

City of Dade City

AGENDA MEMO

To: Mayor and Members of the City Commission
From: Karla S. Owens, City Attorney/Community Development Director
Subject: Terrace Park Utility Services Agreement
Date: May 28, 2009

It is requested that the City Commission consider the following information and recommendation(s):

BACKGROUND:

As you know, Flanagan-Hillpot, LLC owns approximately 57 acres located behind the Hampton Inn. On June 24, 2008, the City approved the annexation and PUD zoning of the property. In order to obtain a guaranteed reservation of water and sewer services from the City, it is necessary for the developer to execute the attached Utility Service Agreement for the proposed Terrace Park Subdivision.

ISSUES:

The attached Utility Service Agreement reserves both water and sewer capacity for 286 residential units in the proposed Terrace Park Subdivision. Paragraph 4(a) of the Agreement requires the payment within forty-five (45) days of the execution of the Agreement by developer of 100% of the water and sewer reservation/commitment fees for 286 units. This amount totals \$338,910.00. The monies paid will be immediately available to the City for expenses related to expanding the existing wastewater treatment plant and other related/permitted items. In addition, the Agreement provides that upon completion of all on-site and required off-site utility construction work and acceptance of same by the City, the utilities shall be transferred to the City along with all necessary easements. The reservation guaranteed by this Agreement runs with the land and can be subsequently assigned by the developer to any subsequent purchasers of the property who will be bound by the terms of this Agreement. Credits may not be sold or transferred from this property. Finally, no plat shall receive final approval until this Agreement has been fully complied with as provided therein. During the last Commission meeting, a suggestion was made to put an expiration date on the payment of these fees. The current water and sewer impact fee is \$1,185.00 per residential unit. The payment made pursuant to this Agreement may be converted for our records into a per unit payment credit of \$1,185.00. If a certificate of occupancy is issued on a unit prior to the end of the three year time period, the credit will stand. Units where no C.O. is issued by the end of that time period will have a credit of \$1,185.00 toward future payment of the new impact fee

of \$5,264.00 per unit (or some other amount as subsequently adopted by the City Commission).

ALTERNATIVES:

1. Approve the attached Utility Service Agreement with Flanagan-Hillpot, LLC and authorize the mayor's signature of same;
2. Amend the Agreement with any provisions you deem appropriate; or
3. Do not approve the attached Utility Service Agreement.

RECOMMENDATION:

This office recommends that should the Commission add language creating an expiration date for payment of water and sewer impact fees, a policy be established directing staff to include this same expiration in every utility service agreement from this point forward.

FUNDING:

No funding is required for this item.

CITY OF DADE CITY
DEVELOPER AGREEMENT FOR
PROVISION OF WATER AND WASTEWATER SERVICES

THIS AGREEMENT made and entered into by and between FLANAGAN HILLTOP LLC, hereinafter referred to as “DEVELOPER,” and the CITY OF DADE CITY, a municipal corporation of the State of Florida, hereinafter referred to as “CITY.”

WITNESSETH:

WHEREAS, DEVELOPER owns or controls lands located in the City of Dade City, Florida, and described in Exhibit “A” attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as “Property,” and DEVELOPER has or is about to develop the Property by constructing or erecting improvements thereon; and

WHEREAS, the DEVELOPER is desirous of providing for the construction, proportionate share of and/or maintenance of central water and wastewater facilities for approximately 286 residential and/or commercial units (hereinafter referred to as ERU’s) so that the DEVELOPER’S project will receive adequate City services; and

WHEREAS, the CITY is willing to provide, in accordance with the provisions and stipulations hereinafter set out, and in accordance with all applicable laws, central water and wastewater service and to operate said facilities so that the occupants of each residence constructed on the Property will receive adequate service(s) from the City; and

WHEREAS, the CITY presently does not have permitted capacity at its existing wastewater treatment facility (WWTF) to serve all of the units proposed by all of the proposed development in the City’s utility service area and is in the process of expanding or rebuilding its existing WWTF.

NOW, THEREFORE, in consideration of the above recitals, the mutual undertakings and agreements herein contained and assumed, and other good and valuable consideration the

receipt and sufficiency of which is acknowledged by the parties, the DEVELOPER and the CITY hereby covenant and agree as follows:

Section 1. Recitals. The above recitals are true and correct and form a material part of this Agreement.

Section 2. Definitions. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

- (a) ***Contribution in Aid of Construction*** means the sum of money, and/or property represented by the value of the improvements constructed or donated by DEVELOPER, which DEVELOPER covenants and agrees to pay for and deliver to the CITY as a Contribution in Aid of Construction, to induce the CITY to provide various services to the Property.
- (b) ***ERU*** means equivalent residential unit connection.
- (c) ***Point of Delivery or Distribution*** means the point where the pipes of the utility are connected with the pipes of the customer. Unless otherwise indicated, the point of delivery shall be at a point in the customer's lot or property line.
- (d) ***Proportionate Fair Share Mitigation*** means monies or construction by the developer to provide mitigation proportionate to the demand for public facilities to be created by actual development of the property.
- (e) ***Service(s)*** means the readiness and ability on the part of the CITY to furnish water and wastewater services.

Section 3. Easements and Rights of Access. The DEVELOPER hereby grants and gives the CITY the exclusive right or privilege to own, maintain, and operate the water and wastewater facilities in, under, over and across the present and future streets, roads, easements, reserved utility sites as provided and dedicated to public use in the record plats, or as provided for in agreements, dedications or grants made otherwise and independent of said record plats and this Agreement. The DEVELOPER hereby further

agrees that the foregoing grants include the necessary right of ingress and egress to any part of the Property; that the foregoing grants shall be for such period of time as the CITY requires such rights, privileges or easements in the ownership, maintenance, operation or expansion of the water and wastewater facilities; that in the event the CITY is required to install any of the above facilities within the Property lying outside the streets and easement areas described above, then the DEVELOPER shall grant to the extent reasonably possible to the CITY, without cost or expense to the CITY, the necessary easement or easements for such “private property” installation; provided, all such “private property” installation by the CITY shall be made in such a manner as not to interfere with the then or future use of such “private property.” The CITY covenants that it will use due diligence in ascertaining all easement locations; however should the CITY install or accept ownership of any facilities outside a dedicated easement area, DEVELOPER, on behalf of itself and the successors and assigns of DEVELOPER, covenants and agrees that the CITY will not be required to move or relocate any facilities lying outside a dedicated easement area. The CITY, hereby agrees that all easement grants will be utilized in accordance with the established and generally accepted practices of the appropriate industry with respect to installation of facilities in the easement areas; and the DEVELOPER in granting easements therein or pursuant to the terms of this Agreement, shall have the right to grant exclusive or non-exclusive rights, privileges and easements to other entities to provide to the Property any utility services other than water and wastewater service.

Section 4. Provision of Water/Wastewater Service. In consideration of, and upon full compliance with all of the prerequisites to be performed by the DEVELOPER contained in this Agreement and all other applicable CITY ordinances or resolutions, the CITY covenants and agrees that it shall allow the connection of the water distribution and wastewater collection facilities installed by the DEVELOPER to the central water and wastewater facilities of the CITY in accordance with the terms and intent of this Agreement and as set forth in Section 4(a) below. Such connection shall also be in accordance with applicable rules and regulations of the Department of Health and Rehabilitative Services (HRS) and the Florida Department of Environmental Protection (FDEP). The CITY agrees that, once it provides water and wastewater service to the

Property and DEVELOPER or approved others have connected customer installations to the water and wastewater system, thereafter the CITY shall provide water and wastewater service to the Property in return for payment of all applicable rates, fees, and charges, and in accordance with and subject to the other provisions of this Agreement, and of applicable laws, including but not limited to rules, regulations, and rate schedules. Provision of water and wastewater service to the Property shall conform to all requirements of all governmental agencies having jurisdiction over the water distribution and wastewater collection operation of the CITY.

(a) **Reservation/ Commitment Fee/Residential.** Within forty-five (45) days of execution of this Agreement, the DEVELOPER shall pay to the CITY \$77,220.00 as a Reservation/Commitment Fee/Water Impact Fee (hereinafter referred to as said sum being 100 percent (100%) of the total amount of water impact fees due for 286 dwelling units). Within forty-five (45) days of execution of this Agreement, the DEVELOPER shall pay to the CITY \$261,690.00 as a Reservation/Commitment/Wastewater Impact Fee (hereinafter referred to as said sum being 100 percent (100%) of the total amount of wastewater impact fees due for 286 dwelling units). The Property has been approved for a maximum of 286 residential units comprised of single family and townhome units or 286 residential units plus professional office pursuant to the design standards set forth in the CITY's RIO zoning district and pursuant to the terms of Property's rezoning Ordinance No. 2008-0981.

(b) **Transfer/Conveyance.** The ERU's hereby reserved for DEVELOPER shall attach to and run with the land described in Exhibit "A" hereto and shall not be severed therefrom and/or sold, conveyed or transferred separate and apart from the property by the DEVELOPER. Nothing in this Agreement shall be construed to prevent the DEVELOPER from acquiring additional ERU's from the CITY in the future, but all such future acquisitions shall be at the prevailing rate schedule in effect at the time such acquisition is made. The CITY shall spend the money as permitted by Florida Law paid to it by the DEVELOPER under the provisions hereof to pay for or to obtain financing for the expansion of the existing WWTP and shall diligently pursue the final completion of such expansion.

Section 5. Design, Review, Construction, Inspection and Conveyance of Water and Wastewater Facilities.

- (a) In order to induce the CITY to provide water and wastewater facilities, and to provide customers located on the Property with water and wastewater services, DEVELOPER hereby covenants and agrees to build or pay for the construction and to transfer ownership and control to the CITY as a Contribution in Aid of Construction, all on-site water distribution and wastewater collection systems as designated on the project's approved construction plans.
- (b) The DEVELOPER shall pay all reasonable review costs incurred by the CITY to review engineering plans and specifications submitted by the DEVELOPER showing the proposed on-site water distribution and wastewater collection system improvements to be installed to provide service to the Property. Such detailed plans may also be limited to a phase of the property with subsequent phases to be furnished from time to time. However, each such phase shall conform to a master utility plan for the development of the entire Property and such master utility plan shall be submitted to the CITY concurrent with or prior to submission of construction plans for the first submitted phase. After the CITY'S approval of construction plans, the DEVELOPER shall cause to be constructed at DEVELOPER'S expense, the water distribution and/or wastewater collection systems as shown on the approved construction plans and/or master utility plan.
- (c) During the construction of the water distribution and wastewater collection systems by DEVELOPER, the CITY shall have the right to inspect, with prior reasonable notice to DEVELOPER, such installation to determine compliance with the plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform, with prior reasonable notice to DEVELOPER, standard tests for compaction, pressure and leakage, infiltration/exfiltration, line and grade, and all other normal engineering tests required by specifications and/or good engineering practices. The DEVELOPER shall provide record drawings and electronic copy of record drawings, FDEP approvals, itemized costs of construction and quantities of

materials used in construction. A one year warranty as described below and in Exhibit “B” attached shall be submitted to the CITY upon completion of construction.

- (d) DEVELOPER hereby transfers to the CITY title to all water distribution and wastewater collection systems installed by DEVELOPER pursuant to the provisions of this Agreement. Such conveyance shall take effect without further action upon the CITY’S written acceptance of the installation. In addition, upon completion of the installation and prior to the rendering of service by the CITY, the DEVELOPER shall convey to the CITY by bill of sale or other appropriate documents in a form satisfactory to the City Attorney, the appropriate on-site and complete off-site water distribution and wastewater collection system as constructed by DEVELOPER and approved by the CITY. At that same time, the DEVELOPER shall convey to the CITY all easements and/or rights-of-way covering areas in which water distribution and wastewater collection systems are installed by recordable document in a form acceptable to the City Attorney. All conveyance of easements and/or rights-of-way shall be legal evidence of title which establishes DEVELOPER’S right to convey such continuous enjoyment of such easements or rights-of-way for those purposes set forth in this Agreement. The use of easements granted by DEVELOPER shall include the use by other utilities so long as such uses do not interfere with use by the CITY. The CITY agrees that its acceptance of the water distribution and wastewater collection systems installed by DEVELOPER for service, or acceptance of the bill of sale, shall constitute the assumption of responsibility by the CITY for the operation and maintenance of such water and wastewater system from that date forward.
- (e) All construction and/or installations by DEVELOPER contractor shall be warranted for at lease one (1) year from the date of acceptance of the improvements by the CITY as further described in Exhibit “B”. Mortgagees(s), if any, holding prior liens on such properties shall be required to release such liens, subordinate their position and join in the grant of dedication of the easements or rights-of-way. All water distribution and wastewater collection

facilities shall be covered by easements if conveyed to the CITY and not located within platted or dedicated rights-of-way.

- (f) Payment of the Contributions-in-Aid-of-Construction (“contribution”) does not and will not result in the CITY waiving any of its utility rates, rate schedules or rules and regulations, and their enforcement shall not be affected in any manner whatsoever by the DEVELOPER making the contribution except as noted herein. The CITY shall not be obligated for any reason whatsoever nor shall the CITY pay any interest or rate of interest upon the contribution. DEVELOPER, landowner, its successor in interest, or assignee shall have the right to a refund of the Reservation/Commitment/Wastewater Impact Fee if the number of units constructed is less than the total number of units and ERU’s for which the Fee has been paid. Said refund shall occur within 90 days of a written refund request to the CITY and shall be at the rate paid by the DEVELOPER for those number of units that were not constructed. In addition to a copy of this agreement, the written petition for a refund must include a notarized sworn statement that the petitioner is the DEVELOPER, successor in interest, or assignee for which the fee was paid, with proof thereof, and is entitled to the refund pursuant to this agreement. No user or customer of water and wastewater services shall be entitled to offset any bill or bills rendered by the CITY for such service or services against the contributions. The DEVELOPER shall not be entitled to offset the contributions against any claim or claims of the CITY.

Section 6. Permission to Connect. The parties agree that this Agreement acknowledges a request for water and sewer service from the CITY. This Agreement further provides terms herein which constitute the response to DEVELOPER’S request for water and sewer service and the availability of such service. This Agreement constitutes a reservation of capacity for the Property upon payment of the Water and Wastewater Impact Reservation/Commitment/Impact Fees referred to above. Water and sewer service is contingent upon both the acceptance of the constructed on-site water and wastewater improvements as set forth in the approved construction plans, and also the receipt of all water and sewer connection fee payments. The CITY shall accept said facilities so long as they are built in accordance with the provisions of this Agreement

and certified at DEVELOPER'S expense by a professional engineer licensed by the State of Florida to have been built substantially in accordance with the approved plans. DEVELOPER, or any owner of any parcel of the Property, or any occupant of any residences or buildings located thereon shall not have the right to and shall not connect any customer installation to the water and wastewater facilities of the CITY until approval for such connection has been granted by the CITY.

Section 7. Application of Subsequent Ordinances, Rates and Fees. Unless otherwise addressed in this Agreement, the CITY may in the future establish, revise, modify and enforce rules, regulations, rates, fees and charges covering the provision of water and wastewater services to the Property. All such rules, regulations, rates, fees and charges adopted by the City Commission shall be binding upon DEVELOPER and/or upon any other entity holding by, through or under DEVELOPER. The DEVELOPER shall pay all rates, fees and/or charges in effect at the time of payment. In the event the CITY adopts an amended Ordinance reducing the Reservation/Commitment/Wastewater Impact Fee charged for water and wastewater service and the Reservation/Commitment/Wastewater Impact Fees paid herein by DEVELOPER have not been expended, DEVELOPER, its' successor in interest or assignee may request a refund and shall be entitled to a refund of the difference between the paid fees at the current rate and the reduced rate. For the purposes of this section, fees collected shall be deemed to be spent on the basis of the first fee in shall be the first fee out. In other words, the first money placed in a special revenue fund shall be the first money taken out of that account when withdrawals are made. Said refund shall occur within 90 days of the submission of written refund request. In addition to a copy of this agreement, the written petition for a refund must include a notarized sworn statement that the petitioner is the DEVELOPER, landowner, successor in interest, or assignee for which the fee was paid, with proof thereof, and is entitled to the refund pursuant to this agreement.

Section 8. Impact Fee Credits. The CITY will not grant to DEVELOPER impact fee credits for construction of water and/or sewer improvements which are project-required improvements. If credits are agreed to be granted pursuant to this Agreement, the DEVELOPER shall provide to the CITY documentation of the expenses related to the design, permitting and construction of the improvements identified as eligible for credit

including but not limited to copies of all cancelled checks for impact fees paid by the DEVELOPER and any other documentation that the City Manager deems reasonably necessary to determine the actual costs and payments for construction and impact fees. The parties agree further that impact fee payments may be due from the DEVELOPER prior to any credits being recognized in a credit account by the CITY.

Section 9. Construction, Permitting, and Inspections.

- (a) The parties agree that prior to construction of any improvements pursuant to the terms of this Agreement, all necessary permit applications will be submitted by DEVELOPER and receive approval by the appropriate regulatory agencies.
- (b) Specifically, provision of water and sewer service by the CITY is contingent upon the DEVELOPER receiving all applicable federal, state or local permits and/or approvals for service to the Property. Should any federal, state or local permit and/or approval for service to the Property be denied or withheld, this Agreement shall be null and void and all payments including well site costs, offsite extension costs, and connection fee payments, including prepayments, shall be immediately returned to the DEVELOPER.
- (c) The CITY reserves the right to inspect or observe any and all work associated with the Property. However, should the CITY observe any deficiencies inconsistent with the plans or construction not in accordance with the approved specifications, the CITY shall notify the DEVELOPER and DEVELOPER shall require the contractor at DEVELOPER'S cost, to make corrections as necessary. Nothing herein shall require the CITY to observe or inspect; however, the DEVELOPER shall be solely responsible for the required improvements being constructed in accordance with the approved construction plans, building permits, and/or accepted industry/manufacturers' standards. Observations by the CITY or its inspectors that do not discover construction not in accordance with the construction plans, building permit, or required standards shall not be deemed a waiver of the DEVELOPER'S requirements herein.
- (d) The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the DEVELOPER of the necessity of complying with the law governing said permitting requirement, condition, term, or restriction.

(e) The DEVELOPER agrees to allow CITY inspector(s) to be present at all times during construction of both the onsite water distribution system and the wastewater collection and transmission system for the Property. The DEVELOPER shall notify the CITY to arrange for the CITY'S inspector(s) to be present when actual connection is made to the CITY'S water supply and wastewater transmission lines.

Section 10. Notices. Any notice, report, demand or other instrument authorized or required to be given or furnished hereunder shall be deemed given or furnished: (i) when addressed to the party intended to receive the same, at the address of such party set forth below, on the date hand delivered at such address, or (ii) three (3) business days after the same is deposited in the United States mail as first class mail, postage paid, return receipt requested, whether or not the same is actually received by such party, or (iii) on the first business day following delivery of same to an overnight courier, as evidenced by the sender's copy of the bill of lading issued by such overnight courier.

DEVELOPER:

Flanagan HillPot, LLC
c/o The Parks Realtors, LLC
2494 Whitehall Circle
Winter Park, FL 32792

CITY OF DADE CITY:

c/o City Manager
38020 Meridian Avenue
P.O. Box 1355
Dade City, Florida 33526-1355

Section 11. Indemnity. The DEVELOPER shall indemnify the CITY, its Commission, agents, employees, consultants, and contractors, from and against any and all claims, liability, demands, damages, expenses, fees fines, penalties, suits, proceedings and actions, including attorneys' fees for injury (including death) to persons or damage to property or property rights that may arise from or be related to acts, errors, or omissions of DEVELOPER, its agents, employees, servants, licensees, invitees, or contractors or by any person under the control or direction of DEVELOPER, or by DEVELOPER'S use of the CITY'S roadways, right-of-ways or system(s), and DEVELOPER shall indemnify the CITY as aforesaid from all liability, claims and all other items above mentioned, arising out of or connected with any default, breach, violation or nonperformance by DEVELOPER of any covenant, condition, agreement or provision contained in this

Agreement concerning all or any part of the CITY'S roadways, rights-of-way and/or system(s).

Section 12. Miscellaneous.

1. This Agreement shall be binding upon and shall inure to the benefit of DEVELOPER, the CITY and their respective assigns and successors by merger, consolidation or conveyance. This Agreement shall not be sold, conveyed, assigned or otherwise disposed of by DEVELOPER without the prior written consent of the CITY. The CITY agrees not to unreasonably withhold such consent.

2. The rights, privileges, obligations and covenants of DEVELOPER and the CITY shall survive the completion of the work of DEVELOPER with respect to completing the water and wastewater facilities and/or services to any phase area and to the Property as a whole.

3. This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between DEVELOPER and the CITY made with respect to the matters herein contained, and when duly executed constitute the Agreement between DEVELOPER and the CITY. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of the Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed. This Agreement shall be governed by the laws of the State of Florida and it shall become effective immediately upon execution by both parties hereto. In the event that the CITY or DEVELOPER is required to enforce this Agreement by court proceedings or other means, by instituting suit or otherwise, venue shall be in Pasco County, and the prevailing party shall be entitled to recover all costs incurred including reasonable attorneys' fees at both the trial and appellate court levels.

4. The parties deem each other to be independent contractors and not agents or employees of the other.

5. The CITY shall not be liable for damages to DEVELOPER by reason of the failure or inability of the CITY to take any action that it is required to take by

a time certain pursuant to the terms of this Agreement when said failure or inability is due to circumstances that are not within the sole control of the CITY and where through the exercise of due diligence, the CITY is unable to overcome the circumstances to enable them to perform. The CITY shall also not be liable for any damages to DEVELOPER as it relates to any obligations imposed pursuant to the terms of this Agreement or by those claiming by or through DEVELOPER which failure, inability or injury is caused directly or indirectly by force majeure as hereinafter set forth. The term "force majeure" as used herein shall mean acts of God, strikes, lock-outs, or other industrial disturbance; acts of public enemies, war, blockades, riots, acts of armed forces, militia, or public authority; epidemics; breakdown of or damage to machinery, pumps, or pipe lines; landslides, earthquakes, hurricanes, fires, storms, floods, or washouts; arrests, title disputes, or other litigation; governmental restraints of any nature whether federal, state, county, municipal or otherwise, civil or military; civil disturbances, explosions; failure or inability to obtain necessary materials, supplies, labor or permits or governmental approvals whether resulting from or pursuant to existing or future rules, regulations, orders, laws or proclamations whether federal, state, county, municipal or otherwise, civil or military; or by any other causes, whether or not of the same kind as enumerated herein, not within the sole control of the CITY and which by exercise of due diligence the CITY is unable to overcome.

6. This Agreement is solely for the benefit of and shall be binding upon the formal parties hereto and their respective authorized successors and assigns, and no right or cause of action shall accrue upon or be reason hereof, to or for the benefit of any third party not a party to this Agreement or an authorized successor or assignee of any third party.
7. Notwithstanding any other provision of this Agreement, DEVELOPER expressly acknowledges: (1) that it has no pledge of or lien upon any real property (including specifically property owned by the CITY), any personal property, or any existing or future revenue source of the CITY (including specifically any revenues or rates, fees, or charges collected by the CITY in connection with the

CITY'S property or utility system) as security for any amounts of money payable by the CITY under this Agreement except for those grants or pledges that were made to the DEVELOPER in association with the zoning amendment on the Property to PD-H2 (Planned Unit Development) and the access rights to the Property across the N-S railway property dividing the Property's east and west sections.

8. DEVELOPER as further consideration for this Agreement, agrees that it shall not engage in the business of providing water and wastewater service to the Property during the period of time the CITY or its successors and assigns provides water and wastewater service to the Property. It is the further intention of the parties that the ~~foregoing~~ this provision shall be a covenant running with the land. Under said provision and also under other provisions of this Agreement, the CITY shall have the sole and exclusive right and privilege, so long as it is reasonably capable of doing so, to provide water and wastewater service to the Property and to the occupants of each residence, building or unit constructed thereon.

9. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and the intentions of the parties can continue to be effected. To that end, this Agreement is declared severable.

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

11. Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender, and the neuter and vice versa.

12. The parties hereby agree that each has played an equal part in the negotiation and drafting of this Agreement, and in the event any ambiguity should be realized in the construction or interpretation of this Agreement, the result of

such ambiguity shall be equally assumed and realized by each of the parties to this Agreement.

13. The terms and conditions of this agreement placed upon the CITY are applicable only to the extent they are within and consistent with the constitutional and statutory limitations on the authority of the CITY. Specifically, the parties acknowledge that the CITY is without authority to grant or pledge a security interest in any of the CITY'S revenue sources or property except for those grants or pledges that were made to the DEVELOPER in association with the zoning amendment on the Property to PD_H-2 (Planned Unit Development) and the access rights to the Property across the N-S railway property dividing the Property's east and west sections

14. DEVELOPER agrees that no representations have been made by the CITY in order to induce DEVELOPER to enter into this Agreement other than as expressly stated in this Agreement.

15. The failure of either party of this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach, or wrongful conduct.

16. All articles and descriptive headings of paragraphs in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

17. DEVELOPER agrees that all acts to be performed by it in connection with this Agreement shall be performed in strict conformity with all applicable federal, state and local laws, rules, regulations, standards, and guidelines.

18. By the execution hereof, the parties covenant that the provisions of this Agreement have been duly approved and signatories hereto are duly authorized to execute this Agreement.

IN WITNESS WHEREOF, DEVELOPER and the CITY have executed this Agreement to be executed this ___ day of _____, 2009.

ATTEST:

CITY OF DADE CITY, FLORIDA

James D. Class, City Clerk

Mayor

Approved as to Legal Form and Legal Sufficiency

Flanagan Hillpot, LLC

President

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 2009, by _____, as _____ of _____ . Said person is either ___ personally known to me, or ___ produced the following identification.

Notary Public

Printed Name:
My Commission Expires: