6	**AGENDA ITEM** **ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS**
	Deadline for Submission - Wednesday 9 a.m. – Thirteen Days Prior to BCC Meeting

3/17/2020

BCC MEETING DATE

TO: **Hunter S. Conrad, County Administrator** **DATE:** **January 16, 2020**

FROM: **Phong Nguyen, Transportation Development Manager** **PHONE:** **209-0613**

SUBJECT OR TITLE: **DEVAGRMOD 2019-01 Durbin Creek National Development Agreement Modification (First Reading)**

AGENDA TYPE: **Contract, Public Hearing**

BACKGROUND INFORMATION:

This is the second amendment of the Durbin Creek National Development Agreement that was approved in 2015 and amended in 2016. The modification requests to revise the phasing schedule and corresponding transportation commitments to accommodate the proposed Durbin Park PUD located on the east side of SR 9B. The request also includes a land use exchange to convert 534,545 sq. ft. of office park space to 1,266 additional apartment units and 150 hospital beds with no increase in the project's external traffic. The proposed changes include revising the project development phasing to accelerate development entitlement; and revising the transportation commitments to combine Race Track Road widening into one phase from Bartram Park Blvd. to Bartram Springs Pkwy instead of two phases, and removing the requirement to 6-lane Race Track Rd at build out. Two public hearings are required to modify a Development Agreement. The second public hearing is scheduled before the BCC on May 19, 2020. There are two other companion applications, a Comprehensive Plan Amendment and a Planned Unit Development, that will be heard concurrently with this Development Agreement.

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:

Announce the date of the second public hearing scheduled for May 19, 2020 at 9:00 a.m. at the County Auditorium, 500 San Sebastian View.

For Administration Use Only:
Legal: PS 2/28/2020 **OMB: DC 3/2/2020** **Admin: Brad Bradley 3/4/2020**

Growth Management Department

DIVISION REPORT

Application for Development Agreement Modification
File Number: DEVAGRMOD 2019-01
Durbin Creek National

To:	Board of County Commissioners
From:	Phong T. Nguyen, Transportation Development Manager
Date:	February 21, 2020
Subject:	DEVAGRMOD 2019-01, request for modification of the Durbin Creek National Development Agreement for the Durbin Park PUD
Applicant:	Durbin Creek National, LLC
Representative:	Ellen Avery-Smith, Rogers Towers, P.A.
Hearing dates:	Board of County Commissioners – March 17, 2020 Board of County Commissioners – May 19, 2020
Commissioner District:	District 1

REQUEST SUMMARY – DEVELOPMENT AGREEMENT MODIFICATION PROVISIONS

The request for modification of the Durbin Creek National Development Agreement (Attachment 1) seeks to modify the following:

1) Subsections 1.3(o) and 1.3(q) – revised definitions for Projected Development phasing and Proposed Roadway Improvements phasing.

2) Section 5.3 – to amend and replace in its entirety the Schedule of Proposed Roadway Improvements consistent with the development phasing changes to accommodate the proposed Durbin Park PUD.

3) Section 6.1 – to amend and replace in its entirety the Projected Development phasing, and the maximum densities and intensities in each development phase.

4) Subsection 8.2(c) - amended to reflect that no residential permits are permitted in Phase 1 and that residential units shall be permitted in all other phases.

5) Subsection 11.1 – replaced in its entirety with a revised list of Exhibits. All previous exhibits not included in revised list have been deleted.

6) Exhibits 5 through 8 – replaced with new Proposed Roadway Improvement exhibits by phase (Exhibits 2 through 5 of the modification); road improvement costs have been updated.

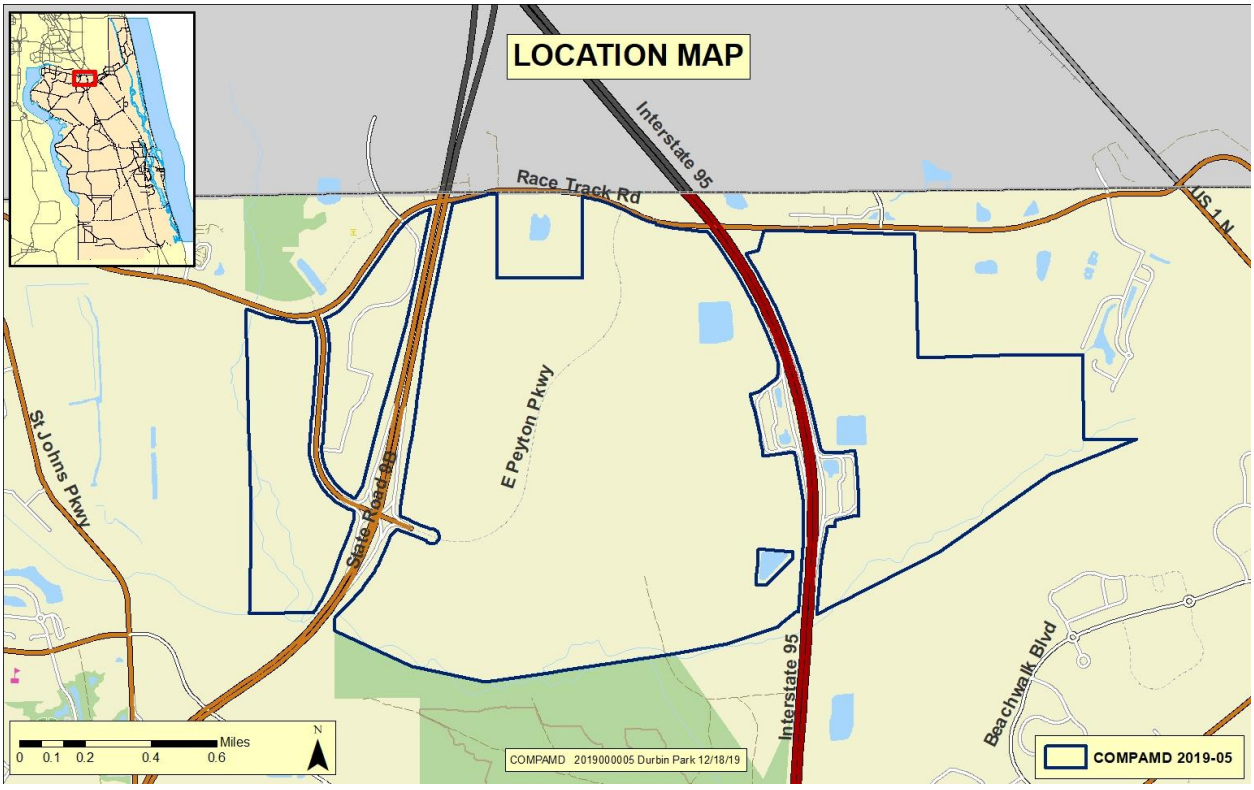
7) Exhibit 9 – replaced with a revised Road Capacity Charge Schedule incorporating the hospital use category (Exhibit 6 of the modification).

8) Exhibit 10 – replaced with a revised Projection of Road Capacity Charges through Buildout table (Exhibit 7 of the modification).

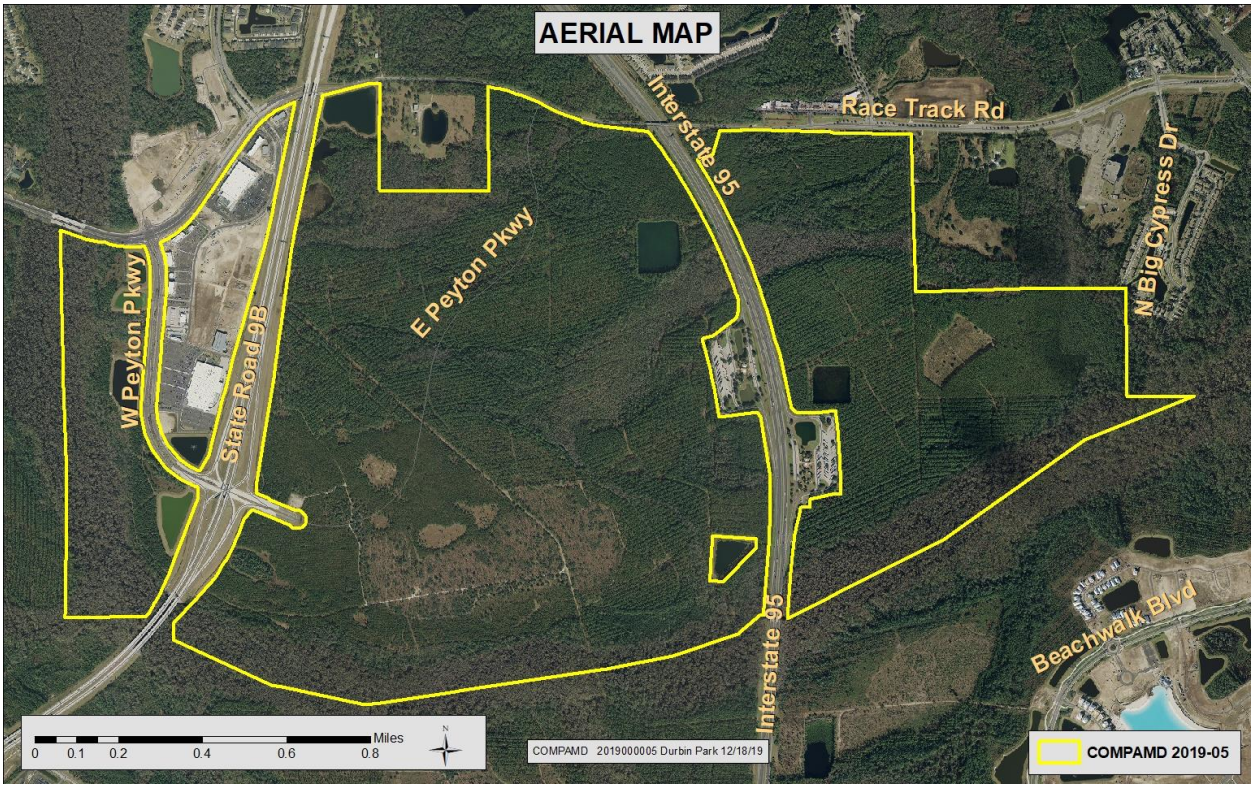
9) Exhibit 12 – replaced with a revised Land Use Conversion Table incorporating the hospital use category (Exhibit 8 to the modification).

MAP SERIES

Location: The Durbin Creek National Urban Service Area is located on the south side of Race Track Road, east and west of I-95. Phase 1 of the proposed development has been rezoned to PUD for the development of 700,000 sq. ft. of retail space. The remainder of the property is currently zoned OR with a proposed rezoning to PUD (Durbin Park PUD)



Aerial Imagery: Durbin Creek National Urban Service Area Boundary and Proposed Roads.



BACKGROUND

The Durbin Creek National Development Agreement (Attachment 3) was approved by the Board of County Commissioners in 2015. The agreement provided for: transportation mitigation/improvements coinciding with development phasing for projected development entitlements within the Durbin Creek National Urban Service Area boundary (USA); and established reimbursement procedures for roadway construction costs from available Ad Valorum Tax Increment (Ordinance 2015-5) and Road Capacity Charges (Ordinance 2015-6) within the Durbin Creek National USA. The agreement was amended in 2016 to increase the square footage in Phase 1A (Durbin Pavilion) to 700,000 sq. ft. with a corresponding decrease in Phase 1B (Attachment 4).

The Durbin Creek National Urban Service Area (USA) comprises 1,624 acres currently proposed for the development of a total of 2,795,610 sq. ft. of office park, 2,397,130 sq. ft. of retail, 350 hotel rooms, and 999 apartment units in five phases. Of the 1,624 acres, approximately 1,254 acres are designated Intensive Commercial (IC) on the Future Land Use Map.

SUMMARY OF PROPOSED CHANGES

In summary, the proposed changes to the Development Agreement provide for revision to the projected development phasing and the transportation mitigation phasing that result in accelerating development into new Phase 2 (generally combining previous Phase 1B and Phase 2); combining the Race Track Rd 4-laning into one phase from Bartram Park Blvd. to Bartram

Springs Pkwy (previously required in Phases 2 and 3) and shifting the requirement to the new Phase 4; and removing the requirement to 6-lane Race Track Road at build out (Summary of Durbin Park Roadway Contributions attached as Attachment 2).

The applicant has indicated that the acceleration of the entitlement is needed to accommodate the proposed Durbin Park PUD development plan and to increase the available funds in the Tax Increment Financing (TIF) fund at a quicker rate for the construction of the required transportation improvements.

The proposed Second Amendment to the Development Agreement includes a land use conversion to convert 534,545 sq. ft. of office park space to 1,266 additional apartment units and 150 hospital beds (375,000 sq. ft.) consistent with the proposed Durbin Park PUD; and sets forth a revised phasing schedule for the aforementioned entitlements and corresponding transportation commitments as follows:

Phase 1 (700,000 sq. ft. of Shopping Center space) – DURBIN PAVILION PUD (located on the west side of SR 9B); NO CHANGE

- Durbin Pavilion PUD (Ordinance 2016-64) approved for the development of 700,000 sq. ft. of shopping center space; approximately 500,000 sq. ft. has been constructed
- Mitigation: Donation of the right-of-way for the SR 9B and Race Track Road improvements, and fund preliminary design of SR 9B improvements. The SR 9B improvements included the extension of SR 9B into St. Johns County to connect with St. Johns Parkway, an interchange within the Durbin Creek National USA, a west connector road connecting SR 9B to Race Track Road (West Peyton Parkway), and joint use stormwater facilities.
- Mitigation amount of $19,712,274 for preliminary design of SR 9B improvements, SR 9B right-of-way, and Race Track Road right-of-way,
- **Phase 1A mitigation requirements are complete; SR 9B and West Peyton Parkway are complete and have been open to traffic since 2018.**

PROPOSED DEVELOPMENT SCHEDULE AND TRANSPORTATION COMMITMENTS FOR THE PROPOSED DURBIN PARK PUD (located on the east side of SR 9B)

Phase 2 (1,250,000 sq. ft. of Shopping Center space, 1,650,000 sq. ft. of Office Park space, 375,000 sq. ft. of Hospital space (1 bed = 2,500 sq. ft.), 225 Hotel rooms, and 1,065 Apartment units)

- East Peyton Parkway (east connector from the SR 9B interchange to Race Track Road) - design 6-lane construct 4-lane facility
- Mitigation amount $19,638,844

Phase 3 (350,000 sq. ft. of Shopping Center space, 350,000 sq. ft. of Office Park space, 125 hotel rooms, and 900 Apartment units)

- East Peyton Parkway – widen from 4 to 6 lanes from SR 9B to Race Track Road
- Mitigation amount $2,720,311

Phase 4 (97,130 sq. ft. of Shopping Center space, 261,065 sq. ft. of Office Park space, and 300 Apartment units)

- Race Track Road – design 6-lane construct 4-lane facility from Bartram Park Blvd to Bartram Springs Pkwy

- Mitigation amount $20,798,446 or $16,464,946 (if FDOT builds the Race Track Road overpass at I-95)

TECHNICAL REVIEW

Comparison of Existing Development Phasing/Roadway Improvements vs Proposed

Existing Phase 1A	Proposed Phase 1

• 700,000 sq. ft. Shopping Center Space
• 1,783 PM peak net trips
• Improvement costs: $19,712,274
• Roadway Improvements:
  • Preliminary design of SR 9B improvements and SR 9B and Race Track Road right-of-way dedication
	• 700,000 sq. ft. Shopping Center Space
	• 1,783 PM peak net trips
	• Improvement costs: $19,712,274
	• Roadway Improvements:
	  • Preliminary design of SR 9B improvements and SR 9B and Race Track Road right-of-way dedication

Existing Phase 1B and 2	Proposed Phase 2

Phase 1B:
• 508,330 sq. ft. Shopping Center Space, 356,880 sq. ft. Office Park
• 1,745 PM peak net trips
• Improvement costs: $13,457,600
• Roadway Improvements:
  • Construct 4-lane East Peyton Parkway
Phase 2:
• 892,160 sq. ft. Shopping Center Space, 1,267,200 sq. ft. Office Park, 350 Hotel Rooms, 594 Apartment Units
• 4,214 PM peak net trips
• Improvement costs: $9,352,500
• Roadway Improvements:
• Construct 4-lane of Race Track Road from East Peyton Parkway to Bartram Springs Parkway
	• 1,250,000 sq. ft. Shopping Center Space, 1,650,000 sq. ft. Office Park, 375,000 sq. ft. Hospital, 225 Hotel Rooms, 1,065 Apartment Units
	• 5,955 PM peak net trips
	• Improvement costs: $19,638,844
	• Roadway Improvements:
	  • Design 6-lane and construct 4-lane East Peyton Parkway

Existing Phase 3	Proposed Phase 3

• 206,640 sq. ft. Shopping Center Space, 623,950 sq. ft. Office Park
• 1,314 PM peak net trips
• Improvement costs: $12,971,100
• Roadway Improvements:
  • Construct 4-lane of Race Track Road from Bartram Park Boulevard to East Peyton Parkway
  • Widen East Peyton Parkway from 4 to 6 lanes
	• 350,000 sq. ft. Shopping Center Space, 350,000 sq. ft. Office Park, 125 Hotel Rooms, 900 Apartment Units
	• 1,699 PM peak net trips
	• Improvement costs: $2,720,311
	• Roadway Improvements:
	  • Construct 6-laning of East Peyton Parkway

Existing Phase 4	Proposed Phase 4

• 90,000 sq. ft. Shopping Center Space, 547,580 sq. ft. Office Park, 405 Apartment Units
• 1,064 PM peak net trips
• Improvement costs: $11,532,600
• Roadway Improvements:
  • Construct 6-lane of Race Track Road from Bartram Park Boulevard to US 1
	• 97,130 sq. ft. Shopping Center Space, 261,065 sq. ft. Office Park, 300 Apartment Units
	• 683 PM peak net trips
	• Improvement costs: $20,798,446 or $16,464,946 (Depending on FDOT)
	• Roadway Improvements:
	  • Design 6- lane and construct 4-lane of Race Trace Road from Bartram Park Boulevard to Bartram Springs Parkway
	• Proposal to remove 6-laning of Race Track Road from agreement based on projection of improvement not being needed until buildout
	• TIF funding will be available if widening is required at buildout

Transportation

Transportation Development staff has reviewed the request and does not object to the proposed modification. The proposed revisions to the projected development entitlement phasing and transportation improvement phasing is consistent with the original intent and meets the proportionate share mitigation requirements for each phase of development. The construction of East Peyton Pkwy from SR 9B to Race Track Rd will provide an additional connection to SR 9B that will relieve the portion of Race Track Rd between Bartram Park Blvd. and East Peyton Pkwy. The portion of Race Track Rd between East Peyton Pkwy and Bartram Springs will likely be included with the FDOT construction of the bridge over I-95.

The applicant's request does not increase the overall project trip generation originally approved and the acceleration of development entitlement is supported by the construction of East Peyton Parkway from SR 9B to Race Track Road and the FDOT construction planned for the bridge over I-95 (funded in FY 2023) that is anticipated to extend 4-laning of Race Track Rd on both sides of the bridge.

The 6-laning of Race Track Rd currently included in the Development Agreement is projected to be needed at buildout based on projected background growth and the proposed development traffic. The request to remove the requirement from the Development Agreement does not mean the improvement will not be constructed since there is a funding mechanism in place (TIF) for construction if determined to be needed in the future. It does, however, remove the requirement to construct the 6-lane for this development.

CORRESPONDENCE

No correspondence has been received regarding this request at the time of the writing of this staff report.

RECOMMENDED ACTION

Staff does not object to the approval of DEVAGRMOD 2019-01 Durbin Creek National finding that the proposed changes do not substantially change the transportation impacts for the projected development, and finding that the request is consistent with the general intent of the approved Development Agreement.

SUGGESTED MOTION/RECOMMENDATION/ACTION

ANNOUNCE THE DATE OF THE 2ND REQUIRED PUBLIC HEARING SCHEDULED FOR MAY 19, 2020

ATTACHMENTS

1. Proposed Second Amendment to the Durbin Creek National Development Agreement
2. Summary of Durbin Park Roadway Contributions – February 20, 2020
3. Durbin Creek National Development Agreement – approved in 2015
4. First Amendment to Development Agreement – approved in 2016

ATTACHMENT 1

DOCUMENTS TO BE RECORDED

SECOND AMENDMENT

TO

DURBIN CREEK NATIONAL

DEVELOPMENT AGREEMENT

DEVAGRMOD 2019-01

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this "**Second Amendment**") is made and entered into by and between **DURBIN CREEK NATIONAL, LLC**, a Florida limited liability company, its successors or assigns ("**Durbin**"); and **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida ("**St. Johns County**" or "**County**") (with Durbin and the County sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**").

R E C I T A L S:

A. The Parties entered into that certain Development Agreement dated February 9, 2015 and recorded in Official Records Book 3986, Page 1862, as amended by that certain First Amendment to Development Agreement dated January 19, 2017 and recorded in Official Records Book 4319, Page 1805, both of the Public Records of St. Johns County, Florida (collectively, the "**Development Agreement**").

B. The Development Agreement provides that it may be altered or amended by written instrument executed by the Parties.

C. The Parties wish to amend the Development Agreement to revise the Projected Development and the Proposed Roadway Improvements (as those terms are defined in the Development Agreement) to reflect the revised development plan for the remainder of the Property (as that term is defined in the Development Agreement).

D. The Parties desire to amend the Development Agreement as set forth more fully below in this Second Amendment.

AGREEMENTS:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both Parties, the Parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated into and made a part of this Second Amendment.

2. Defined Terms. Capitalized terms appearing in this Second Amendment that are defined in the Development Agreement and not defined differently in this Second Amendment shall have the meanings assigned to them in the Development Agreement. The definitions contained in Subsections 1.3(o) and 1.3(q) of the Development Agreement are hereby revised to the following:

> (o) "**Projected Development**," "**Phase 1 Projected Development**,", "**Phase 2 Projected Development**," "**Phase 3 Projected Development**," "**Phase 4 Projected Development**" and "**Total Projected Development**" shall mean the potential development intensities and densities which may occur on the Property as described in Section 6 of this Agreement.

(q) "**Proposed Roadway Improvements**," "**Phase 1 Roadway Improvements**," "**Phase 2 Roadway Improvements,**" "**Phase 3 Roadway Improvements**" and "**Phase 4 Roadway Improvements**" shall mean the roadway improvements as described in Section 5.3 of this Agreement and described in further detail in **Exhibits "2" through "5"** of this Agreement. The Proposed Roadway Improvements shall include any and all improvements required for the Proposed Roadway Improvements by the St. Johns County Land Development Code, the St. Johns County Development Review Manual or the St. Johns County Standards and Details Manual, or by any other governmental agency. By way of example but not limitation: the Proposed Roadway Improvements would include required intersection improvements, signalization, pedestrian sidewalks and crossings, bike paths or lanes, stormwater facilities and mitigation. The Proposed Roadway Improvements also would include rail crossings, whether or not required by a governmental agency.

3. Construction of Proposed Roadway Improvements. Approximately 247 acres of the Property is zoned Planned Unit Development pursuant to St. Johns County Ordinance No. 2016-64 (Durbin Park Phase 1A, PUD 2016-17) (the "**Durbin Park Phase 1A PUD**"). Durbin has filed an application to rezone the remainder of the Property to Planned Unit Development (Durbin Park, PUD 2019-12) (the "**Durbin Park PUD**"). The development plan for the Durbin Park PUD requires certain revisions to Section 5.3 of the Development Agreement. Section 5.3 of the Development Agreement is hereby deleted in its entirety and replaced with the following language:

5.3 Construction of Proposed Roadway Improvements.

(a) The following improvements comprise the **"Proposed Roadway Improvements"** needed to serve the Projected Development:

(1) Phase 1: Execution of Donation Agreement and Joint Use Agreement and conveyance of SR 9B Improvements Right-of-Way to FDOT (estimated to be $17 million); preliminary design of SR 9B Improvements pursuant to 2008 MOU - $934,274.39 (cost already incurred); 2006 Race Track Road Right-of-Way Donations - $1,778,000 (collectively, "**Phase 1 Roadway Improvements**") [Completed].

(2) Phase 2: Design and Construction of East Peyton Parkway (design 6-lane urban, construct 4-lane divided arterial) from SR 9B Interchange to Race Track Road ("**Phase 2 Roadway Improvements**").

(3) Phase 3: Construction of East Peyton Parkway (6-lane urban arterial) from 4 to 6 lanes from SR 9B Interchange to Race Track Road ("**Phase 3 Roadway Improvements**").

(4) Phase 4: Design and Construction of Race Track Road (design 6-lane urban, construct 4-lane divided arterial, Bartram

Park Boulevard to Bartram Springs Parkway) ("**Phase 4 Roadway Improvements**"). The Phase 4 Roadway Improvements may be funded in their entirety by a Roadway Improvement Building, expressly the County; provided, however, that any Roadway Improvement Builder other than the County must be approved in writing by Durbin ("**Phase 4 Roadway Improvements Scenario 1**" or "**Scenario 1**"). Alternatively, portion of the Phase 4 Roadway Improvements may be funded and constructed by FDOT ("**Phase 4 Roadway Improvements Scenario 2**" or "**Scenario 2**"). In Scenario 2, the Roadway Improvement Builder, expressly including the County, may enter into a binding agreement with FDOT to fund any portion of the Phase 4 Roadway Improvements not funded by FDOT, and in so doing, may be eligible for reimbursement for such funding pursuant to Section 5.4 and 5.5 of this Agreement; provided, however, that any Roadway Improvement Builder other than the County must be approved in writing by Durbin.

(b) The projected Roadway Improvement Costs of each Phase and the projected aggregate Total Roadway Improvement Costs for all Phases (in 2014 dollars, adjusted to 2018 by inflation factors) are:

(1) Phase 1: Preliminary design of SR 9B Improvements pursuant to 2008 MOU ($934,274) and 2006 Race Track Road Right-of-Way Donation ($1,778,000), totaling $2,712,274; Conveyance of SR 9B Improvements right-of-way (estimated to be $17,000,000) [Completed – Total $19,712,274];

(2) Phase 2: $19,638,844.00;

(3) Phase 3: $2,720,311.00;

(4) Phase 4 – Scenario 1: $20,798,446.00; Phase 4 – Scenario 2: $16,464,946.00; and

(5) Total Roadway Improvement Costs for all Phases – Scenario 1: $62,869,875.00; Scenario 2: $58,536,375.00.

(c) The Proposed Roadway Improvements for all Phases are further described and depicted in **Exhibits "2" through "5"** attached hereto. The Proposed Roadway Improvements may be revised by an amendment to this Agreement pursuant to Sections 6.3 or 11.11 of this Agreement.

(d) The Proposed Roadway Improvements shall be constructed in compliance with the approved Roadway Construction Plans and with the St. Johns County Land Development Code, the St. Johns County

Development Review Manual and the St. Johns County Standards and Details Manual.

4. Projected Development/Phasing and Coordination with Proposed Roadway Improvements. Section 6.1 of the Development Agreement is hereby deleted in its entirety and replaced with the following language:

6.1 Projected Development. The following maximum development intensities and densities comprise the Projected Development on the Property during the duration of this Agreement (subject to conversion based on the Land Use Conversion Table in **Exhibit "8"**). The references to "sq. ft." are to gross enclosed square feet. The references to "Land Use Code" are to the Trip Generation Manual, 9th Edition (Institute of Transportation Engineers, 2012). The locations of the Projected Development are depicted on the Master Development Plan Maps contained in the PUD ordinances for the Property.

(a) Phase 1 maximum densities and intensities are: 700,000 sq. ft. Shopping Center (Land Use Code 820) ("**Phase 1 Projected Development**"). Durbin has completed the required Phase 1 Roadway Improvements, including the execution of the Donation Agreement and Joint Use Pond & Maintenance Agreement and conveyance of SR 9B Improvement Right-of-Way to FDOT. The Phase 1 Projected Development has been approved by the County in Ordinance No. 2016-64 (PUD 2016-17).

(b) Phase 2 maximum densities and intensities are: 1,650,000 sq. ft. Office Park (Land Use Code 750); 1,250,000 sq. ft. Shopping Center (Land Use Code 820); 375,000 sq. ft. (2,500 sq. ft. = 1 bed) Hospital (Land Use Code 610); 225 Hotel rooms (Land Use Code 310); and 1,065 Apartments units (Land Use Code 220) ("**Phase 2 Projected Development**"). Prior to the County's approval of commercial or subdivision construction plans for the Phase 2 Projected Development, a construction plan applicant shall demonstrate completion of the Phase 1 Roadway Improvements and either compliance with the requirements of Section 5.2 of this Agreement for the Phase 2 Roadway Improvements, including the posting of public construction bond, or the completion, dedication and acceptance by the County of the Phase 2 Roadway Improvements.

(c) Phase 3 maximum densities and intensities are: 350,000 sq. ft. Shopping Center (Land Use Code 820); 350,000 sq. ft. Office Park (Land Use Code 750); 900 Apartments units (Land Use Code 220); and 125 Hotel rooms (Land Use Code 310) ("**Phase 3 Projected Development**"). Prior to the County's approval of commercial or subdivision construction plans for the Phase 3 Projected Development, a construction plan applicant shall

demonstrate completion of the Phase 1 Roadway Improvements and either compliance with the requirements of Section 5.2 of this Agreement for the Phase 2 and 3 Roadway Improvements, including the posting of public construction bond for the Phase 2 and 3 Roadway Improvements, or the completion, dedication and acceptance by the County of the Phase 2 and 3 Roadway Improvements.

(d) Phase 4 maximum densities and intensities are: 261,065 sq. ft. Office Park (Land Use Code 750); 97,130 sq. ft. Shopping Center (Land Use Code 820); and 300 Apartments units (Land Use Code 220) ("**Phase 4 Projected Development**"). Prior to the County's approval of commercial or subdivision construction plans for the Phase 4 Projected Development, a construction plan applicant shall demonstrate completion of the Phase 1 Roadway Improvements and either compliance with the requirements of Section 5.2 of this Agreement for the Phase 2, 3 and 4 Roadway Improvements, including the posting of public construction bond for the Phase 2, 3 and 4 Roadway Improvements, or the completion, dedication and acceptance by the County of the Phase 2, 3 and 4 Roadway Improvements.

(e) Total Projected Development maximum densities and intensities are: 2,265 Apartments units (Land Use Code 220); 350 Hotel rooms (Land Use Code 310); 2,261,065 sq. ft. Office Park (Land Use Code 750); 2,397,130 sq. ft. Shopping Center (Land Use Code 820); and 375,000 sq. ft. Hospital (Land Use Code 610) ("**Total Projected Development**").

5. Future Development Reviews/Other County Concurrency Reviews and Impact Fees. Subsection 8.2(c) is hereby amended to reflect that no residential permits are permitted in Phase 1 and that residential units shall be permitted in all other phases.

6. Miscellaneous Provisions/Exhibits. Subsection 11.1 is hereby deleted in its entirety and replaced with the following and all references to the Exhibits in the Agreement are hereby amended to reflect the following (any exhibits not referenced below have been deleted from the Agreement):

11.1 List of Exhibits.

The following comprise the exhibits to this Agreement.

Exhibit 1	Legal Description of Property
Exhibits 2 through 5	Maps, Descriptions, and Projected Costs of Proposed Roadway Improvements, By Phase
Exhibit 6	Road Capacity Charge Schedule
Exhibit 7	Projection of Road Capacity Charges through Buildout
Exhibit 8	Land Use Conversion Table

All exhibits attached to this Agreement contain additional terms of this Agreement and are incorporated into this Agreement by reference.

7. Status of Development Agreement. The Development Agreement, as amended by this Second Amendment, remains in full force and effect and is hereby ratified and confirmed by the Parties.

8. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. It shall not be necessary to the binding effect of this Second Amendment that the signatures of both Parties appear on any one counterpart of this Second Amendment and this Second Amendment shall bind both Parties as long as both Parties have executed and delivered at least one counterpart of this Second Amendment. Signature pages may be detached from the counterparts and attached to a single copy of this Second Amendment to physically form one document.

IN WITNESS WHEREOF, Durbin and the County have caused this Second Amendment to Development Agreement to be executed by their undersigned lawful representatives, hereunto duly authorized, on the date or dates set forth below and with the intent that this Second Amendment shall take effect on and as of the date it has been executed and delivered by both Parties.

ST JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Jeb S. Smith, Chair

ATTEST:

By: _____
Brandon Patty, Clerk of Courts

DURBIN CREEK NATIONAL, LLC, a Florida limited liability company

_____

Drew Frick, President

STATE OF _____
COUNTY OF _____

The foregoing instrument is hereby acknowledge before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by Drew Frick, President of Durbin Creek National, LLC, a Florida limited liability company, on behalf of said company. He [ ] is personally known or [ ] produced _____ as identification.

_____
NOTARY PUBLIC, State of Florida

Name:_____
My Commission Expires:_____
My Commission Number is:_____

REVISED EXHIBIT 1

PARCEL 1

A PORTION OF SECTIONS 4, 5, 6, 7, 8, AND 9, AND A PORTION OF SECTION 46, THE JOSEPH PEAVETT GRANT, ALL LYING IN TOWNSHIP 5 SOUTH, RANGE 28 EAST, ST. JOHNS COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF RACE TRACK ROAD (A VARIABLE WIDTH RIGHT OF WAY, AS NOW ESTABLISHED) AND THE EASTERLY RIGHT OF WAY LINE OF STATE ROAD NO. 9B (A VARIABLE WIDTH RIGHT OF WAY, AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP, SECTION 78000, F.P. NO. 4314182); THENCE SOUTHERLY, ALONG SAID EASTERLY RIGHT OF WAY LINE OF STATE ROAD NO. 9B, RUN THE FOLLOWING SIX (6) COURSES AND DISTANCES: COURSE NO. 1: SOUTH 11°40'41" WEST, 1794.49 FEET; COURSE NO. 2: SOUTH 11°40'41" WEST, 156.10 FEET; COURSE NO. 3: SOUTH 07°40'39" WEST, 1292.50 FEET TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHERLY; COURSE NO. 4: SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 23012.00 FEET, AN ARC DISTANCE OF 745.37 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 08°36'19" WEST, 745.34 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; COURSE NO. 5: SOUTH 09°32'00" WEST, 1006.21 FEET; COURSE NO. 6: SOUTH 09°34'18" EAST, 96.11 FEET; TO THE NORTHERLY RIGHT OF WAY LINE OF DURBIN CONNECTOR (A 200 FOOT WIDE RIGHT OF WAY, AS SHOWN ON SAID STATE ROAD NO. 9B RIGHT OF WAY MAP: THENCE EASTERLY, SOUTHEASTERLY, SOUTHERLY AND NORTHWESTERLY ALONG THE NORTHERLY, EASTERLY AND SOUTHERLY RIGHT OF WAY LINES OF SAID DURBIN CONNECTOR, RUN THE FOLLOWING SIX (6) COURSES AND DISTANCES: COURSE NO. 1: SOUTH 67°37'24" EAST, 140.83 FEET; COURSE NO. 2: SOUTH 54°07'40" EAST, 51.42 FEET; COURSE NO. 3: SOUTH 67°37'24" EAST, 154.65 FEET; COURSE NO. 4: SOUTH 67°37'24" EAST, 189.94 FEET TO THE ARC OF A CURVE LEADING SOUTHERLY; COURSE NO. 5: SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 116.00 FEET, AN ARC DISTANCE OF 487.72 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 22°22'36" WEST, 200.00 FEET; COURSE NO. 6: NORTH 67°37'24" WEST, 510.91 FEET TO THE AFORESAID EASTERLY RIGHT OF WAY LINE OF STATE ROAD NO. 9B; THENCE SOUTHWESTERLY AND SOUTHERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING FOUR (4) COURSES AND DISTANCES: COURSE NO. 1: SOUTH 41°35'31" WEST, 157.68 FEET TO THE ARC OF A CURVE LEADING SOUTHERLY; COURSE NO. 2: SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 5117.50 FEET, AN ARC DISTANCE OF 282.65 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 21°20'55" WEST, 282.62 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE LEADING SOUTHWESTERLY; COURSE NO. 3: SOUTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 2386.00 FEET, AN ARC DISTANCE OF 873.48 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 33°25'06" WEST, 868.61 FEET, TO THE POINT OF TANGENCY

OF SAID CURVE; COURSE NO. 4: SOUTH 43°54'21" WEST, 440.03 FEET TO THE WESTERLY LINE OF THE SOUTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 7; THENCE SOUTH 00°25'28" WEST, ALONG LAST SAID LINE, 217.87 FEET TO THE NORTHERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 3390, PAGE 1849; THENCE SOUTHEASTERLY, EASTERLY AND NORTHEASTERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING THREE (3) COURSES AND DISTANCES: COURSE NO. 1: SOUTH 65°26'37" EAST, 1356.86 FEET; COURSE NO. 2: SOUTH 77°47'44" EAST, 1202.67 FEET; COURSE NO. 3: NORTH 81°26'36" EAST, 3079.25 FEET; THENCE NORTH 78°52’22” EAST, 845.88 FEET; THENCE NORTH 71°36’06” EAST, 861.43 FEET; THENCE NORTH 49°47’16” EAST, 359.20 FEET; THENCE NORTH 88°34’50” EAST, 50.88 FEET TO THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 95 (STATE ROAD NO. 9, A 300 FOOT LIMITED ACCESS RIGHT OF WAY PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP SECTION NO. 78080-2408 AND SECTION NO. 78080-2440; THENCE NORTHERLY, NORTHWESTERLY, WESTERLY, EASTERLY AND NORTHEASTERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING TWELVE (12) COURSES AND DISTANCES: COURSE NO. 1: NORTH 03°59'10" EAST, 1022.66 FEET TO THE POINT OF CURVATURE OF A CURVE LEADING NORTHERLY; COURSE NO. 2: NORTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 7489.44 FEET, AN ARC DISTANCE OF 336.67 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 02°41'54" EAST, 336.64 FEET; COURSE NO. 3: NORTH 01°23'34" WEST, 446.71 FEET; COURSE NO. 4: NORTH 09°40'59" WEST, 701.21 FEET; COURSE NO. 5: NORTH 26°49'41" WEST, 76.28 FEET; COURSE NO. 6: SOUTH 82°03'36" WEST, 490.40 FEET TO THE ARC OF A CURVE LEADING NORTHERLY; COURSE NO. 7: NORTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 6904.44 FEET, AN ARC DISTANCE OF 1010.17 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 12°07'53" WEST, 1009.27 FEET; COURSE NO. 8: NORTH 73°40'38" EAST, 138.96 FEET; COURSE NO. 9: NORTH 51°51'12" EAST, 370.50 FEET; COURSE NO. 10: NORTH 20°40'10" EAST, 101.72 FEET; COURSE NO. 11: NORTH 03°32'06" WEST, 145.46 FEET TO THE ARC OF A CURVE LEADING NORTHWESTERLY; COURSE NO. 12: NORTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 7489.44 FEET, AN ARC DISTANCE OF 2392.44 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 28°14'08" WEST, 2382.28 FEET TO THE AFORESAID SOUTHERLY RIGHT OF WAY LINE OF RACE TRACK ROAD; THENCE WESTERLY, NORTHEASTERLY AND NORTHWESTERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING SIX (6) COURSES AND DISTANCES: COURSE NO. 1: NORTH 82°50'33" WEST, 579.13 FEET TO THE POINT OF CURVATURE OF A CURVE LEADING WESTERLY; COURSE NO. 2: WESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 1959.83 FEET, AN ARC DISTANCE OF 269.74 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 78°53'59" WEST, 269.53 FEET; COURSE NO. 3: NORTH 15°02'36" EAST, 17.00 FEET TO THE ARC OF A CURVE LEADING WESTERLY; COURSE NO. 4: WESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 1942.83 FEET, AN ARC DISTANCE OF 386.26 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 69°15'40" WEST, 385.62 FEET TO THE POINT OF TANGENCY OF SAID CURVE; COURSE

NO. 5: NORTH 63°33'56" WEST, 113.89 FEET TO THE POINT OF CURVATURE OF A CURVE LEADING WESTERLY; COURSE NO. 6: WESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 2828.27 FEET, AN ARC DISTANCE OF 765.51 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 71°19'10" WEST, 763.17 FEET TO THE EASTERLY LINE OF THE NORTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 5, ALSO BEING THE EASTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1225, PAGE 555 OF THE PUBLIC RECORDS OF SAID COUNTY; THENCE SOUTH 00°38'20" EAST, ALONG LAST SAID LINE, 1316.59 FEET TO THE SOUTHERLY LINE OF LAST SAID LANDS; THENCE NORTH 89°50'32" WEST, ALONG LAST SAID LINE, 1378.02 FEET TO THE WESTERLY LINE OF LAST SAID LANDS; THENCE NORTH 00°14'45" EAST, ALONG LAST SAID LINE, 823.25 FEET; THENCE NORTH 00°16'04" EAST, CONTINUING ALONG LAST SAID LINE, 527.46 FEET TO THE NORTHERLY LINE OF SAID SECTION 5; THENCE SOUTH 89°46'43" WEST, ALONG LAST SAID LINE, 140.52 FEET TO THE AFORESAID SOUTHERLY RIGHT OF WAY LINE OF RACE TRACK ROAD AND THE ARC OF A CURVE LEADING WESTERLY; THENCE WESTERLY, ALONG LAST SAID LINE AND ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 1125.76 FEET, AN ARC DISTANCE OF 18.00 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 76°24'53" WEST, 18.00 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 75°57'24" WEST, CONTINUING ALONG LAST SAID LINE, 578.91 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT
THOSE LANDS DESIGNATED PARCEL 100C, AS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1699, PAGE 720 OF SAID PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA.

THE ABOVE DESCRIBED LANDS BEING SUBJECT TO ANY SUBMERGED SOVEREIGN LANDS OF THE STATE OF FLORIDA ASSOCIATED WITH DURBIN CREEK.

CONTAINING 928.59 ACRES, MORE OR LESS.

TOGETHER WITH:

PARCEL 2

A PORTION OF SECTIONS 5 AND 6, TOWNSHIP 5 SOUTH, RANGE 28 EAST, ST. JOHNS COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF RACE TRACK ROAD, A VARIABLE WIDTH RIGHT OF WAY, AS NOW ESTABLISHED, AND THE WESTERLY RIGHT OF WAY LINE OF STATE ROAD NO. 9B, A VARIABLE WIDTH RIGHT OF WAY, AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP, SECTION 78000, F.P. NO. 4314182; THENCE SOUTHERLY AND SOUTHWESTERLY, ALONG SAID WESTERLY RIGHT OF WAY LINE OF STATE ROAD NO. 9B, RUN THE FOLLOWING FIVE (5) COURSES AND DISTANCES: COURSE NO. 1: SOUTH 11°40'41" WEST, 1750.61 FEET; COURSE NO. 2: SOUTH 15°40'39" WEST, 1333.33

FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHERLY; COURSE NO. 3: SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 23012.00 FEET, AN ARC DISTANCE OF 745.35 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 14°44'58" WEST, 745.32 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; COURSE NO. 4: SOUTH 13°49'18" WEST, 748.94 FEET; COURSE NO. 5: SOUTH 30°33'06" WEST, 227.24 FEET TO THE EASTERLY RIGHT OF WAY LINE OF DURBIN CONNECTOR, A 200 FOOT WIDE RIGHT OF WAY, AS SHOWN ON SAID STATE ROAD NO. 9B RIGHT OF WAY MAP, AND TO THE ARC OF A CURVE LEADING NORTHWESTERLY; THENCE NORTHWESTERLY AND NORTHERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING THREE (3) COURSES AND DISTANCES: COURSE NO. 1: NORTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 860.00 FEET, AN ARC DISTANCE OF 1087.21 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 31°44'26" WEST, 1016.24 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; COURSE NO. 2: NORTH 04°28'33" EAST, 1480.97 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING NORTHERLY; COURSE NO. 3: NORTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 1246.00 FEET, AN ARC DISTANCE OF 550.62 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 08°11'02" WEST, 546.15 FEET, TO THE AFORESAID SOUTHEASTERLY RIGHT OF WAY LINE OF RACE TRACK ROAD, AND THE ARC OF A CURVE LEADING NORTHEASTERLY; THENCE NORTHEASTERLY, ALONG THE SOUTHEASTERLY RIGHT OF WAY LINE OF SAID RACE TRACK ROAD, RUN THE FOLLOWING THREE (3) COURSES AND DISTANCES: COURSE NO. 1: NORTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 981.00 FEET, AN ARC DISTANCE OF 584.01 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 51°40'51" EAST, 575.42 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; COURSE NO. 2: NORTH 34°37'35" EAST, 1189.60 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING NORTHEASTERLY; COURSE NO. 3: NORTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1112.80 FEET, AN ARC DISTANCE OF 722.06 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 53°12'54" EAST, 709.46 FEET, TO THE POINT OF BEGINNING.

CONTAINING 86.38 ACRES, MORE OR LESS.

TOGETHER WITH:

PARCEL 3

A PORTION OF SECTIONS 6 AND 7, TOWNSHIP 5 SOUTH, RANGE 28 EAST, ST. JOHNS COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF RACE TRACK ROAD (A VARIABLE WIDTH RIGHT OF WAY, AS NOW ESTABLISHED) AND THE WESTERLY RIGHT OF WAY LINE OF DURBIN CONNECTOR (A 200 FOOT WIDE

RIGHT OF WAY, AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP, SECTION 78000, F.P. NO. 4314182); THENCE SOUTHERLY AND SOUTHEASTERLY, ALNG LAST SAID LINE, RUN THE FOLLOWING THREE (3) COURSES AND DISTANCES: COURSE NO. 1: SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 1046.00 FEET, AN ARC DISTANCE OF 481.38 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 08°42'29" EAST, 477.14 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; COURSE NO. 2: SOUTH 04°28'33" WEST, 1480.97 FEET TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHEASTERLY; COURSE NO. 3: SOUTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1060.00 FEET, AN ARC DISTANCE OF 1395.81 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 33°14'51" EAST, 1297.13 FEET TO THE WESTERLY RIGHT OF WAY LINE OF STATE ROAD NO. 9B (A VARIABLE WIDTH RIGHT OF WAY, AS SHOWN ON AFORESAID FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP; THENCE SOUTHERLY AND SOUTHWESTERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING THREE (3) COURSES AND DISTANCES: COURSE NO. 1: SOUTH 02°09'50" EAST, 125.24 FEET; COURSE NO. 2: SOUTH 20°58'16" WEST, 1036.52 FEET TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHWESTERLY; COURSE NO. 3: SOUTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 2425.00 FEET, AN ARC DISTANCE OF 614.29 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 28°13'41" WEST, 612.65 FEET TO THE SOUTHERLY LINE OF THE NORTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 7; THENCE SOUTH 89°35'20" WEST, ALONG LAST SAID LINE, 1016.19 FEET TO THE EASTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1288, PAGE 175 OF THE PUBLIC RECORDS OF SAID COUNTY; THENCE NORTH 00°53'26" EAST, ALONG LAST SAID LINE, 1400.54 FEET; THENCE NORTH 01°22'52" WEST, CONTINUING ALONG LAST SAID LINE AND ALONG THE EASTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 819, PAGE 549 OF SAID PUBLIC RECORDS, 3478.60 FEET TO THE AFORESAID SOUTHERLY RIGHT OF WAY LINE OF RACE TRACK ROAD; THENCE EASTERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING THREE (3) COURSES AND DISTANCES: COURSE NO. 1: SOUTH 70°23'16" EAST, 285.33 FEET TO THE POINT OF CURVATURE OF A CURVE LEADING EASTERLY; COURSE NO. 2: EASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 1161.35 FEET, AN ARC DISTANCE OF 309.32 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 78°01'04" EAST, 308.40 FEET TO THE ARC OF A CURVE LEADING EASTERLY; COURSE NO. 3: EASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 981.00 FEET, AN ARC DISTANCE OF 503.52 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 84°47'42" EAST, 498.01 FEET TO THE POINT OF BEGINNING.

CONTAINING 129.33 ACRES, MORE OR LESS.

TOGETHER WITH:

PARCEL 4

A PORTION OF SECTIONS 3, 4, 5, AND 9, TOWNSHIP 5 SOUTH, RANGE 28 EAST, ST. JOHNS COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 3; THENCE SOUTH 89°14'38" WEST, ALONG THE SOUTHERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 60, PAGE 689 OF THE PUBLIC RECORDS OF SAID COUNTY, 1339.97 FEET TO THE SOUTHEASTERLY CORNER OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 720, PAGE 126 OF SAID PUBLIC RECORDS; THENCE SOUTH 88°06'37" WEST, ALONG THE SOUTHERLY LINE OF LAST SAID LANDS, 1309.05 FEET TO THE WESTERLY LINE OF LAST SAID LANDS; THENCE NORTH 01°44'01" WEST, ALONG LAST SAID LINE, 1352.98 FEET TO THE SOUTHWEST CORNER OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 59, PAGE 527 OF SAID PUBLIC RECORDS; THENCE NORTH 01°28'34" WEST, ALONG THE WESTERLY LINE OF LAST SAID LANDS AND ALONG THE WESTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 134, PAGE 504 OF SAID PUBLIC RECORDS, 632.26 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF RACETRACK ROAD (COUNTY ROAD NO. 5, A VARIABLE WIDTH RIGHT OF WAY, AS NOW ESTABLISHED); THENCE WESTERLY AND SOUTHERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING FIVE (5) COURSES AND DISTANCES; COURSE NO. 1: NORTH 88°19'04" WEST, 2143.58 FEET; COURSE NO. 2: SOUTH 01°40'56" WEST, 17.00 FEET; COURSE NO. 3: NORTH 88°19'04" WEST, 270.00 FEET; COURSE NO. 4: SOUTH 15°28'49" WEST, 320.30 FEET; COURSE NO. 5: SOUTH 73°43'53" WEST, 209.74 FEET TO THE EASTERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 95 (STATE ROAD NO. 9, A 300 FOOT LIMITED ACCESS RIGHT OF WAY PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP SECTION NO. 78080-2408 AND SECTION NO. 78080-2440), SAID POINT ALSO LYING ON THE ARC OF A CURVE LEADING SOUTHEASTERLY; THENCE SOUTHEASTERLY, SOUTHERLY, EASTERLY, WESTERLY, AND SOUTHWESTERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING FOURTEEN (14) COURSES AND DISTANCES; COURSE NO. 1: SOUTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 7789.44 FEET, AN ARC DISTANCE OF 2459.14 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 23°35'08" EAST, 2448.94 FEET; COURSE NO. 2: SOUTH 17°38'03" EAST, 225.57 FEET; COURSE NO. 3: SOUTH 12°16'34" EAST, 687.77 FEET; COURSE NO. 4: SOUTH 46°41'58" EAST, 73.71 FEET; COURSE NO. 5: SOUTH 88°18'50" EAST, 234.77 FEET; COURSE NO. 6: NORTH 82°50'00" EAST, 268.31 FEET TO THE ARC OF A CURVE LEADING SOUTHERLY; COURSE NO. 7: SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 8374.44 FEET, AN ARC DISTANCE OF 1058.76 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 03°32'41" EAST, 1058.06 FEET; COURSE NO. 8: NORTH 89°55'22" WEST, 108.55 FEET; COURSE NO. 9: SOUTH 77°16'39" WEST, 283.75 FEET TO THE ARC OF A CURVE LEADING SOUTHERLY; COURSE NO. 10: SOUTHERLY, ALONG AND AROUND THE

ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 7989.44 FEET, AN ARC DISTANCE OF 102.16 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 00°53'39" WEST, 102.16 FEET; COURSE NO. 11: SOUTH 89°04'35" WEST, 121.41 FEET; COURSE NO. 12: SOUTH 11°51'09" WEST, 339.23 FEET; COURSE NO. 13: SOUTH 06°46'05" WEST, 485.62 FEET; COURSE NO. 14: SOUTH 03°59'10" WEST, 587.00 FEET, TO THE SOUTHERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 2190, PAGE 1620, OF THE PUBLIC RECORDS OF SAID ST JOHNS COUNTY; THENCE NORTHEASTERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING THREE (3) COURSES AND DISTANCES: COURSE NO. 1: NORTH 63°02'45" EAST, 2200.27 FEET; COURSE NO. 2: NORTH 54°52'27" EAST, 2182.16 FEET; COURSE NO. 3: NORTH 68°14'55" EAST, 1485.98 FEET, TO THE SOUTHERLY LINE OF THE AFORESAID NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 3; THENCE SOUTH 89°30'48" WEST, ALONG LAST SAID LINE, 851.18 FEET, TO THE WESTERLY LINE OF SAID NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 3; THENCE NORTH 00°20'20" WEST, ALONG LAST SAID LINE, 1371.41 FEET TO THE POINT OF BEGINNING;

THE ABOVE DESCRIBED LANDS BEING SUBJECT TO ANY SUBMERGED SOVEREIGN LANDS OF THE STATE OF FLORIDA ASSOCIATED WITH DURBIN CREEK.

CONTAINING 383.34 ACRES, MORE OR LESS

REVISED EXHIBIT 2

State Road 9B Right-of-Way Donation and Joint Use Agreement – Phase 1 Roadway Improvements

Description: Execution of Donation Agreement and Joint Use Agreement and conveyance of State Road 9B Improvements right-of-way to FDOT ($17,000,000); preliminary design of State Road 9B improvements pursuant to 2008 Memorandum of Understanding ($934,274); 2006 Race Track Road right-of-way donations ($1,778,000).

Estimated Cost: $19,712,274 (2016 Dollars) [Completed]

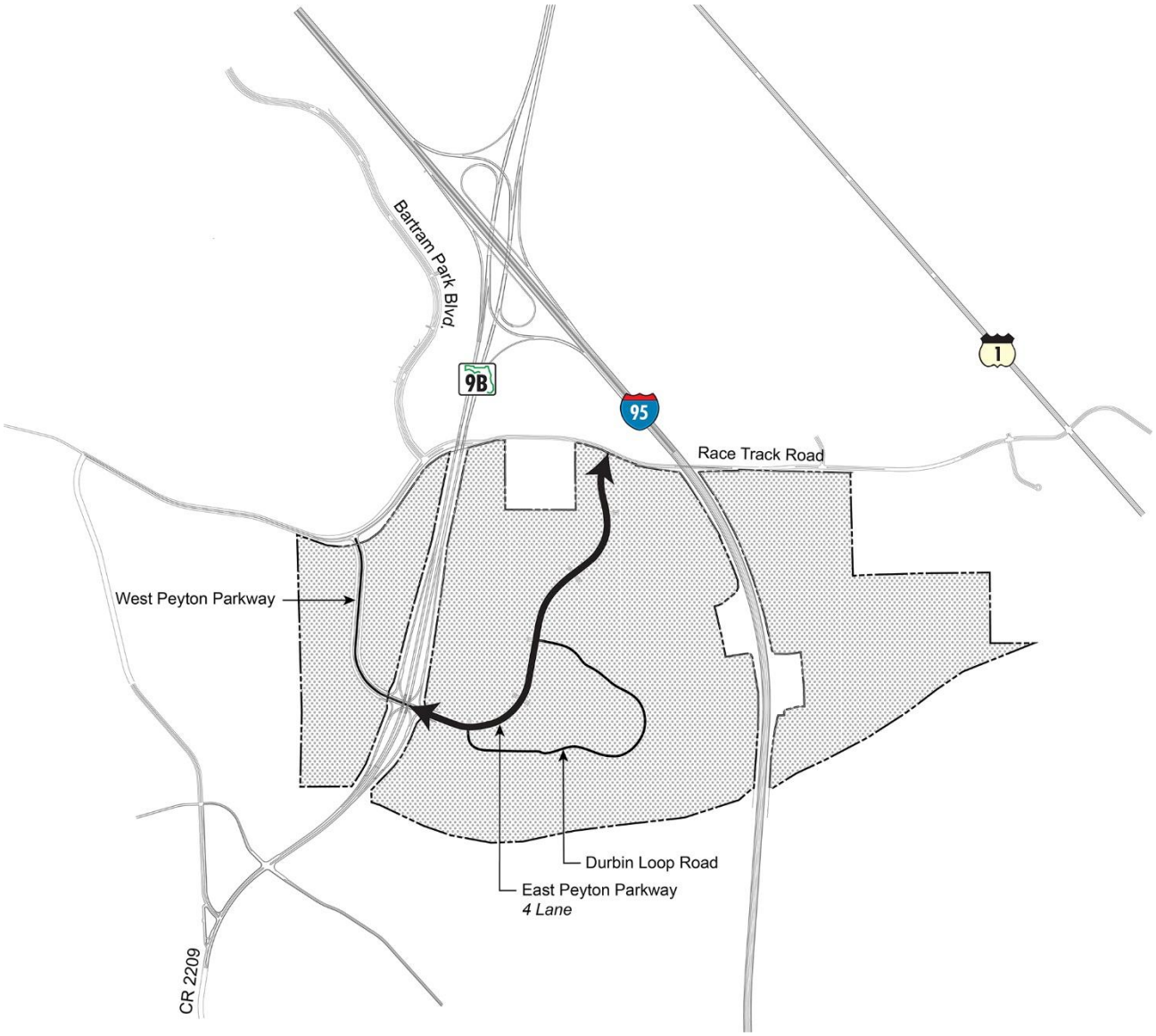
REVISED EXHIBIT 3

East Peyton Parkway 4-Lane Construction – Phase 2 Roadway Improvements

Description: Design 6-lane and construct a 4-lane divided urban arterial between the SR 9B Extension Interchange and Race Track Road per St Johns County Land Development Code, including right-of-way dedication, engineering and related design services, roadway, bike lanes, sidewalk, signing and pavement marking, traffic signals, drainage system and water management ponds, and incidental relocation of existing utilities. The cost of new utilities are not included in this improvement but may be constructed coincidental with this improvement by separate agreement.

The County will maintain roadway, bike lanes, sidewalk, signing and pavement marking, traffic signals, drainage system and water management ponds. The Developer shall maintain landscaping and lighting.

Estimated Cost: $19,638,844 (2019 Dollars)



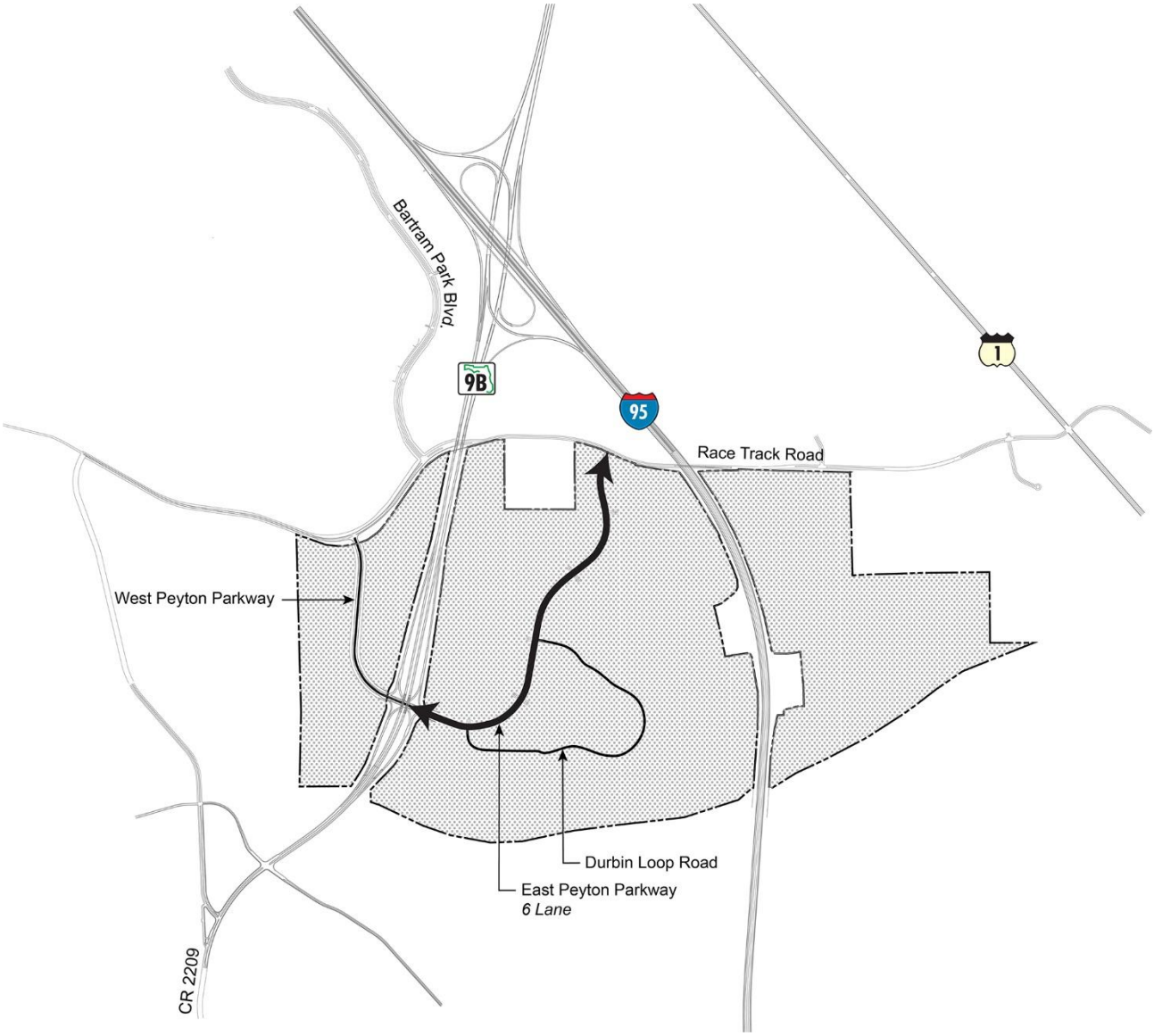
REVISED EXHIBIT 4

East Peyton Parkway 6-Lane Construction – Phase 3 Roadway Improvements

Description: Widen East Peyton Parkway from 4-lane to 6-lane divided urban arterial from the 9B Extension Interchange to Race Track Road per St Johns County Land Development Code, including right-of-way dedication, engineering and related design services, roadway, bike lanes, sidewalk, signing and pavement marking, traffic signals, drainage system and water management ponds, and incidental relocation of existing utilities. The cost of new or upgraded utilities are not included in this improvement but may be constructed coincidental with this improvement by separate agreement.

The County will maintain roadway, bike lanes, sidewalk, signing and pavement marking, traffic signals, drainage system and water management ponds. The Developer shall maintain landscaping and lighting.

Estimated Cost: $2,720,311 (2019 Dollars)



REVISED EXHIBIT 5

Race Track Road (Bartram Park Boulevard to Terminus of 2-Lane Section East of I-95) 4-Lane Widening – Phase 4 Roadway Improvements

Description: Design 6-lane urban, reconstruct existing 2-lane Race Track Road to a 4-lane divided suburban arterial, between Bartram Park Boulevard and the terminus of the 2-lane section of Race Track Road east of the bridge traversing Interstate 95 per St Johns County Land Development Code, including engineering and related design services, roadway, bike lanes, sidewalk, signing and pavement marking, traffic signals, drainage system and water management ponds, and incidental relocation of existing utilities. This 4-lane suburban roadway is to be constructed to allow for the future 6-lane urban section in the future. New or upgraded utilities are not included in this improvement but may be constructed coincidental with this improvement by separate agreement. This Phase 4 Roadway Improvement may include the expanded bridge traversing Interstate 95 if not constructed by FDOT (Scenario 1).

The County will maintain roadway, bike lanes, sidewalk, signing and pavement marking, traffic signals, drainage system and water management ponds. The Developer shall maintain landscaping and lighting.

Estimated Cost: Scenario 1: $20,798,446.00 Scenario 2: $16,464,946.00 (2019 Dollars)

Bartram Park Blvd.
9B
95
1
Race Track Road
West Peyton Parkway
Durbin Loop Road
East Peyton Parkway
CR 2209

REVISED EXHIBIT 6

Road Capacity Charges				
TOTAL	Quantity	Units*	Fee/Unit	Total
Apartment	2,265	DU	$1,567	$3,549,255
Office	2,261,065	SF	$904	$2,044,003
Shopping	2,397,130	SF	$2,803	$6,719,155
Hotel	350	RM	$1,204	$421,400
Hospital	375,000	SF**	$308	$115,500
TOTAL				**$12,849,313**

*SF calculations based on per 1,000 square feet of space.

** For the purposes of this Agreement, 1 hospital bed is equal to 2,500 SF.

REVISED EXHIBIT 7

Projection of Road Capacity Charges Through Buildout

Durbin Roadway Improvement Assessment Through Buildout				
PHASE 1	Quantity	Units*	Fee/Unit	Total
Apartment	-	DU	$1,567	$0
Office	-	SF	$904	$0
Shopping	700,000	SF	$2,803	$1,962,100
Hotel	-	RM	$1,204	$0
				$1,962,100
PHASE 2	Quantity	Units	Fee/Unit	Total
Apartment	1,065	DU	$1,567	$1,668,855
Office	1,650,000	SF	$904	$1,491,600
Hospital*	375,000	SF	$308	$115,500
Shopping	1,250,000	SF	$2,803	$3,503,750
Hotel	225	RM	$1,204	$270,900
				$7,050,605
PHASE 3	Quantity	Units	Fee/Unit	Total
Apartment	900	DU	$1,567	$1,410,300
Office	350,000	SF	$904	$316,400
Shopping	350,000	SF	$2,803	$981,050
Hotel	125	RM	$1,204	$150,500
				$2,858,250
PHASE 4	Quantity	Units	Fee/Unit	Total
Apartment	300	DU	$1,567	$470,100
Office	261,065	SF	$904	$236,003
Shopping	97,130	SF	$2,803	$272,255
Hotel	-	RM	$1,204	$0
				$978,358
TOTAL				**$12,849,313**

*SF is calculated per 1,000 sq. ft. of each use.

*1 hospital bed is the equivalent of 2,500 square feet.

REVISED EXHIBIT 8

LAND USE CONVERSION TABLE					
Land Use	**Proposed**	**Minimum**	**Maximum**	**Net Trip Rate**	**Units**
Multi-Family Residential	2,265 DU	799 DU	2,999 DU	0.354	DU
Office	2,261,065 SF	1,128,160 SF	3,214,952 SF	1.262	1,000 SF
Commercial	2,397,130 SF	1,674,888 SF	2,636,843 SF	2.547	1,000 SF
Hotel	350 RM	0 RM	600 RM	0.379	RM
Hospital[1]	375,000 SF	0 SF	500,000 SF	1.510	2,500 SF/1 RM

(1) For the purposes of this Agreement, 1 hospital bed is equivalent to 2,500 square feet.

Example: To convert 50 Residential Dwellings to Office, multiply 50 x 0.28 = 14,000 square feet

ATTACHMENT 2

SUMMARY OF DURBIN PARK ROADWAY CONTRIBUTIONS

February 20, 2020

peters yaffee
TRANSPORTATION & TRAFFIC ENGINEERING

Summary of Durbin Park Roadway Contributions

Submitted to: Durbin Creek National, LLC
Submitted by: Peters and Yaffee, Inc.

February 20, 2020

Summary

The Owner is requesting changes to the phasing of development rights granted in the Durbin Park Development Agreement, as amended, and the sequencing of roadway improvements associated with the Durbin Park project. These modifications are being requested to help expedite the development of Flagler Hospital's medical campus development within Durbin Park, bringing high-paying jobs to St. Johns County earlier than expected.

The purpose of this Summary of Durbin Park Roadway Contributions is to provide an analysis of the existing Development Agreement to demonstrate that the Durbin Park roadway improvements set forth in the Development Agreement, as is proposed to be amended, have the same benefit to the regional roadway network and are significantly greater than the Owner would be required to construct or fund under the current Land Development Code and Florida law. The Owner has demonstrated that the Proposed DA Modification (as hereinafter defined) still requires the same developer commitments which were front-loaded due to the already-granted dedication of the SR 9B and Race Track Road right-of-way. The Owner has provided an analysis of the regional roadway network and intersections with the requested changes. The Owner has also shown that under today's Land Development Code, the Owner would be responsible for **$22,335,264** less transportation mitigation costs vs. the Development Agreement, as proposed. The Owner is not seeking to terminate the Development Agreement, only to time the roadway construction obligations concurrently with Project development.

Durbin Park Transportation Mitigation

On February 9, 2015, the St. Johns County Commission approved a Development Agreement for Durbin Park, which is recorded in Official Records Book 3986, Page 1862, Public Records of St. Johns County, Florida. On January 19, 2017, the Commission approved a First Amendment to Development Agreement, which is recorded in Official Records Book 4319, Page 1805, Public Records of St. Johns County, Florida. The aforementioned documents are referred to herein collectively as the "Development Agreement". The Development Agreement was based upon a Traffic Study by Prosser, Inc. dated September 26, 2014 (the "Development Agreement Traffic Study").

Flagler Hospital, Inc. is planning a hospital and medical office complex within the southern portion of Durbin Park and needs to have its first phase under construction as soon as possible. In order to provide Flagler with an adequate roadway network to serve its north county campus, Durbin Creek National, LLC ("Owner") has applied to the County to amend the Development Agreement (the "Proposed DA Modification") to revise the Project development rights and order of required roadway improvements.

The Development Agreement and Development Agreement Traffic Study were reviewed to determine: (i) the difference in the required transportation mitigation in the Development Agreement vs. the Proposed DA Modification, and (ii) the difference in the proportionate share calculation and required transportation mitigation for the project set forth in the Development Agreement vs. under the current St. Johns County Land Development Code. The findings are as follows:

Existing Development Agreement Summary

Phase 1A
Development = 700,000 SF Commercial = 1,783 PM peak net trips
Road Improvements = SR 9B and Race Track Road right-of-way dedication, preliminary design of SR 9B = $19,712,274
Original Impact = Not Calculated

Phase 1B
Development = 356,880 SF Office, 508,330 SF Commercial = 1,745 PM peak net trips
Road Improvements = Construction of 4-lane East Peyton Parkway = $13,457,600
Original Impact Phase 1B = $14,316,000 [See Exhibit A, Table 8 in Development Agreement]
Original Cumulative DA Obligation After Phase 1B = $33,169,874

Phase 2
Development = 594 Apartment Units, 350 Hotel Rooms, 892,160 SF Commercial, 1,267,200 SF Office = 4,214 PM peak net trips
Road Improvements = Construction of 4-lane Race Track Road from East Peyton Parkway to Bartram Springs Parkway = $9,352,500
Original Impact of Phase 2 = $7,389,000
Original Cumulative Impact After Phase 2 = $21,705,000 [Original Impact of Phase 1B and 2, combined]
Original Cumulative DA Obligation After Phase 2 = $42,522,374

Phase 3
Development = 623,950 SF Office, 206,640 SF Commercial = 1,314 PM peak net trips
Road Improvements = Construction of 4-lane Race Track Road from Bartram Park Blvd. to East Peyton Parkway = $12,971,100
Original Impact of Phase 3 = $81,000
Original Cumulative Impact After Phase 3 = $21,786,000
Original Cumulative DA Obligation After Phase 3 = $55,493,474

Phase 4
Development = 405 Apartment Units, 547,580 SF Office, 90,000 SF Commercial = 1,064 PM peak net trips
Road Improvements = Construction of 6-lane Race Track Road from Bartram Park Blvd. to US 1 = $11,532,600
Original Impact of Phase 4 = $1,079,000
Original Cumulative Impact After Phase 4 = $22,865,000
Original Cumulative DA Obligation After Phase 4 = $67,026,074

In the Development Agreement, the Owner agreed to be responsible for the construction of transportation improvements that would cost **$44,161,074** more than the calculated project impacts to the public roadway system.

The project's calculated impacts to the roadway network were $22,865,000. The Owner agreed to provide **$30,945,494** ($19,712,274 + $11,233,220) of transportation mitigation. This transportation mitigation consists of Race Track Road and SR 9B right-of-way dedication and preliminary SR 9B engineering (cumulative total $19,712,274), and the payment of a Road Capacity Charge (in lieu of paying road impact fees) of $11,233,220. A Tax Increment Financing ("TIF") district was setup to pay for the approximately $36 million in remaining costs for transportation improvements described in the Development Agreement.

When using the net trip rate set forth in Exhibit 12 of the Development Agreement and the existing development plan for Durbin Park, the existing development is projected to generate **10,120 PM** peak net trips. This would indicate the Original Development Contribution per trip would be **$3,057.86 per trip** ($30,945,494/10,120).

However, when using the Development Agreement trip rate and the Project's calculated impacts to the roadway network of $22,865,000, the Owner's responsibility per trip would be **$2,259.38 per trip** ($22,865,000/10,120).

The Development Agreement Traffic Study is attached as Exhibit A. The quoted original impact costs are located in Exhibit A, Table 8. The Development Agreement is attached as Exhibit B. The quoted transportation responsibility costs are from Exhibits 5, 6, 7 and 8 of the Development Agreement. The quoted projection of road capacity charge through buildout is from the Development Agreement Exhibit 10.

Summary of Proposed Development Agreement Modification

Phase 1 (Phase 1A in Development Agreement)
Development = 700,000 SF Commercial = **1,783** PM peak net trips
Based on Original Developer Contribution per trip, responsibility should be $5,452,164 ($3,057.86*1,783)
Based on Project Impact per trip, responsibility should be $4,028,475 ($2,259.38*1,783)
Developer Contribution = SR 9B and Race Track Road right-of-way and preliminary design of SR 9B ($19,712,274) + Roadway Improvement Assessment ($1,962,100) = $21,674,374

Phase 2 (Phase 1B in Development Agreement)
Development = 1,250,000 SF Commercial, 1,650,000 SF Office, 375,000 SF Hospital (1 Bed = 2,500 SF), 225 Hotel Rooms, 1,065 MF Units = **5,955** PM peak net trips
Based on Original Developer Contribution per trip, responsibility should be $18,209,556
Based on Project Impact per trip, responsibility should be $13,454,608
Developer Responsibility = 4-laning of East Peyton Parkway Construction Cost of $19,638,844.
Developer Contribution: Roadway Improvement Assessment of $7,050,605

Phase 3 (Phase 2 in Development Agreement)
Development = 350,000 SF Commercial, 350,000 SF Office, 125 Hotel Rooms, 900 MF Units = **1,699** PM peak net trips
Based on Original Developer Contribution per trip, responsibility should be $5,195,304
Based on Project Impact per trip, responsibility should be $3,838,687
Developer Responsibility = 6-laning of East Peyton Parkway Construction Cost of $2,720,311
Developer Contribution: Roadway Improvement Assessment of $2,858,250

Phase 4 (Phase 3 in Development Agreement)
Development = 97,130 SF Commercial, 261,065 SF Office, and 300 MF Units = **683** PM peak net trips
Based on Original Developer Contribution per trip, responsibility should be $2,088,518
Based on Project Impact per trip, responsibility should be $1,543,157
Developer Responsibility = 4-laning Race Track Road from Bartram Park Blvd. to Bartram Springs Parkway Construction Cost of $ 20,798,446 or $16,464,946 (if FDOT builds the Race Track Road bridge over I-95)
Developer Contribution: Roadway Improvement Assessment of $978,358

Cumulative Developer Responsibility =$62,869,875 or $58,536,375 if FDOT builds the Race Track Road bridge over I-95.
Cumulative Developer Contribution = $32,561,587

Original Trips 10,120 Net PM peak hour trips
Proposed Trips 10,120 Net PM peak hour trips (same as in Development Agreement)
Proposed additional Developer Contribution = $1,616,093 ($32,561,587 - $30,945,494, which is a 5.2% increase) – This is the difference between the Total Projection of Roadway Capacity Charges Through Buildout in the Proposed DA Modification (Exhibit 7) and the Development Agreement (Exhibit 10) plus the preliminary SR 9B design and Right of Way donation identified in Phase 1 mitigation.

The proposed trip calculation is based on the net trip rate in Revised Exhibit 8 of the proposed Second Amendment to Development Agreement provided in Exhibit C. The Projected Roadway Improvement Assessment is based on the Revised Exhibit 7 provided in Exhibit C to the proposed Second Amendment to Development Agreement.

Analysis of Proposed Changes to Development Agreement

The Owner, through a roadway builder, is responsible for funding construction of the roads listed in the Development Agreement and seeking reimbursement of construction costs as funds are available from the TIF. Because the TIF has generated few dollars to date, the Owner is proposing to revise the Development Agreement as set forth below in order to proceed with development.

The Owner is proposing the following revisions to the Development Agreement:

- Phase 1 (former 1A) remains the same (Right-of-Way and Preliminary Engineering) = $19,712,274.
- Phase 2 (former 1B) remains the same, East Peyton Parkway as a 4-lane road = $19,638,844
- Phase 3 (former Phase 2) instead of constructing Race Track Road from East Peyton Parkway to Bartram Springs Parkway as a 4-lane road, construct East Peyton Parkway as a 6-lane road = $2,720,311
- Phase 4 (former Phase 3) instead of constructing Race Track Road from Bartram Park Boulevard to East Peyton Parkway as a 4-lane road, construct Race Track Road from Bartram Park Boulevard to Bartram Springs Parkway as a 4-lane road = $20,798,446 or $16,464,946 if FDOT constructs the Race Track Road bridge over I-95
- The former Phase 4 mitigation of constructing Race Track Road from Bartram Park Boulevard to US 1 as a 6-lane road is proposed to be removed.
- Cumulative total roadway improvements is projected to be $62,869,875 or $58,536,375 if FDOT builds the Race Track Road bridge over I-95.
- Roadway Capacity Charges are projected to increase from $11,233,220 to $12,849,313

The New Traffic Study of the changes proposed to the Development Agreement is attached as Exhibit D.

Changes to St. Johns County Concurrency Requirements

Since the County and Owner entered into the Development Agreement in 2015, the County has revised its Land Development Code to eliminate transportation concurrency review for non-residential development in an effort to incentivize such development. Thus, for the Durbin Park Project, under today's Code, the Owner would only be required to provide concurrency analysis and transportation proportionate share payment (or road construction obligation) for the proposed maximum 2,265 multi-family units. Assuming a transportation proportionate share payment of $6,846 per unit, the Owner would be required to pay $15,506,190 to the County to construct improvements to the regional roadway network or the Owner would be required to construct roadway improvements in such amount.

Under today's Code, the Owner would also be required to pay road impact fees for the non-residential development, as follows:

- 2,397,130 SF Commercial * $7,426/1,000 SF = $17,801,087
- 2,261,065 SF Office * $2,337/1,000 SF = $5,284,109
- 375,000 SF Hospital (1 bed = 2,500 SF) * $1,919/1,000 SF = $719,625
- 350 Hotel Rooms * $3,496/Room = $1,223,600
- Cumulative total is $40,534,611

Thus, even with the Proposed DA Modification, the Durbin Park Project is still responsible for **$22,335,264** more transportation mitigation than would be required to be paid to the County under today's Code. The Owner is also constructing Project roads with its own funds until TIF revenues are available. It should be noted that the Owner will get no road impact fee credits for any of the improvements made under the Development Agreement or proposed modification thereto.

ATTACHMENT 3

DURBIN CREEK NATIONAL

DEVELOPMENT AGREEMENT

Approved February 3, 2015

DEVAGREE 2014-01

Public Records of St. Johns County, FL
Clerk number: 2015008598
BK: 3986 PG: 1862
2/11/2015 4:23 PM
Recording $741.00

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into on this 9 day of February, 2015, between **DURBIN CREEK NATIONAL, LLC**, a Florida limited liability company, its successors or assigns ("Durbin"); and **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida ("St. Johns County" or "County").

RECITALS

A. Durbin owns approximately 1,624 acres of real property located in St. Johns County, Florida, as more particularly described in **Exhibit "1"** attached hereto (the "Property").

B. The Property is currently vacant, designated Intensive Commercial (IC) and Rural/Silviculture (R/S) on the Future Land Use Map of the St. Johns County Comprehensive Plan, and zoned Open Rural (OR).

C. As designated, the Property constitutes the largest area planned for intensive commercial development in St. Johns County and is uniquely situated to provide commercial services, employment opportunities, and ad valorem tax and sales tax revenues to the County.

D. The Florida Department of Transportation ("FDOT") proposes to design, permit, and construct an improvement known as the extension of State Road 9B ("SR 9B Phase III") which will serve to connect Interstate 95 and County Road 2209 and SR 9B with Race Track Road and to provide a connector road extending west from the interchange to Racetrack Road. SR 9B Phase III also will relieve current congestion at I-95 and County Road 210.

E. As currently aligned, right-of-way for SR 9B Improvements extends through the Property, as shown on **Exhibit 2**.

F. Additionally, the right-of-way for a proposed interchange connecting SR 9B with Race Track Road (a County-maintained road) and a connector road extending west from the interchange to Race Track Road is located within the Property. Collectively, SR 9B, the interchange, and the west connector road are referred to herein as the "SR 9B Improvements" and are depicted in **Exhibit 2.**

G. FDOT has sought from Durbin a donation of the right-of-way required for the SR 9B Improvements in lieu of instituting condemnation proceedings.

H. FDOT also has sought from Durbin the joint use of stormwater facilities to be located on the Property for the SR 9B Improvements.

I. Due to the strategic importance of the SR 9B Improvements to St. Johns County and regional transportation systems, the County seeks to facilitate the donation of the SR 9B Improvements Rights-of-Way and the joint use of stormwater facilities on the Property.

J. Prior to the execution of this Agreement, Durbin, the County, and FDOT entered into a Memorandum of Understanding dated March 3, 2008 (the "2008 MOU"). Pursuant to the 2008 MOU, Durbin has funded a portion of the preliminary design of the SR 9B Improvements.

K. Durbin does not propose to develop the Property at this time but recognizes the Property's development potential at certain projected densities and intensities (the "Projected Development"). In connection with the Projected Development, Durbin proposes the design, permitting, and construction of an east connector from the SR 9B Interchange to Race Track Road and improvements to Race Track Road and to expand the joint use stormwater ponds as necessary for future stormwater capacity (collectively, the "Proposed Roadway Improvements") to be coordinated with the commencement of Phases of the Projected Development in order to provide regional transportation facilities sufficient to serve the Projected Development.

L. Pursuant to an Impact Fee Credit Agreement between Durbin and the County dated March 15, 2006, and an Amendment to the Impact Fee Credit Agreement dated September 6, 2006, Durbin previously has donated approximately 8.46 acres of right-of-way at Race Track Road which will be used for the Proposed Roadway Improvements ("2006 Race Track Road Right-of-Way Donations").

M. Durbin has provided a transportation report which demonstrates that the SR 9B Improvements and the Proposed Roadway Improvements include regional roadway improvements which are sufficient to serve the Projected Development.

N. Durbin also seeks agreement from the County that (i) the donation of the SR 9B Improvements Right-of-Way, joint use of stormwater facilities, and the design, permitting, and construction of the Proposed Roadway Improvements meet or exceed the proportionate share of transportation improvements required for the Projected Development in compliance with Section 163.3180(5)(h), Florida Statutes (2014), and Article XI of the County's Land Development Code, and (ii) the proportionate share shall be applied as a credit toward the road impact fees, if any, for the Projected Development pursuant to Article XI of the County's Land Development Code and Section 13 of St. Johns County Ordinance 87-57, as may be amended from time to time.

O. The Roadway Improvement Costs, including the design, permitting and construction of the Proposed Roadway Improvements will be reimbursed to the Roadway Improvement Builder from available Tax Increment and Road Capacity Charges deposited into the St. Johns County Transportation Improvement Trust Fund [Durbin] or secured by the issuance of Roadway Credits.

P. Prior to the County's approval of commercial or subdivision construction plans for land uses and densities and intensities under land use regulations of the County for each Phase, the Proposed Roadway Improvements for each Phase shall be constructed, dedicated, and accepted or a Construction Contract shall be executed by the Roadway Improvement Builder with a contractor for the construction of the Proposed Roadway Improvements for the Phase consistent with the Roadway Construction Plans approved by the County. The timely performance of the Construction Contract shall be secured by the execution and delivery to the County of a construction bond designating the County as an insured, in a form acceptable to the County. Nothing contained herein shall require the County to approve a particular development order or permit for the Projected Development.

Q. As provided in this Agreement, the sum of the value of Durbin's donation of the SR 9B Improvements Right-of-Way, joint use of stormwater facilities, and the projected Road Capacity Charges to be collected through buildout of the Projected Development meets or exceeds the proportionate share of transportation improvements for the Projected Development and meets or exceeds the Transportation Road Impact Fees projected for the Projected Development.

R. The County also has determined that, given the Property's size, location, and designation for IC uses, the Property presents a unique opportunity for the use of ad valorem Tax Increment revenues to encourage development and the coordinated construction of necessary transportation improvements. Accordingly, the County has adopted the Durbin Tax Increment Ordinance.

S. The County is authorized to enter into this Agreement pursuant to Sections 125.01, 163.3220 et seq., Florida Statutes (2014), and Article XI of the St. Johns County Land Development Code.

T. The County is entering into this Agreement for a term of thirty (30) years in consideration of the commitment by Durbin to donate the SR 9B Improvements Right-of-Way, the joint use of stormwater facilities, and the construction of the Proposed Roadway Improvements.

U. The County has determined that the requirements of Section 163.3233, Florida Statutes (2014), have been met in that:

(1) The County has adopted a local Comprehensive Plan that is in compliance.

(2) The land uses in the Projected Development are consistent with the Future Land Use Map designation of IC and R/S applicable to the Property and the goals, objectives, and policies of the Comprehensive Plan.

(3) This Agreement constitutes a binding commitment to coordinate the construction of regional transportation facilities sufficient to serve the Projected Development with the commencement of the Phases of the Projected Development.

(4) The construction of the Proposed Roadway Improvements will be added to the County's Five-Year Capital Improvement Schedule in timing consistent with the construction phasing described in this Agreement.

V. The Florida Local Government Development Agreement Act, Sections 125.01, 163.3220, et seq., Florida Statutes (2014), and Article XI of the County's Land Development Code authorize the County to enter into development agreements with landowners to encourage

a stronger commitment to comprehensive capital facilities planning, to ensure the provision of adequate public facilities for development, and to encourage the efficient use of resources.

W. This Agreement strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate transportation facilities for development, encourages private participation in comprehensive planning, and reduces the costs of development and land development costs.

X. The implementation of this Agreement is determined by the County to be consistent with the St. Johns County Comprehensive Plan and Land Development Code.

Y. The County has held the required public hearings for consideration of this Agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

AGREEMENT OF THE PARTIES

1. **Recitals and Definitions.**

1.1 Recitals. The matters set forth in the Recitals are true and correct as of the date hereof and are incorporated herein by reference.

1.2 Purpose. The purpose of this Agreement is to provide for the donation of the SR 9B Improvements Right-of-Way, the joint use of stormwater facilities, and the funding of the Proposed Roadway Improvements and, in so doing, to address impacts of the Projected Development. Consistent with that intent, the donation of the SR 9B Improvements Right-of-Way, joint use of stormwater facilities, and construction of the Proposed Roadway

Improvements will satisfy the transportation mitigation requirements for the impacts of Projected Development under applicable provisions of state and local law.

1.3 Definitions. The terms used in this Agreement shall have the following meanings:

(a) **"Agreement"** shall mean this Development Agreement.

(b) **"Ancillary Improvements"** shall mean improvements which are not required for the Proposed Roadway Improvements by the St. Johns County Land Development Code, the St. Johns County Development Review Manual, or the St. Johns County Standards and Details Manual, or by any other governmental agency. By way of example but not limitation: the Ancillary Improvements would include any landscaping, irrigation, and signage beyond what is required by the provisions or agencies mentioned herein. The Ancillary Improvements would not include rail crossings. Ancillary Improvements shall meet any applicable County standards. Ancillary Improvements shall not be reimbursable pursuant to Section 5.5(b).

(c) **"Construction Contract"** shall mean the contract between a Roadway Improvement Builder and a contractor for the construction of Proposed Roadway Improvements.

(d) **"Conversion Notice"** shall mean the notice of a modification in uses, intensities and densities of the Projected Development as provided in Section 6.2 of this Agreement.

(e) **"County"** shall mean St. Johns County, Florida, as described in the first paragraph of this Agreement.

(f) **"Credit Certificate"** shall mean the document containing the amount of Roadway Credit due a Roadway Improvement Builder as provided in Section 5.5(d) of this Agreement.

(g) **"Developer"** shall mean the entity constructing or providing the improvements for specific approved land uses under the land development regulations of the County.

(h) **"Donation Agreement"** shall mean the Donation Agreement referred to in Section 4.1 of this Agreement.

(i) **"Durbin"** shall mean Durbin Creek National, LLC, as described in the first paragraph of this Agreement.

(j) **"Effective Date"** shall mean the date provided in Section 3 of this Agreement.

(k) **"FDOT"** shall mean the Florida Department of Transportation, an agency of the State of Florida.

(l) **"Joint Use Agreement"** shall mean the Stormwater Facilities Joint Use Agreement referred to in Section 4.2 below.

(m) **"Land Use Conversion Table"** shall mean the table described in Section 6.2 below and set forth in **Exhibit "12"**.

(n) **"Phase"** shall refer to one of the Phases enumerated in Section 5.3(a) and 6.1 of this Agreement.

(o) **"Projected Development," "Phase 1A Projected Development," "Phase 1B Projected Development," "Phase 2 Projected Development," "Phase 3 Projected Development," "Phase 4 Projected Development," and "Total Projected Development"** shall mean the potential development intensities and densities which may occur on the Property as described in Section 6 of this Agreement.

(p) **"Property"** shall mean the real property described in Recital A above and in **"Exhibit 1"**.

(q) **"Proposed Roadway Improvements," "Phase 1A Roadway Improvements," "Phase 1B Roadway Improvements," "Phase 2 Roadway Improvements – Scenario 1," "Phase 2 Roadway Improvements – Scenario 2," "Phase 3 Roadway Improvements," and "Phase 4 Roadway Improvements"** shall mean the roadway improvements as described in Section 5.3 of this Agreement and described in further detail in **Exhibits "5" through "8"** of this Agreement. The Proposed Roadway Improvements shall include any and all improvements required for the Proposed Roadway Improvements by the St. Johns County Land Development Code, the St. Johns County Development Review Manual, or the St. Johns County Standards and Details Manual, or by any other governmental agency. By way of example but not limitation: the Proposed Roadway Improvements would include required intersection improvements, signalization, pedestrian sidewalks and crossings, bike paths or lanes, stormwater facilities and mitigation. The Proposed Roadway Improvements also would include rail crossings, whether or not required by a governmental agency.

(r) **"Reimbursement Request"** shall mean the request from a Roadway Improvement Builder upon approval of the Roadway Construction Plans and the execution of the Construction Contract for Proposed Roadway Improvements required to receive a reimbursement from the St. Johns County Transportation Improvement Trust Fund [Durbin] as described in Sections 5.5(a) and (b) of this Agreement.

(s) **"Road Capacity Charge"** shall mean a regulatory fee in the nature of a transportation impact fee imposed by the County on the Projected Development as a condition of

the issuance of a building permit by the County to partially fund the trip capacity needs of the Proposed Roadway Improvements, as described in Section 5.4(b) of this Agreement.

(t) **"Road Capacity Charge Ordinance"** means Ordinance 2015-6 adopted by the County on February 3, 2015, as may be amended, that imposes the Road Capacity Charge.

(u) **"Roadway Construction Plans"** shall mean the plans, specifications and drawings defining the scope of a Proposed Roadway Improvement including a specific enumeration of any Ancillary Improvements proposed to be constructed or provided and proposed to be included in the Proposed Roadway Improvement.

(v) **"Roadway Cost Certificate"** shall mean the document jointly executed by the County and the Roadway Improvement Builder determining the Roadway Improvement Cost for a Proposed Roadway Improvement and required as a condition for the reimbursement of Roadway Improvement Costs from the St. Johns County Transportation Improvement Trust Fund [Durbin] as described in Sections 5.5(c) and (e) of this Agreement.

(w) **"Roadway Credit"** shall mean the remaining dollar amount of the Roadway Improvement Costs contained in a Roadway Credit Certificate less the amount of Roadway Improvement Costs paid from the St. Johns County Transportation Improvement Trust Fund [Durbin] representing the unpaid amount due for reimbursement in a Roadway Cost Certificate as described in Section 5.5 of this Agreement.

(x) **"Roadway Improvement Builder"** shall mean Durbin, a successor or assign who undertakes to dedicate property for right-of-way for the Proposed Roadway Improvements, to fund the acquisition of such right-of-way, and/or to design, permit, and/or

construct any of the Proposed Roadway Improvements. Within its sole discretion, the County may elect to be a Roadway Improvement Builder.

(y) **"Roadway Improvement Costs"** shall mean the costs of a Proposed Roadway Improvement certified in a Roadway Cost Certificate as provided in Sections 5.5(c) and (e) of this Agreement.

(z) **"St. Johns County Transportation Improvement Trust Fund [Durbin]"** shall mean the Trust Fund created in the Durbin Tax Increment Ordinance and maintained by the County in the manner described in Section 5.4 of the Agreement.

(aa) **"SR 9B"** shall mean the roadway improvement described in Recital D above.

(bb) **"SR 9B Improvements"** shall mean the roadway improvements described in Recital F above.

(cc) **"SR 9B Improvements Right-of-Way"** shall mean the right-of-way required for the SR 9B Improvements described in Recital G above.

(dd) **"Tax Increment"** shall mean the amount of countywide County ad valorem tax increment calculated pursuant to the Durbin Tax Increment Ordinance to determine an annual Tax Increment Transfer.

(ee) **"Durbin Tax Increment Ordinance"** shall mean Ordinance No.2015-5 adopted by the County on February 3, 2015, as may be amended, defining the Property as a tax increment area and establishing the formula for a determination of the dedicated increment value to constitute the Tax Increment Transfer.

(ff) **"Tax Increment Transfer"** shall mean the annual tax increment transfer to the St. Johns County Transportation Improvement Trust Fund [Durbin] pursuant to the Durbin Tax Increment Ordinance as described in Section 5.4(c) of this Agreement.

(gg) **"Total Roadway Improvement Costs"** shall mean the total projected costs of the Proposed Roadway Improvements as described in Section 5.3(b) of this Agreement.

(hh) **"Transportation Impact Fee(s)"** shall mean County impact fees due under St. Johns County Ordinance 87-57, as may be amended.

(ii) **"Transportation Report"** shall mean the report prepared for Durbin and submitted to the parties to this Agreement as described in Section 5.1 below.

(jj) **"2008 MOU"** shall mean the Memorandum of Understanding between Durbin, the County, and FDOT described in Recital J above.

(kk) **"2006 Race Track Road Right-of-Way Donations"** shall mean the approximately 8.46 acres of right-of-way donated by Durbin to the County as described in Recital L above.

2. **Representations: Right to Enter into Agreement.**

Each party warrants and represents, with respect to itself, its successors and assigns, that neither the execution of this Agreement nor performance of the obligations contemplated hereby result in or constitute a breach or default under any indenture, contract, or other commitment or restriction to which it is a party or by which it is bound, or require any consent, vote, or approval which has not been obtained, or at the appropriate time shall not have been given or obtained. Each party covenants that it has and will continue to have throughout the term of this Agreement full right and authority to enter into this Agreement and to perform its obligations hereunder, and each party agrees to supply to the other party upon request evidence of such right and authority.

3. **Effective Date/Duration of Agreement and Timing of Projected Development.**

3.1 Effective Date/Duration. Pursuant to Section 163.3239, Florida Statutes (2014), and Section 5.05.04(C), St. Johns County Land Development Code, this Agreement shall become effective upon its recordation ("Effective Date"). Pursuant to Section 163.3229, Florida Statutes (2014), and Section 5.05.04(B), St. Johns County Land Development Code, this Agreement shall remain valid and effective for a period of thirty (30) years after the Effective Date; provided, however, that this Agreement shall not become effective unless and until the amendment to the Comprehensive Plan designating the Property as an urban service area pursuant to Section 163.3164, Florida Statutes (2014), has been adopted and has become effective pursuant to Section 163.3184, Florida Statutes (2014). Pursuant to Section 163.3237, Florida Statutes (2014), and Section 5.05.04(A), St. Johns County Land Development Code, the duration of this Agreement may be extended. The parties acknowledge that it may be necessary and prudent for the County to grant extensions to the duration of this Agreement in order to allow for the completion of the Proposed Roadway Improvements, the full funding of such improvements, the full recoupment of expenses for such improvements, the full use of any and all credits as provided in this Agreement, and the completion/buildout of the Projected Development under the terms and conditions of this Agreement. Therefore, the County agrees that it will not unreasonably withhold approval of an extension to the duration of this Agreement in the event such an extension is sought for such purposes by Durbin, a successor, Roadway Improvement Builder, or assignee.

3.2 Timing of Projected Development. Prior to the County's approval of commercial or subdivision construction plans for land uses and densities and intensities for the Projected Development under the land use regulations for each Phase, the Proposed Roadway

Improvements for each Phase shall be constructed and dedicated and accepted by the County or, alternatively, a Construction Contract shall be executed by the Roadway Improvement Builder with a contractor providing for the construction of the Proposed Roadway Improvements for the Phase consistent with the Roadway Construction Plans approved by the County. The timely performance of the Construction Contract shall be secured by the execution and delivery to the County of a performance bond designating the County as an insured in a form acceptable to the County.

4. **Donation of SR 9B Improvements Right-of-Way and Joint Use of Stormwater Facilities**.

4.1 Donation Agreement. On or before the Effective Date of this Agreement, Durbin and FDOT shall execute a Donation Agreement substantially in the form attached hereto as **Exhibit "3"** providing for the donation by Durbin to FDOT of the SR 9B Improvements Right-of-Way and joint use stormwater facilities.

4.2 Joint Use Agreement. On or before the Effective Date of this Agreement, Durbin and FDOT shall execute a Joint Use Pond & Maintenance Agreement substantially in the form attached hereto as **Exhibit "4"** providing for the joint use of stormwater facilities on the Property for the SR 9B Improvements.

5. **Proposed Roadway Improvements**.

5.1 Transportation Report. Durbin prepared and submitted to the parties a transportation report entitled "Traffic Study" and dated September 26, 2014 (the "Transportation Report"). The Transportation Report demonstrates that the SR 9B Improvements and the Proposed Roadway Improvements include regional roadway improvements which are sufficient

to serve the Projected Development, consistent with the requirements set forth in Section 163.3180(5)(h), Florida Statutes (2014).

5.2 Construction Authorization and Public Project Compliance.

(a) Review of Plans. Prior to the execution of a Construction Contract for the construction of Proposed Roadway Improvements, the Roadway Improvement Builder shall submit Roadway Construction Plans to the County Growth Management Department for review and comment, including a specific enumeration of any Ancillary Improvements proposed to be constructed or provided and proposed to be included in the Proposed Roadway Improvements. Such Roadway Construction Plans shall be reviewed for consistency with the construction standards of the St. Johns County Land Development Code, the St. Johns County Development Review Manual, and the St. Johns County Standards and Details Manual. The County shall have a period of thirty (30) days after receipt of complete Roadway Construction Plans to advise the Roadway Improvement Builder in writing of its approval or of deficiencies, with the specific reasons therefor.

(b) Solicitation of Bids. The Roadway Improvement Builder shall prequalify prospective contractors to submit bids for the construction of any Proposed Roadway Improvements and shall use good faith commercially reasonable efforts to comply with the requirements of Section 255.0525, Florida Statutes (2014), as it may be amended. The prequalification criteria shall be determined by the Roadway Improvement Builder but shall minimally include a review of each candidate's experience, financial resources, organization, personnel, equipment, past record or history, and ability to post payment and performance bonds as may be required. The Roadway Improvement Builder shall cause each prequalified

prospective contractor to actively seek the participation of local contractors for designated subcontracts or tasks.

(c) Compliance with Requirements for Procurement of Professional Services. The Roadway Improvement Builder shall use good faith commercially reasonable efforts to comply with the requirements in Section 287.055, Florida Statutes (2014), as it may be amended, imposed on county governments in the procurement of professional services, and the Roadway Improvement Builder shall defend, hold the County harmless, and indemnify the County for any liability as a result of a declaration by any court of competent jurisdiction of non-compliance with Section 287.055, including the payment of attorneys' fees incurred by the County in defending the action of non-compliance with such statutory requirement by the Roadway Improvement Builder.

(d) Public Construction Bonds. The Roadway Improvement Builder shall provide, or at its option, cause any contractor performing the work to provide, a public construction bond in the amount of one hundred and fifteen percent (115%) of the estimated cost of the Proposed Roadway Improvements securing the timely performance of the construction of the Proposed Roadway Improvements in a manner consistent with the provisions of this Agreement and the Roadway Construction Plans and securing the payment of all claimants supplying labor and material or other supplies used directly or indirectly for the construction of the Proposed Roadway Improvements and otherwise meeting the requirements of Section 255.05, Florida Statutes (2014).

5.3 Construction of Proposed Roadway Improvements.

(a) The following improvements comprise the "Proposed Roadway Improvements" needed to serve the Projected Development:

(1) Phase 1A: Execution of Donation Agreement and Joint Use Agreement and conveyance of SR 9B Improvements Right-of-Way to FDOT; preliminary design of SR 9B Improvements pursuant to 2008 MOU - $934,274.39 (cost already incurred); 2006 Race Track Road Right-of-Way Donations - $1,778,000 (collectively, "Phase 1A Roadway Improvements").

(2) Phase 1B: Design and Construction of East Connector (design 6 lane urban, construct 4-lane suburban) from SR 9B Interchange to Race Track Road ("Phase 1B Roadway Improvements").

(3) Phase 2: Design and Construction of Race Track Road (design 6 lane urban, construct 4-lane divided arterial, East Connector to Bartram Springs Parkway) ("Phase 2 Roadway Improvements"). The Phase 2 Roadway Improvements may be funded and constructed in their entirety by a Roadway Improvement Builder, expressly including the County ("Phase 2 Roadway Improvements—Scenario 1" or "Scenario 1"). Alternatively, portions of the Phase 2 Roadway Improvements may be funded and constructed by FDOT ("Phase 2 Roadway Improvements—Scenario 2" or "Scenario 2"). In Scenario 2, the Roadway Improvement Builder, expressly including the County, may enter into a binding agreement with FDOT to fund any portion of the Phase 2 Roadway Improvements not funded by FDOT, and in so doing, be eligible for reimbursement for such funding pursuant to Section 5.4 and 5.5 of this Agreement.

(4) Phase 3: Design and Construction of Race Track Road (design 6 lane urban, construct 4-lane divided arterial, Bartram Park Blvd. to East Connector, and 6-lane East Connector) ("Phase 3 Roadway Improvements").

(5) Phase 4: Design and Construction of Race Track Road (6-lane divided arterial, Bartram Park Blvd. to U.S. Highway 1) ("Phase 4 Roadway Improvements").

(b) The projected Roadway Improvement Costs of each Phase and the projected aggregate Total Roadway Improvement Costs for all Phases (in 2014 dollars) are:

(1) Phase 1A: Preliminary design of SR 9B Improvements pursuant to 2008 MOU ($934,274) and 2006 Race Track Road Right-of-Way Donation ($1,778,000), totaling $2,712,274;

(2) Phase 1B: $13,457,600;

(3) Phase 2—Scenario 1: $13,402,500; Phase 2—Scenario 2--$9,352,500;

(4) Phase 3: $12,971,100;

(5) Phase 4: $11,532,600; and

(6) Total Roadway Improvement Costs for all Phases: Scenario 1--$54,076,074; Scenario 2--$50,026,074.

(c) The Proposed Roadway Improvements for all Phases are further described and depicted in **Exhibits "5" through "8"** attached hereto. The Proposed Roadway Improvements may be revised by an amendment to this Agreement pursuant to Sections 6.3 or 11.11 of this Agreement.

(d) The Proposed Roadway Improvements shall be constructed in compliance with the approved Roadway Construction Plans and with the St. Johns County Land Development Code, the St. Johns County Development Review Manual, and the St. Johns County Standards and Details Manual.

5.4 Reimbursement of Cost of Proposed Roadway Improvements.

(a) The Roadway Improvement Costs for each Proposed Roadway Improvement shall be reimbursed by the County to a Roadway Improvement Builder solely from

available funds in the St. Johns County Transportation Improvement Trust Fund [Durbin] in the manner described in Sections 5.4 and 5.5 of this Agreement. Except as permitted under Section 5.4(d) of this Agreement relating to costs of administration, funds from the St. Johns County Transportation Improvement Trust Fund [Durbin], including earned interest, shall be spent only on reimbursements or construction for the Proposed Roadway Improvements.

(b) Road Capacity Charges. Road Capacity Charges shall be assessed by the County for the Projected Development in the Road Capacity Charge Ordinance as a condition of the issuance of a building permit and deposited when collected into the St. Johns County Transportation Improvement Trust Fund [Durbin]. The rate for the Road Capacity Charges shall be the rate for the indicated use established in **Exhibits "9" and "10"** incorporated in this Agreement and imposed in the Road Capacity Charge Ordinance. The County and Durbin hereby acknowledge and find that (i) based upon the projections and conclusions in the Transportation Report and the provisions of this Agreement, the projected aggregate amount of Road Capacity Charges imposed on improved property for the Projected Development has a rational nexus to the Total Roadway Improvement Costs and a rational nexus to the need of such improved property for the transportation capacity created by the construction and provision of the Proposed Roadway Improvements, and (ii) the Road Capacity Charges are fair and reasonable and in amounts necessary to regulate the need for transportation capacity anticipated by the Projected Development.

(c) Tax Increment Transfer. Tax Increment Transfers shall be deposited by the County into the St. Johns County Transportation Improvement Trust Fund [Durbin] by January 1 of each County Fiscal Year commencing with the County Fiscal Year beginning October 1, 2015, pursuant to the provisions of the Durbin Tax Increment Ordinance.

(d) Costs of Administration. The County shall retain a portion of the St. Johns County Transportation Improvement Trust Fund [Durbin] in an amount equal to three percent (3%) or the actual costs of its administration of the St. Johns County Transportation Improvement Trust Fund [Durbin], if greater, including actual costs of administering the imposition, adjustment and collection of the Road Capacity Charges, the calculation and accounting for Roadway Credits, the review and approval of the Roadway Improvement Costs, and the preparation of Roadway Cost Certificates. Payments for such actual costs shall be made quarterly and shall take priority over payments described in Section 5.5 of this Agreement. For informational purposes only, notice of each such quarterly payment shall be provided to Durbin within thirty (30) days after the payment.

5.5 Payment of Road Improvement Costs.

(a) Upon approval of the Roadway Construction Plans and execution of the Construction Contract for a Proposed Roadway Improvement as required in Section 5.2 of this Agreement, a Roadway Improvement Builder may file with the County Administrator a Reimbursement Request for a reimbursement from available funds deposited in the Road Reimbursement Trust Fund for the Roadway Improvement Costs for a Proposed Roadway Improvement or for the issuance of a Roadway Credit for such Roadway Improvement Costs determined in the manner provided in this Section 5.5 of this Agreement upon either:

(1) compliance with the requirements of Section 5.2 of this Agreement, including the posting of public construction bond, for the Proposed Roadway Improvement; or,

(2) the completion, dedication and acceptance by the County of the Proposed Roadway Improvement.

(b) Reimbursement Requests. A Reimbursement Request shall be filed with the County Administrator and shall be certified by the Roadway Improvement Builder and shall include the following components:

(1) Value of donated right-of-way: value of donated right-of-way. Such value shall be determined by an appraisal submitted by a Florida licensed real estate appraiser, preferably with a MAI designation, who is acceptable to the County. The appraiser's scope of work shall include an appraisal based on the premise that the process for the Development Agreement, Durbin Tax Increment Ordinance, Road Capacity Charge Ordinance, and the designation of the property as an urban service area under Section 163.3164(50), Florida Statutes (2014), has not been started. The value in the report should not consider any enhanced value to the donated right-of-way resulting from the consideration or approvals by the County of the Development Agreement, Durbin Tax Increment Ordinance, Road Capacity Charge Ordinance, urban service area designation, or any subsequent rezoning. At the time of submission of the Reimbursement Request the appraisal report will be required. In the instance of the 2006 Race Track Road Right-of-Way Donations, no appraisal is necessary because value already has been established in the agreements referred to in Recital L in this Agreement.

(2) Value of acquired right-of-way: actual costs incurred in the acquisition of the right-of-way. Such acquisition of right-of-way to construct the Proposed Roadway Improvement is hereby deemed by the County to be for a public purpose. In the event necessary right-of-way for the Proposed Roadway Improvement must be acquired, the County shall initiate proceedings for eminent domain to acquire such right-of-way and shall comply with all procedures for appraisals and notifications to property owners as outlined in Chapter 73, Florida Statutes (2014). The costs associated with eminent domain proceedings may be included

in the costs for which reimbursement is sought, including but not limited to the amount of the award to the property owner(s), attorney's fees (including as may be awarded to the property owner(s)), court costs, and expert witness fees.

(3) Design, permitting, and construction costs: actual costs incurred, excluding profit and overhead for the Roadway Improvement Builder and excluding Ancillary Improvements, for design, permitting, and construction of the Proposed Roadway Improvement, including but not limited to: surveying, civil engineering, traffic engineering, environmental consultants, attorneys, permitting, platting (bonding, etc.), dedication (title, etc.), and inspection. Evidence of actual costs of design and permitting shall be in the form of written evidence of payment, including paid invoices and/or certification of payment by the applicable licensed contractor or professional. Evidence of actual costs of construction shall be the Construction Contract and certification of costs and percentage of completion of the Proposed Roadway Improvement by a Florida licensed civil engineer based upon the approved Roadway Construction Plans.

(4) Financing costs: actual costs incurred by the Roadway Improvement Builder in financing the construction: typical closing costs (documentary stamp taxes, appraisal costs, and title insurance) and continuing interest payments for such financing from the date of acceptance of the Proposed Roadway Improvement to the date of payment, not to exceed interest at the rate equal to the lesser of fifteen percent (15%) or "Prime Rate" (as hereinafter defined), plus five percent (Prime Rate +5%). Continuing interest payments shall only be reimbursable for a period from twenty-five (25) years from the date of acceptance of the Proposed Roadway Improvement. As used in this sub-section, "Prime Rate" shall mean the current U.S. prime rate as quoted in the "Money Rates" section of the Wall Street Journal at the

time the Reimbursement Request is filed. In the event the Wall Street Journal is no longer publishing the "Money Rates" section, the Prime Rate shall be the prime lending rate charged by the Bank of America or a similar nationally recognized financial institution of comparable size.

(c) Determination of Completeness of Request. Within thirty (30) days of receiving the Reimbursement Request, the County Administrator shall determine whether the Reimbursement Request is complete or may request additional information consistent with subsection (b) above. Upon a determination that the Reimbursement Request is complete, the County and the Roadway Improvement Builder shall confirm such determination by the joint execution of a Roadway Cost Certificate, which shall include a schedule of payments based on certified costs and percentage of completion as provided in Section 5.5(b)(3) above and a schedule of any continuing financing costs/interest payments. Within ninety (90) days after the execution of this Agreement, Durbin shall submit to the County a form of the Roadway Cost Certificate and schedules, and, upon approval of the form for the Roadway Cost Certificate and schedules by the County, such form shall be used for the purpose of this Section 5.5(c).

(d) Payment of Funds from Reimbursement Improvement Fund. Within forty-five (45) days from the joint execution of the Roadway Cost Certificate, the County shall pay to the Roadway Improvement Builder the Roadway Improvement Cost or portion thereof in the Roadway Cost certificate, based on certified costs and percentage of completion and the schedule in the Roadway Cost Certificate, solely from available funds in the St. Johns County Transportation Improvement Trust Fund [Durbin]. In the event insufficient funds are available in the St. Johns County Transportation Improvement Trust Fund [Durbin], the County shall issue the Roadway Improvement Builder a Credit Certificate, dated the date of the joint execution of the Roadway Cost Certificate, documenting as the Roadway Credit the unreimbursed amount of

the Roadway Improvement Cost. In no event shall the amount documented in the Credit Certificate plus the amount disbursed for certified costs exceed, in the aggregate, the Roadway Improvement Cost. Within ninety (90) days after the execution of this Agreement, Durbin shall submit to the County a form of the Credit Certificate for use by a Roadway Improvement Builder as described above. Upon approval of the form of Credit Certificate, such form shall be used in the issuance of Roadway Credits pursuant to this Section 5.5(d). The County may make payment from the St. Johns County Transportation Improvement Trust Fund [Durbin] consistent with this Agreement or any other available source without the need of a request from a Roadway Improvement Builder.

(e) Adjustment of Roadway Cost Certificate. Upon the joint execution of a Roadway Cost Certificate by the County and the Roadway Improvement Builder, the payment from available funds in the St. Johns County Transportation Improvement Trust Fund [Durbin] may be exceeded or be adjusted solely in an amount documented in a change order, approved by the County Public Works Director, to the Construction Contract or certified estimate, and the costs of such adjustment shall be calculated by application of the criteria and methodology for construction costs calculation established in Section 5.5(b)(3) of this Agreement.

(f) Priority of Payment. The priorities for payment from available funds in the St. Johns County Transportation Improvement Trust Fund [Durbin] shall be based upon the date of the Roadway Cost Certificate with the earliest date having the highest priority.

(g) No Further Authorization or Appropriation Required. Payments from the St. Johns County Transportation Improvement Trust Fund [Durbin] as provided in this Section 5.5 shall be self-appropriating and shall require no further authorization or appropriation action beyond the review by the County Administrator.

(h) Use of Roadway Credit. Upon receiving a Credit Certificate, a Roadway Improvement Builder shall use and apply such credit amount: (1) to receive a payment from the St. Johns County Transportation Improvement Trust Fund [Durbin] on March 5, June 5, September 5, December 5 or the next County working day of each Fiscal Year from available funds, or (2) to pay Road Capacity Charges when due. For payments from the St. Johns County Transportation Improvement Trust Fund [Durbin], to the extent funds are available, the Roadway Improvement Builder shall present the Credit Certificate for redemption, and a proposed revised Credit Certificate reflecting the payment of available funds and any remaining balance of the Roadway Credits, to the County Administrator (with a copy to the County Office of Management and Budget and County Growth Management Department). The amount of payment received from the St. Johns County Transportation Improvement Trust Fund [Durbin] shall be based on the available funds and on the dollar amount of the Roadway Credit established in the Roadway Cost Certificate, subject to adjustments for continuing interest payments for financing as provided in Section 5.5(i) below. For payments of Road Capacity Charges, the Roadway Improvement Builder shall present the Credit Certificate for redemption, and a proposed revised Credit Certificate reflecting the payment of the Road Capacity Charges and any remaining balance of the Roadway Credits, to the County Administrator (with a copy to the County Office of Management and Budget and County Growth Management Department), at the time of the issuance of a building permit or when the Road Capacity Charges are otherwise due. The amount of payment of Road Capacity Charges made by a Roadway Improvement Builder using Roadway Credits shall be based on the dollar amount of the Roadway Credit established in the Roadway Cost Certificate, excluding any continuing interest payments. Within thirty (30) days of presentation of the Credit Certificate and proposed revised Credit Certificate, the County

Administrator and the Roadway Improvement Builder shall execute a revised Credit Certificate and the County shall make the payment from the St. Johns County Transportation Improvement Trust Fund [Durbin] or accept payment of the Road Capacity Charges. The County may make payment from the St. Johns County Transportation Improvement Trust Fund [Durbin] consistent with this Agreement or any other available source without the need of a request from a Roadway Improvement Builder.

(i) Use of Roadway Credit for Continuing Interest Payments. Prior to presenting a Credit Certificate for payments from the St. Johns County Transportation Improvement Trust Fund [Durbin] which include continuing interest payments for financing, the Roadway Improvement Builder shall demonstrate to the County Administrator that the Roadway Improvement Builder's financing structure requires regular payments of interest, that the Roadway Improvement Builder is making such regular payments of interest, and that the Roadway Improvement Builder is using Roadway Credits on a continuing basis to obtain reimbursement for such regular payments of interest. The purpose of this requirement is to prevent a Roadway Improvement Builder's payment of interest or use Roadway Credits in a manner which, over time, would delay and enhance reimbursable interest payments.

(j) Assignment of Contract/Bond. Nothing herein shall prevent a Roadway Improvement Builder from assigning a Construction Contract and public construction bond to a landowner or Developer who, upon execution of the assignment and notice to the County, shall become the Roadway Improvement Builder for the Proposed Roadway Improvement.

(k) No County Funding Obligation. Nothing herein shall be construed to obligate the County to provide funding for a Proposed Roadway Improvement other than the payments from the St. Johns County Transportation Improvement Trust Fund [Durbin] as

provided in this Agreement. It is further understood and acknowledged by the parties that the St. Johns County Transportation Improvement Trust Fund [Durbin] is to be funded solely by Road Capacity Charges when collected, Tax Increment when generated pursuant to the Durbin Tax Increment Ordinance, and interest earned on the St. Johns County Transportation Improvement Trust Fund [Durbin]. The County is not obligated to transfer any other funds into the St. Johns County Transportation Improvement Trust Fund [Durbin].

5.6 Excess Transportation Impact Fees.

(a) Findings and Declarations. The County and Durbin hereby acknowledge, declare and find, based upon the projections and conclusions in the Transportation Report, as follows: (i) the projected Road Capacity Charges through buildout of the Projected Development is estimated at $11,233,220; (ii) the value of the SR 9B Improvements Right-of-Way and joint use of stormwater facilities provided in Section 4 of this Agreement is currently estimated to be $17,000,000; and (iii) this total of these amounts $28,233,220, exceeds the Transportation Impact Fees for the Projected Development projected to be $25,272,869. The County and Durbin also hereby acknowledge, declare, and find that the projected total Roadway Improvement Costs for all Phases as declared in Subsection 5.3(b) exceeds the amount of Transportation Impact Fees projected to be received from the Projected Development as described in this Section 5.6 of this Agreement.

(b) Compliance with Transportation Impact Fee Credit Provision. Based upon such acknowledgement, findings and declaration, the parties agree that a reasonable application of the credit provisions applicable to the Transportation Impact Fee in Section 13 of County Ordinance 87-57, as amended, results in the conclusion and interpretation that no Transportation Impact Fees shall be due as a consequence of the Projected Development.

(c) Acknowledgment of County Validity of Previous Transportation Impact Fee Credit. Notwithstanding the acknowledgment, declaration and findings in this Section 5.6, the parties acknowledge as to the 2006 Race Track Road Right-of-Way Donations a Transportation Impact Fee credit of $1,787,000 previously approved in the Impact Fee Agreement between Durbin and the County, dated March 15, 2006, and an amendment to the impact fee agreement, dated September 6, 2006. Such impact fee credit will be paid from available funds in the St. Johns County Transportation Improvement Trust Fund [Durbin] as a last priority; specifically, any Roadway Cost Certificate or Credit Certificate which has a remaining unreimbursed balance shall take priority over such impact fee credit. Such impact fee credit shall not accrue any interest. At any time(s) when there are no Roadway Cost Certificates or Credit Certificates with a remaining unreimbursed balance, Durbin or an assignee may seek redemption of such impact fee credit in the same manner provided for a Credit Certificate in Section 5.5(h) of this Agreement.

(d) No Preclusion of Funds for Proposed Roadway Improvements. The establishment of the Road Capacity Charge will not preclude the use of other funds or funding mechanisms for the Proposed Roadway Improvements, including but not limited to: (i) the use of funds provided by or through any public transportation funding entit(ies); (ii) the use of special assessment districts or other cost recoupment arrangements, as may be approved by Durbin and the County, subject to review and approval by the Board of County Commissioners by ordinance; or (iii) the use of economic development grants as authorized under Ordinance No. 2014-30, as it may be amended, such as sales tax rebates or other incentive mechanisms for community development, redevelopment, or employment-generating uses, subject to review and approval by the Board of County Commissioners by ordinance or resolution. The establishment

of the Road Capacity Charge system herein shall not preclude the County from pursuing funding of Proposed Roadway Improvements by or through FDOT, U.S. Department of Transportation, North Florida Transportation Planning Organization, or other public transportation funding entity.

6. **Projected Development/Phasing and Coordination with Proposed Roadway Improvements**.

6.1 Projected Development. The following maximum development intensities and densities comprise the Projected Development on the Property during the duration of this Agreement. The references to "sq. ft." are to gross enclosed square feet. The references to "Land Use Code" are to the Trip Generation Manual, 9th Edition (Institute of Transportation Engineers, 2012). The Projected Development is depicted, by Phase, on **Exhibit "11"** attached hereto.

(1) Phase 1A maximum densities and intensities are: 600,000 sq. ft. Shopping Center (Land Use Code 820) ("Phase 1A Projected Development"). Prior to the approval of commercial or subdivision construction plans for the Phase 1A Projected Development, Durbin shall complete the Phase 1A Roadway Improvements, including execution of the Donation Agreement and Joint Use Pond & Maintenance Agreement and conveyance of the SR 9B Improvements Right-of-Way to FDOT. The Phase 1A Projected Development shall be subject to review and approval by the County Growth Management Department for location in proximity to the SR 9B Improvements, Race Track Road, or the Proposed Roadway Improvements, or portions thereof, it being specifically understood by the parties that any portion of the east connector from the SR 9B Interchange to Race Track Road which may

provide access to the Phase 1A Projected Development shall be constructed pursuant to a design/cross-section approved by the County.

(2) Phase 1B maximum densities and intensities are: 356,880 sq. ft. Office Park (Land Use Code 750); 608,330 sq. ft. Shopping Center (Land Use Code 820) ("Phase 1B Projected Development"). Prior to the County's approval of commercial or subdivision construction plans for the Phase 1B Projected Development, a construction plan applicant shall demonstrate completion of the Phase 1A Roadway Improvements and either compliance with the requirements of Section 5.2 of this Agreement for the Phase 1B Roadway Improvements, including the posting of public construction bond, or the completion, dedication, and acceptance by the County of the Phase 1B Roadway Improvements.

(3) Phase 2 maximum densities and intensities are: 594 units Apartments (Land Use Code 220); 350 rooms Hotel (Land Use Code 310); 1,267,200 sq. ft. Office Park (Land Use Code 750); 892,160 sq. ft. Shopping Center (Land Use Code 820) ("Phase 2 Projected Development"). Prior to the County's approval of commercial or subdivision construction plans for the Phase 2 Projected Development, a construction plan applicant shall demonstrate completion of the Phase 1A Roadway Improvements and either compliance with the requirements of Section 5.2 of this Agreement for the Phase 1B and 2 Roadway Improvements, including the posting of public construction bond for the Phase 1B and 2 Roadway Improvements, or the completion, dedication, and acceptance by the County of the Phase 1B and 2 Roadway Improvements.

(4) Phase 3 maximum densities and intensities are: 623,950 sq. ft. Office Park (Land Use Code 750); 206,640 sq. ft. Shopping Center (Land Use Code 820) ("Phase 3 Projected Development"). Prior to the County's approval of commercial or

subdivision construction plans for the Phase 3 Projected Development, a construction plan applicant shall demonstrate completion of the Phase 1A Improvements and either compliance with the requirements of Section 5.2 of this Agreement for the Phase 1B, 2, and 3 Roadway Improvements, including the posting of public construction bond for the Phase 1B, 2, and 3 Roadway Improvements, or the completion, dedication, and acceptance by the County of the Phase 1B, 2, and 3 Roadway Improvements.

(5) Phase 4 maximum densities and intensities are: 405 units Apartments (Land Use Code 220); 547,580 sq. ft. Office Park (Land Use Code 750); 90,000 sq. ft. Shopping Center (Land Use Code 820) ("Phase 4 Projected Development"). Prior to the County's approval of commercial or subdivision construction plans for the Phase 4 Projected Development, a construction plan applicant shall demonstrate completion of the Phase 1A Improvements and either compliance with the requirements of Section 5.2 of this Agreement for the Phase 1B, 2, 3, and 4 Roadway Improvement, including the posting of public construction bond for the Phase 1B, 2, 3, and 4 Roadway Improvements, or the completion, dedication, and acceptance by the County of the Phase 1B, 2, 3, and 4 Roadway Improvements.

(6) Total Projected Development maximum densities and intensities are: 999 units Apartments (Land Use Code 220); 350 rooms Hotel (Land Use Code 310); 2,795,610 sq. ft. Office Park (Land Use Code 750); 2,397,130 sq. ft. Shopping Center (Land Use Code 820) ("Total Projected Development").

(7) As described in Section 5.3(d) above, portions of the Phase 2 Roadway Improvements—Scenario 2 may be funded and constructed by FDOT. If and when portions of the Phase 2 Roadway Improvements—Scenario 2 are included in FDOT's five-year work program, either party to this agreement may notify the other party in writing of such

inclusion of Phase 2 Roadway Improvements—Scenario 2 in FDOT's five-year work program. Effective as of a party's receipt of such written notice, then, in lieu of the demonstrated status of improvements described in Section 6.1(3) above, an applicant for commercial or subdivision construction plans for the Phase 2 Projected Development may demonstrate that the applicant has entered into a binding agreement with FDOT to fund any portion of the Phase 2 Roadway Improvements not funded by FDOT.

6.2 Conversion of Uses. Uses, intensities, and densities within the Projected Development may be modified as permitted in the Land Use Conversion Table attached hereto as **Exhibit "12"**. Such a modification may be effected by Durbin, or, with the written consent of Durbin, by a successor or a Developer by providing a Conversion Notice (and, if applicable, Durbin's written consent) to the County. Such Conversion Notice shall include the uses, intensities, and densities proposed, the resulting cumulative uses, densities, and intensities, and any other information required by the Land Use Conversion Table. Within thirty (30) days after its receipt of the notice, the County shall provide written confirmation to the party who provided the Conversion Notice and to Durbin of the County's receipt of the Conversion Notice and of the proposed conversion's compliance with the Land Use Conversion Table. The proposed conversion shall become effective as of the date of the County's written confirmation.

6.3 Modifications. Any other modifications to the Projected Development, Proposed Roadway Improvements or phasing or coordination provisions of this Section 6 other than the conversions described in Section 6.2 above may be sought as an amendment to this Agreement.

6.4 Conversions/Modifications Concurrent with Other Reviews. Conversions as described in Section 6.2 of this Agreement and modifications as described in Section 6.3 above

may be sought concurrently with an application for rezoning and/or other reviews which may be required by the St. Johns County Land Development Code.

6.5 Development Compliance with Applicable Laws. This Agreement is intended to address transportation impacts and the roadway improvements sufficient to serve the Projected Development. As to all impacts not otherwise addressed in this Agreement, any and all uses to be developed on the Property, including the Projected Development and any conversions permitted pursuant to Section 6.2 above, shall comply with the St. Johns County Land Development Code, including zoning, as it may be amended from time to time.

6.6 Annual Reviews. Pursuant to Section 163.3235, Florida Statutes (2014), and Section 4.07, Development Review Manual, on the anniversary of the Effective Date of this Agreement and at the end of every year thereafter, the County shall review the Projected Development and any actual development of the Property to determine if there has been demonstrated good faith compliance with the terms of this Agreement.

7. **No Obligation to Construct Proposed Roadway Improvements.**

The parties understand and acknowledge that, in entering into this Agreement, no party is obligating itself to fund the acquisition of right-of-way, design, permitting, and construction of any of the Proposed Roadway Improvements by any specified date. Rather, that parties are agreeing that construction of the Proposed Roadway Improvements shall be commenced prior to the Projected Development consistent with the phasing as described in Section 6 above.

8. **Future Development Reviews.**

8.1 Current Status of Property. The Property currently is vacant, undeveloped, and used for growing plants, crops, trees, and other agricultural or forestry products; raising

livestock; or for other agricultural purposes. Durbin currently is not applying for any change in the zoning of the Property.

8.2 Future County Reviews. Regarding future reviews of the Projected Development by the County:

(a) Concurrency Reviews. The County agrees that the donation of the right-of-way for the SR 9B Improvements, the joint use of stormwater facilities, and the construction of the Proposed Roadway Improvements in phases coordinated with the Projected Development as described in Section 6 above are sufficient for transportation improvements required for the Projected Development in compliance with Section 163.3180(5)(b), Florida Statutes (2014), and Article XI of the County's Land Development Code.

(b) Road Capacity Charges Exclusive. In light of the agreements set forth in Sections 5.6(b) and 8.2(a) of this Agreement, for the duration of this Agreement, so long as the Projected Development proceeds in compliance with this Agreement, the Road Capacity Charges shall be the exclusive assessment, fee, or exaction imposed upon the Projected Development by the County to mitigate for impacts upon transportation or mobility infrastructure.

(c) Other County Concurrency Reviews and Impact Fees. Nothing in this Agreement shall affect the County's application of concurrency/proportionate share, impact fees, or other exaction systems not related to transportation or mobility services or infrastructure to the Projected Development. No residential units are permitted in Phases 1a or 1b. For residential units, improved active recreation facilities shall be proposed in conjunction with rezoning(s) for residential development, either within the Property or off-site as may be approved by the County. Such facilities shall comply with the applicable provisions of the Comprehensive Plan and Land

Development Code in effect at the time of the rezoning(s). Also, at least fifty percent (50%) of the improved active recreational facilities provided shall be dedicated to the County, acceptance of which is at the County's sole discretion, for public use, and the Developer shall be entitled to receive impact fee credits for such improved recreational facilities. Any dedication of properties shall be coordinated through the County Land Management Systems, Real Estate Division, and approved by the Board of County Commissioners. For residential units, mitigation for any impacts of such residential development upon school facilities shall ensure the availability of adequate school facilities in compliance with State law, the County Comprehensive Plan, including the Capital Improvements Element, and the Land Development Code in effect at the time of such residential development.

(d) Credits/Termination. Upon termination of this Agreement, any and all credits provided in a Credit Certificate or relating to the 2006 Race Track Road Right-of-Way Donations which remain unused as of such termination shall continue to be valid and may be applied, dollar for dollar, against any assessment, fee, or exaction which may be imposed upon development within the Property after termination to mitigate for impacts upon transportation or mobility infrastructure.

9. **County Amendment of Comprehensive Plan Capital Improvements Element for Proposed Roadway Improvements**.

Upon the filing of a Reimbursement Request for a Proposed Roadway Improvement pursuant to Section 5.5(a) of this Agreement, the County may initiate any necessary amendment to its Capital Improvements Plan in the Comprehensive Plan to include the applicable Proposed Roadway Improvement in the County's Five Year Capital Improvement Schedule.

10. **Defaults and Remedies**.

10.1 County is Enforcement Agency. The County shall be the governmental entity with the authority and responsibility to monitor compliance with this Agreement and enforce this Agreement, and the County Administrator is the County official with the authority and responsibility to monitor compliance with this Agreement and enforce this Agreement.

10.2 County/Defaults. If the County defaults in the performance of any obligation under this Agreement required to be performed by it, then Durbin, its successors, a Roadway Improvement Builder, or assignee may deliver written notice of such default to the County. The County shall commence to cure such default within thirty (30) days after the delivery of such notice of default and shall diligently pursue such cure to completion within sixty (60) days after delivery of such notice as to any default. If the County does not cure such default within the time periods provided, then, following an unsuccessful attempt at mediation required by Section 10.4 below, the party who delivered the notice of default may pursue any available remedies in law or equity.

10.3 Durbin and Others/Defaults. If Durbin, its successors, a Roadway Improvement Builder, or assignee defaults in the performance of any obligation imposed upon it under this Agreement, the County shall deliver written notice of such default to the defaulting party. The defaulting party shall commence to cure such default within thirty (30) days after delivery of such notice of default and shall diligently pursue such cure to completion within sixty (60) days after delivery of such notice as to any default. If the defaulting party does not cure such default within the time periods provided, then the County may decline to issue any permits or approvals or provide any extensions of services to the defaulting party, and following an unsuccessful

attempt at mediation required by Section 10.4 below, the County may pursue any additional available remedies in law or equity.

10.4 Mediation. Following any failure to cure a default, the parties shall attempt in good faith to resolve by mediation any noticed and uncured default prior to the commencement of litigation. If the parties are unable to agree upon a mediator, the mediator shall be selected by the Chief Judge of the Seventh Judicial Circuit of the State of Florida upon application being made by either party. The mediation shall be set by the mediator. The mediation process shall be concluded within thirty (30) days after the mediator is selected.

11. **Miscellaneous Provisions**.

11.1 List of Exhibits.

The following comprise the exhibits to this Agreement.

Exhibit 1	Legal Description of Property
Exhibit 2	Illustration of SR 9B and SR 9B Improvements
Exhibit 3	Form of Donation Agreement
Exhibit 4	Form of Joint Use Pond & Maintenance Agreement
Exhibits 5 through 8	Maps, Descriptions, and Projected Costs of Proposed Roadway Improvements, By Phase
Exhibit 9	Road Capacity Charge Schedule
Exhibit 10	Projection of Road Capacity Charges through Buildout
Exhibit 11	Projected Development, By Phase
Exhibit 12	Land Use Conversion Table

All exhibits attached to this Agreement contain additional terms of this Agreement and are incorporated into this Agreement by reference.

11.2 Notices, Demands and Communications Between the Parties. Notices, demands and communications between the parties shall be given by depositing the same in the United

States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

Notices, demands and communications to the County:

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

With copy to:

Patrick F. McCormack
County Attorney
500 San Sebastian View
St. Augustine, Florida 32084

Notices, demands and communications to Durbin and Other Landowners:

Durbin Creek National, LLC
Kenneth P. Wilson
9540 San Jose Boulevard
Jacksonville, Florida 32257

With copies to:

Durbin Creek National, LLC
General Counsel
9540 San Jose Boulevard
Jacksonville, Florida 32257

T. R. Hainline, Jr., Esquire
Rogers Towers, P. A.
1301 Riverplace Boulevard, Suite 1500
Jacksonville, Florida 32207

Notices given as provided above shall be deemed given and shall be effective when delivered to the addressee at the address set forth above, or when deposited in the United States Mail, postage prepaid. Either party may change its address to notices, demands and communications by giving written notice thereof to the other party.

11.3 Successors and Assigns. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and assigns.

11.4 Assignability. Durbin or its successors may assign rights and obligations under this Agreement, which assignment shall be recorded in the public records of St. Johns County. Additionally, a notice of such assignment, identifying the assignee and containing an acknowledgement by the assignee of its assumption of all rights and obligations under this Agreement of the assignor, shall be filed with the County.

11.5 No Liability of Officials, Officers or Employees. No official, officer or employee of the County, Durbin, a Roadway Improvement Builder, or assignee shall be personally liable for any nonperformance or delay in performance by the County, Durbin, Roadway Improvement Builder, or assignee, respectively, or for any amount which may become due under any provisions of this Agreement.

11.6 Dates. When payment, delivery, notification, or other action is required by a specified date in this Agreement and such date falls on a weekend or government-designated holiday, the action shall be required by 5:00 p.m. on the Monday or non-holiday date, respectively, immediately following the otherwise specified date.

11.7 Agreement Executed in Counterparts. This Agreement may be executed in two or more counterparts, each of which is considered and shall be deemed to be an original.

11.8 Merger of Agreement Terms. This Agreement constitutes the entire understanding and agreement of the parties as to the subject matter hereof, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter. Specifically, this Agreement supersedes the 2008 MOU, the Impact Fee Credit Agreement between Durbin and the County dated March 15, 2006, and the Amendment to Impact Fee Credit Agreement dated September 6, 2006.

11.9 Section Headings. Section headings included in this Agreement are for convenience only and shall have no effect upon the meaning or construction of this Agreement.

11.10 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.

11.11 Amendment of Agreement. Unless otherwise provided in this Agreement, no amendment or modification of this Agreement shall be effective or binding upon any party hereto unless such amendment or modification is in writing, has been approved pursuant to the procedures provided in Section 163.3237, Florida Statutes (2014), and Section 5.05.04(A), St. Johns County Land Development Code, and has been executed by all parties.

11.12 Compliance with Laws. The parties shall comply with any and all applicable federal, state and local laws, ordinances, codes, rules and regulations as the same exist and may be amended from time to time.

11.13 Necessity to Obtain Permits and Comply with Laws. Durbin and any successors, Developers, Roadway Improvement Builders, or assignees shall obtain necessary federal, state, and local development permits for the Projected Development. The failure of this Agreement to address any particular permit, condition, term, or restriction applicable to the Projected Development shall not relieve Durbin, any successors, Developers, or Roadway Improvement Builders, or assignees of the necessity of complying with federal, state, and local permitting requirements, conditions, terms or restrictions as may be applicable.

11.14 Approvals. Approvals, issuances of Roadway Credits, transfers of funds, or any other action by the County under this Agreement shall not be unreasonably withheld or delayed. Any disapproval shall state the reasons for disapproval and the actions needed for approval.

11.15 Ad Valorem Taxes. Durbin currently is lawfully using the Property for good faith, bona fide agricultural purposes as defined in Section 193.461, Florida Statutes (2014). The execution of and compliance with this Agreement by Durbin shall not prohibit or otherwise render unlawful, or be construed as prohibiting or rendering unlawful, the use of any or all of the Property for such agricultural purposes.

11.16 Cooperation and Further Assurances. The parties hereto agree to cooperate in all reasonable respects to insure the performance of their obligations pursuant to this Agreement and agree to execute such additional documents and instruments as may be reasonably required to carry out the intent of this Agreement.

11.17 Applicable Law; Jurisdiction and Venue. This Agreement and the rights and obligations of the parties under this Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida (2014). This Agreement may be enforced by the County as provided in Section 163.3243, Florida Statutes (2014). Venue for any litigation pertaining to the subject matter of this Agreement shall be exclusively in St. Johns County, Florida. If any provision of this Agreement, or the application of this Agreement 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

ST JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS

Priscilla L. Bennett, Chair

ATTEST:

Pam Halterman, Deputy Clerk

for Cheryl Strickland, Clerk of Courts

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

DURBIN CREEK NATIONAL, LLC, a Florida limited liability company

Kenneth P. Wilson, President

Witness: _____
Print: Drew D. Fick

Witness: _____
Print: Dean Gwin

STATE OF Florida
COUNTY OF Duval

The foregoing instrument is hereby acknowledge before me this 9th day of February 2015, by Kenneth P. Wilson, President of Durbin Creek National, LLC, a Florida limited liability company, on behalf of said company. He [✓] is personally known or [ ] produced _____ as identification.

_____
NOTARY PUBLIC, State of Florida

Name: Saundra M. Hancock
My Commission Expires: 3-13-15
My Commission Number is: 048833

SAUNDRA M. HANCOCK
MY COMMISSION # EE 048833
EXPIRES: March 13, 2015
Bonded Thru Notary Public Underwriters

Exhibit 1 – Legal Description of Property

EAST PARCEL

A PORTION OF SECTIONS 3, 4, 5, AND 9, TOWNSHIP 5 SOUTH, RANGE 28 EAST, ST. JOHNS COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 3; THENCE SOUTH 89°14'38" WEST, ALONG THE SOUTHERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 60, PAGE 689 OF THE PUBLIC RECORDS OF SAID COUNTY, 1339.97 FEET TO THE SOUTHEASTERLY CORNER OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 720, PAGE 126 OF SAID PUBLIC RECORDS; THENCE SOUTH 88°06'37" WEST, ALONG THE SOUTHERLY LINE OF LAST SAID LANDS, 1309.05 FEET TO THE WESTERLY LINE OF LAST SAID LANDS; THENCE NORTH 01°44'01" WEST, ALONG LAST SAID LINE, 1352.98 FEET TO THE SOUTHWEST CORNER OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 59, PAGE 527 OF SAID PUBLIC RECORDS; THENCE NORTH 01°28'34" WEST, ALONG THE WESTERLY LINE OF LAST SAID LANDS AND ALONG THE WESTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 134, PAGE 504 OF SAID PUBLIC RECORDS, 632.26 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF RACETRACK ROAD (COUNTY ROAD NO. 5, A VARIABLE WIDTH RIGHT OF WAY, AS NOW ESTABLISHED); THENCE WESTERLY AND SOUTHERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING FOUR (4) COURSES AND DISTANCES; COURSE NO. 1: NORTH 88°18'46" WEST, 2143.94 FEET; COURSE NO. 2: SOUTH 01°41'14" WEST, 17.00 FEET; COURSE NO. 3: NORTH 88°18'46" WEST, 270.00 FEET; COURSE NO. 4: SOUTH 86°14'09" WEST, 513.78 FEET TO THE EASTERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 95 (STATE ROAD NO. 9, A 300 FOOT LIMITED ACCESS RIGHT OF WAY PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP SECTION NO. 78080-2408 AND SECTION NO. 78080-2440), SAID POINT ALSO LYING ON THE ARC OF A CURVE LEADING SOUTHEASTERLY; THENCE SOUTHEASTERLY, SOUTHERLY, EASTERLY, WESTERLY, AND SOUTHWESTERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING FOURTEEN (14) COURSES AND DISTANCES; COURSE NO. 1: SOUTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 7789.44 FEET, AN ARC DISTANCE OF 2862.49 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 25°04'08" EAST, 2846.42 FEET; COURSE NO. 2: SOUTH 17°38'03" EAST, 225.57 FEET; COURSE NO. 3: SOUTH 12°16'34" EAST, 687.77 FEET; COURSE NO. 4: SOUTH 46°41'58" EAST, 73.71 FEET; COURSE NO. 5: SOUTH 88°18'50" EAST, 234.77 FEET; COURSE NO. 6: NORTH 82°50'00" EAST, 268.31 FEET TO THE ARC OF A CURVE LEADING SOUTHERLY; COURSE NO. 7: SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 8374.44 FEET, AN ARC DISTANCE OF 1058.76 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 03°32'41" EAST, 1058.06 FEET; COURSE NO. 8: NORTH 89°55'22" WEST, 108.55 FEET; COURSE NO. 9: SOUTH 77°16'39" WEST, 283.75 FEET TO THE ARC OF A CURVE LEADING SOUTHERLY; COURSE NO. 10: SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 7989.44 FEET, AN ARC DISTANCE OF 102.16 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 00°53'39" WEST, 102.16 FEET; COURSE NO. 11: SOUTH 89°04'35" WEST, 121.41 FEET; COURSE NO. 12: SOUTH 11°51'09" WEST, 339.23 FEET; COURSE NO. 13: SOUTH 06°46'05" WEST, 485.62 FEET; COURSE NO. 14: SOUTH 03°59'10" WEST, 600 FEET, MORE OR LESS, TO THE CENTERLINE OF DURBIN CREEK; THENCE NORTHEASTERLY, ALONG LAST SAID LINE, 5880 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF THE AFORESAID NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 3; THENCE SOUTH 89°30'48" WEST, ALONG LAST SAID LINE, 850 FEET MORE OR LESS, TO THE WESTERLY LINE OF SAID NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 3; THENCE NORTH 00°20'20" WEST, ALONG LAST SAID LINE, 1371.41 FEET TO THE POINT OF BEGINNING;

LESS AND EXCEPT

THAT CERTAIN PROPERTY DESCRIBED IN DEED OF DEDICATION (RIGHTS-OF-WAY) PARCEL 112-RACETRACK ROAD, RECORDED IN OFFICIAL RECORDS BOOK 2964, PAGE 1232, OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA.

THE ABOVE DESCRIBED LANDS BEING SUBJECT TO ANY SUBMERGED SOVEREIGN LANDS OF THE STATE OF FLORIDA ASSOCIATED WITH DURBIN CREEK.

WEST PARCEL

A PORTION OF SECTIONS 4, 5, 6, 7, 8, AND 9, AND A PORTION OF SECTION 46, THE JOSEPH PEAVETT GRANT, ALL LYING IN TOWNSHIP 5 SOUTH, RANGE 28 EAST, ST. JOHNS COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 7, TOWNSHIP 5 SOUTH, RANGE 28 EAST, ST. JOHNS COUNTY, FLORIDA; THENCE NORTH 00°02'28" WEST, ALONG THE WESTERLY LINE OF SAID SECTION 7 AND ALONG THE EASTERLY LINE OF THOSE LANDS AS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 813, PAGE 1729, OF THE PUBLIC RECORDS OF SAID COUNTY, 5417.21 FEET TO NORTHERLY LINE OF SAID SECTION 7; THENCE SOUTH 88°33'27" WEST, ALONG LAST SAID LINE, 2709.70 FEET TO THE NORTHWEST CORNER OF THE NORTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 7 AND THE EASTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1288, PAGE 175, SAID PUBLIC RECORDS, AND THE POINT OF BEGINNING; THENCE NORTH 00°53'26" EAST, ALONG LAST SAID EASTERLY LINE, 81.44 FEET TO AN ANGLE POINT IN LAST SAID LINE; THENCE NORTH 01°22'52" WEST, CONTINUING ALONG SAID EASTERLY LINE AND ALONG THE EASTERLY LINE OF THOSE LANDS AS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 819, PAGE 549 OF SAID PUBLIC RECORDS, 3478.85 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF RACETRACK ROAD (COUNTY ROAD NO. 5, A VARIABLE WIDTH RIGHT OF WAY AS NOW ESTABLISHED); THENCE SOUTHEASTERLY, EASTERLY AND NORTHEASTERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING SEVEN (7) COURSES AND DISTANCES; COURSE NO. 1: SOUTH 70°23'18" EAST, 285.47 FEET TO THE ARC OF A CURVE LEADING EASTERLY; COURSE NO. 2: EASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 1161.35 FEET, AN ARC DISTANCE OF 457.92 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 81°41'03" EAST, 454.96 FEET TO THE ARC OF A CURVE LEADING NORTHEASTERLY; COURSE NO. 3: NORTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 605.77 FEET, AN ARC DISTANCE OF 617.42 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 72°15'44" EAST, 591.04 FEET TO THE POINT OF TANGENCY OF LAST SAID CURVE; COURSE NO. 4: NORTH 43°03'49" EAST, 1770.05 FEET TO THE POINT OF CURVATURE OF A CURVE LEADING NORTHEASTERLY; COURSE NO. 5: NORTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1117.67 FEET, AN ARC DISTANCE OF 643.04 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 59°32'45" EAST, 634.20 FEET TO THE POINT OF TANGENCY OF LAST SAID CURVE; COURSE NO. 6: NORTH 76°01'40" EAST, 855.08 FEET TO THE POINT OF CURVATURE OF A CURVE LEADING NORTHEASTERLY; COURSE NO. 7: NORTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1136.75 FEET, AN ARC DISTANCE OF 20.01 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 76°31'56" WEST, 20.01 FEET TO THE NORTHERLY LINE OF SAID SECTION 5; THENCE NORTH 89°45'16" EAST, ALONG LAST SAID LINE, 138.10 FEET TO THE WESTERLY LINE OF THE NORTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 5, ALSO BEING THE WESTERLY LINE OF THOSE LANDS AS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1225, PAGE 555 OF SAID PUBLIC RECORDS; THENCE SOUTH 00°14'13" WEST, ALONG LAST SAID LINE, 1351.31 FEET TO THE SOUTHERLY LINE OF LAST LANDS; THENCE SOUTH 89°50'34" EAST, ALONG LAST SAID LINE, 1378.07 FEET TO THE EASTERLY LINE OF LAST SAID LANDS; THENCE NORTH 00°38'38" WEST, ALONG LAST SAID LINE, 1317.25 FEET TO THE AFORESAID SOUTHERLY RIGHT OF WAY LINE OF RACETRACK ROAD AND THE ARC OF A CURVE LEADING SOUTHEASTERLY; THENCE SOUTHEASTERLY, SOUTHERLY AND EASTERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING SIX (6) COURSES AND DISTANCES; COURSE NO. 1: SOUTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 2817.92 FEET, AN ARC DISTANCE OF 756.63 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 71°24'55" EAST, 754.36 FEET TO THE POINT OF TANGENCY OF LAST SAID CURVE; COURSE NO. 2: SOUTH 63°43'23" EAST, 130.44 FEET TO

THE POINT OF CURVATURE OF A CURVE LEADING SOUTHEASTERLY; COURSE NO. 3: SOUTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1938.99 FEET, AN ARC DISTANCE OF 378.54 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 69°18'57" EAST, 377.94 FEET; COURSE NO. 4: SOUTH 15°05'29" WEST, 17.00 FEET TO THE ARC OF A CURVE LEADING EASTERLY; COURSE NO. 5: EASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 1955.99 FEET, AN ARC DISTANCE OF 270.17 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 78°51'56" EAST, 269.96 FEET TO THE POINT OF TANGENCY OF LAST SAID CURVE; COURSE NO. 6: SOUTH 82°49'16" EAST, 578.74 FEET TO THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 95 (STATE ROAD NO. 9, A 300 FOOT LIMITED ACCESS RIGHT OF WAY PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP SECTION NO. 78080-2408 AND SECTION NO. 78080-2440), AND THE ARC OF A CURVE LEADING SOUTHEASTERLY; THENCE SOUTHEASTERLY, SOUTHERLY, SOUTHWESTERLY AND EASTERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING TWELVE (12) COURSES AND DISTANCES; COURSE NO. 1: SOUTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 7489.44 FEET, AN ARC DISTANCE OF 2392.67 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 28°14'11" EAST, 2382.51 FEET; COURSE NO. 2: SOUTH 03°32'06" EAST, 145.46 FEET; COURSE NO. 3: SOUTH 20°40'10" WEST, 101.72 FEET; COURSE NO. 4: SOUTH 51°51'12" WEST, 370.50 FEET; COURSE NO. 5: SOUTH 73°40'38" WEST, 138.96 FEET TO THE ARC OF A CURVE LEADING SOUTHERLY; COURSE NO. 6: SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 6904.44 FEET, AN ARC DISTANCE OF 1010.17 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 12°07'53" EAST, 1009.27 FEET; COURSE NO. 7: NORTH 82°03'36" EAST, 490.40 FEET; COURSE NO. 8: SOUTH 26°49'41" EAST, 76.28 FEET; COURSE NO. 9: SOUTH 09°40'59" EAST, 701.21 FEET; COURSE NO. 10: SOUTH 01°23'34" EAST, 446.71 FEET TO THE ARC OF A CURVE LEADING SOUTHERLY; COURSE NO. 11: SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 7489.44 FEET, AN ARC DISTANCE OF 336.67 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 02°41'54" WEST, 336.64 FEET TO THE POINT OF TANGENCY OF LAST SAID CURVE; COURSE NO. 12: SOUTH 03°59'10" WEST, 1050 FEET, MORE OR LESS, TO THE CENTERLINE OF DURBIN CREEK; THENCE SOUTHWESTERLY AND NORTHWESTERLY, ALONG LAST SAID LINE, 7700 FEET, MORE OR LESS TO THE WESTERLY LINE OF THE SOUTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 7; THENCE NORTH 00°25'28" EAST, ALONG LAST SAID LINE, 300 FEET, MORE OR LESS TO THE NORTHWEST CORNER OF SAID SOUTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 7, ALSO BEING THE NORTHEAST CORNER OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 813, PAGE 1729 OF SAID PUBLIC RECORDS; THENCE SOUTH 89°35'20" WEST, ALONG NORTHERLY LINE OF LAST SAID LANDS AND ALONG THE SOUTHERLY LINE OF THE AFORESAID NORTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SECTION 7, A DISTANCE OF 1365.17 FEET TO THE WESTERLY LINE OF SAID NORTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SECTION 7 ALSO BEING THE EASTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1288, PAGE 175 OF SAID PUBLIC RECORDS; THENCE NORTH 00°53'26" EAST, ALONG LAST SAID LINE, 1319.10 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT
THOSE LANDS DESIGNATED PARCEL 100C, AS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1699, PAGE 720 OF SAID PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA.

FUTHER LESS AND EXCEPT
THAT CERTAIN PROPERTY DESCRIBED IN DEED OF DEDICATION (RIGHTS-OF-WAY) PARCEL 113-RACETRACK ROAD, RECORDED IN OFFICIAL RECORDS BOOK 2964,PAGE 1236, OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA.

THE ABOVE DESCRIBED LANDS BEING SUBJECT TO ANY SUBMERGED SOVEREIGN LANDS OF THE STATE OF FLORIDA ASSOCIATED WITH DURBIN CREEK.

Exhibit 2 – Illustration of SR 9B Extension

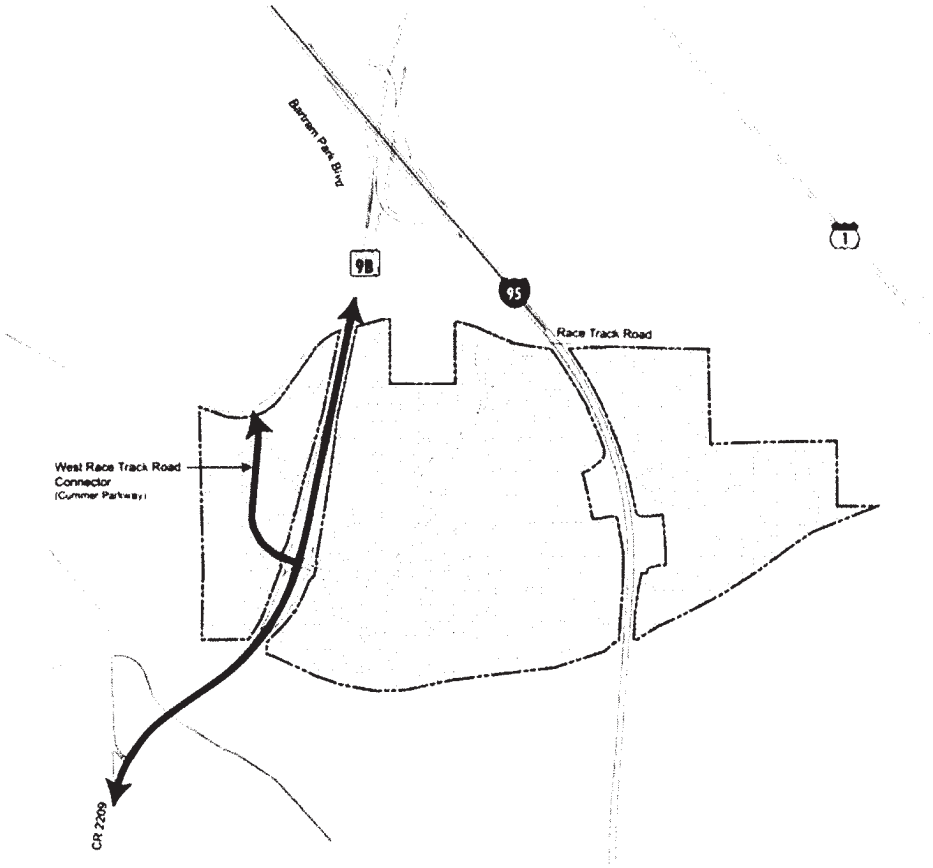


Exhibit 3 – Form of Donation Agreement

PROPERTY DONATION AGREEMENT

This Property Donation Agreement ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and Durbin Creek National, LLC, a Florida limited liability company ("Durbin").

Recitals

A. Durbin is the fee simple owner of certain real property located in St. Johns County, more particularly described in attached Exhibit "A" ("Durbin Property");

B. The Department owns State Road ("SR") 9B in Duval County and St. Johns County, Florida; and

C. The Department plans to design, permit, and construct Phase III of SR 9B, an extension of 9B in St. Johns County, Florida, the relevant portion of which is described in attached Composite Exhibit "B" ("SR 9B Phase III"); and

D. The SR 9B Phase III includes connections between Interstate 95 and St. Johns County Road 2209, and the construction of a new roadway known as the West Cummer Parkway which will connect SR 9B to Race Track Road, see Composite Exhibit "B"; and

E. Funding for the construction of SR 9B Phase III is in the Department's 2014-15 Fiscal Year Transportation Improvement Plan, and the funding has been authorized for contract execution before the end of the 2014-15 Fiscal Year; the design-build request for proposals ("RFP") has been advertised; Technical Proposals from the firms responding to the RFP are due in February, 2015; the anticipated award date for the design build contract is April, 2015; however, the RFP does not require or otherwise commit the Department to procure or contract for any articles or services; and

F. Pursuant to the terms and conditions of this Agreement, Durbin shall donate in fee a portion of the Durbin Property to the Department for the Department's construction of SR 9B Phase III, the specified portion of which is described on attached Exhibit "C-1" ("SR 9B Improvements Right-of-Way"); and

G. Pursuant to the terms and conditions of this Agreement, Durbin shall also donate a perpetual non-exclusive easement to the Department for construction of stormwater ponds as part of SR 9B Phase III, the specified portion of which is described on attached Composite Exhibit "C-2" ("Easement Parcel" or "WRA"); and

H. Maintenance of the WRA is addressed in a proposed Joint Use Pond and Maintenance Agreement to be executed by Durbin and the Department simultaneously with this Agreement; and,

I. On _____, 2015, the St. Johns County Board of County Commissioners approved a Development Agreement between St. Johns County and Durbin (the "Development Agreement") providing for, among other items, the donation of the SR 9B Improvements Right-of-Way and Easement Parcel and the joint use and maintenance of the WRA - the Department is not a party to the Development Agreement; and

J. This Agreement is the result of arm's length negotiations and the parties each represent to the other they are entering this Agreement freely and voluntarily of their own accord and that Durbin's donation of the SR 9B Improvements Right-of-Way and Easement Parcel does not constitute an exaction.

NOW THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, in consideration of the recitals and the mutual covenants and conditions contained in this Agreement, the parties acknowledge and agree as follows:

1. RECITALS & EXHIBITS

The recitals set forth above and attached exhibits are specifically incorporated in and made part of this Agreement by reference.

2. EFFECTIVE DATE

The effective date of this Agreement shall be the date the last of the parties to be charged executes this Agreement ("Effective Date").

3. PROPERTY DONATION & CLOSING

A. The Donation Documents include: (1) signed and sealed surveys, sketches and legal descriptions of the SR 9B Improvements Right-of-Way and Easement Parcel; (2) a title search, issued by a Florida licensed title insurer (Exhibit "D"), showing fee simple ownership of the SR 9B Improvements Right-of-Way and Easement Parcel, free and clear of any and all liens, encumbrances, or other interests of any nature whatsoever and evidencing marketable title in Durbin; (3) Special Warranty Deed (Exhibit "E") for the SR 9B Improvements Right-of-Way; and (4) Perpetual Non-Exclusive Easement (Exhibit "F") for the Easement Parcel. The Department and Durbin have reviewed and approved the Donation Documents.

B. Durbin has: (1) executed the Donation Documents; (2) executed the Department's Right of Way Donation Form, attached to this Agreement as Exhibit "G"; (3) complied with the applicable Public Disclosure Requirements set forth in Section 286.23, Fla. Stat., and Section 7.7 of the Department's Right of Way Manual; (4) executed the Department's Public Disclosure Notice Form, attached to this Agreement as Exhibit "H"; and (5) delivered the executed documents to the Department.

C. The Department, at its sole cost and expense, shall record the Special Warranty Deed and the Perpetual Non-Exclusive Easement in the St. Johns County Public

Records and shall provide Durbin with a copy of the recorded originals upon receipt of the same from the recording offices.

D. Durbin has paid all taxes associated with the SR 9B Improvements Right-of-Way and Easement Parcel arising on or before the date of recording.

4. ENVIRONMENTAL ASSESSMENT

The Department, at its sole cost and expense, has obtained an Environmental Assessment for SR 9B Phase III.

5. UTILITIES.

The Department shall, at its sole cost and expense, include installation of the following utilities, at the locations identified by Durbin in attached Composite Exhibit "I", in the RFP:

(a) lateral sleeves transverse to SR 9B Phase III for potable water, sewer, re-use water, and underground electrical services; and

(b) sleeve parallel to West Cummer Parkway, crossing Race Track Road for a future force main under Race Track Road;

(c) cross drain culverts under SR 9B Phase III; and

(d) a traffic signal at West Cummer Parkway and Race Track Road.

Prior to discharging any water through the cross drain culverts, Durbin shall convey to the Department a permanent non-exclusive drainage easement over all downstream real property owned by Durbin upon which all such water will drain to, in, or through.

6. CONSTRUCTION OF 9B EXTENSION

Nothing in this Agreement or any other current or future Memoranda of Understanding or Agreements executed by the Department and Durbin, its affiliated entities, and its assigns, shall obligate the Department to design, permit, or construct SR 9B Phase III. This provision shall survive termination of this Agreement.

7. RIGHT OF RE-ENTRY

Durbin retains a reversionary interest and right of re-entry (collectively "Right of Re-Entry") in the SR 9B Improvements Right-of-Way and Easement Parcel. Durbin may exercise the Right of Re-Entry by recording a notice and such other documents it deems necessary in the public records of St. Johns County, Florida, if the Department fails to issue its final acceptance of, pursuant to Chapter 337, Florida Statutes (2014), and to open to public traffic SR 9B Phase III described in Recitals C and D above ("Final Acceptance") within twenty (20) years after the Effective Date of this Agreement ("Condition Precedent to Re- Entry"). To exercise this Right of Re-Entry, Durbin must deliver written notice of its intent to exercise the Right of Re-Entry together with a copy

of this Agreement to the Department's District 2 Secretary and the Department's representative identified in the Notice section of this Agreement ("Re-Entry Notice"). The Department may challenge the occurrence of the Condition Precedent to Re-Entry by filing an action for declaratory relief with a state court of competent jurisdiction within one hundred twenty (120) days of receipt of the Re-Entry Notice and such Right of Re-Entry shall be tolled pending final adjudication in the action for declaratory relief. The Department's failure to file an action for declaratory relief within one hundred twenty (120) days of receipt of the Re-Entry Notice shall constitute a forfeiture of the right to do so. In the event the Department does not challenge the occurrence of the Condition Precedent to Re-Entry as provided herein or in the event any such action for declaratory relief results in final adjudication that the Condition Precedent to Re-Entry was satisfied, the Department shall execute such additional documents as reasonably required and prepared by Durbin to effectuate the Right of Re-Entry, including, without limitation, execution of a quit claim deed which shall be utilized if Durbin requires the Department to execute an instrument of conveyance associated with exercise of the Right of Re-Entry. By exercise of the Right of Re-Entry, Durbin is entitled to receive title to the SR 9B Improvements Right-of-Way and Easement Parcel in the same condition of title as conveyed to the Department by Durbin, with the exception of any interests for utilities.

The above notwithstanding, if the Department issues its Final Acceptance of and opens to public traffic SR 9B Phase III within twenty (20) years of the Effective Date of this Agreement ("Condition Precedent to Re-Entry Termination"), the Department may request that Durbin record an instrument in the public records of St. Johns County, Florida confirming that the Right of Re-Entry as provided herein has been terminated. The Department shall deliver written notice of the termination request together with a copy of this Agreement ("Acceptance Notice") to Durbin and to Durbin's representatives identified in the Notice section of this Agreement. Durbin may challenge the occurrence of the Condition Precedent to Re-Entry Termination by filing an action for declaratory relief with a state court of competent jurisdiction within one hundred twenty (120) days of receipt of the Acceptance Notice and such Right of Re-Entry termination shall be tolled pending the outcome of the action for declaratory relief. Durbin's failure to file an action for declaratory relief within one hundred twenty (120) days of receipt of the Acceptance Notice shall constitute a forfeiture of the right to do so. In the event Durbin does not challenge the occurrence of the Condition Precedent to Re-Entry Termination as provided herein or in the event any such action for declaratory relief shall result in final adjudication that the Condition Precedent to Re-Entry Termination was satisfied, Durbin shall execute such additional documents as reasonably required and prepared by the Department to effectuate the right of re-entry termination.

8. EMINENT DOMAIN AND DAMAGES

Provided that the construction of SR 9B Phase III is in substantial conformance with the plans attached as part of Composite Exhibit B, the Department's good faith and lawful exercise of any right provided in this Agreement shall not create any right, title, interest or estate entitling Durbin to full and just compensation from the Department either through inverse

condemnation or eminent domain laws or any similar laws regarding the taking of property for public purposes ("Eminent Domain Law"), and Durbin shall forever waive and relinquish all legal rights and monetary claims which it has, or which may arise in the future, for compensation and/or damages, including, without limitation, special damages, severance damages, removal costs, and loss of business profits resulting in any manner from the Department's good faith and lawful exercise of any right provided in this Agreement. This waiver and relinquishment specifically includes all damages flowing from adjacent properties owned, leased or otherwise controlled by Durbin as a result of the Department's good faith and lawful exercise of any right provided in this Agreement.

9. MUTUAL INDEMNIFICATION

A. Durbin shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, Liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by or resulting from Durbin's negligence, intentional or wrongful acts, or omissions in its use of the Easement Parcel or in its breach of this Agreement ("Durbin Liabilities"). Durbin shall immediately notify the Department in writing upon becoming aware of any Durbin Liabilities. Durbin shall, upon the Department's written demand, participate and associate with the Department in the defense and trial of any Durbin Liabilities, including related settlement negotiations. The inability of Durbin to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph. These indemnification requirements specifically do not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions, or breach of contract.

B. Only to the extent permissible under applicable Florida law, the Department shall promptly defend, indemnify, hold Durbin harmless from and pay all demands, claims, judgments, Liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by or resulting from the Department's negligence, intentional or wrongful acts, or omissions in its use of the the SR 9B Improvements Right-of-Way and Easement Parcel or in its breach of this Agreement ("Department Liabilities"). The Department shall immediately notify Durbin in writing upon becoming aware of any Department Liabilities. The Department shall, upon Durbin's written demand, participate and associate with Durbin in the defense and trial of any Department Liabilities, including related settlement negotiations. The inability of the Department to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph. These indemnification requirements specifically do not encompass indemnifying Durbin for its negligence, intentional or wrongful acts, omissions, or breach of contract.

C. The terms "Durbin Liabilities" and "Department Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource

Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA"), and the Clean Water Act ("CWA").

10. NOTICE

All notices, communications and determinations between the parties and those required by this Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

Department:
Florida Department of Transportation
Attention: Property Management Administrator
Florida Department of Transportation, District Two
1109 S. Marion Avenue, MS 2020
Lake City, FL 32025-5874

With a copy to:
Florida Department of Transportation
Attention: Chief Counsel
1109 South Marion Avenue, Mail Station 2009
Lake City, Florida 32025

Durbin:
Durbin Creek National, LLC
Kenneth P. Wilson
9500 San Jose Blvd
Jacksonville, Florida 32257

With a copy to:
Durbin Creek National, LLC
General Counsel
9500 San Jose Blvd
Jacksonville, Florida 32257

With a copy to:
T. R. Hainline, Jr., Esquire
Rogers Towers, P. A.
1301 Riverplace Boulevard, Suite 1500
Jacksonville, Florida 32207

With a copy to:
Joel Settembrini, Jr., Esquire
Saalfield Shad
245 Riverside Ave., Suite 400
Jacksonville, Florida 32207

11. GOVERNING LAW

This Agreement shall be governed in all respect by the laws of the State of Florida.

12. VENUE AND JURISDICTION

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance, or breach of the Agreement shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. Durbin and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance, or breach of this Agreement.

13. THIRD PARTY BENEFICIARIES

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations, or remedies upon any other person or entity except as expressly provided for in this Agreement.

14. VOLUNTARY EXECUTION OF AGREEMENT

Each party warrants and represents to the other: (a) that it understands all of the rights and obligations set forth in this Agreement and this Agreement accurately reflects the desires of said party; (b) each provision of the Agreement has been negotiated fairly at arm's length; (c) it fully understands the advantages and disadvantages of this Agreement and executes this Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (d) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of the Agreement.

15. ENTIRE AGREEMENT

This instrument contains the entire understanding of the parties and no representations or promises have been made except those that are specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants, and warranties with respect to the subject matter of this Agreement are waived, merged in, and superseded by this Agreement.

16. EXECUTION OF DOCUMENTS

The parties agree that they shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of this Agreement and shall do all other acts to effectuate the Agreement.

17. SUFFICIENCY OF CONSIDERATION

By their signature below, the parties acknowledge the receipt, adequacy, and sufficiency of consideration provided in this Agreement and forever waive the right to object to or otherwise challenge the same.

18. WAIVER

The failure of any party to insist on the strict performance or compliance with any term or provision of this Agreement on one or more occasions shall not constitute a waiver or relinquishment of the rights provided in this Agreement and all such terms and provisions shall remain in full force and effect unless specifically waived or relinquished in writing.

19. INTERPRETATION

No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

20. CAPTIONS

Paragraph title or captions contained in this Agreement are inserted as a matter of convenience and reference and in no way define, limit, extend, or describe the scope of the Agreement.

21. SEVERANCE

If any section, paragraph, clause, or provision of this Agreement is adjudged by a court, agency, or authority of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, all remaining parts of this Agreement shall remain in full force and effect so long as principal purposes of this Agreement remain enforceable.

22. COMPUTATION OF TIME

In computing any period of time prescribed in this Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

23. MODIFICATION OF AGREEMENT

A modification or waiver of any of the provisions of the Agreement shall be effective only if made in writing and executed with the same formality as the Agreement.

IN WITNESS WHEREOF, the parties execute this Agreement consisting of eleven (11) pages, excluding content of attached exhibits.

-Signatures on following pages-

Florida Department of Transportation

By: _____

Printed Name: Greg Evans

Title: District Two Secretary

Date: _____

Witness:

By: _____

Printed Name: _____

Witness:

By: _____

Printed Name: _____

Legal Review:

By: _____
Office of the General Counsel
Florida Department of Transportation

STATE OF FLORIDA
COUNTY OF COLUMBIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Greg Evans, District Two Secretary, who is personally known to me.

_____

Durbin Creek National, LLC, a Florida Limited Liability Company

By: _____

Printed Name: Kenneth P. Wilson

Title: President

Date: _____

Witness:

By: _____

Printed Name: _____

Witness:

By: _____

Printed Name: _____

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, □ who is personally known to me, or □ who produced _____ as identification, who took an oath.

_____

EXHIBIT LIST

Exhibit A	Durbin Property
Composite Exhibit B	SR 9B Phase III
Exhibit C-1	SR 9B Improvements Right-of-Way
Exhibit C-2	Easement Parcel
Exhibit D	Ownership and Encumbrance report
Exhibit E	Special Warranty Deed (fee title parcels)
Exhibit F	Perpetual Non-Exclusive Easement (easement parcels)
Exhibit G	Right of Way Donation Form
Exhibit H	Public Disclosure Form
Composite Exhibt I	Utility Locations

Exhibit 4 -- Form of Joint Use Agreement

This Instrument prepared by or under
the direction of David M. Robertson,
Chief Counsel District 2
Florida Department of Transportation
1109 South Marion Avenue, Mail Station 2009
Lake City, Florida 32025-5874

JOINT USE POND & MAINTENANCE AGREEMENT

THIS JOINT USE POND & MAINTENANCE AGREEMENT ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and Durbin Creek National, LLC, a Florida limited liability company ("Durbin").

RECITALS:

A. Durbin is the fee simple owner of certain real property located in St. Johns County, more particularly described in attached Exhibit "A" ("Durbin Property");

B. The Department owns State Road ("SR") 9B in Duval County and St. Johns County, Florida ("Department Property"); and

C. The Department plans to design, permit, and construct Phase III of SR 9B, an extension of 9B in St. Johns County, Florida, the relevant portion of which is described in attached Composite Exhibit "B" ("SR 9B Phase III"); and

D. The SR 9B Phase III includes connections between Interstate 95 and St. Johns County Road 2209, and the construction of a new roadway known as the West Cummer Parkway which will connect SR 9B to Race Track Road, see Composite Exhibit "B"; and

E. Funding for the construction of SR 9B Phase III is in the Department's 2014-15 Fiscal Year Transportation Improvement Plan, and the funding has been authorized for contract execution before the end of the 2014-15 Fiscal Year; the design-build request for proposals ("RFP") has been advertised; Technical Proposals from the firms responding to the RFP are due in February, 2015; the anticipated award date for the design build contract is April, 2015; however, the RFP does not require or otherwise commit the Department to procure or contract for any articles or services; and

F. Pursuant to the terms and conditions of this Agreement, Durbin shall donate in fee a portion of the Durbin Property to the Department for the Department's construction of SR 9B Phase III, the specified portion of which is described on attached Exhibit "C-1" ("SR 9B Improvements Right-of-Way"); and

G. Donation of the SR 9B Improvements Right-of-Way is addressed in a proposed Property Donation Agreement to be executed by Durbin and the Department simultaneously with this Agreement; and,

H. Pursuant to the terms and conditions of this Agreement, Durbin shall also donate a perpetual easement to the Department for construction of stormwater ponds as part of SR 9B Phase III, the specified portion of which is described on attached Composite Exhibit "C-2" ("Easement Parcel" or "WRA");

I. The Department has agreed to design, permit, and construct the WRA and is seeking an Environmental Resource Permit (the "Pond Permit") from the St. Johns River Water Management District ("SJRWMD"); and

J. Upon completion of construction, the Department shall be solely responsible for the operation and maintenance of the WRA and any costs associated therewith unless and until Durbin assumes sole responsibility for operation and maintenance of the WRA and associated costs, whereupon, following the certifications and other documentation provided for herein, Durbin shall assume such responsibility; and

K. Upon or before Durbin's assumption of the operation and maintenance of the WRA, Durbin may seek from SJRWMD a modification of the Pond Permit to expand the WRA to serve as a joint use facility such that Durbin may convey stormwater from the Durbin Property into the WRA and the Department may continue to convey stormwater from the 9B Phase III into the WRA; and

L. After such election, Durbin shall design, permit, and construct the expansion of the WRA and shall be solely responsible for the operation and maintenance of the WRA and any costs associated therewith; and

M. For purposes of this Agreement the term "stormwater" shall have the meaning set forth in Fla. Admin. Code R. 14-86.002 (21).

N. On _____, 2015, the St. Johns County Board of County Commissioners approved a Development Agreement between St. Johns County and Durbin (the "Development Agreement") providing for, among other items, the donation of the SR 9B Improvements Right-of-Way and Easement Parcel and the joint use and maintenance of the WRA - the Department is not a party to the Development Agreement; and

O. This Agreement is the result of arm's length negotiations and the parties each represent to the other they are entering this Agreement freely and voluntarily of their own accord and that Durbin's donation of the SR 9B Improvements Right-of-Way and Easement Parcel does not constitute an exaction.

NOW THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound hereby, acknowledge and agree as follows:

1. RECITALS & EXHIBITS

The recitals set forth above and Exhibits attached hereto are specifically incorporated herein by reference and made part of this Agreement.

2. EFFECTIVE DATE

The effective date of this Agreement shall be the date the last of the parties to be charged executes the Agreement ("Effective Date").

3. CONSTRUCTION OF SR 9B PHASE III

Nothing in this Agreement or any other current or future Memoranda of Understanding or Agreements executed by the Department and Durbin, and its affiliated entities, and its assigns, shall obligate the Department to design, permit, or construct SR 9B Phase III or the WRA.

4. RIGHT OF RE-ENTRY

Durbin retains a reversionary interest and right of re-entry (collectively "Right of Re-Entry") in the SR 9B Improvements Right-of-Way and Easement Parcel. Durbin may exercise the Right of Re-Entry by recording a notice and such other documents it deems necessary in the public records of St. Johns County, Florida, if the Department fails to issue its final acceptance of, pursuant to Chapter 337, Florida Statutes (2014), and to open to public traffic SR 9B Phase III described in Recitals C and D above ("Final Acceptance") within twenty (20) years of the Effective Date of this Agreement ("Condition Precedent to Re- Entry"). To exercise this Right of Re-Entry, Durbin must deliver written notice of its intent to exercise the Right of Re-Entry together with a copy of this Agreement to the Department's District 2 Secretary and the Department's representative identified in the Notice section of this Agreement ("Re-Entry Notice"). The Department may challenge the occurrence of the Condition Precedent to Re-Entry by filing an action for declaratory relief with a state court of competent jurisdiction within one hundred twenty (120) days of receipt of the Re-Entry Notice and such Right of Re-Entry shall be tolled pending final adjudication in the action for declaratory relief. The Department's failure to file an action for declaratory relief within one hundred twenty (120) days of receipt of the Re-Entry Notice shall constitute a forfeiture of the right to do so. In the event the Department does not challenge the occurrence of the Condition Precedent to Re-Entry as provided herein or in the event any such action for declaratory relief results in final adjudication that the Condition Precedent to Re-Entry was satisfied, the Department shall execute such additional documents as reasonably required and prepared by Durbin to effectuate the Right of Re-Entry, including, without limitation, execution of a quit claim deed which shall be utilized if Durbin requires the Department to execute an instrument of conveyance associated with exercise of the Right of Re-Entry. By exercise of the Right of Re-Entry, Durbin is entitled to receive title to the SR 9B Improvements Right-of-Way and Easement Parcel in the same condition of title as conveyed to the Department by Durbin, with the exception of any interests for utilities.

The above notwithstanding, if the Department issues its Final Acceptance and opens to public traffic SR 9B Phase III within twenty (20) years of the Effective Date of this Agreement ("Condition Precedent to Re-Entry Termination"), the Department may request that Durbin record an instrument in the public records of St. Johns County, Florida confirming that the Right of Re-Entry as provided herein has been terminated.

The Department shall deliver written notice of the termination request together with a copy of this Agreement ("Acceptance Notice") to Durbin and to Durbin's representatives identified in the Notice section of this Agreement. Durbin may challenge the occurrence of the Condition Precedent to Re-Entry Termination by filing an action for declaratory relief with a state court of competent jurisdiction within one hundred twenty (120) days of receipt of the Acceptance Notice and such Right of Re-Entry termination shall be tolled pending the outcome of the action for declaratory relief. Durbin's failure to file an action for declaratory relief within one hundred twenty (120) days of receipt of the Acceptance Notice shall constitute a forfeiture of the right to do so. In the event Durbin does not challenge the occurrence of the Condition Precedent to Re-Entry Termination as provided herein or in the event any such action for declaratory relief shall result in final adjudication that the Condition Precedent to Re-Entry Termination was satisfied, Durbin shall execute such additional documents as reasonably required and prepared by the Department to effectuate the right of re-entry termination.

5. COMPLIANCE

A. The Department and Durbin shall perform their respective obligations under this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, St. Johns River Water Management District ("SJRWMD"), Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard and St. Johns County, Florida ("Governmental Law").

B. The WRA shall be constructed for the interim condition pond, but designed such that after the pond is expanded at a later date by Durbin to the ultimate condition pond, the ultimate condition pond will meet the Ultimate Condition Durbin Creek National, LLC Development Design High Water Elevations and the Ultimate Condition Maximum Discharges as shown on Table 2 and Table 3, respectively, on Page 2 of 2 of Appendix L of the SR 9B from CR 2209 to the I-95 Interchange Design-Build Request for Proposals, dated December 2, 2014. The interim condition pond and ultimate condition pond (subject to future design changes by Durbin) are shown on the Pond Grading Details for Pond 5, Pond 6B and Pond 7B and the RFP Ultimate ICPR Models, respectively, in Appendix L of the SR 9B from CR 2209 to the I-95 Interchange Design-Build Request for Proposals, dated December 2, 2014.

C. Upon written request by Durbin the Department shall provide Durbin with: (1) as-built surveys of the constructed WRA; and (2) a stormwater management facility (pond) compliance letter issued by SJRWMD for the WRA; (3) any Department records regarding the operation and maintenance of the WRA during the construction; and (4) any correspondence to or from SJRWMD regarding the operation and maintenance of the WRA.

6. E-VERIFY

From the Assumption Date (defined below) and for so long as required by executive order of the Governor or by other law, as the same may be amended, Durbin shall: (a) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Durbin during the term of the contract; and (b) expressly require any contractors or subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the contractor or subcontractor during the contract term.

7. PERMITS

A. In performance of this Agreement Durbin may be required to obtain one or more Department permits which may include a copy of this Agreement as an exhibit. Notwithstanding the inclusion or incorporation of this Agreement as part of any such Department permits, this Agreement shall remain separate and apart from such other documents and shall not be merged into the same absent the prior written express consent of the parties. Should any term or provision of this Agreement conflict with any term, provision or requirement of any Department permit, the terms and provisions of this Agreement shall control unless specifically noted otherwise in any such Department permit.

B. The Department shall acquire the Pond Permit and take all action necessary to become the permittee under any other permit required by the St. Johns River Water Management District concerning SR 9B Phase III.

8. ACCESS

A. From the Effective Date to the Assumption Date (defined below) of this Agreement, the Department, including its agents and assigns, shall have the right to enter the WRA for exercising: (1) any right provided in this Agreement; and (2) accessing, observing, inspecting, operating or maintaining the WRA. Nothing in this section is intended to alter or otherwise limit the Department's rights to access or Perpetual Easement rights regarding the WRA.

B. From the Assumption Date of this Agreement, the Department, including its agents and assigns, shall have the right to enter the WRA Property during normal business hours upon reasonable advance notice to Durbin for exercising: (1) any right provided in this Agreement; and (2) accessing, observing, inspecting, operating and maintaining the WRA. Nothing in this section is intended to alter, expand, or limit the Department's rights to access or Perpetual Easement rights regarding the WRA Property in accordance with applicable Governmental Law.

9. STORMWATER DRAINAGE AND RETENTION RIGHTS

A. The WRA is designed and shall be constructed by the Department to drain, accept, detain, and retain the maximum volume of stormwater the Department is authorized to divert to the WRA from SR 9B Phase III ("Original Capacity") consistent with the Pond Permit and the plans for the WRA attached hereto as part of Composite Exhibit B.

B. At a future date and in conjunction with the development of the Durbin Property, Durbin may notify the Department in writing that Durbin is considering expanding the WRA and thereafter assuming sole responsibility for operation and maintenance of the WRA or portions thereof and associated costs. Within sixty (60) days after receipt of such notice, the Department shall provide Durbin with the following: as-built surveys of the constructed WRA; a Stormwater Management Facility (Pond) Compliance Letter issued by SJRWMD for the WRA, verifying that the WRA was constructed in compliance with the Pond Permit; any Department records regarding the operation and maintenance of the WRA and any correspondence to or from SJRWMD regarding such operation or maintenance.

C. Within sixty (60) days after receipt of such information from the Department, Durbin shall notify the Department of its election (or not) to assume sole responsibility for operation and maintenance of the WRA or portions thereof and associated costs. Any such assumption of responsibility shall be effective upon the transfer of the Pond Permit to Durbin. Any documents required by SJRWMD for such assumption of responsibility and transfer shall be prepared and filed with SJRWMD by Durbin, at Durbin's sole expense.

D. In conjunction with an election by Durbin to assume the operation and maintenance of the WRA, Durbin may seek from SJRWMD a modification of the Pond Permit to expand the WRA or portions thereof to allow Durbin to divert to the expanded WRA or portions thereof the stormwater from the development of the Durbin Property ("Durbin Capacity"). Such modification may be sought prior to the transfer of the Pond Permit to Durbin and the effective date of the assumption of the operation and maintenance of the WRA; however, construction of such modification shall not commence prior to the transfer of the Pond Permit to Durbin and the effective date of the assumption of the operation and maintenance of the WRA. The Department shall cooperate with Durbin in the transfer and modification of the Pond Permit and execute any documents required by SJRWMD in connection with such transfer and modification.

E. The expanded WRA shall be designed and constructed by Durbin to drain, accept, detain, and retain both the Original Capacity and the Durbin Capacity, consistent with a modified Pond Permit and Governmental Law at the time of the expansion.

F. The Department shall have the perpetual right to drain, accept, detain and retain the Original Capacity of stormwater from SR 9B Phase III into the WRA.

G. After modification of the permit as provided in Section 9(B) above, Durbin shall have the perpetual right to drain, accept, detain and retain the Durbin Capacity of stormwater from the Durbin Property into the WRA.

H. From the effective date of a transfer of the Pond Permit to Durbin ("Assumption Date"), Durbin shall assume and be solely responsible for paying all state, regional, and local government assessments, taxes, and fees related in any way to the nature, volume, or quality of stormwater discharging from or to the WRA. Taxes, fees, and

assessments shall include all Total Maximum Daily Load allocations for the Durbin Property, Department Property, and Perpetual Easement.

10. OPERATION AND MAINTENANCE

A. From the Effective Date until the Assumption Date, the Department shall operate and maintain the WRA, at its sole cost and expense, in compliance with the Department's Statewide Stormwater Management Plan, incorporated herein by reference.

B. If Durbin determines the Department is not operating and maintaining the WRA in accordance with the terms and provisions of this Agreement, Durbin shall deliver written notification of such to the Department. The Department shall have thirty (30) days from the date of Durbin's written notice, or such other time as Durbin and the Department mutually agree in writing, to correct the deficiency and provide Durbin with written notice of the same ("Notice of Correction - Maintenance").

C. If Durbin determines the deficiency remains after receipt of the Department's Notice of Correction - Maintenance, Durbin, within its discretion, may select one or more of the following remedies: (1) provide the Department with written authorization granting such additional time as Durbin deems appropriate to correct the deficiency; or (2) correct the deficiency at the Department's sole cost and expense. Should Durbin elect to correct the deficiency, Durbin shall provide the Department with an invoice for the costs incurred by Durbin to correct the deficiency and the Department shall pay the invoice in accordance with the "Payment" section of this Agreement.

D. From the Assumption Date, Durbin shall operate and maintain WRA at its sole cost and expense, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement. From the assumption date, nothing in this Agreement shall obligate the Department to operate or maintain the WRA, said obligations to remain the sole responsibility of Durbin.

E. If the Department determines Durbin is not operating and maintaining the WRA in accordance with the terms and provisions of this Agreement, the Department shall deliver written notification of such to Durbin. Durbin shall have thirty (30) days from the date of the Department's written notice, or such other time as the Department and Durbin mutually agree in writing, to correct the deficiency and provide the Department with written notice of the same ("Notice of Correction - Maintenance").

F. If the Department determines the deficiency remains after receipt of Durbin's Notice of Correction - Maintenance, the Department, within its discretion, may select one or more of the following remedies: (1) provide Durbin with written authorization granting such additional time as the Department deems appropriate to correct the deficiency; or (2) correct the deficiency at Durbin's sole cost and expense. Should the Department elect to correct the deficiency, the Department shall provide Durbin with an invoice for the costs incurred by the Department to correct the deficiency and Durbin shall pay the invoice in accordance with the "Payment" section of this Agreement.

G. If at any time in the sole determination of the Department, the integrity or safety of the WRA requires immediate maintenance for the benefit of public health, safety or welfare, the Department may perform such maintenance it deems appropriate under the circumstances. The Department shall attempt to notify Durbin prior to action under this section, but may take necessary steps to correct emergency situations prior to such notification in order to prevent imminent danger to public health, safety or welfare. The Department shall provide Durbin with written notice of the emergency maintenance performed by the Department and an invoice for the same. Durbin shall pay the invoice in accordance with the "Payment" section of this Agreement.

H. At no time shall the operation or maintenance of the WRA interfere with or otherwise impede the Department's use or Durbin's use of the WRA.

11. EMINENT DOMAIN AND DAMAGES

Provided that the construction of SR 9B Phase III is in substantial conformance with the plans attached as part of Composite Exhibit B, the Department's good faith and lawful exercise of any right provided in this Agreement shall not create any right, title, interest or estate entitling Durbin to full and just compensation from the Department either through inverse condemnation or eminent domain laws or any similar laws regarding the taking of property for public purposes ("Eminent Domain Law"), and Durbin shall forever waive and relinquish all legal rights and monetary claims which it has, or which may arise in the future, for compensation and/or damages, including, without limitation, special damages, severance damages, removal costs, and loss of business profits resulting in any manner from the Department's good faith and lawful exercise of any right provided in this Agreement. This waiver and relinquishment specifically includes all damages flowing from adjacent properties owned, leased or otherwise controlled by Durbin as a result of the Department's good faith and lawful exercise of any right provided in this Agreement.

12. COVENANT

It is the express intent of the parties that this Agreement shall run with title to the WRA Property encumbered by the Perpetual Easement and shall bind the parties' successors and assigns.

13. MAINTENANCE OF TRAFFIC

A. Upon the Assumption Date, Durbin shall be responsible for the maintenance of traffic ("MOT") at all times during Durbin's performance under this Agreement. MOT shall be performed in accordance with applicable Governmental Law and the most current edition of each of the following, as the same may be constituted and amended from time to time, all of which are incorporated herein and made part of this Agreement by reference: (1) Section 102 of the Department's Standard Specifications for Road and Bridge Construction; (2) the Manual on Uniform Traffic Control Devices; (3) the Department's Roadway Design Standards Index 600 Series; and (4) other applicable Governmental Law.

B. If Durbin fails to perform MOT as required herein, the Department, within its discretion, may elect to perform MOT at Durbin's sole cost and expense. Should the Department perform MOT, the Department shall provide Durbin with an invoice for the

costs incurred by the Department and Durbin shall pay the invoice in accordance with the "Payment" section of this Agreement.

C. Durbin shall not be required to perform MOT necessitated by modifications or improvements initiated by the Department.

14. PAYMENT

All invoices submitted for payment pursuant to the terms and provisions of this Agreement are due and payable within thirty (30) days of the date of the invoice ("Due Date"). Any portion of an invoice not paid by the Due Date shall immediately thereafter begin accruing interest at a rate of interest established pursuant to §55.03, Fla. Stat., until paid in full.

15. INSURANCE

A. From the Assumption Date, Durbin, at its sole cost and expense, and/or its Maintenance Contractor shall procure and maintain a commercial general liability insurance policy, specifically naming the Department as an additional insured and insuring the Department and Durbin against any and all claims for injury or damage to persons and property, and for the loss of life or property that may occur (directly or indirectly) by reason of the performance or breach of this Agreement. Such insurance shall be carried in a minimum amount of not less than Two Hundred Thousand Dollars ($200,000.00) for bodily injury or death to any one person or any number of persons in any one occurrence, and not less than Two Hundred Thousand Dollars ($200,000.00) for property damage, or a combined coverage of not less than Three Hundred Thousand Dollars ($300,000.00).

B. Durbin shall continuously maintain the policy of insurance required by this section from the Assumption Date of this Agreement. Each policy of insurance required by this Agreement shall be issued by a company licensed to do business in the State of Florida. If during any term of this Agreement any insurance carrier provides notice to either party of its intent to cancel or not renew any of the required insurance policies, Durbin shall, prior to the earlier of expiration of the existing term or the effective date of cancellation, secure replacement insurance satisfying the requirements of this Agreement.

C. Durbin may self insure the WRA. If Durbin chooses to self insure then, from the Assumption Date, Durbin shall provide the Department with all documents demonstrating Durbin's compliance with Section 624.031, Florida Statutes.

D. On such occasions as the Department reasonably requires, Durbin shall provide the Department with certificates documenting the self-insurance coverage is in place and effective.

16. MUTUAL INDEMNIFICATION

A. Durbin shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, Liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by or resulting from Durbin's

negligence, intentional or wrongful acts, or omissions in its use of the Easement Parcel or in its breach of this Agreement ("Durbin Liabilities"). Durbin shall immediately notify the Department in writing upon becoming aware of any Durbin Liabilities. Durbin shall, upon the Department's written demand, participate and associate with the Department in the defense and trial of any Durbin Liabilities, including related settlement negotiations. The inability of Durbin to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph. These indemnification requirements specifically do not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions, or breach of contract.

B. Only to the extent permissible under applicable Florida law, the Department shall promptly defend, indemnify, hold Durbin harmless from and pay all demands, claims, judgments, Liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by or resulting from the Department's negligence, intentional or wrongful acts, or omissions in its use of the the SR 9B Improvements Right-of-Way and Easement Parcel or in its breach of this Agreement ("Department Liabilities"). The Department shall immediately notify Durbin in writing upon becoming aware of any Department Liabilities. The Department shall, upon Durbin's written demand, participate and associate with Durbin in the defense and trial of any Department Liabilities, including related settlement negotiations. The inability of the Department to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph. These indemnification requirements specifically do not encompass indemnifying Durbin for its negligence, intentional or wrongful acts, omissions, or breach of contract.

C. The terms "Durbin Liabilities" and "Department Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA"), and the Clean Water Act ("CWA").

17. NOTICE

All notices, communications and determinations between the parties hereto and those required by this Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

Department: Florida Department of Transportation
Attention: Property Management Administrator
Florida Department of Transportation, District Two
1109 S. Marion Avenue, MS 2020
Lake City, FL 32025-5874

With a copy to: Florida Department of Transportation
Attention: Chief Counsel

1109 South Marion Avenue, Mail Station 2009
Lake City, Florida 32025

Durbin: Durbin Creek National, LLC
Kenneth P. Wilson
9500 San Jose Blvd
Jacksonville, Florida 32257

With a copy to: Durbin Creek National, LLC
General Counsel
9500 San Jose Blvd
Jacksonville, Florida 32257

With a copy to: T. R. Hainline, Jr., Esquire
Rogers Towers, P. A.
1301 Riverplace Boulevard, Suite 1500
Jacksonville, Florida 32207

With a copy to: Joel Settembrini, Jr., Esquire
Saalfield Shad
245 Riverside Ave., Suite 400
Jacksonville, Florida 32207

18. GOVERNING LAW

This Agreement shall be governed in all respect by the laws of the State of Florida.

19. VENUE AND JURISDICTION

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in St. Johns County, Florida.

B. All persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

20. ASSIGNMENT

A. All persons and entities acquiring title to, or any interest in, the WRA Property, or any portion thereof, shall be deemed to have assumed the obligations and liabilities set forth in this Agreement.

B. Durbin, including subsequent owners of the WRA Property, shall cause any person or entity acquiring title to, or any interest in, the WRA Property, or any portion thereof, to execute a written assumption of this Agreement. Assumption agreements shall be mutually reviewed and agreed upon by Durbin and the Department, such agreement not to be unreasonably withheld. The parties' review of the assumption agreement is to ensure that the transferee has the means and ability to perform this Agreement.

Assumption agreements shall be executed at or prior to the time of the assumption of maintenance obligations. Each such assumption agreement shall be recorded by the transferor in the St. Johns County Public Records and provided to Durbin and the Department upon receipt of the same from the recording office.

C. Transfer of title to the WRA Property, or any portion thereof, shall not relieve the transferor from any liability arising under this Agreement and accruing during the transferor's ownership.

D. The parties, and all persons and entities accepting an assignment or assumption of this Agreement, agree that this paragraph does not constitute an unreasonable restraint on alienation with regard to the WRA Property.

21. THIRD PARTY BENEFICIARIES

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

22. VOLUNTARY EXECUTION OF AGREEMENT

Each party warrants and represents to the other: (i) it understands all of the rights and obligations set forth in this Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of this Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of this Agreement and executes this Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of this Agreement.

23. ENTIRE AGREEMENT

This instrument, together with the attached exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Agreement, and any part hereof, are waived, merged herein and superseded hereby.

24. SUFFICIENCY OF CONSIDERATION

By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in this Agreement and forever waive the right to object to or otherwise challenge the same.

25. WAIVER

The failure of either party to insist on the strict performance or compliance with any term or provision of this Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

26. INTERPRETATION

No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

27. CAPTIONS

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

28. SEVERANCE

If any section, paragraph, clause or provision of this Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of this Agreement shall remain in full force and effect and the parties shall be bound thereby so long as the principal purposes of this Agreement remain enforceable.

29. COMPUTATION OF TIME

In computing any period of time prescribed in this Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

30. MODIFICATION OF AGREEMENT

A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

31. PUBLIC RECORDS

A. Per Chapter 119, Florida Statutes, as it may be amended, the Department is subject to Public Records.

B. From the Assumption Date, Durbin shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, as it may be amended, and made or received by Durbin in conjunction with this Agreement. Specifically, if Durbin is acting on behalf of a public agency Durbin shall: (1) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by Durbin; and (2) Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in chapter 119, Florida Statutes, or as otherwise provided by law; and (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) Meet all requirements for retaining public records and transfer, at no cost, to the Department, all public records in possession of Durbin upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be

provided to the Department in a format that is compatible with the information technology systems of the Department.

C. Durbin shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of Durbin shall promptly provide the Department a copy of Durbin's response to each such request.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties execute this Agreement consisting of thirteen (13) pages, excluding Exhibits.

-Signatures on Following Pages-

Florida Department of Transportation

By: _____

Printed Name: Greg Evans

Title: District Two Secretary

Date: _____

Witness:

By: _____

Printed Name: _____

Witness:

By: _____

Printed Name: _____

Legal Review:

By: _____
Office of the General Counsel
Florida Department of Transportation

STATE OF FLORIDA
COUNTY OF COLUMBIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Greg Evans, District Two Secretary, who is personally known to me.

_____

Durbin Creek National, LLC, a Florida Limited Liability Company

By: _____

Printed Name: Kenneth P. Wilson

Title: President

Date: _____

Witness:

By: _____

Printed Name: _____

Witness:

By: _____

Printed Name: _____

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, □ who is personally known to me, or □ who produced _____ as identification, who took an oath.

_____

Exhibit 5 – Proposed Phase 1B Roadway Improvements

East Race Track Road Connector 4 Ln Construction

Description: Design 6 lane urban, construct new 4 lane suburban divided arterial between SR 9B Extension Interchange and Race Track Road per St Johns County Land Development Code, including right-of-way dedication, engineering and related design services, roadway, bike lanes, sidewalk, signing and pavement marking, traffic signals, drainage system and water management ponds, and incidental relocation of existing utilities. This 4 lane suburban roadway is to be constructed to allow for the ultimate 6 lane urban section in the future. New utilities are not included in this improvement, but may be constructed coincidental with this improvement by separate agreement.

Estimated Cost: $ 13,457,600 (2014 Dollars)

Map:

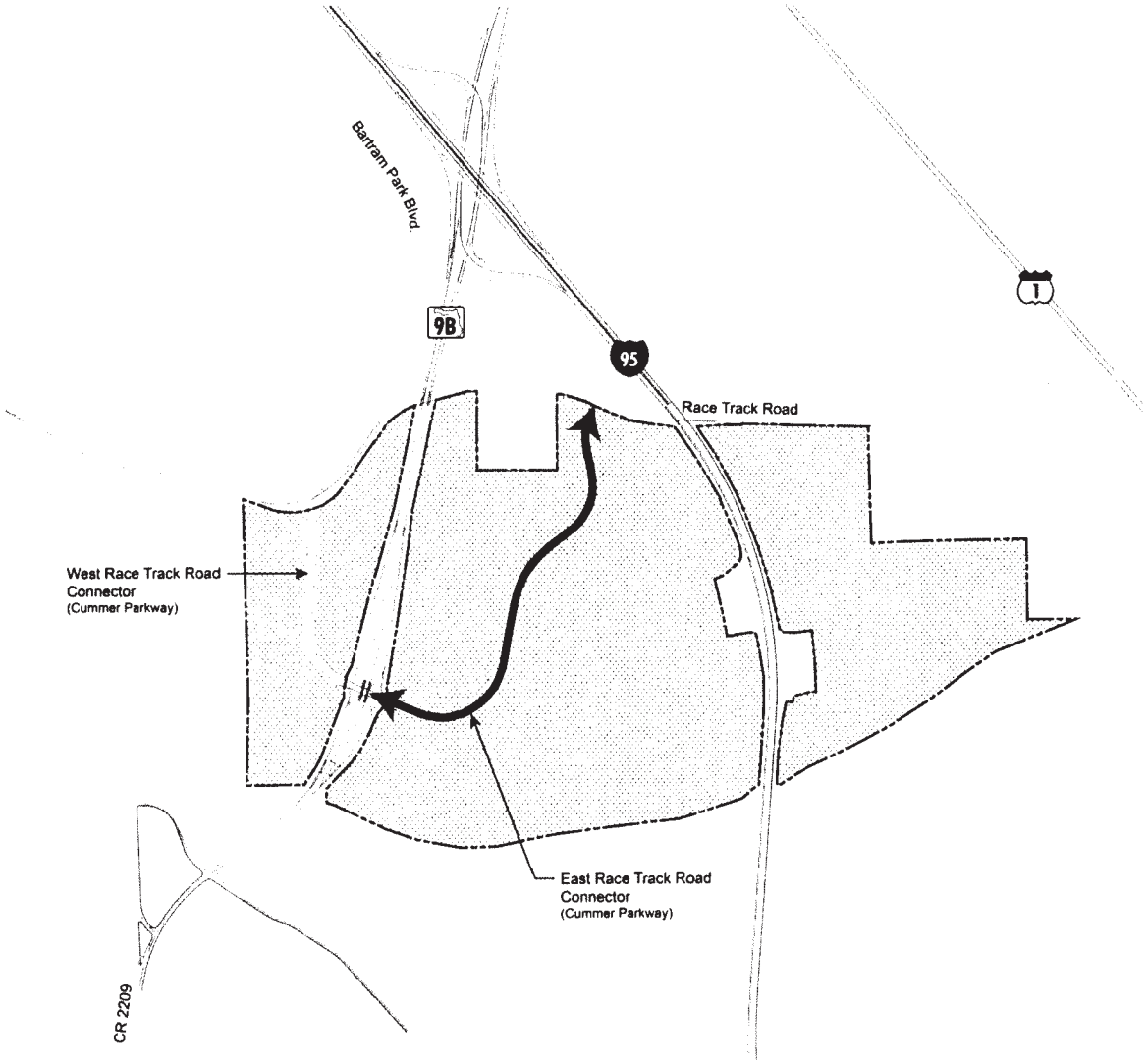


Exhibit 6 – Proposed Phase 2 Roadway Improvements

Race Track Road (E Race Track Rd Connector to Bartram Springs Parkway) 4-Lane Widening

Description: Design 6 lane urban, reconstruct existing 2-lane Race Track Road to a 4 lane divided suburban arterial, between East Race Track Road Connector and Bartram Springs Parkway, per St Johns County Land Development Code, including engineering and related design services, roadway, bike lanes, sidewalk, signing and pavement marking, traffic signals, drainage system and water management ponds, and incidental relocation of existing utilities. This project shall include a new I-95 Overpass spanning the existing I-95 right-of-way (allowing for a pier at the centerline). This 4 lane suburban roadway is to be constructed to allow for the ultimate 6 lane urban section in the future. New or upgraded utilities are not included in this improvement, but may be constructed coincidental with this improvement by separate agreement. St Johns County shall cause the Bartram Park DRI right-of-way to be dedicated and made available for this project.

Estimated Cost: $ 13,402,500 (2014 Dollars) or $9,352,500 if FDOT builds the bridge (Scenario 2)

Map:

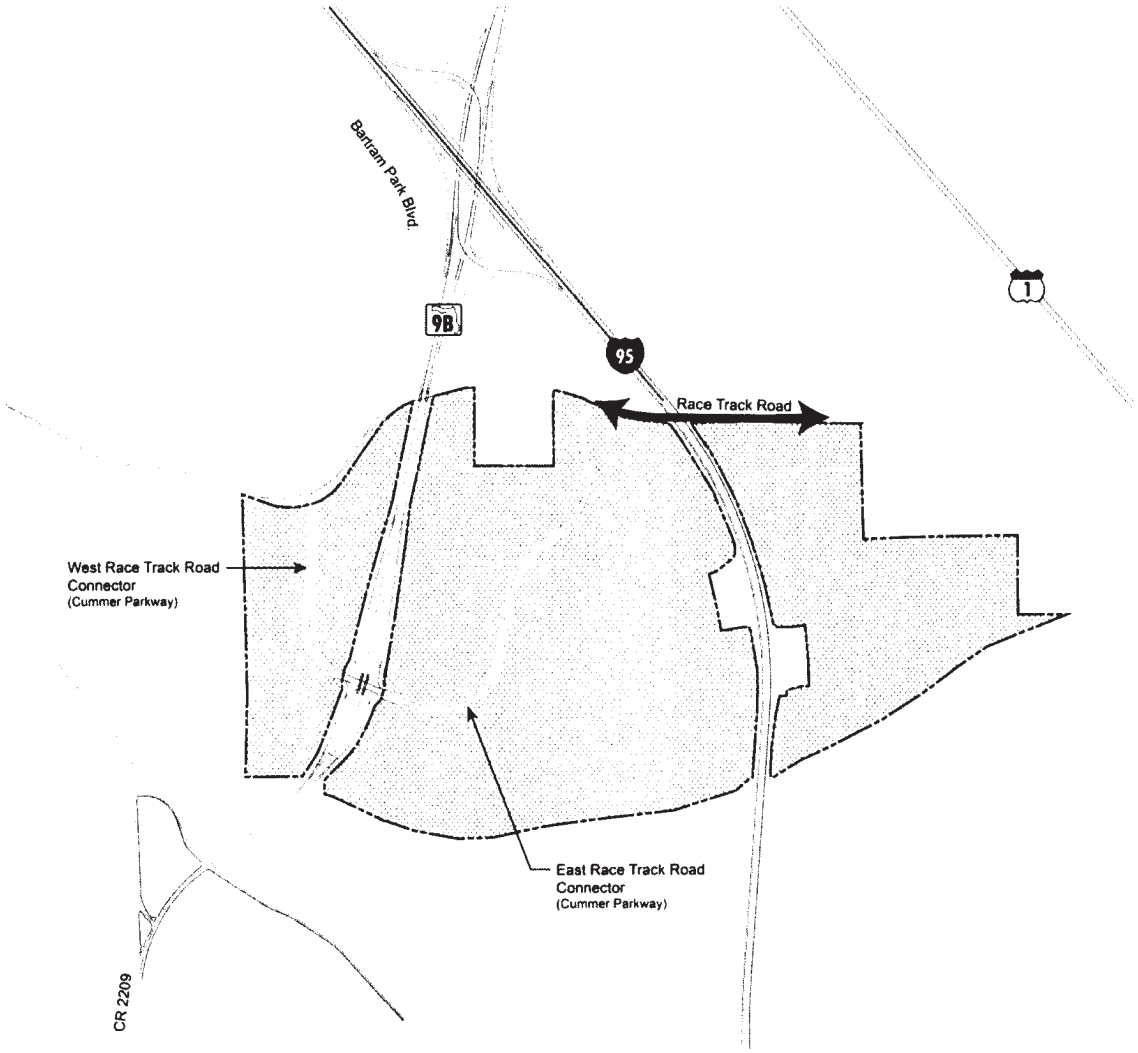


Exhibit 7 – Proposed Phase 3 Roadway Improvements

Race Track Road (Bartram Park Blvd to E Race Track Rd Connector) 4-Lane Widening, and

East Race Track Road Connector 6 Ln Construction Widening

Race Track Road Description: Design 6 lane urban, reconstruct existing 2-lane Race Track Road to a 4 lane divided suburban arterial, between Bartram Park Boulevard and East Race Track Road Connector, per St Johns County Land Development Code, including right-of-way dedication, engineering and related design services, roadway, bike lanes, sidewalk, signing and pavement marking, traffic signals, drainage system and water management ponds, and incidental relocation of existing utilities. This 4 lane suburban roadway is to be constructed to allow for the ultimate 6 lane urban section in the future. New or upgraded utilities are not included in this improvement, but may be constructed coincidental with this improvement by separate agreement. St Johns County shall cause the Bartram Park DRI right-of-way to be dedicated and made available for this project.

Race Track Road Map:

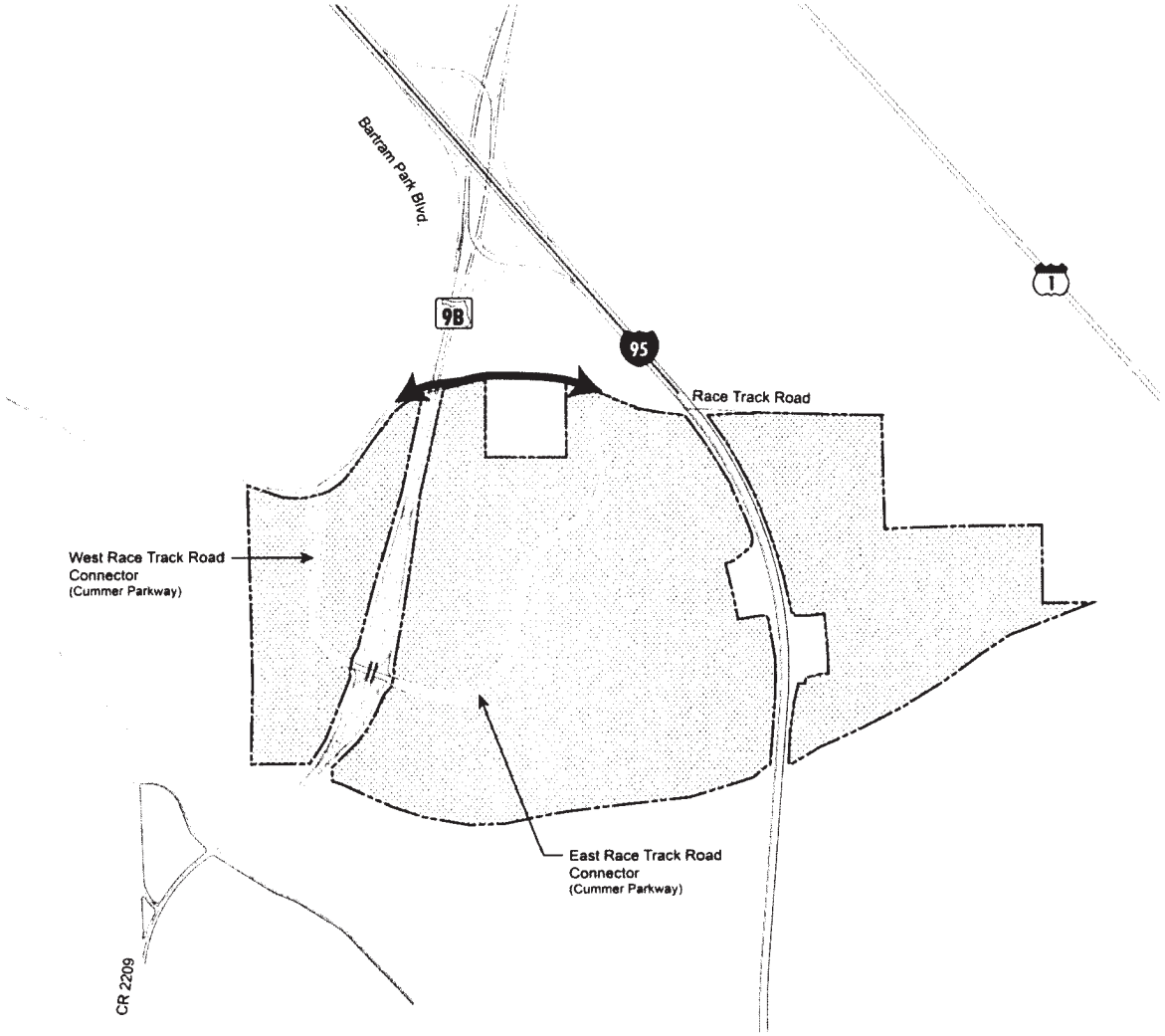


Exhibit 7 Continued:

East Cummer Parkway Description: Widen East Cummer Parkway from a 4-lane suburban to a 6 lane divided urban arterial, between SR 9B Extension Interchange and Race Track Road per St Johns County Land Development Code, including right-of-way dedication, engineering and related design services, roadway, bike lanes, sidewalk, signing and pavement marking, traffic signals, drainage system and water management ponds, and incidental relocation of existing utilities. New or upgraded utilities are not included in this improvement, but may be constructed coincidental with this improvement by separate agreement.

Estimated Cost: $ 12,971,100 (2014 Dollars)

Map:

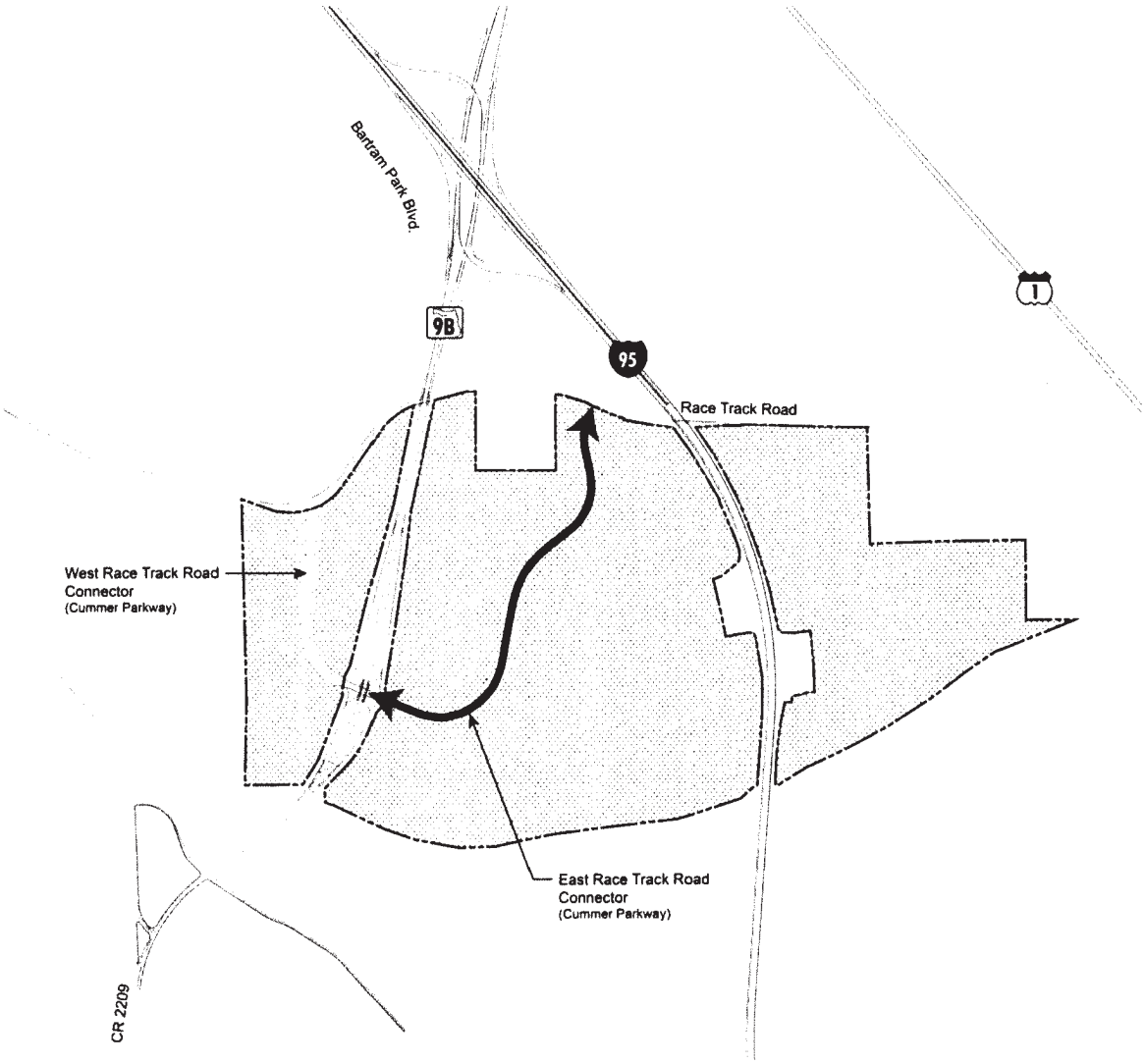


Exhibit 8 – Proposed Phase 4 Roadway Improvements

Race Track Road (Bartram Park Blvd to US 1) 6-Lane Widening

Description: Widen Race Track Road from a 4-lane suburban to a 6 lane divided urban arterial, between Bartram Park Blvd and US 1, per St Johns County Land Development Code, including engineering and related design services, roadway, bike lanes, sidewalk, signing and pavement marking, traffic signals, drainage system and water management ponds, and incidental relocation of existing utilities. New or upgraded utilities are not included in this improvement, but may be constructed coincidental with this improvement by separate agreement.

Estimated Cost: $ 11,532,600 (2014 Dollars)

Map:

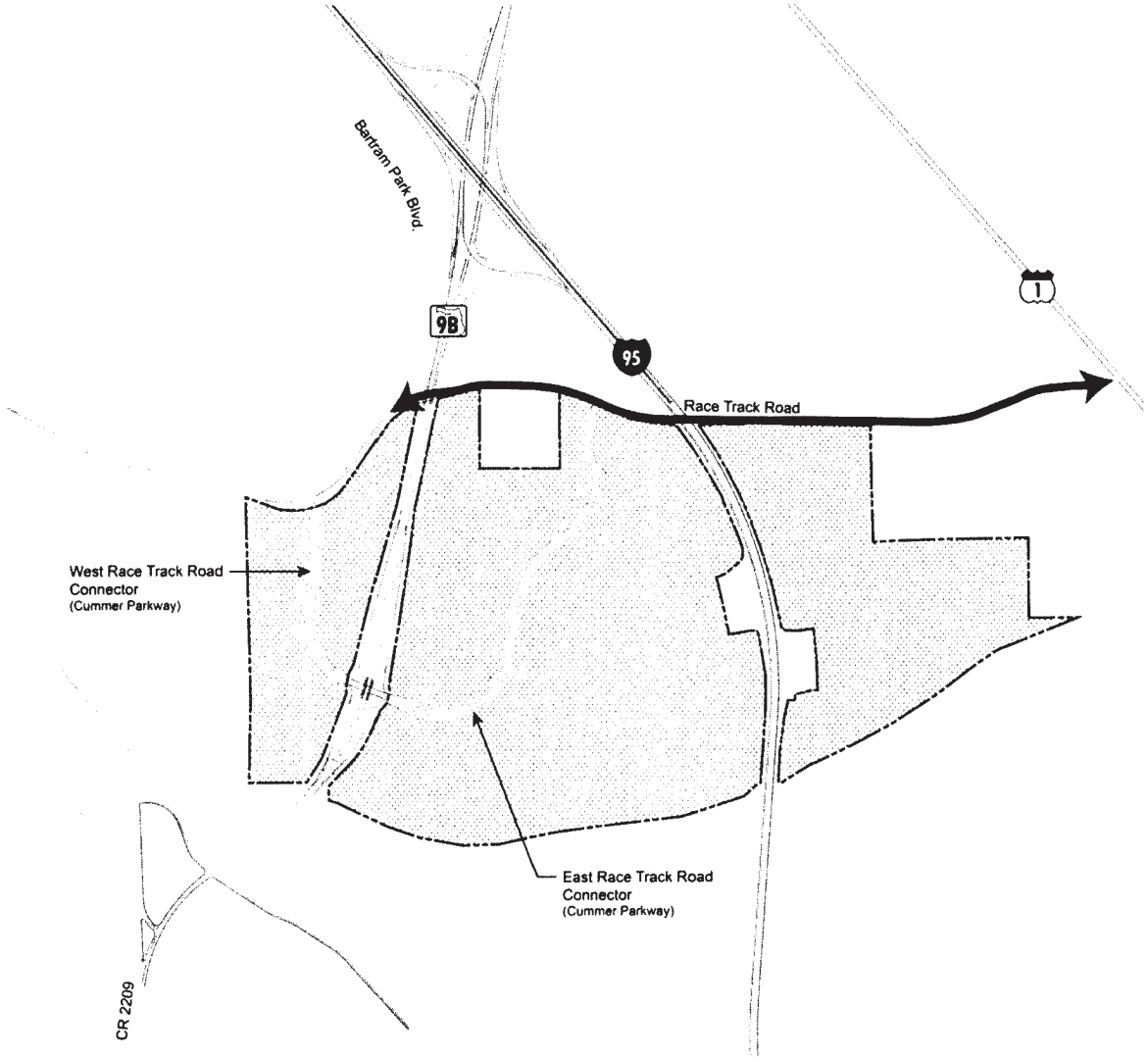


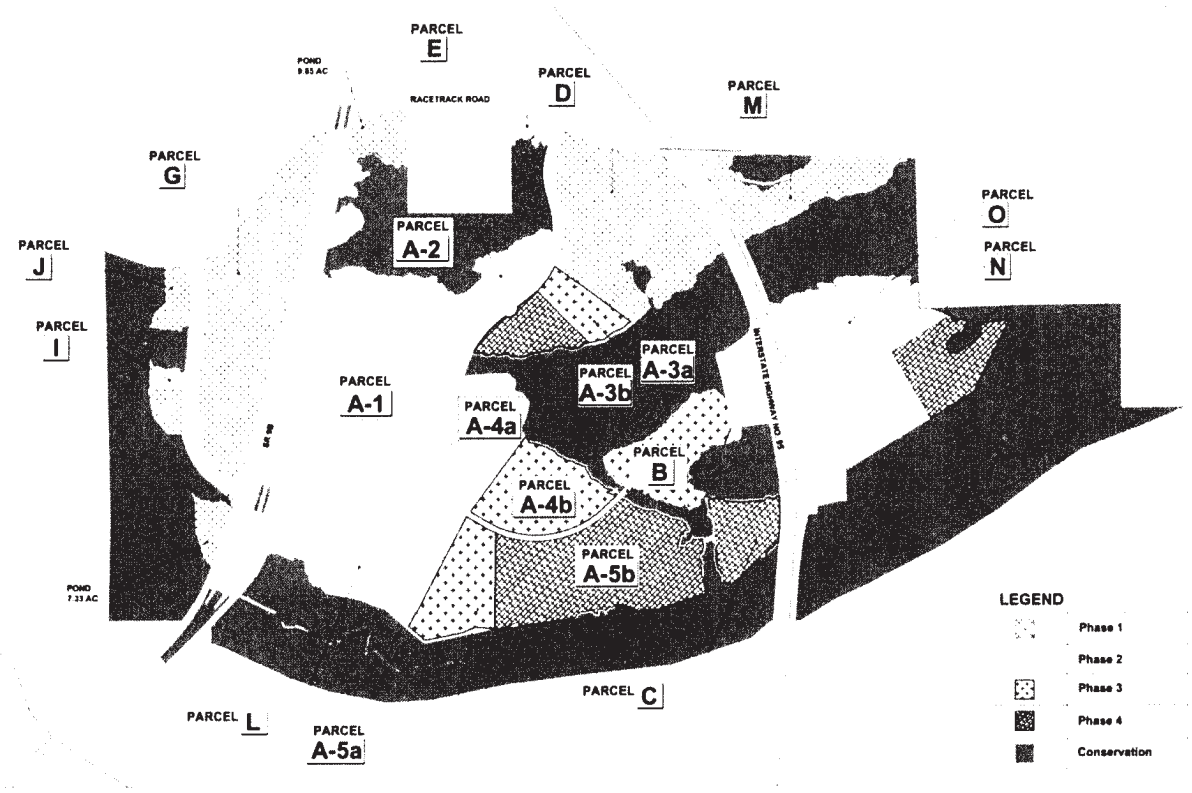
Exhibit 9 – Road Capacity Charges Schedule

Road Capacity Charges				
Land Use	**Quantity**	**Units**	**Fee/Unit**	**Total**
Apartment	999	DU	$1,567	$1,565,433
Office	2,795.610	1,000 SF	$904	$2,527,231
Shopping	2,397.130	1,000 SF	$2,803	$6,719,155
Hotel	350	RM	$1,204	$421,400
				$11,233,220

Exhibit 10 – Projection of Road Capacity Charges Through Buildout

Durbin Roadway Improvement Assessment Through Buildout				
PHASE 1	Quantity	Units	Fee/Unit	Total
Apartment	-	DU	$1,567	$0
Office	356.880	1,000 SF	$904	$322,620
Shopping	1,208.330	1,000 SF	$2,803	$3,386,949
Hotel	-	RM	$1,204	$0
				$3,709,569
PHASE 2	Quantity	Units	Fee/Unit	Total
Apartment	594	DU	$1,567	$930,798
Office	1,267.200	1,000 SF	$904	$1,145,549
Shopping	892.160	1,000 SF	$2,803	$2,500,724
Hotel	350	RM	$1,204	$421,400
				$4,998,471
PHASE 3	Quantity	Units	Fee/Unit	Total
Apartment	-	DU	$1,567	$0
Office	623.950	1,000 SF	$904	$564,051
Shopping	206.640	1,000 SF	$2,803	$579,212
Hotel	-	RM	$1,204	$0
				$1,143,263
PHASE 4	Quantity	Units	Fee/Unit	Total
Apartment	405	DU	$1,567	$634,635
Office	547.580	1,000 SF	$904	$495,012.32
Shopping	90.000	1,000 SF	$2,803	$252,270
Hotel	-	RM	$1,204	$0
				$1,381,917
TOTAL				**$11,233,220**

Exhibit 11 – Projected Development By Phase



Parcel	Description
A-1	681,840 sf Retail (ITE 820), 350 Rooms Hotel (ITE 310), 324 Units Apartments (ITE 220)
A-2	270 Units Apartments (ITE 220)
A-3a	91,593 SF Retail (ITE 820)
A-3b	128 Units Apartments (ITE 220)
A-4a	202,320 SF Retail (ITE 820)
A-4b	60,920 SF Retail (ITE 820), 273,427 SF Office (ITE 750)
A-5a	54,127 SF Retail (ITE 820), 77,783 SF Office (ITE 750)
A-5b	90,000 SF Retail (ITE 820), 399,510 SF Office (ITE 750)
B	272,740 SF Office (ITE 750)
C	148,070 SF Office (ITE 750)
D	540,000 SF Retail (ITE 820)
E	8,000 SF Retail (ITE 820)
G	660,330 SF Retail (ITE 820)
I	24,600 SF Office (ITE 750)
J	8,000 SF Retail (ITE 820)
L	77,560 SF Office (ITE 750)
M	356,880 SF Office (ITE 750)
N	277 Units Apartments (ITE 220)
O	1,165,040 SF Office (ITE 750)

Exhibit 12 – Land Use Conversion Table

Exchange Table

	Proposed	Min	Max	Net Trip Rate	Units
Residential	999	799	1,202	0.354	Dwelling
Office	2,795.610	2,376.269	3,214.952	1.262	1,000 SF
Commercial	2,397.130	2,157.417	2,636.843	2.547	1,000 SF
Hotel	350	298	403	0.379	RM

	Convert To	Residential	Office	Commercial	Hotel
Convert From	Residential	1.000	0.280	0.139	0.933
	Office	3.569	1.000	0.496	3.330
	Commercial	7.203	2.018	1.000	6.721
	Hotel	1.072	0.300	0.149	1.000

Example:
To convert 50 Residential Dwellings to Office, multiply 50 * 0.28 = 14,000 square feet

St. Johns County
Clerk of the Circuit Court
Cheryl Strickland
St. Augustine, FL 32084
Office: (904) 819-3632

Transaction # 1398574	**Agent #**	**Source:**
Receipt # 2015007359	**Attention:**	**Returned:**
Cashier Date: February 11, 2015	**Name:** ROGERS TOWERS	**Will Call #**
Cashier: NIKKI	**Address:**	

AGREEMENT **CFN:** 2015008598 **Book:** 3986 **Page:** 1862 **Consideration:**

From: DURBIN CREEK **To:** ST JOHNS COUNTY

100-RECORDING	$741.00

PAYMENT: CHECK 6309 AMOUNT: $741.00

Total Payments:	Total Fees:	Shortage:	Check Overage:	Escrow Deposit:	Escrow Balance:
$ 741.00	$ 741.00	$ 0.00	$ 0.00	$0.00	$0.00

ATTACHMENT 4

FIRST AMENDMENT

TO

DURBIN CREEK NATIONAL

DEVELOPMENT AGREEMENT

Approved December 6, 2016

DEVAGRMOD 2016-01

Instr #2017004771 BK: 4319 PG: 1805, Filed & Recorded: 1/20/2017 1:19 PM #Pgs:6
Hunter S. Conrad,Clerk of the Circuit Court St. Johns County FL Recording $52.50

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "**First Amendment**") is made and entered into by and between **DURBIN CREEK NATIONAL, LLC**, a Florida limited liability company, its successors or assigns ("**Durbin**"); and **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida ("**St. Johns County**" or "**County**") (with Durbin and the County sometimes referred to herein individually as a "Party" and collectively as the "Parties").

RECITALS:

A. The Parties entered into that certain Development Agreement dated February 9, 2015 and recorded in Official Records Book 3986, Page 1862, Public Records of St. Johns County, Florida (the "**Original Development Agreement**").

B. The Original Development Agreement provides that it may be altered or amended by written instrument executed by the Parties.

C. Durbin desires to commence development of a portion of the Property (as that term is defined in the Original Development Agreement) to increase the shopping center square footage in Phase 1A by 100,000 square feet and to decrease the amount of such use in Phase 1B by an equal amount, and to modify the dedication of active recreation facilities.

D. The Parties desire to amend the Original Development Agreement as set forth more fully below in this First Amendment.

AGREEMENTS:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both Parties, the Parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated into and made a part of this First Amendment.

2. Defined Terms. Capitalized terms appearing in this First Amendment that are defined in the Original Development Agreement and not defined differently in this First Amendment shall have the meanings assigned to them in the Original Development Agreement.

3. Projected Development/Phasing and Coordination with Proposed Roadway Improvements. Section 6.1 and subsections 6.1(1) and 6.1(2) of the Original Development Agreement are hereby deleted in their entirety and replaced with the following language (subsections 6.1(3), (4), (5), (6) and (7) of the Original Development Agreement are not being modified in this First Amendment):

6. **Projected Development/Phasing and Coordination with Proposed Roadway Improvements**

6.1 Projected Development. The following maximum development intensities and densities comprise the Projected Development on the Property during the duration of this Agreement. The references to "sq. ft." are to gross enclosed square feet. The references to "Land Use Code" are to the Trip Generation Manual, 9th Edition (Institute of Transportation Engineers, 2012). The conceptual locations of the Projected Development, in the densities, intensities and phases set forth below, are depicted on **Exhibit 11** attached hereto and are subject to change as portions of the Property are rezoned.

(1) Phase 1A maximum densities and intensities are: 700,000 sq. ft. Shopping Center (Land Use Code 820) ("**Phase 1A Projected Development**") (subject to conversion based on the Land Use Conversion Table in Exhibit 12). The Phase 1A Projected Development shall be restricted to the area shown in Exhibit 11, with the Projected Development being located generally west of SR 9B, south of Race Track Road and east of West Peyton Parkway. Durbin has completed the required Phase 1A Roadway Improvements, including the execution of the Donation Agreement and Joint Use Pond & Maintenance Agreement and conveyance of SR 9B Improvement Right-of-Way to FDOT. The Phase 1A Projected Development shall be subject to review and approval by the County Growth Management Department for location in proximity to the SR 9B Improvements, Race Track Road or the Proposed Roadway Improvements, or portions thereof.

(2) Phase 1B maximum densities and intensities are: 356,880 sq. ft. Office Park (Land Use Code 750); 508,330 sq. ft. Shopping Center (Land Use Code 820) ("**Phase 1B Projected Development**") (subject to conversion based on the Land Use Conversion Table in Exhibit 12). Prior to the County's approval of commercial or subdivision construction plans for the Phase 1B Projected Development, a construction plan applicant shall demonstrate completion of the Phase 1A Roadway Improvements and either compliance with the requirements of Section 5.2 of this Agreement for the Phase 1B Roadway Improvements, including the posting of public construction bond, or the completion, dedication and acceptance by the County of the Phase 1B Roadway Improvements.

4. Future Development Reviews. Subsection 8.2(c) of the Original Development Agreement is hereby deleted in its entirety and replaced with the following language:

(c) Other County Concurrency Reviews and Impact Fees. Nothing in this Agreement shall affect the County's application of concurrency/proportionate share, impact fees or other exaction systems not related to transportation or mobility services or infrastructure to the Projected Development. No residential units are permitted in Phase 1A or 1B. For residential units, active recreation facilities shall be proposed in conjunction with rezoning(s) for residential development, either within the Property or off-site as may be approved by the County. Such facilities shall comply with applicable provisions of the Comprehensive Plan and Land Development Code in effect at the time of the rezoning(s). Also, at least fifty (50)

percent of the active recreational facilities provided shall either (i) be dedicated to the County, acceptance of which is at the County's sole discretion, or (ii) be dedicated to a property owners association or community development district, provided that in either event, such fields shall be available for use by the public. The Developer shall be entitled to receive impact fee credits for dedication of active recreational facilities to the County. Any dedication of properties shall be coordinated through the County Land Management Systems, Real Estate Division, and approved by the Board of County Commissioners. For residential units, mitigation for any impacts of such residential development upon school facilities shall ensure the availability of adequate public school facilities in compliance with State law, the County Comprehensive Plan, including the Capital Improvements Element, and the Land Development Code in effect at the time of such residential development.

5. Projected Development By Phase. Exhibit 11 attached to the Original Development Agreement is hereby deleted and replaced with **Revised Exhibit 11** attached hereto and incorporated herein by this reference.

6. Status of Original Development Agreement. The Original Development Agreement, as amended by this First Amendment, remains in full force and effect and is hereby ratified and confirmed by the Parties.

7. Counterparts. This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. It shall not be necessary to the binding effect of this First Amendment that the signatures of both Parties appear on any one counterpart of this First Amendment and this First Amendment shall bind both Parties as long as both Parties have executed and delivered at least one counterpart of this First Amendment. Signature pages may be detached from the counterparts and attached to a single copy of this First Amendment to physically form one document.

[The remainder of this page is blank. This First Amendment continues on the next page.]

IN WITNESS WHEREOF, Durbin and the County have caused this First Amendment to Development Agreement to be executed by their undersigned lawful representatives, hereunto duly authorized, on the date or dates set forth below and with the intent that this First Amendment shall take effect on and as of the date it has been executed and delivered by both Parties.

ST JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS

Chair James K. Johns

ATTEST: Hunter S. Conrad, Clerk

Deputy Clerk 1/18/17

DURBIN CREEK NATIONAL, LLC, a Florida limited liability company

Kenneth P. Wilson, President

STATE OF Florida
COUNTY OF Duval

The foregoing instrument is hereby acknowledge before me this 19 day of January, ~~2016,~~ 2017 by Kenneth P. Wilson, President of Durbin Creek National, LLC, a Florida limited liability company, on behalf of said company. He [X] is personally known or [ ] produced _____ as identification.

Notary Public State of Florida
Melissa A Yuhas
My Commission FF 899689
Expires 08/22/2019

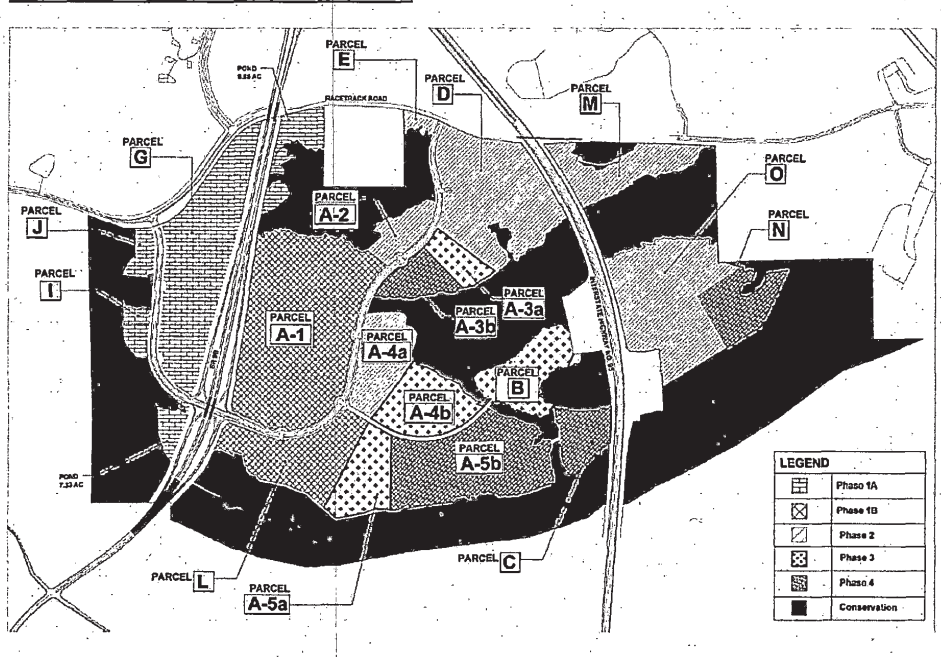
NOTARY PUBLIC, State of Florida

Name: Melissa A. Yuhas
My Commission Expires: 8-22-19
My Commission Number is: FF 899689

BK: 4319 PG: 1809

REVISED EXHIBIT 11

Exhibit 11 – Projected Development By Phase



The conceptual locations of the Projected Development, in the densities, intensities and phases set forth on this exhibit, are subject to change as portions of the Property are rezoned.

Parcel	Description
A-1	508,330 SF Retail (ITE 820), 224,600 SF Office (ITE 750)
A-2	270 Units Apartments (ITE 220)
A-3a	91,593 SF Retail (ITE 820)
A-3b	128 Units Apartments (ITE 220)
A-4a	202,320 SF Retail (ITE 820)
A-4b	60,920 SF Retail (ITE 820), 273,427 SF Office (ITE 750)
A-5a	54,127 SF Retail (ITE 820), 77,783 SF Office (ITE 750)
A-5b	90,000 SF Retail (ITE 820), 399,510 SF Office (ITE 750)
B	272,740 SF Office (ITE 750)
C	148,070 SF Office (ITE 750)
D	600,000 SF Retail (ITE 820), 350 Rooms Hotel (ITE 310), 324 Units Apartments (ITE 220)
E	8,000 SF Retail (ITE 820)
G	700,000 SF Retail (ITE 820)
I	Pond
J	Pond
L	156,880 SF Office (ITE 750)
M	77,560 SF Office (ITE 750) + 81,840 SF Retail (ITE 820)
N	277 Units Apartments (ITE 220)
O	1,165,040 SF Office (ITE 750)

BK: 4319 PG: 1810

4	AGENDA ITEM ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS *Deadline for Submission - Wednesday 9 a.m. – Thirteen Days Prior to BCC Meeting*

12/6/2016

BCC MEETING DATE

TO: Michael D. Wanchick, County Administrator **DATE:** November 16, 2016

FROM: Jan Trantham, Senior Transportation Planner **PHONE:** 209-0611

SUBJECT OR TITLE: DEVAGRMOD 2016-01 Durbin Creek National Development Agreement Modification (Second Reading)

AGENDA TYPE: Contract, Public Hearing

BACKGROUND INFORMATION:

This is the first amendment of the Durbin Creek National Development Agreement that was approved in 2015. The modification requests to increase the shopping center square footage in Phase 1A by 100,000 square feet and decrease Phase 1B by an equal amount, to clarify that the 50% of active recreation facilities can either be dedicated to the County or to a POA or CDD provided these facilities remain available for public use, and to clarify that Exhibit 11 depicts the conceptual location of the projected development phases and is subject to change as portions of the property are rezoned. The location of Phase 1A has been identified and will be restricted to the area shown on Exhibit 11 (as modified), situated between SR 9B and West Peyton Parkway. Transportation mitigation for Phase 1A has been completed by the donation of the SR 9B right-of-way to FDOT. The increased to 700,000 sq. ft. in Phase 1A does not increase project impacts with the companion decrease in Phase 1B, and identifying the specific location for Phase 1A in an area where roadway improvements/widening is currently under construction when the location was previously unknown is a positive change. This is the final public hearing that is scheduled before the BCC on December 6, 2016.

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:

APPROVE: Motion to approve the first amendment of the Durbin Creek National Development Agreement, DEVAGRMOD 2016-01, finding that the proposed changes do not substantially change the transportation or recreation impacts for the projected development, and the finding that the request is consistent with Article XI of the Land Development Code and Florida Statutes..
DENY: Motion to deny the first amendment of the Durbin Creek National Development Agreement, DEVAGRMOD 2016-01.

For Administration Use Only:
Legal: PS 11/17/2016 **OMB: DC 11/17/2016** **Admin: KS 11/18/2016**

Agenda Item
DEVAGRMOD 2019-01 Durbin Creek National

St. Johns County
Board of County Commissioners

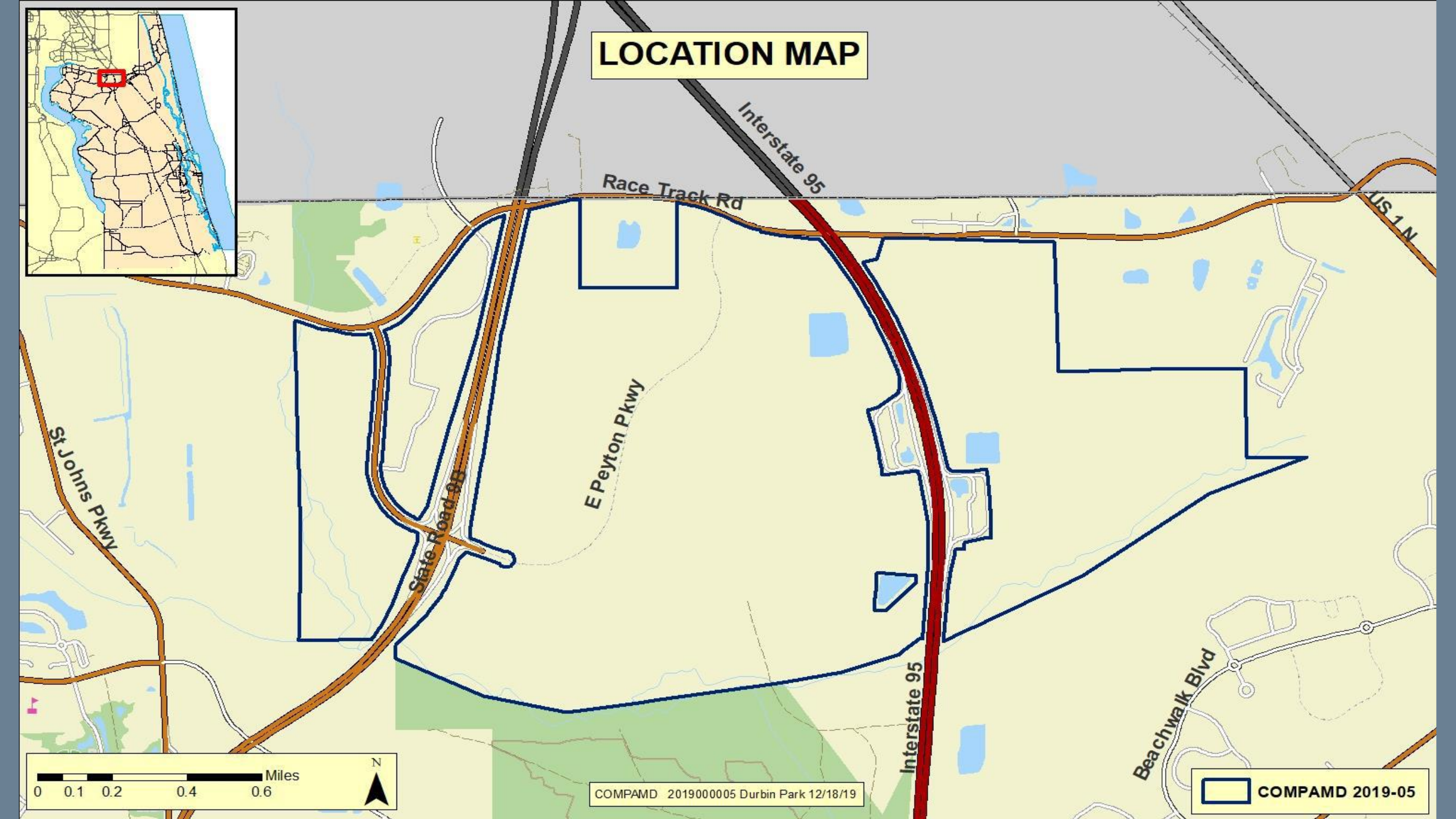
DEVAGRMOD 2019-01
Durbin Creek National

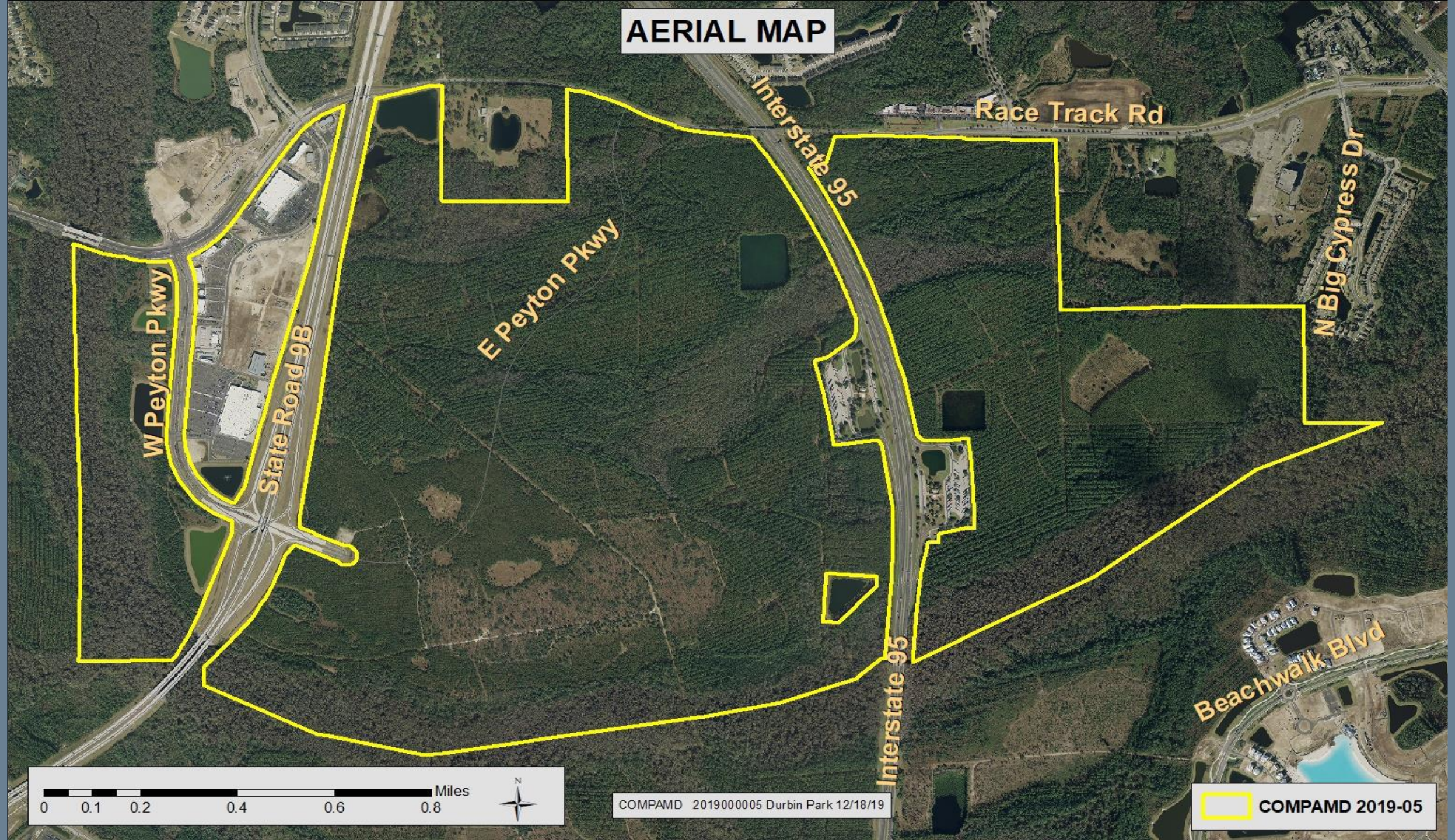
Hearing:

- This is the first of two required public hearings
- No action is required by the Board for this public hearing
- This hearing is to announce the date of the 2nd required public hearing scheduled for **May 19, 2020** at the County Auditorium, 500 San Sebastian View, St. Augustine, FL

DEVAGRMOD 2019-01
Durbin Creek National

- **Request:**
  - This is a request for a second amendment to the Durbin Creek National Development Agreement for the Durbin Park PUD
  - Located south of Race Track Road and to the east and west of I-95


LOCATION MAP
Interstate 95
Race Track Rd
US 1 N
E Peyton Pkwy
St Johns Pkwy
State Road 9B
Interstate 95
Beachwalk Blvd
Miles
0 0.1 0.2 0.4 0.6
N
COMPAMD 2019000005 Durbin Park 12/18/19
COMPAMD 2019-05


AERIAL MAP
Interstate 95
Race Track Rd
N Big Cypress Dr
E Peyton Pkwy
W Peyton Pkwy
State Road 9B
Interstate 95
Beachwalk Blvd
0 0.1 0.2 0.4 0.6 0.8 Miles
N
COMPAMD 2019000005 Durbin Park 12/18/19
COMPAMD 2019-05

DEVAGRMOD 2019-01
Durbin Creek National

Introduction

Review

Analysis

Public Input

Findings

Background:

- Durbin Creek National Urban Service Area is comprised of 1,624 acres and currently proposed for the development of:
  - 2,795,610 sq. ft. of Office Park
  - 2,397,130 sq. ft. of Retail
  - 350 Hotel Rooms
  - 999 Apartment Units in five (5) phases
- Of the 1,624 acres, approximately 1,254 are designated Intensive Commercial (IC)

DEVAGRMOD 2019-01
Durbin Creek National

Introduction

Review

Analysis

Public Input

Findings

Background:

- 2015: Development Agreement approved by the Board to provide for transportation mitigation/improvement coinciding with the development phasing for projected development entitlements; and established reimbursement procedures for roadway construction costs from available Ad Valorum Tax Increment (Ordinance 2015-5) and Road Capacity Charges (Ordinance 2015-6)
- 2016: Agreement was amended to increase square footage within Phase 1A (Durbin Pavilion) to 700,000 sq. ft. with corresponding decrease in Phase 1B

DEVAGRMOD 2019-01
Durbin Creek National

Introduction

Review

Analysis

Public Input

Findings

Application Summary:

- Request for a second amendment to the projected development and transportation mitigation phasing to accommodate Durbin Park PUD development plan and assist in increasing available TIF funds for the construction of required transportation improvements
- Requests a land use conversion to convert 534,545 sq. ft. of office park to 1,266 of additional apartment units and 150 hospital beds (375,000 sq. ft.) (2,500 sq. ft.= 1 Hospital Bed)

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Figure 1: Proposed Development and Commitment Schedule

PHASE 1 NO CHANGES MADE	PHASE 2	PHASE 3	PHASE 4
• Durbin Pavilion PUD (Ordinance 2016-64) approved for 700,000 sq. ft. of Shopping Center; approximately 500,000 sq. ft. having been constructed	• 1,250,00 sq. ft. Shopping Center • 1,650,000 sq. ft. Office Park • 375,000 sq. ft. Hospital • 225 Hotel Rooms • 1,065 Apartment Units	• 350,000 sq. ft. Shopping Center • 350,000 sq. ft. Office Park • 125 Hotel Rooms • 900 Apartment Units	• 97,130 sq. ft. Shopping Center • 261,065 sq. ft. Office Park • 300 Apartment Units
• Mitigation amount: $19,712,274 (preliminary design of SR 9B improvements, SR 9B right-of-way, Race Track Road right-of-way)	• Mitigation amount: $19,638,844	• Mitigation amount: $2,720,311	• Mitigation amount: $16,464,946 or $20,798,446 (Depending on FDOT building of Race Trace Road overpass at I-95 funded FY 2023)
• Joint use of stormwater facilities • Donation of right-of-ways • Fund preliminary design of 9B improvements	• Design 6-lane and construct 4-lane of East Peyton Parkway (east connector from the SR 9B interchange to Race Track Road)	• Widen East Peyton Parkway from 4 to 6 lanes	• Design 6-lane and construct 4-lane from Bartram Park Boulevard to Bartram Springs Parkway

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Comparison Review:

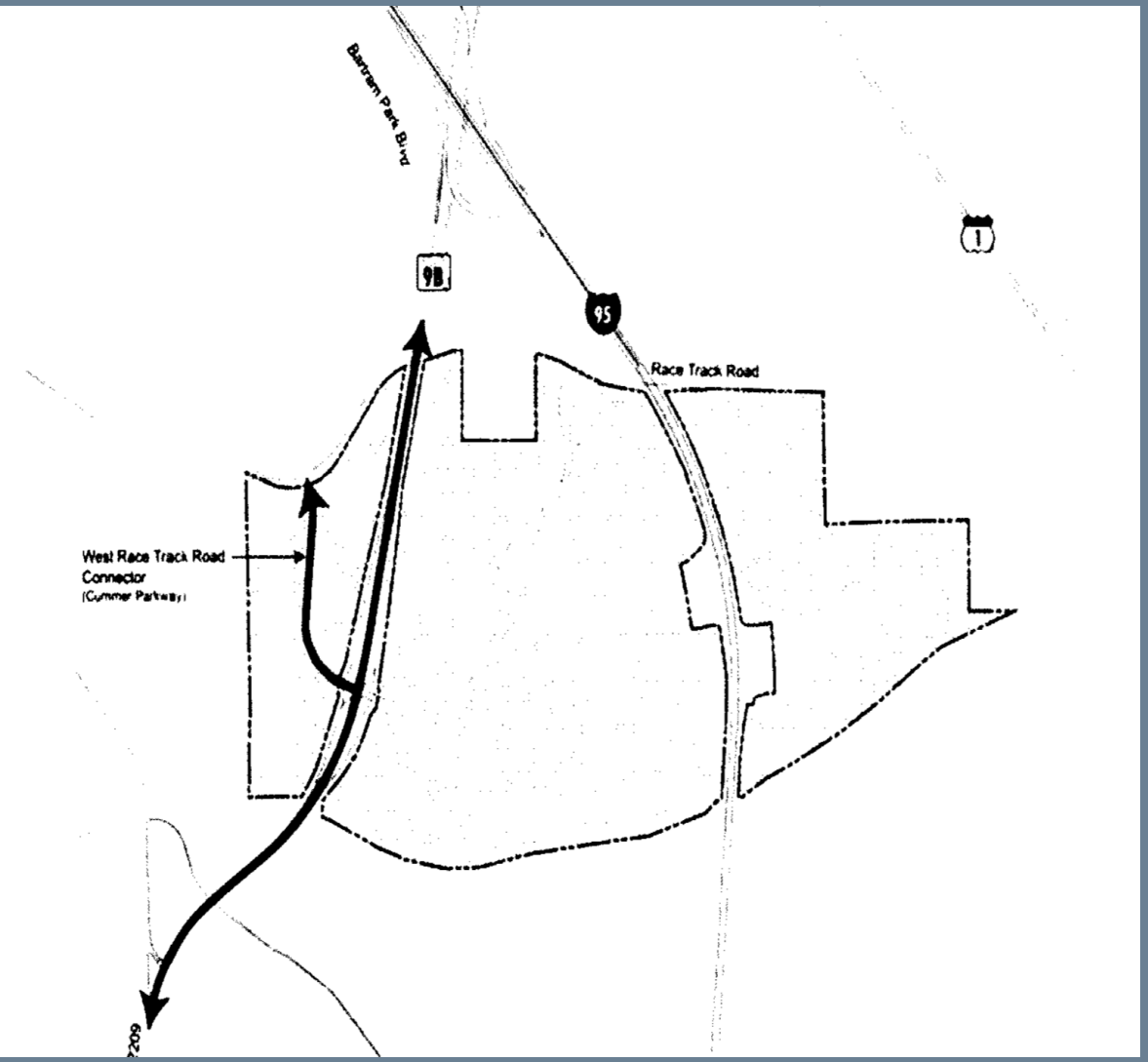
Existing Phase 1A

- 700,000 sq. ft. Shopping Center Space
- 1,783 PM peak net trips
- Improvement costs: $19,712,274
- Roadway Improvements:
  - Preliminary design of SR 9B improvements and SR 9B and Race Track Road right-of-way dedication

Proposed Phase 1

- 700,000 sq. ft. Shopping Center Space
- 1,783 PM peak net trips
- Improvement costs: $19,712,274
- Roadway Improvements:
  - Preliminary design of SR 9B improvements and SR 9B and Race Track Road right-of-way dedication

Existing Phase 1A



Proposed Phase 1

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Comparison Review:

Existing Phase 1B

- 508,330 sq. ft. Shopping Center Space, 356,880 sq. ft. Office Park
- 1,745 PM peak net trips
- Improvement costs: $13,457,600
- Roadway Improvements:
  - Construct 4-lane East Peyton Parkway

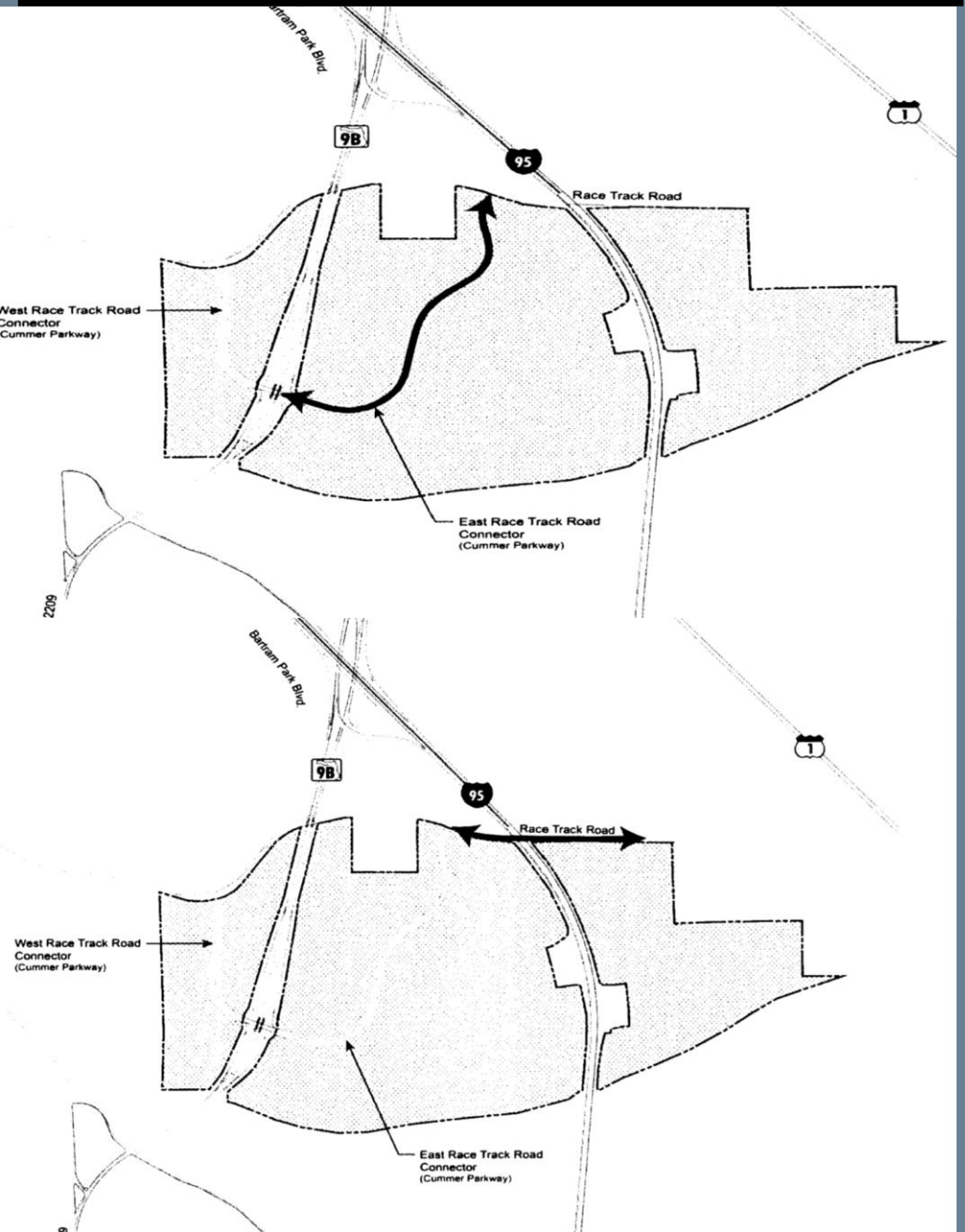
Existing Phase 2

- 892,160 sq. ft. Shopping Center Space, 1,267,200 sq. ft. Office Park, 350 Hotel Rooms, 594 Apartment Units
- 4,214 PM peak net trips
- Improvement costs: $9,352,500
- Roadway Improvements:
  Construct 4-lane of Race Track Road from East Peyton Parkway to Bartram Springs Parkway

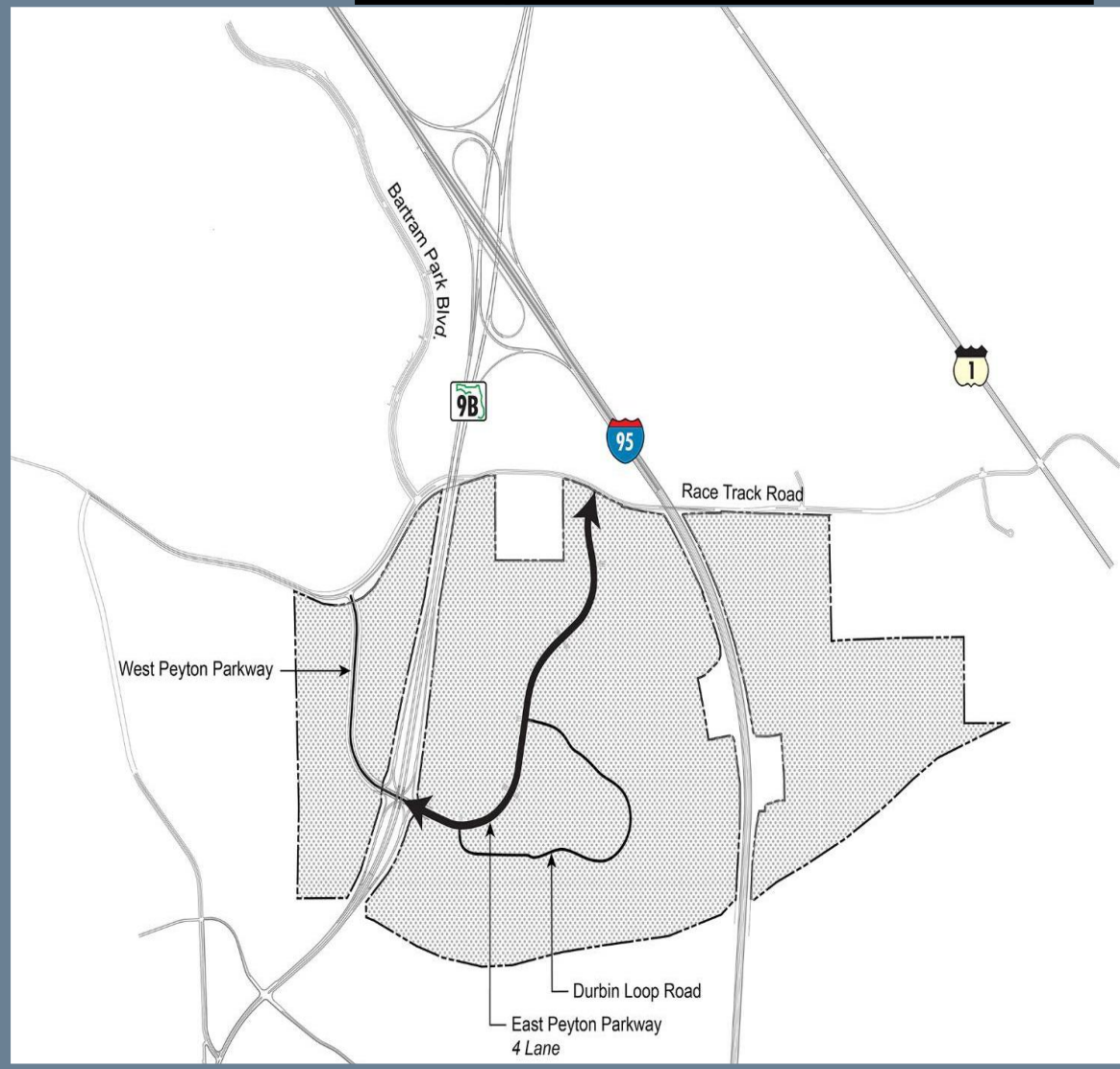
Proposed Phase 2

- 1,250,000 sq. ft. Shopping Center Space, 1,650,000 sq. ft. Office Park, 375,000 sq. ft. Hospital, 225 Hotel Rooms, 1,065 Apartment Units
- 5,955 PM peak net trips
- Improvement costs: $19,638,844
- Roadway Improvements:
  - Design 6-lane and construct 4-lane East Peyton Parkway

Existing Phase 1B and 2



Proposed Phase 2



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Comparison Review:

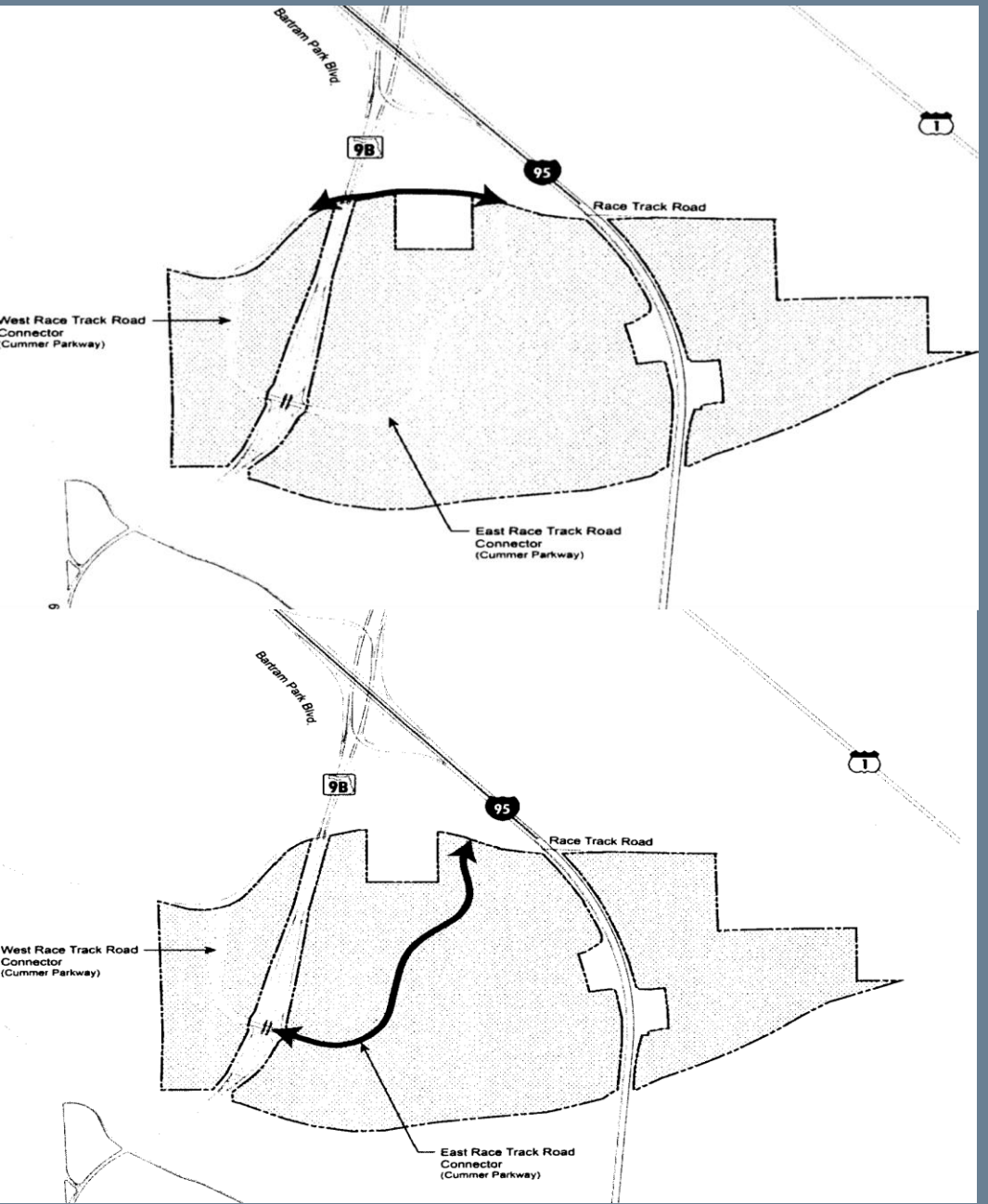
Existing Phase 3

- 206,640 sq. ft. Shopping Center Space, 623,950 sq. ft. Office Park
- 1,314 PM peak net trips
- Improvement costs: $12,971,100
- Roadway Improvements:
  - Construct 4-lane of Race Track Road from Bartram Park Boulevard to East Peyton Parkway
  - Widen East Peyton Parkway from 4 to 6 lanes

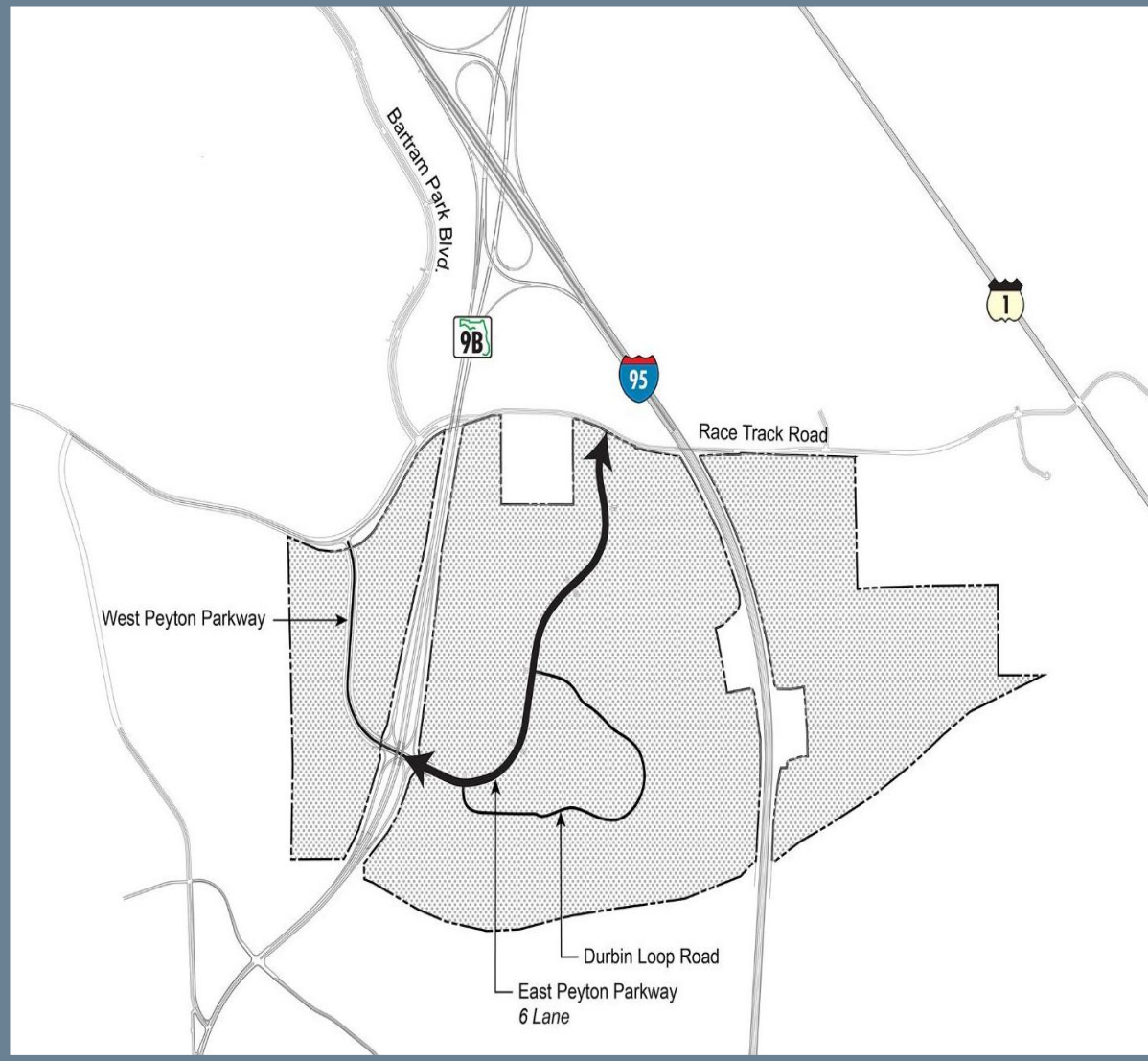
Proposed Phase 3

- 350,000 sq. ft. Shopping Center Space, 350,000 sq. ft. Office Park, 125 Hotel Rooms, 900 Apartment Units
- 1,699 PM peak net trips
- Improvement costs: $2,720,311
- Roadway Improvements:
  - Construct 6-laning of East Peyton Parkway

Existing Phase 3



Proposed Phase 3



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Comparison Review:

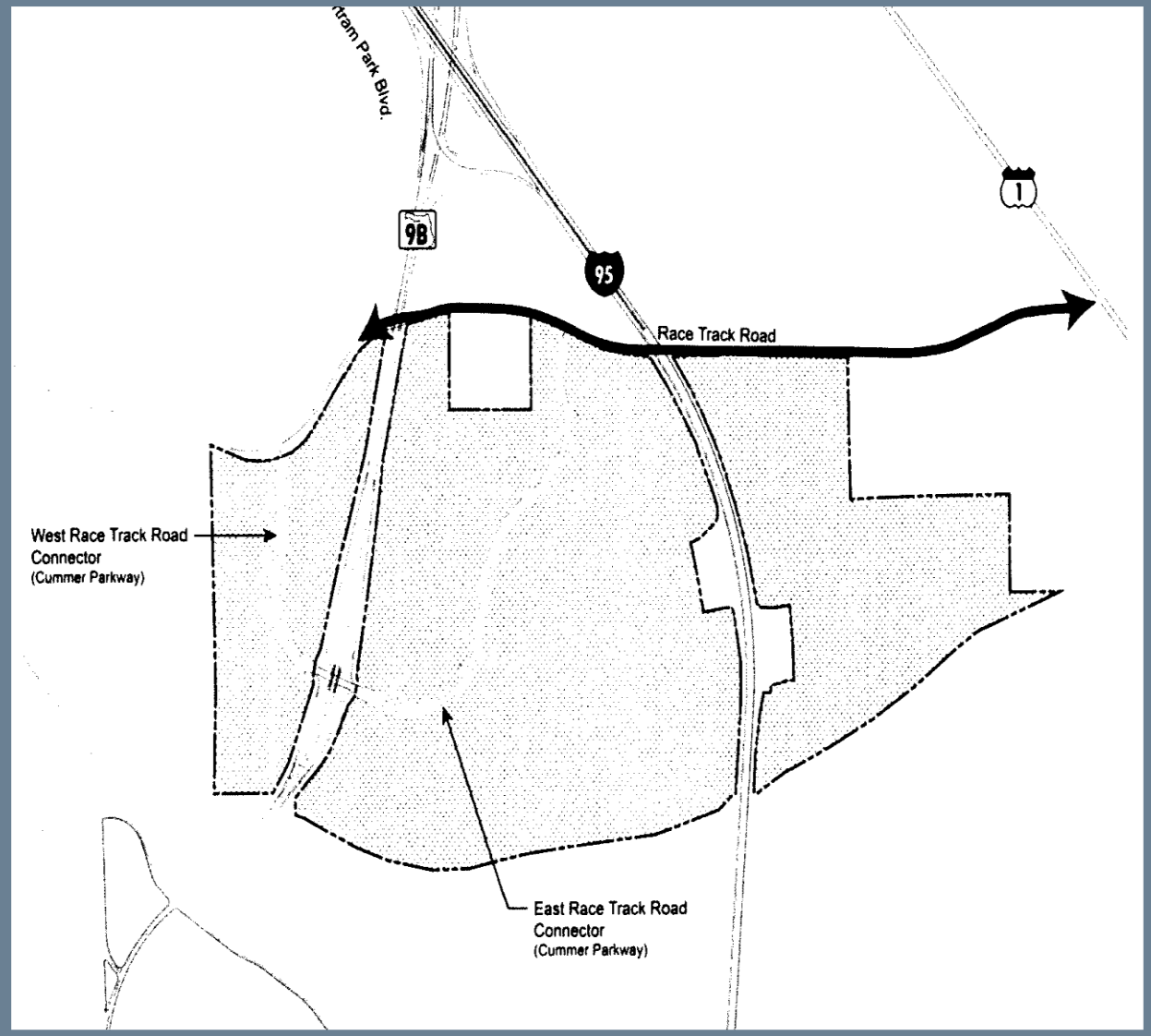
Existing Phase 4

- 90,000 sq. ft. Shopping Center Space, 547,580 sq. ft. Office Park, 405 Apartment Units
- 1,064 PM peak net trips
- Improvement costs: $11,532,600
- Roadway Improvements:
  - Construct 6-lane of Race Track Road from Bartram Park Boulevard to US 1

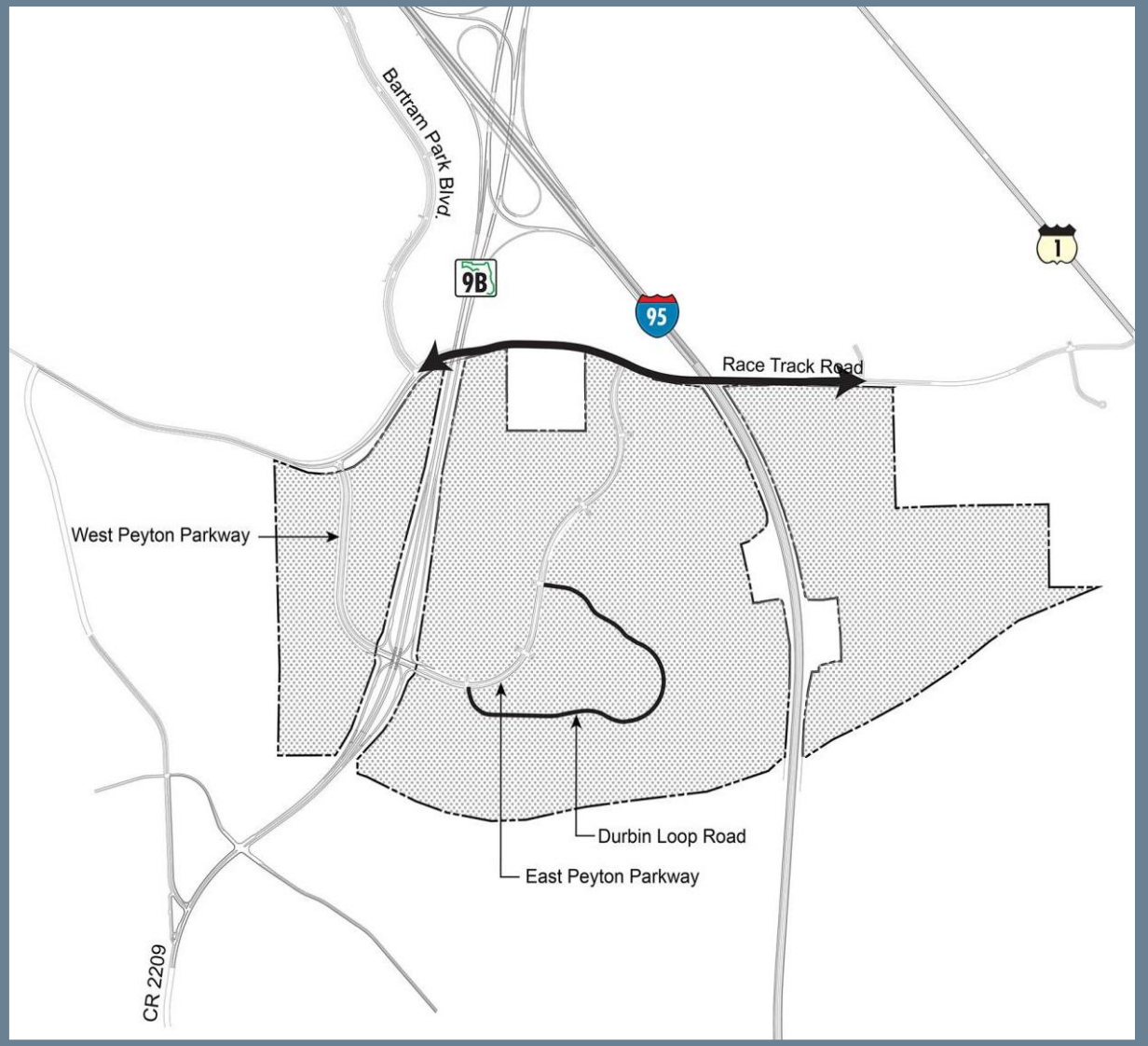
Proposed Phase 4

- 97,130 sq. ft. Shopping Center Space, 261,065 sq. ft. Office Park, 300 Apartment Units
- 683 PM peak net trips
- Improvement costs: $20,798,446 or $16,464,946 (Depending on FDOT)
- Roadway Improvements:
  - Design 6- lane and construct 4-lane of Race Trace Road from Bartram Park Boulevard to Bartram Springs Parkway
- Proposal to remove 6-laning of Race Track Road from agreement based on projection of improvement not being needed until buildout
- TIF funding will be available if widening is required at buildout

Existing Phase 4



Proposed Phase 4



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Review:

- Construction of East Peyton Parkway from SR 9B to Race Track Road will provide an additional connection to SR 9B which in turn will relieve the portion of Race Track Road between Bartram Park Blvd. and East Peyton Parkway

- Portion of Race Track Rd. between E. Peyton Pkwy and Bartram Springs likely to be included in FDOT construction of bridge over I-95

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Analysis:

- Staff finds the proposed revisions to the projected development entitlement phasing and transportation improvement phasing to be consistent with the original intent and meets proportionate share mitigation requirements for each phase
  - Proposed modifications do not increase overall project trip generation originally approved
  - Proposed acceleration of development entitlements supported by East Peyton Parkway construction, and FDOT bridge construction that is anticipated to extend 4-laning of Race Track Road on both sides of bridge

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Correspondence:

- Staff has not received any correspondence regarding the requested at this time

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Recommended Action:

- Announce the date of the 2ND required public hearing scheduled for **MAY 19, 2020** at the County Auditorium, 500 San Sebastian View, St. Augustine, FL

St. Johns County
Board of County Commissioners