

# IMPACT FEE CREDIT AGREEMENT YARBOROUGH LANE EXTENSION

THIS IMPACT FEE CREDIT AGREEMENT ("AGREEMENT") is made and entered by and between **Clayton Properties Group, Inc.**, a Florida corporation authorized to do business in the State of Florida ("DEVELOPER"), and POLK COUNTY, FLORIDA, a political subdivision of the State of Florida (the "COUNTY").

## WITNESSETH:

**WHEREAS**, DEVELOPER is the owner of certain real property located south of Crews Lake Drive and adjacent to the existing eastern right-of-way alignment of Yarborough Lane, as more specifically described in the legal description attached hereto as Exhibit "A" ("Property"); and

**WHEREAS**, DEVELOPER received a planned development approval for a single family detached project on LDPD-2021-17 on September 22, 2021 and has received final Level 2 approval through the County's land development process for up to 558 single family homes and associated infrastructure for Touchstone, as identified by LDRES-2022-3, (the "Project") which is generally depicted on the Site Plan attached hereto as Exhibit "B"; and

**WHEREAS**, DEVELOPER and the COUNTY agree the existing right of way for Yarborough Lane is substandard; and

**WHEREAS**, DEVELOPER is required by Section 705(E) of the Polk County Land Development Code to dedicate along the entire frontage of the Project up to 40' from the centerline of Yarborough Lane for a two (2) lane collector road with a Rural Section (no curb); and

**WHEREAS**, DEVELOPER incurred extraordinary costs and obtained additional right-of-way, in excess of DEVELOPER'S requirements of the Polk County Land Development Code, from adjacent unrelated third party property owners along the existing Yarborough Lane alignment and beyond the limits of the Project to facilitate the Off-Site Improvements ("Yarborough ROW"), as hereinafter defined and shown on Exhibit "C"; and

**WHEREAS**, DEVELOPER is willing to construct certain non-site-related transportation improvements to construct Yarborough Lane consistent with the standards for a two-lane "collector road," as defined by the Polk County Land Development Code, and extend Yarborough Lane approximately 2,000 feet beyond the Project's southernmost entrance to facilitate future connections to the transportation network and other residential developments (the "Transportation Improvements") as depicted on Exhibit "D" attached hereto and incorporated herein by reference; and

**WHEREAS**, the DEVELOPER agrees upon completion of the Off-Site Improvements to convey and/or dedicate the Off-Site Improvements and convey Yarborough Lane ROW to the County; and

**WHEREAS**, the COUNTY has determined that Transportation Impact Fee credits in the amount of \$562,694.00, may be given for DEVELOPER'S construction of the Transportation Improvements based upon Florida Statutes §163.31801(5) and the POLK COUNTY AMENDED AND RESTATED COMPREHENSIVE IMPACT FEE ORDINANCE, as amended; and

**WHEREAS**, the DEVELOPER has requested, and the COUNTY has agreed, to reimburse the DEVELOPER for the Yarborough ROW in cash and Transportation Impact Fee credits in the total amount of \$108,127.41 upon completion of the Transportation Improvements; and

**WHEREAS**, the COUNTY and DEVELOPER desire to set forth in writing the terms and conditions of their understanding and agreement related to DEVELOPER'S construction of the Transportation Improvements described herein, as well as DEVELOPER'S ability to obtain Transportation Impact Fee credits from the COUNTY for DEVELOPER'S fulfillment of the same; and

**WHEREAS**, this AGREEMENT is in the best interest of the public health, safety and welfare of Polk County, Florida and provide a benefit to the residents of Polk County.

**NOW, THEREFORE**, in consideration of the mutual covenants, premises and promises hereinafter set forth, the receipt, adequacy and sufficiency of which are hereby acknowledged, the COUNTY and DEVELOPER hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct in all respects and are expressly incorporated herein by reference.

2. **Effective Date.** The Effective Date of this AGREEMENT shall be the date in which the COUNTY executes this AGREEMENT.

3. **Transportation Improvements.** The COUNTY and DEVELOPER agree to the following terms and conditions: DEVELOPER shall undertake the design, engineering, permitting and construction of improvements to Yarborough Lane as depicted and described in **Exhibit "C"** attached hereto and incorporated herein by this reference (the "**Transportation Improvements**").

4. **Yarborough Lane Right-of-Way Dedication.** DEVELOPER shall convey to the COUNTY the Yarborough Lane ROW by Warranty Deed, with good and marketable title, free and clear of liens, and in fee simple, as shown on **Exhibit "C."** Upon DEVELOPER'S conveyance and the COUNTY'S acceptance of the Yarborough ROW, DEVELOPER shall be reimbursed \$36,142.78 in transportation impact fee credits, subject to Section 6.E. below, and \$71,984.63 in cash for a total reimbursement amount of \$108,172.41, as indicated in **Exhibit "D,"** which is the actual value and costs incurred by DEVELOPER to obtain title to Yarborough Lane ROW. The timing of the conveyance shall not occur prior to the completion of the Transportation Improvements by DEVELOPER and acceptance of the Transportation Improvements by the COUNTY.

5. **Plans, Specifications, and Permits.**

A. Prior to construction of the Transportation Improvements, DEVELOPER shall be responsible for preparing and submitting to the COUNTY plans and specifications for the Transportation Improvements ("**Plans and Specifications**"). The COUNTY will review the Plans and Specifications in accordance with the Level 2 Review process set forth in the Land Development Code ("**LDC**"). Any resubmittals of the Plans and Specifications as a result of changes required by the COUNTY shall be reviewed by the COUNTY in accordance with the Level 2 Review process. Once approved, the final Plans and Specifications shall become a material part of this AGREEMENT and shall be used by DEVELOPER to obtain bids for construction of the Transportation Improvements.

B. The Plans and Specifications for the Transportation Improvements may be modified through the mutual agreement of DEVELOPER and the COUNTY through the permitting processes, and by change

order as actual construction of the Transportation Improvements progresses. Proposed modifications will be provided by DEVELOPER to the COUNTY for review. To be effective and binding against the COUNTY, however, any and all such modifications and change orders must be in writing, executed by the COUNTY and DEVELOPER.

C. DEVELOPER shall design and construct the Transportation Improvements in a manner sufficient to satisfy the applicable government permitting requirements. It will be the responsibility of DEVELOPER to obtain any permits from any other governmental entity required for the construction of the Transportation Improvements.

D. It will be the responsibility of DEVELOPER to obtain any and all environmental survey, environmental permits, and environmental mitigation for the Transportation Improvements, if necessary.

6. **Construction Requirements.**

A. DEVELOPER agrees to use a competitive bidding process in retaining a contractor to construct the Transportation Improvements. The COUNTY will have the right to review the competitive bidding process utilized by DEVELOPER and shall additionally have the right to review all bids received. In the event that the COUNTY reasonably determines that the bidding process is insufficient or that the proposed number of construction days to complete the Transportation Improvements is not reasonable, the COUNTY may require DEVELOPER to reject all bids and re-bid all or a portion thereof as applicable. If DEVELOPER refuses to reject the bids and re-bid, the COUNTY shall have the option to terminate this AGREEMENT including terminating any obligation of the COUNTY to reimburse or provide Credits to DEVELOPER. After receipt of responsive bids, DEVELOPER shall select the lowest priced responsive and responsible bidder, notify the COUNTY of the bidder selected, and enter into a Contract for Construction of the Improvements (the “**Construction Contract**”) with the selected contractor. As of the Effective Date, the Developer estimates the total cost to design, permit, construct, and install the Transportation Improvements will be \$562,694.00, as shown on the Opinion of Probable Cost attached as **Exhibit “E”**. Upon execution of a final Construction Contract, DEVELOPER will provide a copy of the Construction Contract to the Polk County Roads and Drainage Department.

B. DEVELOPER shall not begin construction on the Transportation Improvements until a written Notice to Proceed has been provided to by the COUNTY to DEVELOPER which shall not be unreasonably withheld, conditioned or delayed. If the COUNTY fails to provide the Notice to Proceed within 10 business days of DEVELOPER providing a copy of the Construction Contract to the Polk County Roads and Drainage Department, the COUNTY’S consent to proceed to schedule a pre-construction conference.

C. Prior to the commencement of construction and after the written Notice to Proceed has been provided to DEVELOPER, DEVELOPER shall schedule, notice, and attend a pre-construction conference with DEVELOPER’S engineer, DEVELOPER’S contractor, Polk County Roads and Drainage Department, and all involved utility companies. The DEVELOPER agrees to provide notice of the meeting at least seven (7) days in advance of such meeting so as to allow the relevant parties and entities to attend.

D. The COUNTY may periodically inspect and monitor the work site during construction of the Transportation Improvements. If, during construction, the COUNTY finds the work, materials, or equipment are defective, the COUNTY will give DEVELOPER written notice of the defect and DEVELOPER agrees to correct the defective condition, if commercially reasonable, within thirty (30) days of DEVELOPER’S receipt of such notice. If DEVELOPER fails to correct the deficiency the COUNTY may take any action necessary on DEVELOPER’S behalf, including correcting the deficiency, removing deficiencies, or utilizing COUNTY’S contractor to complete the work.

E. Pursuant to Section 2.11 of the Polk County Amended and Restated Comprehensive Impact Fee Ordinance (Ord. No. 2019-056, as amended, referred to hereinafter as the “Ordinance”) and Florida Statutes §163.31801(5), in exchange for DEVELOPER’S contribution to public facilities or infrastructure, including site planning and design, and construction of the Transportation Improvements, Transportation Impact Fees shall be credited to DEVELOPER in the amount of \$562,694 plus certain soft costs associated with the land dedication of Yarborough Road ROW in the amount of \$36,142.78, as further set forth in Section 4 above, for a total amount of \$598,836.78 (the “**Impact Fee Credits**”). The Impact Fee Credits shall be issued to the DEVELOPER in accordance with and subject to the following requirements:

(1) The Impact Fee Credits shall be issued to DEVELOPER based on the actual cost of the public facilities or infrastructure, including land dedication, site planning and design, and construction costs (as evidenced by paid invoices and other appropriate supporting documentation deemed sufficient by the COUNTY) of those Transportation Improvements that qualify for expenditure of Transportation Impact Fees under Section 4.04.B of the Ordinance and Florida Statutes §163.31801(5). The schedule of qualifying improvements eligible for Transportation Impact Fee credits hereunder is set forth and described in the cost estimate in **Exhibit “E,”** attached hereto and incorporated herein by reference. The total amount of Transportation Impact Fee credits issued hereunder shall be certain soft costs associated with the Yarborough Lane Right of Way and cost of the Transportation Improvements, which total amount shall not exceed \$598,836.78, unless otherwise agreed to by both parties, as evidenced by a duly executed written amendment hereto. Any request for additional transportation impact fee credits from the COUNTY pursuant to Section 4.04B of the Ordinance and Florida Statutes §163.31801(5) based on proposed, additional improvements which may be eligible for credit, must be submitted as a new application under Section 2.11 of the Ordinance and Florida Statutes §163.31801(5) and must comply with all requirements specified thereunder.

(2) The Impact Fee Credits granted pursuant to this AGREEMENT are assignable and transferable in accordance with section 163.31801(10), Florida Statutes.

(3) If the impact fee is increased, DEVELOPER shall be entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date the Impact Fee Credit was first established in accordance with section 163.31801(7), Florida Statutes.

(4) The value of each impact fee imposed by the COUNTY shall be the value of the impact fee at the time each future development project is submitted by DEVELOPER and the total balance of the Impact Fee Credits shall be reduced proportionately.

(5) DEVELOPER, its successors and assigns, shall have ten (10) years from the Effective Date in which to spend the Impact Fee Credits issued hereunder. Any impact fee credits issued hereunder shall be governed by, and may be transferred as permitted under, the Ordinance and section 163.31801 Florida Statutes.

F. Upon completion of the Transportation Improvements in accordance with the Plans and Specifications, DEVELOPER shall furnish a set of record drawings certified by the Engineer of Record that the Transportation Improvements have been completed in general conformance with the Plans and Specifications, as the same may be modified in accordance with the terms of this AGREEMENT. This certification shall include a statement that necessary inspections, tests, and physical measurements have been made, and that to the best of their knowledge, information and belief all materials entering into the Transportation Improvements are in general conformance with the Plans and Specifications, or otherwise conform to or meet generally accepted professional practices. DEVELOPER shall also prepare and submit, at its cost, any required certifications to permitting agencies. In addition, DEVELOPER shall, at such time, provide the COUNTY with copies of records from the Transportation Improvements as each may request, including, but not limited to, Engineer of Record sealed Record Drawings.

G. Subject to the requirements of Section 13, below, the Transportation Improvements shall be completed within three years of the Effective Date, unless a later date is mutually agreed to by the parties, which agreement shall not be unreasonably withheld. DEVELOPER shall provide the COUNTY a monthly construction management status report during the term of this AGREEMENT. Upon completion of the Transportation Improvements, DEVELOPER shall notify the COUNTY, in writing, of the completed construction and acceptance by the COUNTY.

H. Upon receipt of the DEVELOPER'S competition notification described in Section 6.G., above, the COUNTY shall conduct or cause to be conducted such inspections of the Transportation Improvements as it may desire in order to determine that the construction of the Transportation Improvements is satisfactory and conforms to the Plans and Specifications ("**Inspection**"). Upon completion of the Inspection, the COUNTY shall issue a letter to the DEVELOPER indicating that the Transportation Improvements comply with the approved Plans and Specifications.

7. **Conveyance of Transportation Improvements.**

A. DEVELOPER shall, at its sole cost and expense, convey the Transportation Improvements to the COUNTY free and clear of all liens and encumbrances within ten (10) business days of the issuance of the COUNTY inspector's letter indicating that the Transportation Improvements comply with the approved Plans and Specifications.

B. Provided all such conditions are met, the COUNTY agrees to accept such conveyance without delay, and shall thereafter be responsible for the operation and maintenance of the Transportation Improvements so conveyed to the COUNTY. As part of such conveyance, DEVELOPER agrees to warrant the Transportation Improvements so conveyed, through a written instrument acceptable to the COUNTY, for a period of one (1) year from the date of acceptance by the COUNTY of the Transportation Improvements.

8. **Development Approvals.** This AGREEMENT shall in no manner constitute a development approval regarding the Property. Developer must secure all applicable development permits for Transportation Improvements and comply with all applicable development laws. In the event the Transportation Improvements do not receive all necessary approvals from the COUNTY, this AGREEMENT shall automatically terminate and be of no further force or effect.

9. **Self-Help Provision.** In the event DEVELOPER proceeds with the Transportation Improvements according to the terms set forth herein and the COUNTY desires to expedite the overall construction of the Transportation Improvements, the COUNTY shall be permitted, upon delivery of written notice to DEVELOPER, to assume DEVELOPER'S responsibilities related to the construction of the Transportation Improvements. In such event, the COUNTY shall be entitled to ownership of the Plans and Specifications and all permits (including environmental permits) granted to DEVELOPER in connection with the Transportation Improvements and DEVELOPER shall use its diligent, good faith efforts to ensure the successful transfer of the same to the COUNTY; provided, however, that all costs related to construction then performed by DEVELOPER shall nonetheless be reimbursed by the COUNTY to DEVELOPER in Transportation Impact Fees Credits equal to the construction cost incurred by DEVELOPER prior to the COUNTY'S commencement of the work pursuant to this Self-Help Provision.

10. **Approvals.** In those instances, in which a party's approval, consent or satisfaction is required under this AGREEMENT, and a time period is not specified, then it shall be implied that such action shall be exercised in a reasonable manner and within a reasonable time frame. Time is hereby declared of the essence as to the lawful performance of all duties and obligations set forth in this Agreement.

11. **Indemnification.** DEVELOPER, its successors, and assigns shall protect, defend, indemnify, and hold harmless, the COUNTY, its officers, commissioners, employees and agents from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, including reasonable attorney's fee and costs, or other expense or liabilities, of every kind and character resulting from any error, omission, or negligent act of DEVELOPER itself, its agents, contractors, subcontractors, employees, or representatives in the performance of its obligations under this Agreement. The foregoing indemnification obligation shall not apply to the extent of the negligence of the COUNTY.

12. **Insurance.**

12.1 Notwithstanding anything to the contrary in this AGREEMENT, DEVELOPER shall maintain, or cause its agents and contractors to maintain, Professional Liability Insurance in the amount of \$2,000,000.00 per occurrence, exclusive of defense costs, and the Commercial General Liability, Comprehensive Auto Liability, and Workers Compensation coverages stated in 12.2, below.

12.2 DEVELOPER shall maintain, or cause its agents and contractors to maintain, the following types of insurance with at least the following minimum limits of liability:

|                                    |                               |
|------------------------------------|-------------------------------|
| Commercial General Liability:      | \$2,000,000.00 per occurrence |
| Comprehensive Automobile Liability | \$1,000,000.00 per occurrence |
| Workers Compensation               | Statutory Limits              |
| Employers Liability                | \$1,000,000.00                |

12.3 All insurance must be provided by a carrier licensed to do business in the State of Florida having an A.M. Best rating of at least the "A" category and size category of VIII. Polk County shall be named as additional insured on all General Liability and Automobile Liability policies on a primary and non-contributory basis. The General Liability, Automobile Liability and Workers' Compensation policies shall contain a waiver of subrogation in favor of Polk County.

12.4 DEVELOPER shall provide Polk County with original Certificates of Insurance satisfactory to Polk County to evidence such coverage promptly following the execution of this Agreement and before any work commences on the Transportation Improvements. Polk County must be identified on the Certificates as follows: "Polk County, a political subdivision of the State of Florida." Coverage must commence on or before the first day work begins and remain in effect until at least the end of the warranty period stated in Paragraph 7.B.

13. **Term and Nature of Agreement.** With the exception of warranty requirements, this AGREEMENT shall terminate upon satisfaction by the Parties hereto of their respective obligations contained herein. If DEVELOPER is unable to obtain all necessary approvals for the construction of the Transportation Improvements from the County, or any other governmental agency, or if DEVELOPER is unable to enter a Construction Contract for the Transportation Improvements, the DEVELOPER or COUNTY may terminate this Agreement. If this AGREEMENT is terminated, DEVELOPER shall not be liable for, and the COUNTY shall not seek from DEVELOPER, either damages or specific performance of this AGREEMENT; provided, however, that the conveyance of any property completed prior to the termination of this AGREEMENT shall not be affected. If DEVELOPER fails to begin construction of the Transportation Improvements on or before three (3) years from the Effective Date of this AGREEMENT, this AGREEMENT shall be null and void.

14. **Notices.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted

electronically (i.e. telecopier device) or within three (3) days after depositing the United State Postal Services, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

- County: Chairman  
Polk County Board of County Commissioners  
330 West Church Street  
Bartow, Florida 33830
- Copy to: County Attorney  
Polk County Board of County Commissioners  
330 West Church Street  
Bartow, Florida 33830
- Copy to: Polk County Office of Planning and Development  
ATT: Concurrency & Entitlements Manager  
330 West Church Street  
Bartow, FL 33830
- Copy to: Polk County Roads & Drainage Division  
ATT: Roads & Drainage Director  
3000 Sheffield Road  
Winter Haven, FL 33880
- Developer: Clayton Properties Group, INC.  
5000 Clayton Road  
Maryville, TN 37804
- Copy to: Attorney Bart Allen  
Peterson & Myers, P.A.  
225 E. Lemon Street  
Lakeland, FL 33801

15. **Public Records.** Pursuant to Section 119.0701, Florida Statutes, Developer shall comply with the Florida Public Records' laws, and shall:

- a. Developer acknowledges Polk County's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and comply in the handling of the material created under this Agreement. DEVELOPER further acknowledges that the constitutional and statutory provisions control over the terms of this Agreement. In association with its performance pursuant to this Agreement, DEVELOPER shall not release or otherwise disclose the content of any documents or information that is specifically exempt from disclosure pursuant to all applicable laws.

- b. Without in any manner limiting the generality of the foregoing, Developer acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records and shall:
- i. Keep and maintain public records required by the COUNTY to perform the service.
  - ii. Upon request from the COUNTY'S custodian of public records, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
  - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if DEVELOPER does not transfer the records to the COUNTY.
  - iv. Upon completion of the contract, transfer, at no cost, to the COUNTY all public records in possession of DEVELOPER or keep and maintain public records required by the COUNTY to perform the service. If DEVELOPER transfers all public records to the COUNTY upon completion of the contract, DEVELOPER shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If DEVELOPER keeps and maintains public records upon completion of the contract, DEVELOPER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the COUNTY, upon request from the COUNTY'S custodian of public records, in a format that is compatible with the information technology systems of the COUNTY.
- c. **IF DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT POLK COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

**RECORDS MANAGEMENT LIAISON OFFICER  
POLK COUNTY  
330 WEST CHURCH ST.  
BARTOW, FL 33830  
TELEPHONE: (863) 534-7527  
EMAIL: RMLO@POLK-COUNTY.NET**

16. **Records and Audits.** The DEVELOPER shall maintain in its corporate headquarters all books, documents, papers and other evidence pertaining in any way to payments made pursuant to this AGREEMENT. Such records shall be available at the DEVELOPER'S corporate headquarters at all reasonable times during the term of this Agreement and for ten (10) years from the date of final payment under this AGREEMENT for audit or inspection by the COUNTY, or its duly authorized agent or representative, upon five (5) business day's prior written notice.

17. **Equal Opportunity Employment.** The DEVELOPER agrees that it will not discriminate and will provide in all contracts that its contractors will not discriminate against any employee or applicant



for employment under this AGREEMENT because of race, color, religion, sex, age or national origin and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age or national origin.

18. **Amendment.** This AGREEMENT may only be amended and modified by an instrument in writing executed by the Parties hereto or their successors or assigns in interest.

19. **Severability.** 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 if the intentions of the Parties can continue to be effectuated. To that end, this Agreement is declared severable.

20. **Assignment and Successors.** This AGREEMENT shall be binding upon and the benefits and obligations of this AGREEMENT shall inure to all successors and assigns of the Parties to this AGREEMENT, regardless of the name of the successors or assigns. Among other third parties, DEVELOPER may assign its right, obligations and responsibilities hereunder to a community development district, which may fund any of the obligations hereunder as a “cost” pursuant to Section 190.003(8), and Section 190.012(1)(g), (h), of the Florida Statutes, and without further action of the parties. In the event that DEVELOPER assigns this AGREEMENT and its rights, obligations and responsibilities hereunder to a third party, DEVELOPER shall provide written notice to the COUNTY.

21. **Disclaimer of Third Party Beneficiaries.** No right or cause of action shall accrue upon or by reason of this AGREEMENT, to or for the benefit of any third party not a formal party hereto, except any successors in interest of the DEVELOPER or the County.

22. **Governing Law and Venue.** In performing this AGREEMENT, each party will abide by the respective statutes, ordinances, rules and regulations pertaining to, or regulating, the acts of such party. This AGREEMENT shall be governed by and construed in accordance with laws of the State of Florida. In the event of any legal action concerning this Agreement, the parties agree that venue will be proper only in the courts of the Tenth Judicial Circuit, located in Polk County, Florida, or in the United States District Court, Middle District of Florida, located in Hillsborough County, Florida. Each party shall be responsible for its own attorneys’ fees and costs.

23. **Counterparts.** This AGREEMENT may be executed in any number of counterparts each of which when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

24. **Entire Agreement.** This AGREEMENT constitutes the entire agreement of the Parties with respect to the subject matter hereof, and may not be modified or amended except by a written instrument equal in dignity herewith and executed by the Parties to be bound thereby.

25. **Non-Waiver.** No consent or waiver, expressed or implied, by either party, to or of any breach or default of the other party, with regard to the performance by said other party of its obligations under this AGREEMENT shall be deemed or construed to constitute consent or waiver, to or of, any other breach or default in the performance of that party, of the same or of any other objection of performance incumbent upon that party. Failure on the part of either party to complain of any act or failure to act on the part of the other party in default, irrespective of how long the failure continues, shall not constitute a waiver by that party of its rights and any remedies that exist under this AGREEMENT, at law, or in equity.

26. **Construction of Agreement.** This AGREEMENT shall not be construed against either party on the basis of it being the drafter of this AGREEMENT. The Parties agree that both herein played an equal part in negotiating the terms and conditions of this AGREEMENT. Captions and Paragraph headings in this

AGREEMENT are provided for convenience only and shall not be deemed to explain, modify, amplify or aid in the interpretation, construction or meaning of this AGREEMENT.

27. **Force Majeure.** Should the performance of this AGREEMENT by the DEVELOPER be prevented or delayed by any Act of God or other cause beyond the reasonable control of DEVELOPER, including but not limited to, floods, storm, fire, war, total or partial failure of transportation or delivery facilities, interruption of power, or by any law, regulation or order of any federal, state or local authority, DEVELOPER'S performance shall be excused to the extent it is thus prevented or delayed. Neither the lack of financial resources, budgetary requirements, crop revenues, harvesting schedules, nor such other errors, shall constitute a force majeure event sufficient to excuse nonperformance hereunder.

28. **Recordation.** Within 14 days after both parties have executed this AGREEMENT, Polk County shall record the AGREEMENT in the public records of Polk County, Florida.

29. **Default and Opportunity to Cure.** If either Party materially defaults in its obligations under this Agreement and fails to cure the same within thirty (30) days after the date that the non-defaulting Party delivers notice of the default to the other Party, then the non-defaulting Party shall have the right to (i) immediately terminate this Agreement by delivering written notice to the defaulting Party, and (ii) pursue any and all remedies available in law, equity, and under this Agreement.

30. **Limitation of Liability.** IN NO EVENT SHALL POLK COUNTY BE LIABLE TO THE DEVELOPER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY POLK COUNTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

31. **Days.** The term "days" in this Agreement shall mean calendar days unless otherwise so noted. If a date for performance falls on a Saturday, Sunday or legal State of Florida or federal holiday, the date for performance shall be extended until the next calendar day that is not a Saturday, Sunday or legal Holiday.

32. **Miscellaneous.** This Agreement shall be subject to the following provisions:

- a. Each Party shall bear its own expense for any litigation resulting from this Agreement, which shall include but not be limited to attorney fees and applicable courts costs, including appellate proceedings.
- b. If any section, phrase, sentence or portion of this Agreement is, for any reason, held to be invalid by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.
- c. The fact that this Agreement does not detail all laws, rules, regulations, permits, conditions, terms and restrictions that must be satisfied to develop the Developer's Property shall not relieve the Developer, the County, or their respective successors in interest, of the

obligation to comply with the laws governing such permit requirements, conditions, terms and regulations, except as otherwise provided herein.

33. **Employment Eligibility Verification (E-Verify).**

- a. Unless otherwise defined herein, terms used in this Section which are defined in Section 448.095, Florida Statutes, as may be amended from time to time, shall have the meaning ascribed in said statute.
- b. Pursuant to Section 448.095(5), Florida Statutes, the DEVELOPER, and any subcontractor thereof, must register with and use the E-Verify system to verify the work authorization status of all new employees of the DEVELOPER or subcontractor. The DEVELOPER acknowledges and agrees that (i) the County and the DEVELOPER may not enter into this Agreement, and the DEVELOPER may not enter into any subcontracts hereunder, unless each party to this Agreement, and each party to any subcontracts hereunder, registers with and uses the E-Verify system; and (ii) use of the U.S. Department of Homeland Security's E-Verify System and compliance with all other terms of this Certification and Section 448.095, Fla. Stat., is an express condition of this Agreement, and the County may treat a failure to comply as a material breach of this Agreement.
- c. By entering into this Agreement, the DEVELOPER becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The DEVELOPER shall maintain a copy of such affidavit for the duration of this Agreement. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute or Section 448.09(1), Fla. Stat., the subcontract must be terminated immediately. If this Agreement is terminated pursuant to Section 448.095, Fla. Stat., such termination is not a breach of contract and may not be considered as such. Any challenge to termination under this provision must be filed in the Tenth Judicial Circuit Court of Florida no later than 20 calendar days after the date of termination. If this Agreement is terminated for a violation of Section 448.095, Fla. Stat., by the DEVELOPER, the DEVELOPER may not be awarded a public contract for a period of 1 year after the date of termination. The DEVELOPER shall be liable for any additional costs incurred by the County as a result of the termination of this Agreement. Nothing in this Section shall be construed to allow intentional discrimination of any class protected by law.

34. **Letter of Credit.** Within sixty (60) days of the Effective Date, DEVELOPER shall provide an irrevocable standby Letter of Credit ("LOC") payable to Polk County in the amount of one hundred ten percent (110%) of the cost to construct the Transportation Improvements, as stated in Exhibit "E." The LOC shall be issued by a financial institution qualified to do business in the State of Florida with a branch office in Polk County having normal banking business hours. The

LOC's initial expiration date must not be less than one year from the Effective Date of this AGREEMENT and must contain a provision for automatic renewal until the Transportation Improvements have been accepted for ownership and maintenance by Polk County. Polk County shall release the LOC upon Developer satisfactorily completing the Transportation Improvements and providing all record drawings to Polk County. In the event Developer fails to complete the Transportation Improvements, Polk County shall have the right but not the obligation to draw on the LOC.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this AGREEMENT on the respective dates under each signature, by and through their authorized representatives.

**COUNTY**

BOARD OF COUNTY COMMISSIONERS OF POLK  
COUNTY

\_\_\_\_\_  
William C. Braswell, Chair

This \_\_\_\_\_ day of \_\_\_\_\_, 2024.

(SEAL)

ATTEST: Stacy M. Butterfield, Clerk

\_\_\_\_\_  
Deputy Clerk

Approved by County Attorney  
As To Form and Legal Sufficiency:

By: \_\_\_\_\_

WITNESSES

**DEVELOPER**

\_\_\_\_\_  
Signature

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

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

\_\_\_\_\_  
Signature

Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF POLK

The foregoing instrument is hereby acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_, a \_\_\_\_\_ company on behalf of said company by means of physical presence or ( ) online notarization ( ) who is personally known to me or ( ) who has produced a driver's license as identification.

NOTARY PUBLIC: \_\_\_\_\_

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

(Affix Notarial Seal)

My Commission Expires: \_\_\_\_\_

Commission Number: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Parcel 1

Lot 40 of Section 23, Township 29 South, Range 24 East, W. F. HALLAM AND COMPANY'S CLUB COLONY TRACT of Lakeland Highlands, Florida, said lot being equivalent to the NW 1/4 of the NW 1/4 of the SW 1/4 of said Section, Township and Range. Parcel ID 242923-288000-004001 and 242923-288000-004002.

And

Parcel 2

Lot 39 of W.F. HALLAM & COMPANY'S CLUB COLONY TRACT of Lakeland Highlands, according to the plat thereof recorded in Plat Book 1, Page 102, of the Public Records of Polk County, Florida and that part of vacated road recorded December 21, 2017 in Official Records Book 10348, Page 703, LESS that portion of additional road right-of-way recorded for Crews Lake Drive. Parcel ID. 242923-288000-003900.

And

Parcel 3

Lot 41 of Section 23, Township 29 South, Range 24 East, of W. F. HALLAM AND COMPANY'S CLUB COLONY TRACT of Lakeland Highlands, Florida, according to plat thereof recorded in Plat Book 1, Page 102, public records of Polk County, Florida. Parcel ID. 242923-288000-004100.

And

Parcel 4

The SE 1/4 of NW 1/4 of SW 1/4 of Section 23, Township 29 South, Range 24 East, also known as Lot 42 of W. F. Hallam & Co's Club Colony Tract of Lakeland Highlands, according to the map or plat thereof as recorded in Plat Book 1, Page 102A of the public records of Polk County, Florida and that part of vacated road recorded December 21, 2017 in Official Records Book 10348, Page 703. Parcel ID. 242923-288000-004200.

And

Parcel 5

Lots 55 and 56 of Section 23, Township 29 South, Range 24 East, of W. F. HALLAM AND COMPANY'S CLUB COLONY TRACT of Lakeland Highlands, Florida, according to plat thereof recorded in Plat Book 1, Page 102, public records of Polk County, Florida and that part of vacated road recorded December 21, 2017 in Official Records Book 10348, Page 703. Parcel ID. 242923-288000-005500.

And

Parcel 6

The SW 1/4 of the SW 1/4 of the SW 1/4 in Section 23, Township 29 South, Range 24 East or Lot 57 of W. F. HALLAM & CO'S CLUB COLONY TRACT OF LAKE LAND HIGHLANDS FLORIDA, according to the map or plat thereof as recorded in Plat Book 1, Page 102A, and that part of vacated road recorded December 21, 2017 in Official Records Book 10348, Page 703, Public Records of Polk County, Florida. Parcel ID. 242923-288000-005700.

And

Parcel 7

The SE 1/4 of the SW 1/4, LESS the NE 1/4 of SE 1/4 of SW 1/4 of Section 23, Township 29 South, Range 24 East, and that part of vacated road recorded December 21, 2017 in Official Records Book 10348, Page 703, Public Records of Polk County, Florida. Parcel ID. 242923-000000-042020.

And

Parcel 8

Lot 58, in Section 23, Township 29 South, Range 24 East, W. F. Hallam & Co.'s Club Colony Tract, according to the map or plat thereof recorded in Plat Book 1, Page 102 and that part of vacated road recorded December 21, 2017 in Official Records Book 10348, Page 703, Public Records of Polk County, Florida. Parcel ID. 242923-288000-005801.

And

Parcel 9

The NE 1/4 of the NE 1/4 of the NW 1/4 of Section 26, Township 29 South, Range 24



East, and that part of vacated road recorded December 21, 2017 in Official Records Book 10348, Page 703, LESS road right-of-way, lying in Polk County, Florida. Parcel ID. 242926-000000-031030.

And

Parcel 10

The Southeast 1/4 of the Southwest 1/4 of the Southeast 1/4 of Section 23, Township 29 South, Range 24 East, LESS road right-of-way, lying in Polk County, Florida. Parcel ID. 242923-000000-024030.

And

Parcel 11

The Southwest 1/4 of the Southwest 1/4 of the Southeast 1/4 of Section 23, Township 29 South, Range 24 East, and that part of vacated road recorded December 21, 2017 in Official Records Book 10348, Page 703, LESS road right-of-way, lying in Polk County, Florida. Parcel ID. 242923-000000-024050.

And

Parcel 12

Lots 7 and 8 of W. F. HALLAM & CO'S CLUB COLONY TRACT OF LAKELAND HIGHLANDS FLORIDA, according to the map or plat thereof as recorded in Plat Book 1, Page 102A, also described as The N 1/2 of the NW 1/4 of the NW 1/4 in Section 26, Township 29 South, Range 24 East and that part of vacated road recorded December 21, 2017 in Official Records Book 10348, Page 703, Public Records of Polk County, Florida, Less the North 24.0 feet of the West 65.0 feet of the NW1/4 of the NW1/4 of the NW 1/4. Parcel ID. 242926-289500-000072.

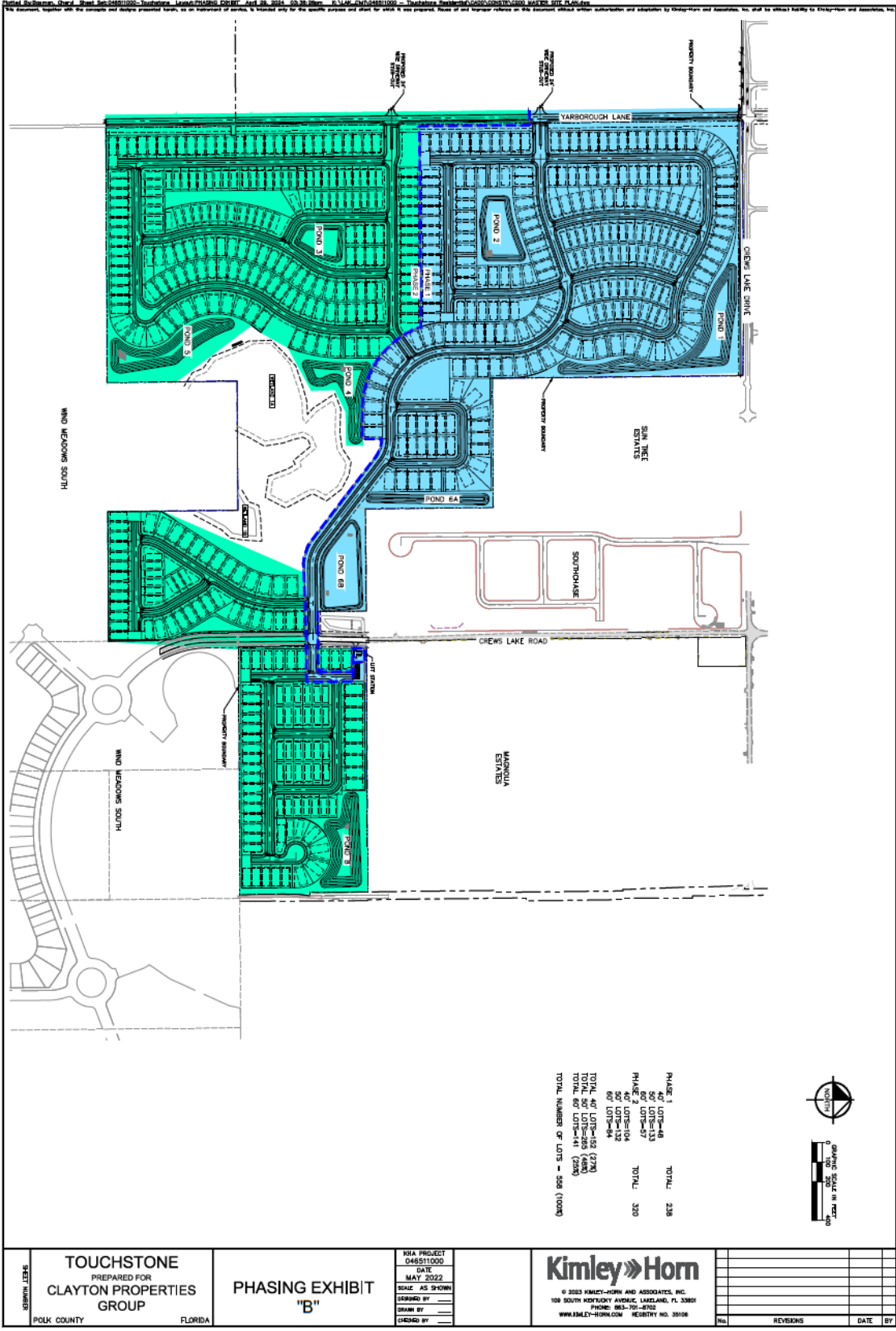
Less and Except

That part of the Southwest 1/4 of the Southwest 1/4 of the Southeast 1/4 and that part of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 23, Township 29 South, Range 24 East and that part of the Northeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of Section 26, Township 29 South, Range 24 East, Polk County, Florida being more particularly described as follows:

Begin at the Northwest corner of the Northwest 1/4 of the Northwest 1/4 of the Northeast 1/4 of said Section 26, the same also being the Northeast corner of the Northeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of said Section 26 and also the

Southeast corner of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 23 and also the Southwest corner of the Southwest 1/4 of the Southwest 1/4 of the Southeast 1/4 of said Section 23; thence North 89°43'15" East along the South boundary of said Section 23, a distance of 30.00 feet; thence departing said South boundary, North 00°39'14" West a distance of 382.46 feet to the point of curvature of a curve concave Easterly having a radius of 1970.00 feet; thence Northerly along the arc of said curve, through a central angle/delta of 4°07'19" (chord = 141.70 feet, chord bearing = North 01°24'25" East) for a distance of 141.73 feet to the point of reverse curvature with a curve concave Westerly having a radius of 2030.00 feet; thence Northerly along the arc of said curve, through a central angle/delta of 3°46'28" (chord = 133.71 feet, chord bearing = North 01°34'51" East) for a distance of 133.73 feet to the non-tangent, non-radial intersection with the North boundary of the aforementioned Southwest 1/4 of the Southwest 1/4 of the Southeast 1/4 of Section 23; thence South 89°38'18" West along said North boundary and along the North boundary of the aforementioned Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 23, a distance of 180.53 feet; thence departing said North boundary, South 00°39'14" East, a distance of 250.00 feet; thence North 89°20'46" East, a distance of 110.39 feet to the non-tangent, non-radial intersection with a curve concave Easterly having a radius of 2030.00 feet; thence Southerly along the arc of said curve, through a central angle/delta of 0°44'15" (chord = 26.13 feet, chord bearing = South 00°17'07" East) for a distance of 26.13 feet to the point of tangency; thence South 00°39'14" East, a distance of 538.78 feet to the point of curvature of a curve concave Northeasterly having a radius of 595.00 feet; thence Southeasterly along the arc of said curve, through a central angle/delta of 18°14'38" (chord = 188.66 feet, chord bearing = South 09°46'33" East) for a distance of 189.46 feet to the non-tangent, non-radial intersection with the East boundary of the aforementioned Northeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of Section 26; thence departing said curve and along the said East boundary, North 00°38'19" West a distance of 342.78 feet to the point of beginning.

# EXHIBIT "B" SITE PLAN





**EXHIBIT “D” YARBOROUGH ROW COST**

| Center State Development 2 LLC<br>Transaction Detail By Account<br>As of January 5, 2023 |            |            |                          |                     |              |     |                    |           |                   |
|--|------------|------------|--------------------------|---------------------|--------------|-----|--------------------|-----------|-------------------|
| Type   | Date       | Num        | Name                     | Memo                | Class        | Clr | Split              | Amount    | Balance           |
| <b>660000 - DEVELOPMENT COSTS</b>  |            |            |                          |                     |              |     |                    |           |                   |
| 661000 - Soft Costs  |            |            |                          |                     |              |     |                    |           |                   |
| 661040 - Closing Costs   |            |            |                          |                     |              |     |                    |           |                   |
| 661041 - Land Purchase   |            |            |                          |                     |              |     |                    |           |                   |
| General Journal  | 06/30/2022 | CH202...   | Suz Investment Corp...   | closing costs f...  | Yarboroug... |     | 150000 - LAND      | 1,307.13  | 1,307.13          |
| General Journal  | 06/30/2022 | CH202...   | Wingo Investment Co...   | closing costs f...  | Yarboroug... |     | 150000 - LAND      | 1,177.50  | 2,484.63          |
| Total 661041 - Land Purchase   |            |            |                          |                     |              |     |                    |           | 2,484.63          |
| Total 661040 - Closing Costs   |            |            |                          |                     |              |     |                    |           | 2,484.63          |
| <b>661050 - Engineering</b>  |            |            |                          |                     |              |     |                    |           |                   |
| Bill   | 09/16/2022 | NO.1003    | L P Engineering Servi... | NO.1003             | Yarboroug... |     | 20000 - Accoun...  | 7,500.00  | 7,500.00          |
| Bill   | 12/08/2022 | Invoice... | L P Engineering Servi... | Invoice 1018        | Yarboroug... |     | 20000 - Accoun...  | 19,500.00 | 27,000.00         |
| Total 661050 - Engineering   |            |            |                          |                     |              |     |                    |           | 27,000.00         |
| <b>661070 - Geotechnical Engineering</b>   |            |            |                          |                     |              |     |                    |           |                   |
| Bill   | 11/18/2022 | Invoice... | Grindley Williams En...  | Invoice 4582        | Yarboroug... |     | 20000 - Accoun...  | 802.00    | 802.00            |
| Bill   | 11/24/2022 | Invoice... | Grindley Williams En...  | Invoice 4328        | Yarboroug... |     | 20000 - Accoun...  | 2,626.00  | 3,428.00          |
| Total 661070 - Geotechnical Engineering  |            |            |                          |                     |              |     |                    |           | 3,428.00          |
| <b>661080 - Legal</b>  |            |            |                          |                     |              |     |                    |           |                   |
| Bill   | 08/07/2022 | YLP-in...  | Tulia Michele Haff       | invoice 22854       | Yarboroug... |     | 20000 - Accoun...  | 1,227.70  | 1,227.70          |
| Total 661080 - Legal   |            |            |                          |                     |              |     |                    |           | 1,227.70          |
| <b>661110 - RE Taxes</b>   |            |            |                          |                     |              |     |                    |           |                   |
| General Journal  | 06/30/2022 | CH202...   | Suz Investment Corp...   | re taxes for pur... | Yarboroug... |     | 150000 - LAND      | -6.15     | -6.15             |
| General Journal  | 06/30/2022 | CH202...   | Wingo Investment Co...   | re taxes for pur... | Yarboroug... |     | 150000 - LAND      | -6.77     | -12.92            |
| Total 661110 - RE Taxes  |            |            |                          |                     |              |     |                    |           | -12.92            |
| <b>661120 - Survey</b>   |            |            |                          |                     |              |     |                    |           |                   |
| Bill   | 08/01/2022 | YL-inv ... | Platinum Surveying &...  | invoice 3075        | Yarboroug... |     | 20000 - Accoun...  | 4,500.00  | 4,500.00          |
| Total 661120 - Survey  |            |            |                          |                     |              |     |                    |           | 4,500.00          |
| Total 661000 - Soft Costs  |            |            |                          |                     |              |     |                    |           | 38,627.41         |
| Total 660000 - DEVELOPMENT COSTS   |            |            |                          |                     |              |     |                    |           | 38,627.41         |
| <b>664000 - LAND COST</b>  |            |            |                          |                     |              |     |                    |           |                   |
| General Journal  | 12/31/2022 | BE202...   |                          | cost of land pu...  | Yarboroug... |     | Capitalized Lan... | 69,500.00 | 69,500.00         |
| Total 664000 - LAND COST   |            |            |                          |                     |              |     |                    |           | 69,500.00         |
| <b>TOTAL</b>   |            |            |                          |                     |              |     |                    |           | <b>108,127.41</b> |

**EXHIBIT "E" COST ESTIMATE**

| PRELIMINARY BID FORM TOUCHSTONE<br>FORCE MAIN<br>YARBOROUGH LANE SOUTH ONSITE |                              |          |              |                           |                   | Exhibit E |  |
|---|------------------------------|----------|--------------|---------------------------|-------------------|-----------|--|
| ITEM  | DESCRIPTION                  | QUANTITY | UNIT PRICE   | AMOUNT                    |                   |           |  |
| <b>I. MISCELLANEOUS</b>   |                              |          |              |                           |                   |           |  |
| 1   | Design/Permitting            | 1        | LS \$ 52,000 | \$ 52,000                 |                   |           |  |
|   |                              |          |              | <b>SUBTOTAL</b>           | <b>\$ 52,000</b>  |           |  |
| <b>II. PROPOSED IMPROVEMENTS</b>  |                              |          |              |                           |                   |           |  |
| 2   | 18" HP (0-6)                 | 80       | LF \$ 49     | \$ 3,933                  |                   |           |  |
| 3   | 24" HP (6-8)                 | 420      | LF \$ 71     | \$ 29,862                 |                   |           |  |
| 4   | 24" HP (8-10)                | 340      | LF \$ 73     | \$ 24,912                 |                   |           |  |
| 5   | Type P-5 Inlet               | 7        | EA \$ 8,522  | \$ 59,657                 |                   |           |  |
| 6   | Test Storm Sewer             | 840      | LF \$ 10     | \$ 8,408                  |                   |           |  |
| 7   | # 57 Bedding Stone           | 20       | TN \$ 78     | \$ 1,554                  |                   |           |  |
| 8   | 10" Waterman                 | 1,500    | LF \$ 53     | \$ 78,855                 |                   |           |  |
| 9   | 10" Gate Valve               | 3        | EA \$ 3,783  | \$ 11,350                 |                   |           |  |
| 10  | 2" Auto Blow Off             | 1        | EA \$ 8,160  | \$ 8,160                  |                   |           |  |
| 11  | BT / Pressure Test Waterline | 1,500    | LF \$ 4      | \$ 6,480                  |                   |           |  |
| 12  | 12" Stabilization            | 5,315    | SY \$ 10     | \$ 50,971                 |                   |           |  |
| 13  | 8" Limerock Base             | 4,000    | SY \$ 21     | \$ 83,040                 |                   |           |  |
| 14  | 2" SP 9.5 Asphalt Paving     | 4,000    | SY \$ 16     | \$ 65,720                 |                   |           |  |
| 15  | Miami Curb and Gutter        | 2,960    | LF \$ 15     | \$ 44,222                 |                   |           |  |
| 16  | 5' Sidewalk (4" Thick)       | 7,235    | SF \$ 5      | \$ 33,570                 |                   |           |  |
|   |                              |          |              | <b>SUBTOTAL</b>           | <b>\$ 510,694</b> |           |  |
| <b>SUMMARY</b>  |                              |          |              |                           |                   |           |  |
| <b>I. MISCELLANEOUS</b>   |                              |          |              |                           | \$ 52,000         |           |  |
| <b>II. PROPOSED IMPROVEMENTS</b>  |                              |          |              |                           | \$ 510,694        |           |  |
|   |                              |          |              | <b>CONSTRUCTION TOTAL</b> | <b>\$ 562,694</b> |           |  |