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**AGENDA ITEM
ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS**

Deadline for Submission - Wednesday 9 a.m. – Thirteen Days Prior to BCC Meeting

4/2/2019

BCC MEETING DATE

TO: Michael D. Wanchick, County Administrator

DATE: March 8, 2019

FROM: Jan Trantham, Senior Transportation Planner

PHONE: 209-0611

SUBJECT OR TITLE: IFAM 2019-01 Amended Concurrency and Impact Fee Credit Agreement (Proportionate Fair Share Agreement) for Mill Creek Plaza PUD

AGENDA TYPE: Consent Agenda, Contract

BACKGROUND INFORMATION:

Mill Creek Plaza, LLC (Developer) and Turner WGV, LLC (Owner - Phase 1) have requested an amendment of the Mill Creek Plaza Proportionate Fair Share Agreement (PFS AGREE 2016-06) that was approved by the BCC March 7, 2017 to mitigate for concurrency transportation impacts for Phase 1 of the Mill Creek Plaza PUD for the development of 12,000 sq. ft. hardware store. Article XI (Concurrency Management) of the Land Development Code was specifically amended on August 7, 2018 to exempt non-residential development from concurrency. Transportation mitigation is no longer required for non-residential developments. The Mill Creek Plaza PUD is a non-residential development and the Developer/Owner has requested that the Agreement be amended to remove the remaining proportionate share payment and memorialize the road impact fee credit awarded for dedication of right-of-way on SR 16.

1. IS FUNDING REQUIRED? No

2. IF YES, INDICATE IF BUDGETED. No

IF FUNDING IS REQUIRED, MANDATORY OMB REVIEW IS REQUIRED:

INDICATE FUNDING SOURCE:

SUGGESTED MOTION/RECOMMENDATION/ACTION:

Motion to approve IFAM 2019-01 and authorize the County Administrator to execute the Amended Concurrency and Impact Fee Credit Agreement for Mill Creek Plaza PUD finding that the amendment of PFS AGREE 2016-06 is consistent with Article XI of the Land Development Code, as amended.

For Administration Use Only:

Legal: PS 3/15/2019

OMB: DC 3/18/2019

Admin: DML 3/20/2019

ATTACHMENT 1

DOCUMENTS TO BE RECORDED

AMENDED

MILL CREEK PLAZA

CONCURRENCY AND IMPACT FEE
AGREEMENT

IFAM 2019-01

AMENDED
CONCURRENCY AND IMPACT FEE CREDIT AGREEMENT
(Proportionate Fair Share Methodology, LDC Section 11.09.04)

THIS AMENDED CONCURRENCY AND IMPACT FEE CREDIT AGREEMENT

(the “**Agreement**”) is made as of this ____ day of _____, 2019, by and between **MILL CREEK PLAZA, LLC**, a Florida limited liability company, its heirs, successors or assigns, (“**Mill Creek**”), **TURNER WGV, LLC**, its successors or assigns, (“**Turner**”), and **ST. JOHNS COUNTY**, a political subdivision of the State of Florida (the “**County**”).

W I T N E S S E T H:

WHEREAS, Mill Creek and the County entered into that certain Concurrency and Impact Fee Credit Agreement dated March 14, 2017 and recorded at Official Records Book 4343, Page 1848 of the public records of St. Johns County, Florida (the “**Mill Creek Agreement**”) that is applicable to the real property described in **Exhibit “A”** attached hereto (the “**Development Property**”); and

WHEREAS, the Development Property is subject to the Planned Unit Development approved under Ordinance 2016-20, as amended by Ordinance 2018-19 (collectively, the “**PUD**”); and

WHEREAS, the Mill Creek Agreement contemplated the development of up to 45,000 square feet of non-residential development, including 12,000 square feet of hardware space (the “**Phase I Development**”) and up to 33,000 additional square feet of non-residential development including specialty retail space, a ten pump gasoline station with convenience mart and carwash,

and a fast food restaurant with drive-thru window (the “Phase II Development”) as more particularly described in the Mill Creek Hardware PUD; and

WHEREAS, Ordinance 2018-19 amended the Phase I Development to include 15,000 square feet of hardware space and the Phase II Development to include up to 30,000 additional square feet of non-residential development; and

WHEREAS, at the time of the Mill Creek Agreement approval, Mill Creek was the owner of all of the Development Property, but subsequently conveyed a portion of the Development Property and the approved development rights under the PUD for the Phase I Development to Turner, and has retained the remainder of the Development Property and the approved development rights under the PUD for the Phase II Development; and

WHEREAS, the Mill Creek Agreement set forth Mill Creek’s obligation to dedicate right-of-way for State Road 16 to the County and to contribute proportionate fair share funds to mitigate for the PUD development’s proportionate fair share impacts to roadway improvements as defined in the Mill Creek Agreement in the amount of \$58,337.00 for the Phase I Development (the “Phase I PFS”), with a new Concurrency and Impact Fee Agreement to be required if and when the Phase II Development is proposed (the “Phase II PFS”); and

WHEREAS, Mill Creek has dedicated the right-of-way for State Road 16 with an approved valuation under the Mill Creek Agreement of \$85,000.00 pursuant to that certain Deed of Dedication dated April 18, 2017 and recorded at Official Records Book 4386, Page 794 of the public records of St. Johns County, Florida and accepted by the County under Resolution 2017-178 (the “Dedication”); and

WHEREAS, on or about August 7, 2018, the St. Johns County Board of County Commissioners passed Ordinance Nos. 2018-43 and 2018-44, exempting non-residential development from the County's concurrency system; and

WHEREAS, there is no longer a requirement for the Phase I PFS or the Phase II PFS for the development of the PUD under the County's concurrency system; and

WHEREAS, Mill Creek is entitled to Road Impact Fee Credits as defined under Section 13 of St. Johns County Ordinance #87-57, as amended, in the amount of \$85,000 for the Dedication to be collected on road impact fees that become due for development that occurs within the Development Property; and

WHEREAS, the parties have agreed to formally amend the Mill Creek Agreement to terminate the requirement for the Phase I PFS or Phase II PFS and to memorialize Mill Creek's award of Road Impact Fee Credits in the amount of \$85,000; and

WHEREAS, Turner consents to this Amendment of the Mill Creek Agreement to terminate the requirement for proportionate share mitigation and to acknowledge the remaining award to Mill Creek of Road Impact Fee Credits; and

WHEREAS, all provisions of the Mill Creek Agreement that are not modified in this Amendment remain in full force and effect.

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

1. Findings of Fact

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

2. Proportionate Fair Share Payments

The requirement for the Phase I PFS is hereby terminated and Phase II of the project shall comply with St. Johns County's Concurrency requirements (if any) at the time of construction plan approval for the Phase II Development.

3. Impact Fee Credits.

a. The total Road Impact Fee Credits awarded to Mill Creek for use on the Development Property is \$85,000.00. The total amount of Road Impact Fee Credits available shall be limited to the amount of Road Impact Fees due for the Development Property.

b. Mill Creek may sell, transfer, assign, or convey all or part of its allocation of Road Impact Fee Credits to a purchaser, transferee, assignee or grantee for use only within the Development Property for such consideration as Mill Creek determines. In such event, Mill Creek shall execute and deliver to the County a copy of the instrument selling, transferring, assigning or granting its allocation of the Road Impact Fee Credits, or portion thereof to a Feepayer. Mill Creek and Turner acknowledge that only one Road Impact Fee Credit account may exist at any given time for the Development Property.

c. Mill Creek shall issue vouchers to FeePAYERS within the Development Property that contain a statement setting forth the amount of Road Impact Fees paid, an example of which is attached as **Exhibit "B"** to this Agreement.

18. Effective Date.

This Agreement shall become effective the date it is recorded in the Public Records of St. Johns County, Florida (the "Effective Date"). If this Agreement is not executed by Mill Creek and

Turner and delivered to the County within thirty (30) days of approval, this Agreement shall be come null and void.

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

MILL CREEK:

Witness:

Mill Creek Plaza, LLC, a Florida limited liability company

By: Jagplan, LLC, a Delaware limited liability company
Its: Manager

Name: _____

By: _____
Name: Greg Severt
Its: Member

Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument is hereby acknowledged before me this ____ day of _____, 2019, by Greg Severt, as Member of Jagplan, LLC, a Delaware limited liability company, as Manager of Mill Creek Plaza, LLC, A Florida limited liability company, on behalf of the company. He is personally known to me.

NOTARY PUBLIC, State of Florida
Name: _____

My Commission Expires: _____
My Commission Number is: _____

TURNER:

Witness:

Turner WGV, LLC, a Florida limited liability company

Name: _____

By: _____
Name: Mitchell A. Turner
Its: Manager

Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument is hereby acknowledged before me this ____ day of _____, 2019, by Mitchell A. Turner, as Manager of Turner WGV, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me.

NOTARY PUBLIC, State of Florida
Name: _____

My Commission Expires: _____
My Commission Number is: _____

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

Witness:

ST. JOHNS COUNTY, FLORIDA

Name: _____

By: _____
Name: Michael D. Wanchick,
County Administrator

Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument is hereby acknowledged before me this ____ day of _____, 2019, by Michael D. Wanchick, who is the County Administrator for St. Johns County, Florida, and is authorized to execute this Agreement on behalf of St. Johns County, Florida. He is personally known to me.

NOTARY PUBLIC, State of Florida
Name: _____

My Commission Expires: _____
My Commission Number is: _____

Exhibit "A"

[Legal Description of Development Property]

A PORTION OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 216, PAGE 624, OFFICIAL RECORDS BOOK 759, PAGE 1284, OFFICIAL RECORDS BOOK 2181, PAGE 306, OFFICIAL RECORDS BOOK 2181, PAGE 308, OFFICIAL RECORDS BOOK 2181, PAGE 313 AND OFFICIAL RECORDS BOOK 2273, PAGE 548, ALL OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE SOUTHWEST RIGHT OF WAY LINE OF STATE ROAD NO. 16, (SAID RIGHT OF WAY AT THIS POINT BEING 200 FEET IN WIDTH) WITH THE SOUTHEAST RIGHT OF WAY LINE OF STATE ROAD NO. 16 (FORMERLY STATE ROAD NO. 16-A AND WOLFE CUT-OFF ROAD), A 66 FOOT WIDTH RIGHT OF WAY; THENCE SOUTH 55°15'00" EAST ON SAID SOUTHWEST RIGHT OF WAY LINE OF STATE ROAD NO. 16, A DISTANCE OF 720.54 FEET TO A 1/2" IRON PIPE "NO IDENTIFICATION", SAID IRON PIPE BEING AT THE NORTHEAST CORNER OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 95, PAGE 336, OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA; THENCE SOUTH 20°32'14" WEST, ALONG THE EAST LINE OF SAID LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 95, PAGE 336, OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA, A DISTANCE OF 302.21 FEET; THENCE NORTH 71°40'16" WEST, A DISTANCE OF 1112.98 FEET; THENCE NORTH 18°04'39" WEST, A DISTANCE OF 149.10 FEET TO A POINT ON THE SOUTHEAST RIGHT OF WAY LINE OF SAID STATE ROAD NO. 16; THENCE NORTH 71°52'08" EAST, ALONG SAID SOUTHEAST RIGHT OF WAY LINE OF STATE ROAD NO. 16, A DISTANCE OF 649.00 FEET TO THE POINT OF BEGINNING.

Exhibit "B"

Example of Voucher

ST. JOHNS COUNTY ROAD IMPACT FEE VOUCHER
Mill Creek Hardware PUD Development

Voucher No. _____

1. Name and Address of Grantor:

2. Name and Address of Grantee: _____
3. Legal Description of Subject Property: **See Exhibit A attached hereto.**
4. Subdivision or Master Development Plan Name: _____

The undersigned confirms that it has received from _____
on _____, 20____, funds sufficient for the following impact fees required under
the applicable St. Johns County Impact Fee Ordinance, as amended, as indicated below. Grantor
gives notice to St. Johns County, Florida, that the following sums should be deducted from the
applicable Impact Fee Credit Account of _____.

____ Roads Ordinance #87-57 in the amount of \$_____

MILL CREEK PLAZA, LLC

By: _____
Name: _____
Its: _____

END OF RECORDED SECTION

ATTACHMENT 2

APPROVED

MILL CREEK PLAZA

CONCURRENCY AND IMPACT FEE
AGREEMENT (PFS AGREEMENT)

PFS AGREE 2016-06

CONCURRENCY AND IMPACT FEE CREDIT AGREEMENT
(Proportionate Fair Share Methodology, LDC Section 11.09.04)

THIS CONCURRENCY AND IMPACT FEE CREDIT AGREEMENT (the “Agreement”) is made as of this 14 day of March, 2017, by and between **MILL CREEK PLAZA, LLC**, a Florida limited liability company, its heirs, successors or assigns, (“Developer”), and **ST. JOHNS COUNTY**, a political subdivision of the State of Florida (the “County”).

WITNESSETH:

WHEREAS, Developer owns the real property described in **Exhibit “A”** attached hereto (the “Development Property”), which land is currently designated as Community Commercial land use under Ordinance 2016-19 and Planned Unit Development pursuant to St. Johns County Ordinance 2016-20 (the “Mill Creek Hardware PUD”) and Developer intends to develop the Development Property as set forth below and in accordance with the Mill Creek Hardware PUD; and

WHEREAS, the Mill Creek Hardware PUD allows the development of up to 45,000 square feet of non-residential development (the “Development”), including 12,000 square feet of hardware space (the “Phase I Development”), and up to 33,000 additional square feet of non-residential development including specialty retail space, a ten pump gasoline station with convenience mart and carwash, and a fast food restaurant with drive-thru window (the “Phase II Development”), as more particularly described in the Mill Creek Hardware PUD; and

WHEREAS, a finding of inadequate transportation capacity for an application for concurrency determination (CONMAJ 2015-16) was issued by St. Johns County on January 11, 2016, with a finding that Staff analysis indicated inadequate transportation capacity on Link 90 (SR 16 from SR 13 to CR 16-A); and

WHEREAS, based upon existing traffic volumes on SR 16, the County has determined that two access points from SR 16 into the project will be required to serve the Development; a western access on the two-lane portion of SR 16 to be constructed within Phase I and an eastern access to be constructed prior to any Phase II Development; and

WHEREAS, Developer seeks by this Agreement to obtain a determination by the County that adequate public facilities and services are available (“Concurrency”) for the Phase I Development; and

WHEREAS, a new Concurrency and Impact Fee Agreement will be required if and when the Developer proposes in the future to develop the Phase II Development; and

WHEREAS, the County has adopted a Proportionate Fair Share Program, as defined in Part 11.09.00 of the County’s Land Development Code (“LDC”) that establishes a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors; and

WHEREAS, Developer seeks by this Agreement to obtain a certificate of concurrency for the Phase I Development benefiting the Development Property; and

WHEREAS, Developer seeks by this Agreement to set forth its obligation regarding dedication of right-of-way for SR 16 to the County and payment for County-initiated transportation improvements to SR 16, or other capacity improvements within the project impact area reasonably related to impacts of the Phase I Development to be determined by the County at its sole discretion (the “Roadway Improvements”) pursuant to Section 163.3180, Florida Statutes and Section 11.09.04.B of the LDC to mitigate for the Development’s proportionate fair share impacts; and

WHEREAS, the transportation improvements and other activities to be made or performed by the County using the Developer’s proportionate fair share contribution will advance the

implementation of the County's adopted Traffic Circulation Element as contained within the 2025 EAR-based Amendments to the St. Johns County Comprehensive Land Use Plan and will provide a significant benefit to the impacted transportation system by improving the overall Level of Service on the impacted transportation system; and

WHEREAS, the County deems it to be in the public interest to recognize the contributions of Developer in improving the transportation system in the portion of the County in which the Development Property is located; and

WHEREAS, pursuant to the County requirements of the LDC, Developer is providing both right-of-way donation and funds for the Roadway Improvements that are recognized as meeting the requirements for Road Impact Fee Credits, as defined herein below; and

WHEREAS, St. Johns County Road Impact Fee Ordinance #87-57, as amended, allows impact fee credits to be granted for proportionate fair share payments and right-of-way donation and certain improvements ("Road Impact Fee Credits"); and

WHEREAS, Developer desires to enter into this Agreement to set forth the conditions under which a Final Certificate of Concurrency, as that term is defined in the LDC, for traffic impacts may be issued for the Phase I Development to be developed on the Development Property, and pursuant to the terms of Ordinance #87-57, as amended, set forth the terms and conditions upon which Road Impact Fee Credits shall be available and used; and

WHEREAS, the County has determined that Developer is making a binding commitment for itself and its successors and assigns in the Phase I Development and the Development Property to the County to donate right-of-way and to fund a portion of the transportation facilities necessary to mitigate the impacts of the Phase I Development pursuant to Section 11.09.04.B of the LDC; and

WHEREAS, Developer desires to make these binding commitments to fund a proportionate fair share of the construction of the necessary public facilities to achieve available capacity pursuant to Section 11.03.01.A.2 of the LDC; and

WHEREAS, the LDC, as amended from time to time, allows the County's execution of such Agreement; and

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

WHEREAS, Developer or its successors or assigns will be required to dedicate right of way and to pay road impact fees as set forth in Ordinance #87-57, as amended ("Road Impact Fees") for roads in connection with the Development. As a result, Developer is a "Feepayer" as defined in Ordinance #87-57, as amended, which establishes the existence of Road Impact Fees and provides a procedure for awarding Road Impact Fee credits to FeePAYERS under certain circumstances; and

WHEREAS, this Agreement will provide a mechanism for the management of the Road Impact Fee Credits to which Developer shall or may become entitled by the terms hereof; and

WHEREAS, a commitment to donate right of way and to contribute both funds and right-of-way donation for the proportionate share of construction costs of an improvement is necessary for Developer to obtain a final certificate of concurrency for the Phase I Development.

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

1. Findings of Fact

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

2. Purpose.

The purpose of this agreement is:

a. to grant any owner of the Development Property, or any portion thereof, traffic concurrency as provided for in Concurrency Certificate No. CONMAJ 2015-16 as required for the construction of the Phase I Development authorized by this Agreement at any time during the term of this Agreement, as this Agreement may be amended or extended from time to time, subject to compliance with the terms and conditions of this Agreement and the Concurrency Certificate, as appropriate, by Developer; and

b. to recognize transportation improvements to be proportionately funded by Developer as providing significant benefit to the impacted transportation system in the area of the Development Property.

3. Densities and Intensities Statement.

The Mill Creek Hardware PUD allows the development of up to 45,000 square feet of non-residential development, including the Phase I Development of 12,000 square feet of hardware space (the Phase I Development) and up to 33,000 additional square feet of non-residential development which includes specialty retail space, a ten pump gasoline station with convenience mart and carwash, and a fast food restaurant with drive-thru window (the Phase II Development), as more particularly described in the Mill Creek Hardware PUD. This Agreement seeks traffic concurrency for the Phase I Development only.

Amendments to the zoning classification and/or the proposed Development from time to time, which do not increase the transportation impacts beyond the development intensities proposed or allowed therein or the equivalent thereof as identified in the traffic impact analysis report submitted in support of any such ordinance and the request for concurrency, shall not affect the validity or vary the terms of this Agreement. If a zoning and/or development change is made that in any way increases such transportation impacts as set forth herein, this Agreement shall not be effective only as to the incremental development causing the increased impacts, but such incremental development shall not limit or impair any rights, privileges and benefits afforded by this Agreement.

4. Developer's Total Proportionate Share Obligation

a. The engineer's opinion of probable construction costs estimated to improve all deficient roadways within the Mill Creek Hardware PUD's Traffic Impact Area equate to a total cost of \$13,514,629.00, of which the proportionate fair share for the Phase I Development is calculated to be \$143,337.00 as detailed in the attached **Exhibit "B"** (the "PFS Amount").

b. The Developer shall execute a deed to the County for the right of way for SR 16 valued at \$85,000.00 that is more particularly described in Exhibit "C" within 60 days after approval of this Agreement by the County.

c. The Developer shall pay its remaining amount of proportionate fair share (\$143,337.00 - \$85,000.00 = \$58,337.00) for the Phase I Development no later than two (2) years from the approval of this Agreement provided, however, that prior to final construction plan approval for any portion of the Phase I Development, a proportionate fair share payment based upon the number of trips allocated to that portion of the development within the final construction plan set is required. The remaining portion(s) of the PFS Amount shall be due prior to construction

plan approval of any portion of the remaining Development, based upon the number of trips allocated to that portion of the Phase I Development.

d. The Developer will construct the Left Turn Access at the western entrance to the project on or before as-built approval of the Phase I Development and the Right Turn Access at the eastern entrance will be constructed on or before as-built approval for any portion of the Phase II Development.

e. The Developer commits to pay the PFS Amount for traffic impacts to facilitate the Roadway Improvements as defined herein.

5. County Obligations.

a. By executing this Agreement, the County hereby authorizes this Agreement to be used as a basis for granting transportation concurrency for the Phase I Development as provided for in Article XI of the LDC. This authority extends, however, only to the authority contemplated by Article XI of the LDC and neither expressly nor impliedly relieves Developer of the obligation to secure any and all other State, Federal and local permits necessary to authorize the Phase I Development contemplated by this Agreement. The County shall issue a Final Certificate of Concurrency (CONMAJ 2015-16) upon approval of this Agreement, which Final Certificate of concurrency may precede the approval of this Agreement and be conditioned upon the approval of this Agreement and in compliance with the conditions set forth herein.

b. The County assumes all obligations for the completion of the Roadway Improvements.

c. Upon payment of the PFS Payment, all of the required trips will remain reserved in perpetuity and no further payment or mitigation will be due for the Phase I Development.

d. The County recognizes the Roadway Improvements as significantly benefiting the impacted transportation system.

e. The County has adopted or will adopt the Roadway Improvements into the County's Five-Year Schedule of Capital Improvements in the County's Capital Improvements Element ("CIE") of its Comprehensive Plan at its next scheduled update.

6. Authority and Duration.

This Agreement is made and granted pursuant to the St. Johns County LDC and Florida Statute 163.3180, as they may be amended from time to time, and is effective from the Effective Date through the expiration of the Final Certificate of Concurrency, unless otherwise extended by extension of the Final Certificate of Concurrency or by agreement of the parties hereto. In the event the Final Certificate of Concurrency is extended, the duration of this Agreement shall also be automatically extended.

7. Extension of Agreement: Subsequent Change.

The duration of this Agreement may be extended by the County. If the County modifies the LDC with respect to the Concurrency Management System subsequent to the execution of this Agreement, or if a change in circumstances warrants such that the Roadway Improvements do not represent the best method for mitigation of transportation impacts, the County may pursue such other method so long as the rights granted to Developer in this Agreement are not adversely impacted and remain unchanged, and the payment obligations of the Developer do not increase.

8. Necessity to Obtain Permits.

Developer hereby acknowledges its obligation to obtain all necessary local development permits which may be needed for the Development Property. The failure of this Agreement to address any particular permit, condition, term, or restriction applicable to the Development

Property shall not relieve Developer or its heirs, successors or assigns, of the necessity of complying with federal, state, and local permitting requirements, conditions, terms, or restrictions as may be applicable. In the event Developer encounters unanticipated delays in obtaining the required permits, or is unable to obtain the required permits, the County will not unreasonably deny, upon a showing of good cause, a request to extend the timeframes contemplated herein.

9. Impact Fees.

Pursuant to Ordinance #87-57, as amended, the County requires any person who seeks to develop land within St. Johns County, as evidenced by such person's application for a building permit or certificate of occupancy, to pay a Road Impact Fee so as to assure that such new development bears a proportional share of the cost of capital expenses necessary to provide roads in St. Johns County.

a. Roadway Improvements. Pursuant to the requirements of this Agreement, Developer has agreed to provide funds for the Development's proportionate share of the Roadway Improvements and to donate right-of-way for SR 16 to the County for the Development, as outlined in Section 4 above.

b. Amount. The Developer has requested and the County has agreed to provide Developer with certain road impact fee credits equal to the PFS Amount of \$143,337.00 pursuant to Section 13 of Ordinance #87-57, as amended. Cash payment of the PFS Amount paid to the County and the value of the right of way for CR 16 shall be eligible for Road Impact Fee Credits on a "dollar for dollar" basis. The total Road Impact Fee Credits available shall be limited to the amount of Road Impact Fees due for the Development Property. Road Impact Fee Credits shall be awarded to Developer when any portion of the cash payment of the PFS Amount is paid and the right of way for SR 16 has been dedicated to the County as provided under this Agreement.

c. Method of Issuance. From and after the date hereof, all Feepayers applying for building permits or certificates of occupancy in connection with any construction in the Development Property shall pay the amount due under the Road Impact Fee Ordinance, directly to the Developer to the extent there remain unused road impact fee credits available within the Development Road Impact Fee credit account. Developer shall be fully responsible for notifying all Feepayers of this requirement and shall ensure that such payments are directly paid to Developer. Then, for so long as the total Road Impact Fee Credits for which the Developer has issued vouchers under this Agreement is less than the total Road Impact Fee Credits authorized by this Agreement, Developer shall issue such Feepayer a voucher evidencing full payment of Road Impact Fees in connection with such Feepayer's application for building permit or certificate of occupancy. The voucher issued by Developer shall contain a statement setting forth the amount of Road Impact Fee paid, and an example of said voucher is included as **Exhibit "D"** to this Agreement. Upon presentation of such voucher by the Feepayer, the County shall issue a receipt to the Feepayer and deduct the amount of such voucher from the Development's Road Impact Fee Credit Account. In the event that the County institutes an alternate mechanism to the current vouchers for Road Impact Fee Credits, such as a voucherless system, Developer and Feepayer may use said alternate system.

d. Sale of Development. In the event Developer may determine to sell all or part of its Property, Developer may sell, transfer, assign, or convey all or part of its allocation of Road Impact Fee Credits to such purchaser, transferee, assignee or grantee for use only within the Development Property for such consideration as Developer determines. In such event, Developer shall execute and deliver to the County, a copy of the instrument selling, transferring, assigning or granting its allocation of the Road Impact Fee Credit, or portion thereof to a Feepayer. Developer

acknowledges that only one Impact Fee Credit account may exist at any given time for the Development Property.

e. Limitations on Amount/Assignability/Use. In no event shall Developer sell, transfer, assign or convey all or part of the Road Impact Credits for use outside the Development Property, without the approval of the County. Further, Developer acknowledges the total amount of such Road Impact Fee Credits may be further limited by Section 13 of Ordinance #87-57, as amended, and in effect at the time this Agreement becomes effective and Developer covenants and agrees that it will not challenge by any judicial proceeding the interpretation of the County Attorneys' office that the Road Impact Fee Credits identified or granted by this Agreement are limited to the extent and/or amount of Road Impact Fees which are due or become due from the Development. Road Impact Fee Credits can be applied to extend the Final Certificate of Concurrency.

10. Remedies.

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

11. Future Impact Fee Assessments, Proportionate Fair Share Refunds.

a. Nothing in this Agreement shall be deemed to require the County to continue to levy or collect Road Impact Fees, or, if levied, to levy them for any certain amount.

b. Notwithstanding any other provision in this Agreement, no land, except the Development Property, shall be, implicitly or explicitly, considered approved for concurrency, by virtue of this Agreement.

c. In the event that the proposed or constructed Phase I Development is so modified as to create a net reduction of impacts to the impacted transportation system from those outlined in Section 3 herein and its related application for concurrency (CONMAJ 2015-16), Developer shall have the right to obtain a pro rata reduction by modification of this Agreement pursuant to the review and approval of a Concurrency Certificate Modification that results in reduced transportation impacts. In the event that the proportionate fair share obligation described at Section 4 above of this Agreement has already been met for any portion of the Phase I Development, Developer shall hold a transportation concurrency credit for the Development Property that may be applied to a subsequent phase or portion of the Development equal to the pro rata reduction based on reduced transportation impacts.

12. Binding Effect.

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement.

13. Applicable Law; Jurisdiction of Venue.

This Agreement, and the rights and obligations of the parties hereto as they may appear herein, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in St. Johns County, Florida. The parties waive trial by jury. If any provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement

shall be valid and enforceable to the fullest extent permitted by law. The fact that this Agreement does not detail all laws, rules, regulations, permits, conditions, terms and restrictions that must be satisfied to complete the development contemplated by this Agreement shall not relieve any party, or its successors in interest of the obligation to comply with the law governing such permit requirements, conditions, terms, and restrictions. Notwithstanding the foregoing, the interests of each party may be mortgaged in connection with a mortgage of any portion of the Development Property.

14. Joint Preparation.

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

15. Exhibits.

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

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

17. Counterparts.

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

18. Effective Date.

This Agreement shall become effective the date it is recorded in the Public Records of St. Johns County, Florida (the "Effective Date"). If this Agreement is not executed by the Developer

and delivered to the County within thirty (30) days of approval, this Agreement shall be come null and void.

19. Amendment.

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

20. Duration of Permits.

Developer acknowledges, except for the extension of the concurrency reservation of transportation capacity as hereinabove enumerated, this Agreement does not extend the duration of any other permits or approvals.

21. Further Assurances.

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

22. Notices.

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

For the County:

County Administrator
St. Johns County
500 San Sebastian View
St. Augustine, Florida 32084

With copy to: County Attorney
St. Johns County
500 Sebastian View
St. Augustine, Florida 32084

For Developer: Mill Creek Plaza, LLC
c/o Greg Severt
3304 Coastal Highway
St. Augustine, FL 32084

With copy to: Kathryn F. Whittington, Esq.
Whittington Law, PLLC
24 Cathedral Place, Ste. 400
St. Augustine, FL 32084

23. Miscellaneous Provisions:

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

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

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

d. If the Developer has met all of its obligations hereunder, then, the rights granted to Developer hereunder shall survive the termination of this Agreement and shall continue for so long as there remain any unused Road Impact Fee Credits.

e. Nothing in this Agreement shall act to allow Developer to receive Road Impact Fee Credits for contributions provided by a government entity including, but not limited to a Community Development District but if a Community Development District makes such payments on behalf of a party, then it shall be entitled to the Road Impact Fee Credits.

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

DEVELOPER:

Witness:

Mill Creek Plaza, LLC, a Florida limited liability company

By: Jagplan, LLC, a Delaware limited liability company

Its: Manager

Pam Halterman
Name: Pam Halterman

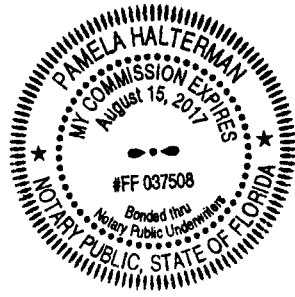
By: Greg Severt
Name: Greg Severt
Its: Member

Bonnie A. Potman
Name: BONNIE A POTMAN

STATE OF _____
COUNTY OF _____

The foregoing instrument is hereby acknowledged before me this 14 day of March, 2017, by Greg Severt, as Member of Jagplan, LLC, a Delaware limited liability company, as Manager of Mill Creek Plaza, LLC, A Florida limited liability company, on behalf of the company. He is personally known to me. DL FI [REDACTED]

exp 9/2033
Pamela Halterman
NOTARY PUBLIC, State of Florida
Name: Pamela Halterman



My Commission Expires: 8/15/17
My Commission Number is: FP037508

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

Witness:

ST. JOHNS COUNTY, FLORIDA

Pam Halterman
Name: Pam Halterman

Bonnie A. Putman
Name: BONNIE A PUTMAN

By: [Signature]
Name: Michael D. Wanchick,
County Administrator

Date: 3/13/17

LEGALLY SUFFICIENT

[Signature]
Name
Date: 3/8/17

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument is hereby acknowledged before me this 13 day of March, 2017, by Michael D. Wanchick, who is the County Administrator for St. Johns County, Florida, and is authorized to execute this Agreement on behalf of St. Johns County, Florida. He is personally known to me.



Lauren N. Ferro
NOTARY PUBLIC, State of Florida
Name: Lauren N. Ferro

My Commission Expires: Sept. 22, 2018
My Commission Number is: FF161842

Exhibit "A"

[Legal Description of Development Property]

A PORTION OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 216, PAGE 624, OFFICIAL RECORDS BOOK 759, PAGE 1284, OFFICIAL RECORDS BOOK 2181, PAGE 306, OFFICIAL RECORDS BOOK 2181, PAGE 308, OFFICIAL RECORDS BOOK 2181, PAGE 313 AND OFFICIAL RECORDS BOOK 2273, PAGE 548, ALL OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE SOUTHWEST RIGHT OF WAY LINE OF STATE ROAD NO. 16, (SAID RIGHT OF WAY AT THIS POINT BEING 200 FEET IN WIDTH) WITH THE SOUTHEAST RIGHT OF WAY LINE OF STATE ROAD NO. 16 (FORMERLY STATE ROAD NO. 16-A AND WOLFE CUT-OFF ROAD), A 66 FOOT WIDTH RIGHT OF WAY; THENCE SOUTH 55°15'00" EAST ON SAID SOUTHWEST RIGHT OF WAY LINE OF STATE ROAD NO. 16, A DISTANCE OF 720.54 FEET TO A 1/2" IRON PIPE "NO IDENTIFICATION", SAID IRON PIPE BEING AT THE NORTHEAST CORNER OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 95, PAGE 336, OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA; THENCE SOUTH 20°32'14" WEST, ALONG THE EAST LINE OF SAID LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 95, PAGE 336, OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA, A DISTANCE OF 302.21 FEET; THENCE NORTH 71°40'16" WEST, A DISTANCE OF 1112.98 FEET; THENCE NORTH 18°04'39" WEST, A DISTANCE OF 149.10 FEET TO A POINT ON THE SOUTHEAST RIGHT OF WAY LINE OF SAID STATE ROAD NO. 16; THENCE NORTH 71°52'08" EAST, ALONG SAID SOUTHEAST RIGHT OF WAY LINE OF STATE ROAD NO. 16, A DISTANCE OF 649.00 FEET TO THE POINT OF BEGINNING.

Exhibit "B"
 [Proportionate Share Calculation and
 Table 5 - Data for Calculation]

TABLE 5

DATA FOR CALCULATING PROPORTIONATE FAIR SHARE

6/14/2016

PROJECT: MILL CREEK HARWARE																
			A	B	C	D	E	F	G	H	I	J	K	L	M	N
Link ID	Roadway	Termini	Length (mi)	Existing MSV	Project Traffic	Improvement Description	Improved MSV	Increase in MSV F = E-B	Cost/Mile Urban	Total Construction Cost H = G*A	19% R/W I = H*0.19	Signal Cost	4% Engineering K = (H+J)*0.46	Total Cost L = H+I+J+K	% Share M = C/F	Prop Share N = L*M
90	SR 16	SR 13 to CR 16A	1.66	1600	21	Widen 2 to 4 Lanes	3,580	1,980	\$ 4,579,627	\$7,602,181	\$1,444,414	\$210,000	\$4,258,034	\$13,514,629	1.06%	\$143,337
														Total	\$143,337	

Proportionate Share Calculation (see attached Table 5)	\$143,337
Less Value of Right-of-Way to be Dedicated	- \$ 85,000
Phase I Proportionate Share Remaining to be Paid	\$ 58,337

Exhibit "C"

[Legal Description of Right of Way to be Dedicated]

A PORTION OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 216, PAGE 624, OFFICIAL RECORDS BOOK 759, PAGE 1284, OFFICIAL RECORDS BOOK 2181, PAGE 306, OFFICIAL RECORDS BOOK 2181, PAGE 308, OFFICIAL RECORDS BOOK 2181, PAGE 313 AND OFFICIAL RECORDS BOOK 2273, PAGE 548, ALL OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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[Sketch of Right-of-Way to be Dedicated]

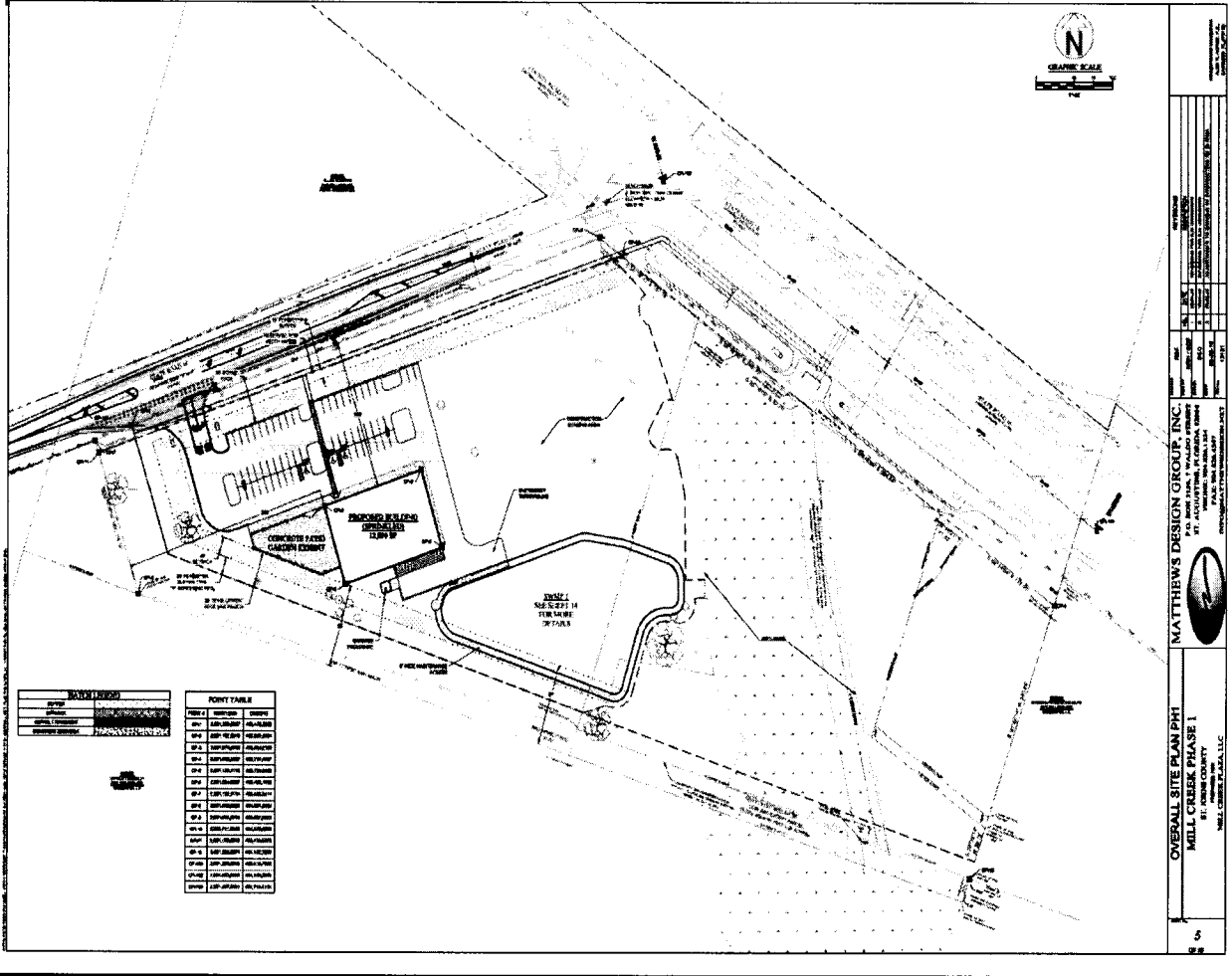


Exhibit "D"

Example of Voucher

ST. JOHNS COUNTY IMPACT FEE VOUCHER
Mill Creek Hardware PUD Development

Voucher No. _____

1. Name and Address of Grantor:

2. Name and Address of Grantee: _____
3. Legal Description of Subject Property: **See Exhibit A attached hereto.**
4. Subdivision or Master Development Plan Name: _____

The undersigned confirms that it has received from _____
on _____, 20____, funds sufficient for the following impact fees required under
the applicable St. Johns County Impact Fee Ordinance, as amended, as indicated below. Grantor
gives notice to St. Johns County, Florida, that the following sums should be deducted from the
applicable Impact Fee Credit Account of _____.

____ Roads Ordinance #87-57 in the amount of \$ _____

MILLCREEK PLAZA, LLC

By: _____
Name: _____
Its: _____

ATTACHMENT 3

RESOLUTION AND DEED
FOR SR 16 RIGHT-OF-WAY

RESOLUTION 2017-178

RESOLUTION NO. 2017- 178

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, ACCEPTING A DEED OF DEDICATION FROM MILL CREEK PLAZA, LLC TO ST. JOHNS COUNTY AS REQUIRED IN THE CONCURRENCY AND IMPACT FEE AGREEMENT APPROVED MARCH 7, 2017.

RECITALS

WHEREAS, Mill Creek Plaza, LLC, a Florida limited liability company has executed and presented to St. Johns County a Deed of Dedication, attached hereto as Exhibit "A", incorporated by reference and made a part hereof, conveying additional right-of-way along State Road 16; and

WHEREAS, this deed is given to satisfy a requirement of the Concurrency and Impact Fee Agreement approved by the Board of County Commissioners on March 7, 2017, and recorded in Official Records Book 4343, page 1848; and

WHEREAS, it is in the best interest of the County to accept the Deed of Dedication for the health, safety and welfare of its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated into the body of this Resolution and such Recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners hereby accepts the Deed of Dedication, attached hereto.

Section 3. The Clerk is instructed to record the original Deed of Dedication in the public records of St. Johns County, Florida.

Section 4. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners this 6th day of June, 2017.

**BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA**

By: _____
James K. Johns, Chair

ATTEST: Hunter S. Conrad, Clerk

By: Sam Halterman
Deputy Clerk



RENDITION DATE 6/8/17

This document prepared by:

Kathryn F. Whittington, Esq.
24 Cathedral Place, Suite 400
St. Augustine, FL 32084

DEED OF DEDICATION

THIS INDENTURE, made this 18th day of April, 2017, between **MILL CREEK PLAZA, LLC**, a Florida limited liability company, whose address is 3304 Coastal Highway, St. Augustine, Florida 32084, hereinafter called Grantor, and **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32084, hereinafter called Grantee.

WITNESSETH: that for and in consideration of the acceptance of this Dedication by the Grantee, said Grantor does hereby give, grant, dedicate, and convey to the Grantee, its successors and assigns forever, the following described land, situate in St. Johns County, Florida, to wit:

PROPERTY AS DESCRIBED ON **EXHIBIT "A"** ATTACHED
HERETO AND BY THIS REFERENCE MADE A PART
HEREOF.

TO HAVE AND HOLD the same unto the Grantees, its successors and assigns forever, in fee simple for road right-of-way.

AND the Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under said Grantor, its successors and assigns, and not otherwise; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2016 and those easements, restrictions and reservations of record, if any.

IN WITNESS WHEREOF, the said Grantor has hereunto set hand and seal the day and year first above written.

GRANTOR:

Mill Creek Plaza, LLC, a Florida limited liability company

By: Jagplan, LLC, a Delaware limited liability company

Its: Manager

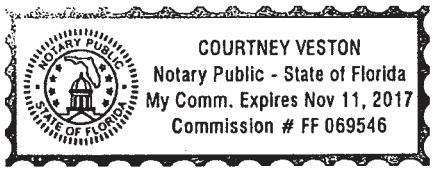
B. Good
Name: Brittney Good

By: Greg Severt
Name: Greg Severt
Its: Member

Karen M. Taylor
Name: Karen M. Taylor

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument is hereby acknowledged before me this 18 day of APRIL, 2017, by Greg Severt, as Member of Jagplan, LLC, a Delaware limited liability company, as Manager of Mill Creek Plaza, LLC, A Florida limited liability company, on behalf of the company. He is personally known to me.



Courtney Veston
NOTARY PUBLIC, State of Florida
Name: COURTNEY D VESTON
My Commission Expires: 11-11-17

EXHIBIT "A"

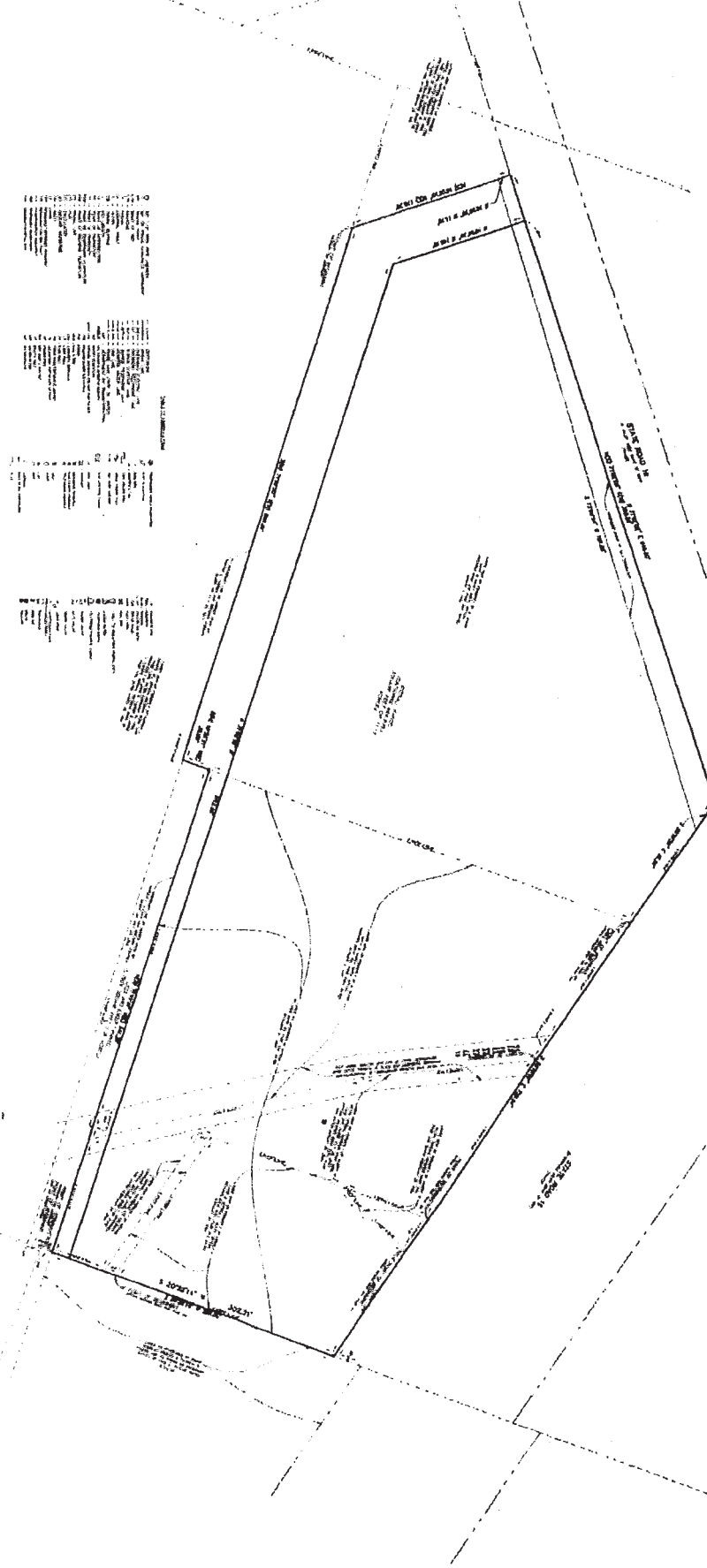
[Legal Description of Right of Way]

A PORTION OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 216, PAGE 624, OFFICIAL RECORDS BOOK 759, PAGE 1284, OFFICIAL RECORDS BOOK 2181, PAGE 306, OFFICIAL RECORDS BOOK 2181, PAGE 308, OFFICIAL RECORDS BOOK 2181, PAGE 313 AND OFFICIAL RECORDS BOOK 2273, PAGE 548, ALL OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

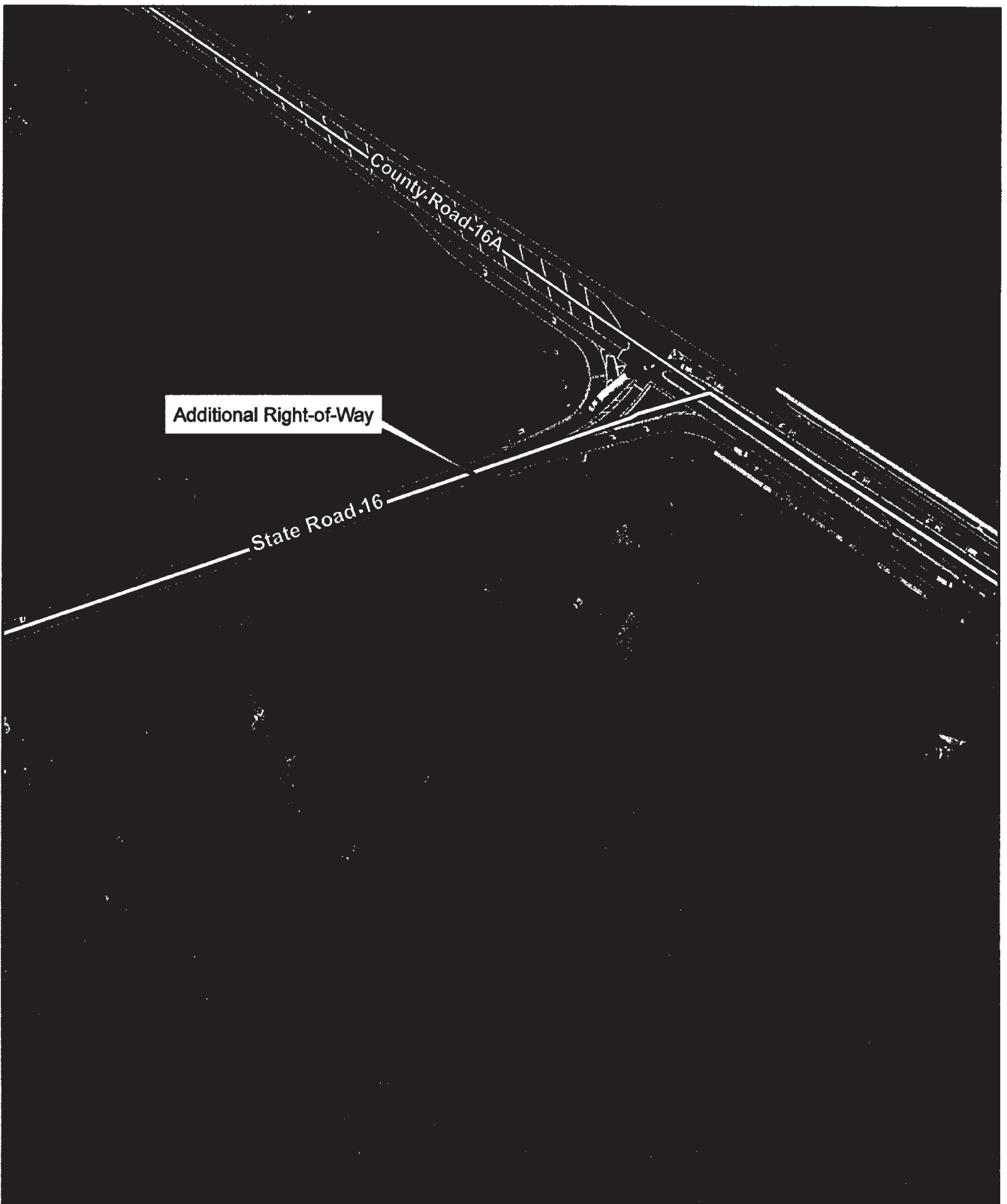
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MAP SHOWING SPECIFIC PURPOSE SURVEY OF:
 A PORTION OF SECTION 14, TOWNSHIP 31 NORTH, RANGE 12 EAST,
 COUNTY OF CHANDLER, OKLAHOMA

THIS SURVEY WAS MADE FOR THE PURPOSE OF DIVIDING THE LAND SHOWN INTO SEVERAL TRACTS OF LAND FOR THE PURPOSE OF CONVEYING THE SAME TO THE SEVERAL PARTIES NAMED IN THE INSTRUMENTS REFERRED TO IN THE LIST OF REFERENCES HEREON. THE SURVEY WAS MADE BY THE SURVEYOR AND HIS ASSISTANTS IN THE MONTH OF MARCH, 1908, AND THE RESULTS THEREOF ARE SHOWN ON THIS MAP. THE SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF THE ACT OF CONGRESS, PASSED MARCH 3, 1878, AND THE ACT OF CONGRESS, PASSED MARCH 3, 1893, AND THE ACT OF CONGRESS, PASSED MARCH 3, 1899, AND THE ACT OF CONGRESS, PASSED MARCH 3, 1908.



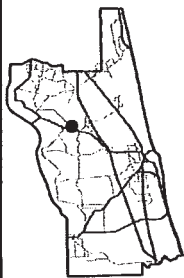
<p>604-005</p>	<p>CHAS. E. COOPER, JR. CIVIL ENGINEER</p>	<p>CHAS. E. COOPER, JR. CIVIL ENGINEER</p>	<p>CHAS. E. COOPER, JR. CIVIL ENGINEER</p>
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Additional Right-of-Way

State Road 16

County Road 16A



2013 Aerial Imagery

May 9, 2017

Deed of Dedication Mill Creek Plaza

Land Management
Systems
Real Estate
Division
(904) 209-0790

Disclaimer:
This map is for reference use only.
Data provided are derived from multiple
sources with varying levels of accuracy.
The St. Johns County Real Estate
Division disclaims all responsibility
for the accuracy or completeness
of the data shown hereon.

