

## **Wynnstone, Cascades & Brentwood INFRASTRUCTURE AGREEMENT**

This Infrastructure Agreement is made and entered into as of the Effective Date (defined in Section 4.8, below), by and between **GLK REAL ESTATE, LLC** a Florida Limited Liability Company ("Developer") and **POLK COUNTY**, a political subdivision of the State of Florida ("Polk County" or "County"), pursuant to the authority of Section 163.3180, Florida Statutes (2022). Developer and Polk County are referred to herein individually as a "Party" and collectively as the "Parties."

WITNESSETH:

**WHEREAS**, Developer proposes to develop three residential developments known as Cascades, Wynnstone, and Brentwood; and

**WHEREAS**, the developments are generally located on FDC Grove Road, south of Minute Maid Ramp Road 2, and north of Masee Road, and west of U.S. 27, as more specifically described in the legal description(s) attached hereto as **Exhibit "A"** (the "Property"); and

**WHEREAS**, Wynnstone is a proposed single-family development located within the City of Haines City, Florida (the "City"), and is accessed by FDC Grove Road, a County-maintained roadway; and

**WHEREAS**, Cascades is a proposed three-phased single-family development located within the City, and is accessed by FDC Grove Road, Park Place Boulevard, and Masee Road, which are all County-maintained roadways (except for Masee Road, which is a City-maintained roadway); and

**WHEREAS**, Brentwood is a proposed two-phased single family attached (townhome) development located within unincorporated Polk County, and is accessed by Holly Hill Grove Road 3, Holly Hill Grove Road 2, and FDC Grove Road, which are all County-maintained roadways; and

**WHEREAS**, Developer has received approval from the City to construct up to 1,029 single-family dwelling units for Cascades and up to 793 single-family dwelling units for Wynnstone, as depicted in the site plans attached as **Exhibit "B"** and **Exhibit "B-1"**; and Developer has received approval from the County to construct up to 226 townhomes for Brentwood Phase 1, has received approval from the City to construct 246 Townhomes in Phase 2 and Phase 3, proposes to construct 290 townhomes in Phase 4 and Phase 5, and 288 apartments directly south thereof, for a total 1,050 units in Brentwood, as depicted in the site plan attached as **Exhibit "B-2"** (the 2,872 approved units are collectively the "Project"); and

**WHEREAS**, Developer has received conditional Level 2 Approval from the County for a residential driveway and utilities for up to 597 lots for Cascades Phase I, project number: LDRES-2021-9; conditional Level 2 Approval from the County for residential driveway and

utilities for up to 74 lots for Cascades Phase II, project number: LDRES 2021-22; conditional Level 2 Approval from the County for residential driveway and utilities for up to 344 lots for Cascades Phase III, project number: LDRES-2021-120; conditional Level 2 Approval from the County for residential driveway and utilities for up to 226 lots for Brentwood Phase 1, project number: LDRES-2021-16; and conditional Level 2 Approval from the County for residential driveway and utilities for up to 246 lots for Brentwood Phase 2 and 3, project number: LDRES-2021-119; and

**WHEREAS**, as part of the Level 2 Review, the County has notified the Developer that the Project will result in the operational failure of three intersections on FDC Grove Road, which are maintained by the County (the “**County’s Deficient Segments**”), and four intersections on US 27, between CR-547 and Heller Brothers Boulevard (the “**FDOT’s Deficient Intersections**”). The “**County’s Deficient Segments**” and the “**FDOT’s Deficient Intersections**” are collectively the “**Deficient Transportation Facilities**”); and

**WHEREAS**, the trips generated by the Project will cause the Deficient Transportation Facilities to operate below adopted Level of Service standards; therefore, pursuant to Section 163.3180(5)(h), Florida Statutes, as amended, the Developer is responsible for a proportionate share mitigation for transportation improvements needed to restore acceptable traffic operating conditions; and

**WHEREAS**, the Developer has commissioned a traffic study and a mitigation document from Raysor Transportation Consulting dated June 28, 2021, and August 23, 2021 (updated December 19, 2022 and July 18, 2023), respectively (collectively, the “**Traffic Study**”), which is on file with the Land Development Division and incorporated herein by this reference, to identify certain improvements necessary to alleviate the Deficient Transportation Facilities; and

**WHEREAS**, the County has reviewed and approved the Traffic Study; and

**WHEREAS**, pursuant to improvements identified in the Traffic Study, the Developer has agreed to provide the following to address the Deficient Transportation Facilities:

- (1) construct improvements to FDC Grove Road and the County shall reimburse such construction costs with transportation impact fee credits for costs up to the amount equal to the proportionate share payment and by cash reimbursement for the amount that exceeds the Developer’s proportionate share payment for the County’s Deficient Segments (“**Infrastructure Improvements**”); and
- (2) provide a proportionate share payment for the FDOT’s Deficient Intersections; and
- (3) construct improvements to Holly Hill Grove Road 2 to satisfy collector road standards and the County shall reimburse such construction costs with transportation impact fee credits.

**WHEREAS**, the County has requested and Developer has agreed to construct additional improvements, such as bike lanes, to FDC Grove Road (“**Additional Improvements**”); and

**WHEREAS**, the Developer shall construct such Additional Improvements concurrently

with the Infrastructure Improvements; and

**WHEREAS**, it is therefore deemed to be in the interest of public health, safety, and welfare for the County to facilitate and expedite the construction of the improvements to the County's Deficient Segments;

**WHEREAS**, the Developer and the County desire to enter into this Agreement to establish the respective rights and obligations in accordance with the terms and conditions of this Agreement; and

**NOW THEREFORE**, in consideration of the premises hereof, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto covenant and agree as follows:

## **ARTICLE I RECITALS AND DEFINITIONS**

- 1.1 Recitals.** The Recitals stated above are an integral part of this Agreement and are incorporated herein by reference as if fully set forth herein.
- 1.2 Definitions.** Terms which are capitalized herein shall be defined as set forth in the Recitals above or as otherwise defined in this Agreement.

## **ARTICLE II CONDITIONS OF AGREEMENT**

- 2.1 Developer's Obligations to Polk County.** The following activities are to be completed by the Developer in the timeframes indicated for each respective activity.

**2.1.1. Proportionate Share for County's Deficient Segments.** The Developer shall be responsible for its proportionate share for the County's Deficient Segments, as described in Exhibit "C," which totals two million nine hundred and fourteen thousand, eight hundred and eight-six dollars (\$2,914,886) (the "**County PS Payment**"). The County PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. The Developer and County further acknowledge and agree that the County PS Payment represents the final and binding amount the Developer is required to pay through the buildout of the currently approved Project as proportionate share mitigation for impacts of the Project upon roadways within the County's jurisdiction; provided, however, that if Developer subsequently increases the number of units and/or square footage, as applicable, of the Project, the Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Section 2.4.1 below. Developer and County further acknowledge and agree that the calculation of, and agreement regarding, the amount of the County PS Payment constitute material inducements for the Parties to enter into this Agreement.

**2.1.2. Road Construction.**

**2.1.2.1. Infrastructure Improvements.** The Developer shall design, permit, and construct the improvements to FDC Grove Road that are described in the attached Cost Estimate in Exhibit “C” in accordance with the construction plans attached as Exhibit “D-1” (the “**Plans and Specifications**”) (collectively, the “**Infrastructure Improvements**”). Any modifications that increase, in the aggregate, the cost estimate in Exhibit “C” by ten percent (10%) or less shall require written approval by the County. Any modifications that increase, in the aggregate, the cost estimate in Exhibit “C” by more than ten percent (10%) shall require a fully executed amendment to this Agreement.

**2.1.2.2. Additional Improvements.** The Developer shall design, permit, and construct additional improvements to FDC Grove Road that are described in the attached Cost Estimate in Exhibit “D-2” in accordance with the Plans and Specifications (“**Additional Improvements**”). The Infrastructure Improvements and Additional Improvements shall be collectively referred to herein as the “**FDC Grove Road Improvements.**” Any modifications that increase, in the aggregate, the cost estimate in Exhibit “D-2” by ten percent (10%) or less shall require written approval by the County. Any modifications that increase, in the aggregate, the cost estimate in Exhibit “D-2” by more than ten percent (10%) shall require a fully executed amendment to this Agreement.

**2.1.2.3. Holly Hill Grove Road 2 Improvements.** The Developer shall design, permit, and construct additional improvements to Holly Hill Grove Road 2 from FDC Grove Road to 1600 linear feet to the East thereof that are described in the attached Cost Estimate in Exhibit “D-3”. The **FDC Grove Road Improvements** and the **Holly Hill Grove Road 2 Improvements** shall be collectively referred to herein as the “**Road Improvements.**” Any modifications that increase, in the aggregate, the cost estimate in Exhibit “D-3” by ten percent (10%) or less shall require written approval by the County. Any modifications that increase, in the aggregate, the cost estimate in Exhibit “D-3” by more than ten percent (10%) shall require a fully executed amendment to this Agreement.

**2.1.3. Bidding Process.** Developer agrees to use a competitive bidding process in retaining a contractor to construct the Road Improvements. The County will have the right to review the competitive bidding process and 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 Road 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 provide concurrency and/or impact fee 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 FDC Grove Road Improvements (the “**Construction Contract**”) with the selected

contractor. Upon execution of a final Construction Contract, Developer will provide a copy of the Construction Contract to the Polk County Roads and Drainage Department.

**2.1.4. Level 2 Construction Plans.** The FDC Grove Road Improvements Plans and Specifications have received Level 2 approval, project number: LDNON-2022-209. Developer shall not commence constructing the Holly Hill Grove Road 2 Improvements until the Plans and Specifications have received Level 2 approval. For the purpose of this Agreement, references to Plans and Specifications are meant to include both the approved FDC Grove Road and to be approved Holly Hill Grove Road 2 Plans and Specifications.

**2.1.5. Commencement Notice.** Prior to the commencement of construction, the Developer shall schedule, notice, and attend a pre-construction conference with Developer's engineer, Developer's contractor, Land Development Division, and all involved utility companies. 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.

**2.1.6. Inspections and Monitoring.** The County may periodically inspect and monitor the work site during construction of the Road 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; in addition, the County reserves the right to withhold reimbursement and/or transportation impact fee credits.

**2.1.7. Completion Date; Approval; Conveyance of Road Improvements.** The Road Improvements shall be completed within three years of the effective date of this Agreement. Upon completion of the Road Improvements, the Developer shall submit to the County a final invoice ("**Final Invoice**"), an engineer's certificate of completion that confirms the Road Improvements have been properly constructed in accordance with County standards and the Plans and Specifications, and all construction and financial information necessary to ensure that contractors and subcontractors have been paid in full (collectively, the "**Final Documentation**"). The Final Documentation shall include, without limitation, "as-built" drawings, detailed construction costs and invoices, receipts, copies of payments to the contractor, release of liens, and any required certification to permitting agencies. Upon receipt of all Final Documentation, the County shall have thirty (30) days to review the Final Invoice and Final Documentation, request additional documentation that the County deems necessary, and conduct inspections of the Road Improvements ("**Final Review Period**"). Within thirty (30) days after the County completes its Final Review Period, the County shall pay the Final Invoice and issue a letter to the Developer indicating that the Road Improvements comply with the approved Plans and Specifications (the "**Approval Letter**"). Developer shall, at its sole cost and

expense, convey all interests that it may have in the Road Improvements to the County, free and clear of all liens and encumbrances, within ten (10) business days after the issuance of the Approval Letter.

**2.1.8. Status Reports for Road Improvements.** The Developer shall provide the County with a monthly contractor's construction management status report during the term of this Agreement.

**2.1.9. Development Permits.** Developer shall be required to secure all applicable local development permits for any proposed construction on its Property. Developer will also obtain all required county, region, state, or federal approvals, prior to the development of its Property.

**2.1.10. Proportionate Share for FDOT Deficient Intersections.** The Developer shall be responsible for its proportionate share for the FDOT Deficient Intersections. Within sixty (60) days of the Effective Date of this Agreement, the Developer shall provide the County with its proportionate share payment for the FDOT's Deficient Intersections, as described in Exhibit "C-1," which totals seven hundred ninety thousand nine hundred and ninety five dollars (\$790,995) (the "**FDOT PS Payment**"). The FDOT PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. The Developer and County further acknowledge and agree that the FDOT PS Payment as set forth above shall be the final and binding calculation of the amount the Developer is required to pay through the buildout of the currently approved Project as proportionate share mitigation for impacts of the Project upon roadways within the FDOT's jurisdiction; provided, however, that if Developer subsequently increases the number of units and/or square footage, as applicable, of the Project, the Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Section 2.4.1 below. Developer and County further acknowledge and agree that the calculation of, and agreement regarding, the amount of the FDOT PS Payment constitute material inducements for the Parties to enter into this Agreement. Pursuant to section 2.3, the County shall reimburse Developer for a portion of the FDOT PS Payment with transportation impact fee credits.

**2.1.11. No refund.** Proportionate Share contributions are non-refundable.

**2.2. Polk County's Obligations to Developer.** The following activities are to be completed by Polk County in the time frames indicated for each respective activity.

**2.2.1. Reimbursement to Developer for FDC Grove Road Improvements.** The County shall provide a cash reimbursement to the Developer for the cost of the Infrastructure Improvements minus the amount of the County PS Payment for a total reimbursement amount not to exceed one million six hundred and seventy five thousand five hundred and fifty-seven dollars and 5 cents (\$1,675,557.05). The County shall provide a cash reimbursement to the Developer for the cost of the Additional Improvements for an amount not to exceed four million one hundred and twenty-four

thousand nine hundred and seventy five dollars and thirty one cents (\$4,124,975.31). After construction of the FDC Grove Road Improvements has commenced, the Developer may begin invoicing the County on a monthly basis and shall include backup documentation justifying the request for the payment of the invoice, including, without limitation, detailed construction costs, description of the work completed, release of liens, and an affidavit from the general contractor that subcontractors, suppliers or other providers of goods or services for the FDC Grove Road Improvements reflected in the invoice have been paid in full (the “**Documentation**”). The invoice shall separate the costs associated with the Infrastructure Improvements from the costs associated with the Additional Improvements. Upon receipt of the invoice and Documentation, the County shall have thirty (30) days to review the invoice and Documentation, request additional documentation to substantiate the invoice that the County deems necessary, and conduct inspections (the “**Review Period**”). Within thirty (30) days after the County concludes its Review Period, the County shall reimburse the Developer the amount set forth in the invoice.

**2.2.2. Vesting of Trips/Concurrency.** Within twenty-one (21) days following its receipt of the FDOT PS Payment (described in Section 2.1.10.) and the LOC (described in Section 3.1.5), the County shall issue a letter of concurrency sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency on the Deficient Transportation Facilities. In the event Developer has not paid the FDOT PS Payment and LOC within sixty (60) days of the Effective Date, this Agreement shall become null and void. Additionally, nothing herein shall be construed to exempt Developer from meeting the requirements of all other applicable laws, ordinances, rules, or regulations for the construction of the Project, or from making the required payment of transportation impact fees applicable to the Project.

**2.3 Transportation Impact Fee Credits.** Upon completion of the Infrastructure Improvements and the Holly Hill Grove Road 2 Improvements pursuant to Sections 163.3180 and 163.31801, Florida Statutes, the Developer shall be entitled to receive transportation impact fee credits up to but not exceeding the total amount of the County PS Payment of two million nine hundred and fourteen thousand, eight hundred and eight-six dollars (\$2,914,886), and Holly Hill Grove Road 2 Improvement of four hundred and twenty two thousand one hundred and thirty six dollars (\$422,136). Upon the County’s receipt of the FDOT PS Payment, the Developer shall be entitled to receive transportation impact fee credits up to but not exceeding three hundred and thirty-one thousand and thirty-six dollars (\$331,036). Credits for the County PS Payment and FDOT PS Payment shall be reduced by six hundred forty nine, one hundred and eighty four 40/100 dollars (\$649,184.40) for the percentage share that the Project’s traffic represents of the added capacity to FDC Grove Road and Holly Hill Grove Road for total impact fee credits of three million and eighteen, eight hundred and seventy three dollars (\$3,018,873). 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 Section 163.31801, F.S., Transportation Impact Fees shall be credited to the Developer for the County PS Payment in accordance with and subject to the following requirements:

**2.3.1** Transportation Impact Fee credits granted pursuant to this Agreement are assignable and transferrable in accordance with Section 163.31801(8), Florida Statutes. Successors and assigns shall follow the submittal process in Section 2.3.2.

**2.3.2** The value of each impact fee credit(s) shall be the value of the impact fee at the time each future development project is submitted to Polk County for transportation impact fee credit. The submittal for impact fee credits shall occur anytime between site/construction plan (Level 2 Review) approval and the time impact fees are due to the County or applicable local government. The submittal shall be in writing to the Office of Planning Development and the credits shall be issued in the form of a voucher(s) for the total number of requested lots/units in the submittal. Said submittal shall include an approved site/construction plan(s) or recorded plat as granted by the County and the local government that has jurisdiction. Once voucher(s) are issued by the County, the amount shall be deducted from impact fee credits awarded by this Agreement.

**2.3.3** The Developer, and its successors and assigns, shall have ten (10) years from the date of issuance in which to use any Transportation Impact Fee Credits issued hereunder. Any impact fee credits issued hereunder shall be governed by the Ordinance.

## **2.4. Miscellaneous.**

**2.4.1. Increase in Project Trips.** Any change to the Project which increases the unit count and/or square footage, as applicable, may result in an increase in trips on the Deficient Segments or other segments within the transportation impact area, as defined by County. Developer understands and agrees that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Developer is precluded from asserting any such vesting. In addition, Developer understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to become null and void, and/or may require application for and execution of an additional agreement, along with any other required documentation, for the number of increased trips.

**2.4.2. Insufficiency of Agreement.** In the event that this Agreement fails to address a particular permit, condition, term, or restriction, Developer shall not be relieved of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

**2.4.3. Compliance with Applicable Standards.** Any public facility, including water, wastewater or transportation facility, designed and constructed by Developer shall be in compliance with all applicable Polk County requirements, and applicable region, state and federal standards and requirements.

**2.4.4. Consistency with Florida Statutes.** This Agreement meets the requirements of applicable Florida Statutes.

**ARTICLE III  
INDEMNIFICATION, INSURANCE, WARRANTY, AND RELEASE**

As to the construction of the Road Improvements by Developer, the Parties hereby consent and agree as follows:

**3.1 Insurance.**

**3.1.1** Developer shall require its engineer (and other design professionals) who participate in the design, installation, and construction of the Road Improvements to acquire and 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 Paragraph 3.1.2, below.

**3.1.2** Developer shall require its engineer (and other design professionals), general contractor, contractors and subcontractors who participate in the design and construction of the Road Improvements to acquire and 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

**3.1.3** 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.

**3.1.4** 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 Road 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 3.3.

**3.1.5 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 developer’s proportionate share payment cost of four million, five hundred and ninety thousand four hundred and forty-three dollars to construct the Road Improvements, as stated in **Exhibit “C.”** 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 Road Improvements have been accepted for ownership and maintenance by Polk County. Polk County shall release the LOC upon Developer satisfactorily completing the Road Improvements and providing all record drawings to Polk County. In the event Developer fails to complete the Road Improvements, Polk County shall have the right but not the obligation to draw on the LOC.

- 3.2 Warranty Period.** Developer shall provide a warranty surety in the form of either a maintenance bond or letter of credit, acceptable to Polk County, in the amount of 10% of the cost to construct the Road Improvements, to warrant the Road Improvements and any appurtenances thereto constructed by Developer from any and all defects for a period of one (1) calendar year from the date in which Polk County accepts the Road Improvements for ownership and maintenance.
- 3.3 Release.** For and in consideration of the mutual agreements set forth herein, Developer agrees the terms and conditions of this Agreement are reasonable under the totality of the circumstances, and the Developer for itself, and on behalf of its successors, assigns or trustees, and anyone claiming by, through, or under any of them, does hereby fully waive, release and forever discharge Polk County from and against any claims for inverse condemnation, regulatory takings, U.S.C. Section 1983, or claims under Chapter 70, Florida Statutes, arising out of or resulting from the terms and conditions hereof. Developer acknowledges and agree that its agreement to this release is a material inducement to Polk County to enter into this Agreement. The Parties agree that this release is to the specific causes of action listed and not be deemed a release of any non-listed causes of action to which Developer may be entitled.
- 3.4 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.
- 3.5 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 for 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.

**ARTICLE IV  
MISCELLANEOUS PROVISIONS**

- 4.1 Notices.** Any notice delivered with respect to this Agreement shall be in writing and deemed delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth below, or to such other address or other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

Polk County:

Chairman  
Polk County Board of County  
Commissioners 330 West Church Street  
Bartow, Florida

33830 with a copy

to:

County Attorney  
Polk County Board of County  
Commissioners 330 West Church Street  
Bartow, Florida 33830

Polk County Office of Planning and  
Development 330 West Church Street  
Bartow, Florida 33830

Developer:

GLK Real Estate, LLC  
Attn: Rennie Heath  
346 East Central Ave.  
Winter Haven, Florida 33880

- 4.2 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.
- 4.3 Amendment or Cancellation.** No amendment, modification, or other change(s) to this Agreement shall be binding upon the Parties unless in writing and formally executed by

all of the Parties.

- 4.4 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. Polk County shall pay the costs of recording this Agreement as well as any amendment, cancellation, modification, extension, or revocation thereto.
- 4.5 Applicable Law, Enforcement, Jurisdiction and Venue.** This Agreement shall be subject to the following provisions:
- 4.5.1** This Agreement and the rights and obligations of the County and Developer hereunder shall be interpreted, governed by, construed under, and enforced in accordance with the applicable laws of the State of Florida, and the Laws of Polk County pursuant to the Land Development Code, Polk County Comprehensive Plan, and any amendments thereto in effect on the Effective Date of this Agreement.
  - 4.5.2** Venue for any litigation pertaining to the subject matter hereof shall be exclusively in the state courts in and for Polk County, Florida, or Federal Court in the Middle District of Florida, located in Tampa, Florida.
  - 4.5.3** 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.
  - 4.5.4** 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.
  - 4.5.5** 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.
- 4.6 Successors and Assignment.** This Agreement shall be binding upon and the benefits and obligations of this Agreement shall inure to all heirs, legal representatives, successors and assigns of the Parties to this Agreement. In the event the Developer assigns this Agreement and its rights, obligations and responsibilities hereunder to a third party, the Developer shall provide written notice to the County.
- 4.7 Entire Agreement.** This Agreement contains the entire understanding between the Parties, and the Parties agree that no representation was made by or on behalf of any Party that is not contained in this Agreement, and that in entering into this Agreement neither relied upon, or was entitled to rely upon, any representation not herein specifically set forth.

- 4.8 **Effective Date.** This Agreement shall become effective upon the County's execution of the Agreement (the "**Effective Date**").
- 4.9 **Default and Opportunity to Cure.** With exception of the timing of the FDOT PS Payment as set forth in Section 2.1.10, 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. This section 4.9 does not apply to the Developer's default for failure to timely pay the FDOT PS Payment and timely provide the LOC pursuant to sections 2.1.10 and 3.1.5, respectively; Developer's failure to perform said obligations is addressed in section 2.2.2.
- 4.10 **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.
- 4.11 **Exhibits.** All exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by this reference.
- 4.12 **Release.** For and in consideration of the mutual agreements set forth herein, Developer agrees the terms and conditions of this Agreement are reasonable under the totality of the circumstances, and Developer for itself, and on behalf of its successors, assigns or trustees, and anyone claiming by, through, or under any of it, does hereby fully waive, release and forever discharge Polk County from and against any claims for inverse condemnation, regulatory takings, U.S.C. Section 1983, or claims under Chapter 70, Florida Statutes, arising out of or resulting from the terms and conditions this Agreement. Developer acknowledges and agrees that its agreement to this release is a material inducement to the County to enter into this Agreement. The Parties agree that this release is to the specific causes of action listed and not be deemed a release of any non-listed causes of action to which Developer may be entitled.
- 4.13 **Self-Help Provision.** In the event Developer proceeds with the Road Improvements according to the terms set forth herein and the County desires to expedite the overall construction of the Road Improvements, the County shall be permitted, upon delivery of written notice to Developer, to assume Developer's responsibilities related to the construction of the Road 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 Road 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.

**4.14 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 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:
  - a. Keep and maintain public records required by the County to perform the services required under this Agreement.
  - b. 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.
  - c. 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 the Developer does not transfer the records to the County.
  - d. 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 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**

**4.15. 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, through their duly authorized representatives, have executed this Agreement on the day(s) and year set forth below.

**BOARD OF COUNTY COMMISSIONERS  
OF POLK COUNTY**

(SEAL)

ATTEST:

By: \_\_\_\_\_  
George Lindsey, III, Chair

Date signed by Chairman: \_\_\_\_\_

**Signature Blocks Continues on Next Page**

**GLK Real Estate, LLC**

WITNESSES

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

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

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

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

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

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

State of  
Florida  
County of  
Polk

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, 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.

(AFFIX NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public – State of Florida  
Print Name:  
\_\_\_\_\_

My Commission

Expirationand

Commission Number:

## **List of Exhibits**

Exhibit A – Legal Description

Exhibit B – Cascades Site Plan

Exhibit B-1 – Wynnstone Site Plan

Exhibit B-2 – Brentwood Site Plan

Exhibit C – County Proportionate Share Amount and Infrastructure Improvements Cost Estimate

Exhibit C-1 – FDOT Proportionate Share Amount

Exhibit D-1 – Infrastructure Improvement Plans and Specifications

Exhibit D-2 - Additional Improvements Cost Estimate Exhibit D-3 - Holly Hill Grove Road 2

Improvements Cost Estimate

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

EXHIBIT "B"

SITE PLAN--CASCADES

EXHIBIT "B-1"

SITE PLAN -- WYNNSTONE

EXHIBIT "B-2"

SITE PLAN – BRENTWOOD

EXHIBIT "C"

COUNTY PS AMOUNT & INFRASTRUCTURE IMPROVEMENTS COST ESTIMATE

EXHIBIT "C-1"

FDOT PS AMOUNT

EXHIBIT “D-1”

INFRASTRUCTURE IMPROVEMENT PLANS AND SPECIFICATIONS

EXHIBIT "D-2"

ADDITIONAL IMPROVEMENTS COST ESTIMATE

EXHIBIT "D-3"

HOLLY HILL GROVE ROAD IMPROVEMENTS COST ESTIMATE