

**IMPACT FEE CREDIT AGREEMENT
W LAKE HAMILTON DRIVE AND LUCERNE PARK ROAD (SR
544) INTERSECTION**

THIS IMPACT FEE CREDIT AGREEMENT ("AGREEMENT") is made and entered by and between Cottages at Lake Hamilton, LLC, a Florida limited liability company 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 or contract purchaser of certain real property located at 2850 W Lake Hamilton Drive, Winter Haven, FL 33881 and identified as Parcel Number 27-28-06-000000-043040 ("**Property**"); and

WHEREAS, DEVELOPER intends to develop a multifamily project, Vistas at Lake Hamilton (LDNON-2023-124), on the above described Property (the "**Project**"); and

WHEREAS, DEVELOPER is willing to construct certain non-Site-Related Transportation Improvements concerning W Lake Hamilton Drive and Lucerne Park Road (SR 544) intersection, as hereinafter defined; and

WHEREAS, the cost estimate for the Transportation Improvements is reflected in **Exhibit "B"** ("**Cost Estimate**"); and

WHEREAS, the COUNTY has determined that Transportation Impact Fee credits in an amount not to exceed \$318,976.70, may be given for DEVELOPER's construction of the Transportation Improvements based upon the POLK COUNTY AMENDED AND RESTATED COMPREHENSIVE IMPACT FEE ORDINANCE, as amended; 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 construction of improvements to W Lake Hamilton Drive, specifically right-turn lane installation, in accordance with approved plans (LDNON-2023-124) depicted in **Exhibit “A”** attached hereto and incorporated herein by this reference, and as described in the Plans and Specifications, including certain improvements to the paving within W Lake Hamilton Drive (collectively, the “**Transportation Improvements**”). DEVELOPER shall bear the full responsibility for payment of all financial obligations for the Transportation Improvements, including design and permitting costs.

4. **Modifications of the Plans and Specifications; Permits.**

A. The Plans and Specifications for the Transportation Improvements may be materially 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 (it being understood that non-material modifications shall not be required to be submitted by DEVELOPER for the COUNTY’S approval). 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. Any modifications that increase, in the aggregate, the Cost Estimate by ten percent (10%) or less shall require written approval by the COUNTY. Any modifications that increase, in the aggregate, the Cost Estimate by more than ten percent (10%) shall require a fully executed amendment to this AGREEMENT.

B. DEVELOPER shall 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. The COUNTY hereby grants any and all rights, approvals, permits, title and interest necessary for DEVELOPER to perform DEVELOPER’S obligations under this AGREEMENT, including, but not limited to, any and all licenses, easements and permits to construct the Transportation Improvements in the public right-of-way of W Lake Hamilton Drive.

5. **Construction Requirements.**

A. DEVELOPER shall notify COUNTY that DEVELOPER has selected a contractor to perform the Transportation Improvements. Promptly after the date of this AGREEMENT, DEVELOPER shall enter into a Contract for Construction of the Improvements (the “Construction Contract”) with DEVELOPER’S selected contractor. Upon execution of a final Construction Contract, DEVELOPER will provide a copy of the Construction Contract to the COUNTY.

B. COUNTY hereby notifies DEVELOPER that DEVELOPER may proceed with constructing the Transportation Improvements in accordance with the terms and conditions hereof.

C. Prior to the commencement of construction, DEVELOPER shall schedule, notice, and attend a pre-construction conference with DEVELOPER’S engineer, DEVELOPER’S contractor, the COUNTY, and all involved utility companies.

D. Upon reasonable prior notice, 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 (or such longer period as may be reasonably necessary) of DEVELOPER’S receipt of such notice. If DEVELOPER fails to correct the deficiency within such period, 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"), in exchange for DEVELOPER's construction of the Transportation Improvements, Transportation Impact Fees shall be credited to DEVELOPER in the estimated amount of up to \$318,976.70 (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 construction costs (as evidenced by paid invoices and other appropriate supporting documentation deemed sufficient by the COUNTY, and which include "hard construction costs" and "soft construction costs", such as design and engineering costs) of those Transportation Improvements that qualify for expenditure of Transportation Impact Fees under Section 4.04.B of the Ordinance. The schedule of qualifying improvements eligible for Impact Fee Credits hereunder is set forth and described in the cost estimate in **Exhibit "B"**, attached hereto and incorporated herein by reference. The total amount of Impact Fee Credits issued hereunder shall not exceed \$318,976.70, unless otherwise agreed to by both parties, as evidenced by a duly executed written amendment hereto. Any request for additional Impact Fee Credits from the COUNTY pursuant to Section 4.04B of the Ordinance 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 must comply with all requirements specified thereunder. COUNTY shall be deemed to have issued, and DEVELOPER shall be deemed to have received, the Impact Fee Credits on the date that COUNTY accepts the Transportation Improvements pursuant to Section 6.B.

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

(3) The value of each Impact Fee Credit shall be the value of the Transportation Impact Fee at the time a future development project is submitted by DEVELOPER to the COUNTY to receive Impact Fee Credits.

(4) DEVELOPER, and 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.

(5) For the avoidance of doubt, (x) with respect to any Transportation Impact Fees that have already been paid by DEVELOPER as of the date the COUNTY accepts the Transportation Improvements pursuant to Section 6.B. (collectively, "**Paid Transportation Impact Fees**"), COUNTY shall reimburse DEVELOPER for any such Paid Transportation Impact Fees within forty-five (45) days after DEVELOPER'S written request therefor, (y) from and after the date that COUNTY accepts the Transportation Improvements pursuant to Section 6.B., the amount of Impact Fee Credits issued to DEVELOPER pursuant to this Agreement shall be reduced by the amount of Paid Transportation Impact Fees reimbursed to DEVELOPER pursuant to the foregoing, and (z) the remaining Impact Fee Credits (i.e., when and if such Impact Fee Credits are reduced by the amount of Paid Transportation Impact Fees reimbursed to DEVELOPER pursuant to the foregoing) granted under and pursuant to this Agreement shall be available to Developer to be credited against any Transportation Impact Fees coming due and payable with respect to the Property and the Project from and after the date DEVELOPER completes the Transportation Improvements.

F. Upon completion of the work 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 work are in general conformance with the plans, or otherwise conform to or meet generally accepted professional practices. If applicable, DEVELOPER shall also prepare and submit any required certifications to permitting agencies.

G. Subject to the requirements of Section 12, below, the Transportation Improvements shall be completed within 24 months of the effective date of this agreement, 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 (“**Completion Notice**”). Upon receipt of DEVELOPER’s Completion Notice, the COUNTY shall conduct or cause to be conducted such inspections of the Transportation Improvements as it may desire to determine that the Transportation Improvements conform 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 (“**Inspection Letter**”). For the avoidance of doubt, COUNTY acknowledges and agrees that (x) DEVELOPER is entering into this AGREEMENT with the expectation and on the belief that DEVELOPER shall not be required to incur more than \$318,976.70.00 in connection with the design, engineering and construction of the Transportation Improvements, and (y) if, for any reason or no reason, the cost to design, engineer and construct the Transportation Improvements exceeds \$318,976.70 by more than ten percent (10%) (e.g., the COUNTY submits a change order to DEVELOPER that requires DEVELOPER to incur additional design and engineering costs, and DEVELOPER must pay more to DEVELOPER’S contractor with respect to implementing such change order), then DEVELOPER will cease design, engineering and construction on the Transportation Improvements until the COUNTY agrees in an amendment to this AGREEMENT reasonably acceptable to DEVELOPER to reimburse DEVELOPER for the increased costs thereof.

H. **Letter of Credit.** Within thirty (30) days prior to commencing construction of the Transportation Improvements, DEVELOPER shall provide an irrevocable standby Letter of Credit (“**LOC**”) payable to the COUNTY in the amount of one hundred ten percent (110%) of the cost to construct the Transportation Improvements, as stated in Exhibit “B.” The LOC shall be issued by a financial institution qualified to do business in the State of Florida with a branch office in Central Florida 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 the COUNTY. The COUNTY shall release the LOC within thirty (30) days after the date DEVELOPER has notified the COUNTY that DEVELOPER has satisfactorily completed the Transportation Improvements pursuant to subsection 5.H. In the event DEVELOPER fails to complete the Transportation Improvements prior to the date required pursuant to this Agreement, the COUNTY shall have the right but not the obligation to draw on the LOC.

6. **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, or such other time as specifically agreed to by both the COUNTY and DEVELOPER, of the issuance of the COUNTY

Inspection Letter indicating that the Transportation Improvements comply with the approved construction plans, which letter shall be delivered to DEVELOPER as soon as reasonably possible after receipt of DEVELOPER'S notice that the Transportation Improvements are complete and the Inspection is completed.

B. Provided all such conditions are met, the COUNTY agrees to accept such conveyance without delay and provide written notification of acceptance to DEVELOPER. Thereafter, the COUNTY shall 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 for a period of one (1) year from the date of acceptance by the COUNTY of the Transportation Improvements.

7. **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, pursuant to this Agreement, from the COUNTY, this AGREEMENT shall automatically terminate and be of no further force or effect.

8. **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.

9. **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.

10. **Indemnification.** DEVELOPER, its successors, and assigns shall protect, defend, indemnify, and hold harmless, the COUNTY, its officers, commissioners, council members, employees and agents from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, including a reasonable, actually incurred, attorney's fee or other expenses 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 or willful misconduct of the COUNTY.

11. **Insurance.**

11.1 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.

11.2 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:	\$1,000,000.00 per occurrence
Comprehensive Automobile Liability	\$1,000,000.00 per occurrence
Workers Compensation	Statutory Limits
Employers Liability	\$1,000,000.00

11.3 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 the COUNTY.

11.4 DEVELOPER shall provide the COUNTY with Certificates of Insurance satisfactory to the COUNTY to evidence such coverage promptly following the execution of this Agreement and before any work commences on the Transportation Improvements. The 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 6.B.

12. **Term and Nature of Agreement.** With the exception of (x) warranty requirements which expressly survive the termination of this AGREEMENT and (y) the COUNTY'S obligation to issue the Impact Fee Credits to DEVELOPER as and when required under this AGREEMENT, which shall expressly survive the termination hereof, this AGREEMENT shall terminate upon satisfaction by the Parties hereto of their respective obligations contained herein. At any time thereafter, upon written request of either party hereto, the other party hereto shall execute and deliver a written termination of this AGREEMENT, and failure to so execute and deliver such written termination of this AGREEMENT on or before the thirtieth (30th) day after the request is made, shall be deemed a full termination of this AGREEMENT without further action being required by either party hereto. If DEVELOPER is unable to obtain all necessary approvals for the construction of the Transportation Improvements from any governmental agency other than the COUNTY, 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.

13. **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

Developer: Cottages at Lake Hamilton, LLC
2875 NE 191st Street, Suite 305
Aventura, FL 33180

14. **Public Records.** Pursuant to Section 119.0701, Florida Statutes, DEVELOPER shall comply with the following Florida Public Records' laws, to the extent applicable:

A. DEVELOPER acknowledges the 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 services required under this AGREEMENT.
- ii. Upon request from the COUNTY's custodian of public records, or his/her designee, 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 AGREEMENT term and following completion of the AGREEMENT if the DEVELOPER does not transfer the records to the COUNTY.
- iv. Upon completion of the AGREEMENT, 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 AGREEMENT, 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 AGREEMENT, 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**

15. **Records and Audits.** The DEVELOPER shall maintain in its corporate headquarters all original 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 five (5) 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 ten (10) business day's prior written notice.

16. **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.

17. **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.

18. **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.

19. **Assignment and Successors.** This AGREEMENT shall be binding upon and the benefits and obligations of this AGREEMENT shall inure to all successors or assigns of the Parties to this AGREEMENT, regardless of the name of the successors or assigns. 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.

20. **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.

21. **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.

22. **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.

23. **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.

24. **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.

25. **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.

26. **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.

27. **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.

28. **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.

29. **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.

30. **Enforcement.** 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, or its 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.

31. **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.

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.

DEVELOPER

COTTAGES AT LAKE HAMILTON, LLC,
a Florida limited liability company

By: COTTAGES AT LAKE HAMILTON
MANAGEMENT, LLC, a Florida limited liability
company, its manager.

By: [Signature]
Name: Samy Cohen
Title: manager

This 17th day of January, 2024.

COUNTY

BOARD OF COUNTY COMMISSIONERS OF POLK
COUNTY

W.C. Braswell, Chairman

This _____ day of _____, 2024.

(SEAL)

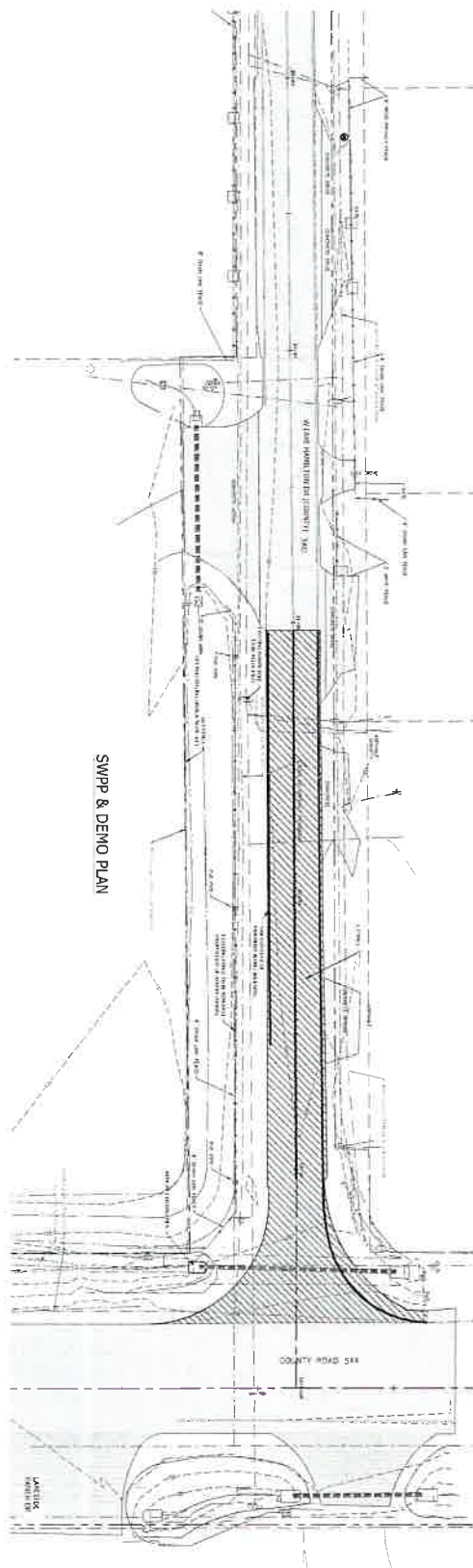
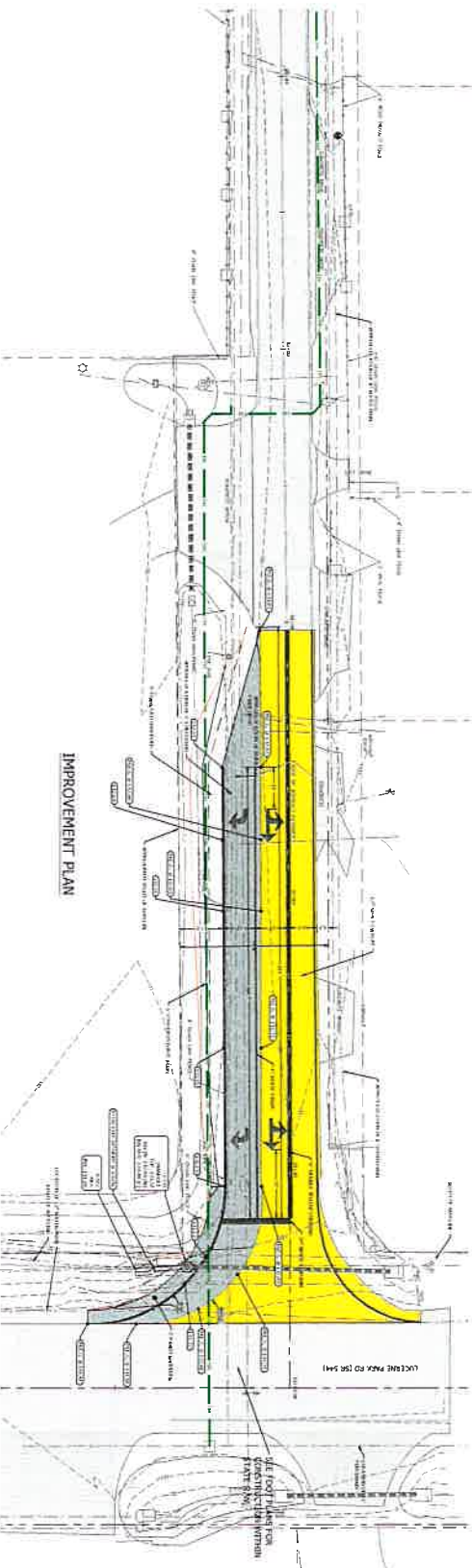
ATTEST: Stacy M. Butterfield, Clerk

Deputy Clerk

Approved by County Attorney
As To Form and Legal Sufficiency:

By: _____

Exhibit “A” - Transportation Improvements Depiction & Description



2600	CLIENT:	M&S DEVELOPMENT
	PROJECT:	VISTAS AT LAKE HAMILTON
C1101	SR 544 TURN LANE IMPROVEMENT PLAN	
W LAKE HAMILTON DR, WOFFER HAVEN, FL		

SLOAN
 Engineering Group

100 SOUTH WOODLARK AVENUE, BARTON, FL 33893
 PHONE: (800) 550-7044 - FAX: (800) 550-1150
 FLORIDA CERTIFICATE OF AUTHORIZATION (FCA) #25047

DESIGNED BY: [Signature]
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 DATE: [Date]

PROFESSIONAL SEAL
 STATE OF FLORIDA
 CIVIL ENGINEER
 [Signature]

NO.	DATE	DESCRIPTION
1	10/20/20	ISSUED FOR PERMITS

POLK
 Professional Services
 Incorporated
 10000 N. US HWY 1
 TAMPA, FL 33613
 (813) 973-1111

Exhibit “B” – Cost Estimate

Vistas at Lake Hamilton - BID PROPOSAL

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	SOFT COSTS				
1	Engineering Design	1	EACH	\$7,600.00	\$7,600.00
2	Off-site Survey	1	EACH	\$17,500.00	\$17,500.00
3	County Application Fee	1	EACH	\$3,321.00	\$3,321.00
	SOFT COSTS TOTAL				\$28,421.00
	GENERAL CONDITIONS				
4	Supervision	4	EACH	\$2,500.00	\$10,000.00
5	Gas/Tolls/Truck Expense	4	EACH	\$500.00	\$2,000.00
6	Jobsite Technology	4	EACH	\$250.00	\$1,000.00
7	Silt Fence	306	LF	\$3.50	\$1,071.00
8	SWPP Monitoring	1	LS	\$1,500.00	\$1,500.00
9	Survey & As-Builts	1	LS	\$15,000.00	\$15,000.00
10	Testing	1	LS	\$10,000.00	\$10,000.00
	GENERAL CONDITIONS TOTAL				\$40,571.00
	***ROADWAY OFFSITE FDOT ***				
11	Mobilization	1	LS	\$20,000.00	\$20,000.00
12	Traffic Maintenance	1	LS	\$71,600.88	\$71,600.88
13	Mill & Resurfacing 1.5" FC-12.5	740	SY	\$32.90	\$24,346.00
14	Widening 1.5" FC-12.5	1063	SY	\$20.01	\$21,270.63
15	Widening 2" type 5P	363	SY	\$49.15	\$17,841.45
16	8" Limerock Base (LBR 100)	363	SY	\$21.40	\$7,768.20
17	12" Stabilization LBR 40	363	SY	\$16.05	\$5,826.15
18	8" Stabilized Shoulder	186	SY	\$21.40	\$3,980.40
19	Striping & Signage	1	LS	\$8,000.00	\$8,000.00
20	Manhole	1	EACH	\$4,466.98	\$4,466.98
21	18" HDPP	19	LF	\$67.00	\$1,273.00
22	Mitered End Section	1	EACH	\$1,200.00	\$1,200.00
23	Demo Existing Chain Link Fence and Mitered End	1	LS	\$3,780.53	\$3,780.53
24	Cut Proposed Area Using Cut of Materials Placed and Compacted	1	LS	\$24,057.89	\$24,057.89
25	Bahia Sod - ROW	409	SY	\$3.65	\$1,492.85
	ROADWAY OFFSITE TOTAL				\$216,904.96
	CONTRACTOR FEES				
26	GL Insurance			1.50%	\$3,862.14
27	Bond			2.00%	\$5,226.76
28	Contractor OH&P			9.00%	\$23,990.84
				TOTAL \$	318,976.70