682.91 feet to the aforesaid Westerly right-of-way line of Roberts Road; thence along said right-of-way line S 82°29'02" E () for a distance of 191.60 feet to the aforesaid Point of Beginning of this description.*

() This bearing should actually be S 01°24'55" E, in order to mathematically close.*

EXHIBIT "B"

Development Impact Fee Schedule

Preserve at Flagler Beach, LLC								
Structure	Building Fees	School Impact	Recreation Fees	Sewer Fees	Sewer Impact	Water Fees	Water Impact	Total Fees
Building 1	\$ 41,943.79	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$ 259,237.29
Building 2	\$ 42,088.62	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$ 259,382.12
Building 3	\$ 42,088.62	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$ 259,382.12
Building 4	\$ 41,943.79	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$ 259,237.29
Building 5	\$ 41,943.79	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$ 259,237.29
Building 6	\$ 41,943.79	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$ 259,237.29
Building 7	\$ 42,088.62	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$ 259,382.12
Building 8	\$ 41,943.79	\$ 27,930.00	\$ 8,053.50	\$ 960.00	\$ 92,475.00	\$ 12,600.00	\$ 75,275.00	\$ 259,237.29
Garage 1	\$ 1,621.10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,621.10
Garage 2	\$ 1,621.10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,621.10
Garage 3	\$ 1,621.10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,621.10
Garage 4	\$ 1,621.10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,621.10
Garage 5	\$ 1,621.10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,621.10
Clubhouse	\$ 11,488.33	\$ -	\$ -	\$ 960.00	\$ 3,082.50	\$ 2,125.00	\$ 2,509.19	\$ 20,165.02
Bike Storage / Pet	\$ 9,133.81	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,133.81
Mail	\$ 1,473.45	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,473.45
Trash	\$ 1,721.82	\$ -	\$ -	\$ 960.00	\$ 3,082.50	\$ -	\$ -	\$ 5,764.32
Maintenance	\$ 6,295.33	\$ -	\$ -	\$ -	\$ -	\$ 720.00	\$ 2,509.19	\$ 9,524.52
Engineer Pass Thru	\$ 5,218.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,218.00
SUBTOTAL	\$ 379,421.05	\$ 223,440.00	\$ 64,428.00	\$ 9,600.00	\$ 745,965.00	\$ 103,645.00	\$ 607,218.38	\$ 2,133,717.43
PER UNIT	\$ 1,580.92	\$ 931.00	\$ 268.45	\$ 40.00	\$ 3,108.19	\$ 431.85	\$ 2,530.08	\$ 8,890.49

Proposed Payment Schedule Summary						Note
Permit Item	100%	35%	65%	TBD	Total	
Building Fees	\$ 379,421.05	\$ -	\$ -	\$ -	\$ 379,421.05	Owner will present vouchers demonstrating pre-payment.
School Impact	\$ 223,440.00	\$ -	\$ -	\$ -	\$ 223,440.00	
Recreation Fees	\$ -	\$ 22,549.80	\$ 41,878.20	\$ -	\$ 64,428.00	
Total Sewer Fees	\$ -	\$ 264,447.75	\$ 491,117.25	\$ -	\$ 755,565.00	
Total Water Fees	\$ -	\$ -	\$ -	\$ 710,863.38	\$ 710,863.38	
SUBTOTAL	\$ 602,861.05	\$ 286,997.55	\$ 532,995.45	\$ 710,863.38	\$ 2,133,717.43	
TOTAL UPFRONT INSTALLMENT	\$ 602,861.05					(a) Owner will pay now and permits will be released. Owner will pay according to agreement.
TOTAL REMAINING DUE PRIOR TO C/O				\$ 1,243,858.83		

(a) Owner has paid \$223,540.00 to Flagler County School Board. Owner will present vouchers to cover the \$223,440.00, and provide a check for \$666,418.60

EXHIBIT “C”

Water Line Project

Penny Overstreet

From: William Whitson
Sent: Friday, June 17, 2022 3:11 PM
To: Drew Smith
Cc: Penny Overstreet
Subject: FW: Preserve at Flagler Beach - Draft Concurrency, Impact Fee Payment and Impact Fee Credit Agreement

FYI

W W

From: Christine Novak <cnovak@CityofFlaglerBeach.com>
Sent: Friday, June 17, 2022 2:58 PM
To: William Whitson <wwhitson@cityofflaglerbeach.com>; Larry Torino <LTorino@CityofFlaglerBeach.com>
Cc: Marlene Beams <MBeams@CityofFlaglerBeach.com>
Subject: RE: Preserve at Flagler Beach - Draft Concurrency, Impact Fee Payment and Impact Fee Credit Agreement

Mr. Whitson,

All numbers are correct and the only thing is a typo Owner will ay according to agreement.

Chris Novak



Financial Assistant/Project Coordinator

*City Hall, 105 S 2nd Street
Flagler Beach, FL 32136
386-517-2000 ext. 242
386-986-8395 Cell*

From: William Whitson <wwhitson@cityofflaglerbeach.com>
Sent: Friday, June 17, 2022 2:16 PM
To: Larry Torino <LTorino@CityofFlaglerBeach.com>
Cc: Christine Novak <cnovak@CityofFlaglerBeach.com>; Marlene Beams <MBeams@CityofFlaglerBeach.com>
Subject: FW: Preserve at Flagler Beach - Draft Concurrency, Impact Fee Payment and Impact Fee Credit Agreement

FYI.....Please review and get back to me as soon as possible.

Thanks!

W W

From: Drew Smith <dsmith@shepardfirm.com>

Sent: Friday, June 17, 2022 11:24 AM

To: William Whitson <wwhitson@cityofflaglerbeach.com>

Subject: FW: Preserve at Flagler Beach - Draft Concurrency, Impact Fee Payment and Impact Fee Credit Agreement

D. ANDREW SMITH, III | ATTORNEY AT LAW
BOARD CERTIFIED - CITY, COUNTY & LOCAL GOVERNMENT LAW



SHEPARD, SMITH,
KOHLMYER & HAND, P.A.
2300 MAITLAND CENTER PKWY, STE 100
MAITLAND, FL 32751
TOLL FREE: 866.247.3008
OFFICE: 407.622.1772
FAX: 407.622.1884
SHEPARDFIRM.COM



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From: Ellen Avery-Smith <eaverysmith@rtlaw.com>

Sent: Friday, June 17, 2022 10:32 AM

To: William Whitson <wwhitson@cityofflaglerbeach.com>; Drew Smith <dsmith@shepardfirm.com>

Cc: eric@piedmontpe.com; John D. Cattano <cattanoj@aol.com>

Subject: Preserve at Flagler Beach - Draft Concurrency, Impact Fee Payment and Impact Fee Credit Agreement

Good morning, all.

Attached is a draft Concurrency, Impact Fee Payment and Impact Fee Credit Agreement for the Preserve at Flagler Beach project for your review and comment. I know time is tight, so I am available later today and Monday to make any necessary changes prior to the deadline for the June 23 City Commission meeting.

Thank you for your continued help with this project.

Ellen

Ellen Avery-Smith | Shareholder

ROGERS TOWERS

Rogers Towers, P.A. | 100 Whetstone Place, Suite 200 | St. Augustine, Florida 32086

Direct 904.825.1615 | Fax 904.396.0663 | Internal 5207 | eaverysmith@rtlaw.com | www.rtlaw.com | [View Attorney Bio](#)

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