

RESOLUTION 2018- 140
FIFTH AMENDMENT TO THE PALM COAST PARK
DEVELOPMENT OF REGIONAL IMPACT DEVELOPMENT ORDER

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING THE FIFTH AMENDMENT TO THE PALM COAST PARK DEVELOPMENT OF REGIONAL IMPACT DEVELOPMENT ORDER; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO RECORD THE FIFTH AMENDMENT TO THE PALM COAST PARK DRI DO IN AN APPROVED FORM; PROVIDING FOR EXECUTION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on December 7, 2004 the City Council of the City of Palm Coast approved the Palm Coast Park Development of Regional Impact Development Order (DRI DO) by means of the adoption of Resolution Number 2004-48, which Resolution and DRI DO were recorded at Official Records Book 1177, Page 1796 of the Public Records of Flagler County, Florida; and

WHEREAS, on February 15, 2005 the City Council of the City of Palm Coast approved the Notice of Clarification to provide notice to the effect that City Council was in agreement that the term “Mitigation Pipeline Amount” contained on lines 20 and 21 or Page 39 of the DRI DO means the same thing as, and is synonymous with, the term “Developer’s Proportionate Share Contribution” to ensure that the DRI DO fully conforms with the requirements of State Law said action being taken by means of the adoption of Resolution Number 2005-03 as recorded at Official Records Book 1215, Page 1424 of the Public Records of Flagler County, Florida; and

WHEREAS, On July 17, 2007, the City Council adopted an Amended and Restated DRI DO (Resolution # 2007-05), to clarify that certain public uses are permitted in the DRI (fire stations, public schools), also clarifying that public schools are allowed anywhere in the DRI, and clarifying conditions for recreational facilities, the Amended and Restated DRI DO being duly recorded on July 23, 2007, in Official Records Book 1600, Page 49, of the Public Records of Flagler County Florida; and

WHEREAS, on October 4, 2011, the City Council adopted the 2nd Amended and Restated DRI DO (Resolution # 2011-93), an amendment incorporating changes to phasing dates, acreage of total development, acreage of common area, updating map exhibits, and certain conditions related to recreation, the 2nd Amended and Restated DRI DO being duly recorded on October 20, 2011, in Official Records Book 1838, Page 834, of the Public Records of Flagler County, Florida; and

WHEREAS, on September 5, 2017, City Council approved Resolution # 2017-100, the 3rd DRI Amendment to allow conversion of 94 acres of land designated for Business/Institutional uses to Residential use, the DRI-DO being duly recorded on January 16, 2018, in Official Records Book 2253, and Page 339; of the Public Records of Flagler County, Florida; and

WHEREAS, on January 16, 2018, City Council approved Resolution # 2018-07, an update to the 3rd DRI amendment (the fourth amendment) to relocate borrow/soil extraction activities to more appropriate locations within the DRI; and

WHEREAS, on or about July 11, 2018, Palm Coast Land, LLC, a Florida limited liability company, with an address at 145 City Place, Suite 300, Palm Coast, Florida, 32164; developer of the Palm Coast Park DRI, submitted a proposed change to the City requesting an amendment to the Palm Coast Park DRI-DO; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA:

SECTION 1. FINDINGS OF THE CITY COUNCIL.

(a). The above recitals (whereas clauses) are hereby adopted as the findings of the City Council of the City of Palm Coast.

(b). The City Council of the City of Palm Coast hereby adopts and incorporates into this Resolution the City staff report and City Council agenda memorandum and

packet relating to the application relating to the proposed 5th Amendment to the DRI DO. The exhibits to this Resolution are incorporated herein as if fully set forth herein verbatim.

(c). The City of Palm Coast has complied with all requirements and procedures of Florida law in processing and advertising this Resolution and the associated 5th Amendment to the DRI DO.

(d). This Resolution and the approval of the 5th Amendment to the Palm Coast Park DRI DO are consistent with the goals, objectives and policies of the *Comprehensive Plan of the City of Palm Coast*.

SECTION 2. APPROVAL OF 5TH AMENDMENT TO THE PALM COAST PARK DRI DO. The City Council of the City of Palm Coast hereby approves the 5th Amendment to the Palm Coast Park DRI, as attached hereto and incorporated herein by reference as Exhibit “A.”

SECTION 3. AUTHORIZATION TO EXECUTE. The 5th Amendment to the DRI DO shall be executed by the Mayor and the City Clerk, subsequent to execution by the DRI property owner(s) and subsequent to the document having been finalized and revised into a clear and recordable form. Upon full execution, the City Clerk, shall cause the document to be recorded in the Official Records of Flagler County (Land Records) in accordance with the provisions of State Law at the expense of the DRI property owner(s).

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 5. SEVERABILITY. If any section, sentence, phrase, word or portion of this Resolution is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence phrase, word or portion of this Resolution not otherwise determined to be invalid, unlawful or unconstitutional.

SECTION 6. IMPLEMENTING ACTIONS. The City Manager or designee is hereby authorized to take any actions necessary to implement the action taken in this Resolution including the incorporation of the amendment into the existing Palm Coast Park DRI-DO.

SECTION 7. EFFECTIVE DATE. This Resolution shall become effective immediately upon adoption.

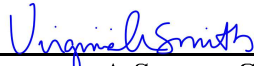
DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 16th day of October 2018.

CITY OF PALM COAST, FLORIDA



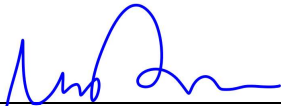
MILISSA HOLLAND, MAYOR

ATTEST:



VIRGINIA A. SMITH, CITY CLERK

Approved as to form and legality



William E. Reischmann, Jr., Esq.



Attachment: Exhibit "A" – 5th Amendment to the DRI-DO

Prepared by:
City of Palm Coast
160 Lake Ave.
Palm Coast, FL 32164

Return for recording to:
City Clerk
City of Palm Coast
160 Lake Avenue
Palm Coast, FL 32164

FIFTH AMENDMENT TO THE PALM COAST PARK
DEVELOPMENT OF REGIONAL IMPACT DEVELOPMENT ORDER

This Fifth Amendment to the Palm Coast Park Development of Regional Impact Development Order (“Amendment”) is effective this 27 day of November 2018, by and between Palm Coast Land, LLC (the “Declarant”), whose address is 145 City Place, Suite 300, Palm Coast, Florida 32164, and the City of Palm Coast (the “City”), whose address is 160 Lake Avenue, Palm Coast, Florida 32164.

RECITALS

1. On or about December 7, 2004, the City Council of the City of Palm Coast (the “City Council”) adopted Resolution # 2004-48 approving the Palm Coast Park Development of Regional Impact Development Order (DRI DO) which is recorded at Official Records Book 1177, Page 1796 of the Public Records of Flagler County, Florida.
2. On or about February 15, 2005, the City Council approved the Notice of Clarification to provide notice to the effect that City Council was in agreement that the term “Mitigation Pipeline Amount” contained on lines 20 and 21 or Page 39 of the DRI DO means the same thing as, and is synonymous with, the term “Developer’s Proportionate Share Contribution” to ensure that the DRI DO fully conforms with the requirements of State Law said action being taken by means of the adoption of Resolution Number 2005-03 as recorded at Official Records Book 1215, Page 1424 of the Public Records of Flagler County, Florida.
3. On or about July 17, 2007, the City Council adopted an Amended and Restated DRI DO (Resolution # 2007-05), to clarify that certain public uses are permitted in the DRI (fire stations, public schools), also clarifying that public schools are allowed anywhere in the DRI, and clarifying conditions for recreational facilities, the Amended and Restated DRI DO being duly recorded on July 23, 2007, in Official Records Book 1600, Page 49, of the Public Records of Flagler County Florida.
4. On or about October 4, 2011, the City Council adopted the 2nd Amended and Restated DRI DO (Resolution # 2011-93), an amendment incorporating changes to phasing

dates, acreage of total development, acreage of common area, updating map exhibits, and certain conditions related to recreation, the 2nd Amended and Restated DRI DO being duly recorded on October 20, 2011, in Official Records Book 1838, Page 834, of the Public Records of Flagler County, Florida.

5. On or about September 5, 2017, City Council approved Resolution # 2017-100, the 3rd DRI Amendment to allow conversion of 94 acres of land designated for Business/Institutional uses to Residential use, the DRI-DO being duly recorded on January 16, 2018, in Official Records Book 2253, and Page 339; of the Public Records of Flagler County, Florida.
6. On or about January 16, 2018, City Council approved Resolution # 2018-07, an update to the 3rd DRI amendment (the fourth amendment) to relocate borrow/soil extraction activities to more appropriate locations within the DRI.
7. On or about July 6, 2018, the Declarant of the DRI DO, filed an application to amend the DRI DO to reflect current market demand from various builders and sub developers.
8. The City and Declarant agree to amend the DRI DO as provided herein.
9. This Amendment is consistent with (1) the State's Comprehensive Plan as set forth in Section 187, Florida Statutes, and (2) the City's Comprehensive Plan.
10. The public hearing to consider this Amendment was properly noticed and held by the City Council pursuant to Florida State law and the City's Land Development Code.

NOW THEREFORE, be it hereby ordered and resolved by the City Council, that based upon the following finding of facts and conclusions of law, the consent and agreement of the Declarant, and subject to the following terms and conditions, the City Council hereby approves this Fifth Amendment to the Palm Coast Park Development of Regional Impact Development Order, pursuant to the provisions of Section 380.06 F.S., other applicable State laws and the codes and ordinances of the City.

A. Recitals: The aforementioned recitals are taken as true, incorporated herein by reference and made a material part of this Amendment.

B. Amendments: Additions are shown in underline and deletions are shown in strikethrough.

- (1) Part I, Section 3. Land Use Totals: This section of the DRI DO shall be amended to provide the following table with all other references to remain the same.

The Palm Coast Park DRI may be developed up to, but may not exceed the following:

Land Use	Gross Blvd./Units or Area	Ac.*
Residential	3600 <u>4960/DUs (1,000 of these units will be restricted to multi-family use – Declarant will provide binding letter/notice to City to</u>	1528 Acres

	<u>identify Tracts to be limited to multi-family)</u>	
Office	800,000 SF	140 Acres
Commercial	1,500,000 <u>1,317,800 SF</u> (includes reduction from conversion of entitlements in June 2014 and the current reduction)	475 Acres
Industrial	800,000 SF	300 Acres
Institutional	100,000 SF	20 Acres
Common Area		2,214 Acres **

*The Palm Coast Park DRI is planned as an integrated mixed-use development. As a result, land uses will be integrated, rather than specifically assigned to a designated area. Consequently, acreage is approximate for each land use category.

** Common Area includes all open space, areas for preservation and greenbelts that shall be available for the common use and enjoyment of all Palm Coast Park DRI property owners and visitors.

(2) Part I, Section 5. Phasing, Buildout, and Expiration. This section of the DRI DO shall be amended to permit 4960 total residential units to be constructed.

Land Use	Phase 1		Phase 2		Phase 3		Total	
	Sq. ft.	Units	Sq. ft.	Units	Sq. ft.	Units	Sq. ft.	Units
Residential		2,480		2,480				4,960
Office	200,000		200,000		400,000		800,000	
Retail Commercial	208,900		308,900		800,000		1,317,800	
Industrial	200,000		200,000		400,000		800,000	
Institutional	40,000		40,000		20,000		100,000	

(3) Part II, Section 13. Recreation and Open Space. Amend this section to include the following new subsection:

(j) In order to facilitate the City and Declarant’s objective of creating a sports complex while addressing the impacts of 1,000 multi-family units (in the Fifth Amendment to the DRI-DO), the City and the Declarant agree to a Park Site Exchange as follows: (i) The City shall convey Tract A, as identified in the Master Development Plan to the Declarant by special warranty deed, both as described and depicted by Exhibit “1”,

and (ii) the Declarant shall convey by general warranty deed the Alternate City Park Site to the City, both as described and depicted by Exhibit "2". The conveyances of the parties' respective lands pursuant to the Park Site Exchange shall be free from all encumbrances except easements, reservations, and restrictions acceptable to each other, together with all appurtenances pertaining to the conveyance. Declarant will prepay taxes for the year of closing pursuant to Fla. Stat. 196.295, and all special assessments which have been levied or certified prior to closing on the Alternate City Park Site. One hundred and twenty days before Closing, the Declarant will cause the title company of its choice to issue and deliver to City ALTA title commitments to issue a policy in the amount of the assessed value of the Alternate City Park Site, accompanied by one copy of each document supporting any exceptions to the title commitment. The parties will execute a standard form owner's affidavit and such other affidavits as may be reasonably required by the City, the Title Company, or the Closing Agent. The Declarant will also execute an Affidavit of interest in Real Property pursuant to Fla. Stat. 286.23. The Declarant will execute affidavits declaring that Alternate City Park Site does not currently contain any Hazardous Substances in violation of any applicable environmental laws or regulations, including but not limited to Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., any "superlien" laws, any superfund laws, or similar federal or state laws, or any successor statutes ("Environmental Laws"), nor to Declarant's knowledge has any clean-up of their properties occurred pursuant to the Environmental Laws which could give rise to liability to reimburse any governmental authority for the costs of such clean-up or result in a lien or encumbrance. Subsequent to the Park Site Exchange, the City will process changes to the permitted land uses of each as follows:

(a) The City Park Site: A land use designation of Mixed Use and a zoning classification of COM-2, High Density Residential and Office which is consistent with the adjacent Tracts.

(b) The Alternate City Park Site: A land use designation of Public and a zoning classification of Public/Semi-public. The Declarant shall cause any and all CDD assessment or the CDD's right to assess the property to be released from said encumbrance.

(k) The Declarant shall receive park impact fee credits due to the Declarant donating land to the City in excess of the amount of land required based on the number of dwelling units. Declarant is providing an extra 16 acres of land as part of the Park Site Exchange in order to facilitate a City sports complex. The Declarant is providing enough park land for 909 dwelling units above the 4960 maximum allowed in this development. Due to the Declarant's excess contribution, impact fees for 909 dwelling units will be credited against the Declarant's total impact fees due for the development. Declarant will provide notice to City of intent to use impact fee credits; such notice shall include the name of selected project within the Palm Coast Park DRI. The parties

will then enter into an agreement prior to the award of the credits for that particular project. The Declarant will not be entitled to any more than 4960 dwelling units, however.

(1) Additional access from the southern portion of the Alternate City Park Site to US 1 shall be made through the Declarant's property Tracts 17 & 18 via an access easement in a form acceptable to the City unless Declarant and City agree in writing to waive this requirement.

(4) Part II, Section 14. Education. Amend this section to include the following:

Declarant or its successors shall provide Concurrency Agreement (by letter, resolution or form acceptable to school board) prior to approval of final plat/site plan for the 1,000 multi-family units approved by this Fifth Amendment to the DRI-DO.


(5) Exhibit "B" of the DRI-DO, Master Development Plan: Exhibit "B" of the DRI-DO is amended as attached hereto in Exhibit "3" of this Amendment to designate Tracts A and 13A for Mixed Use Development.

(6) Exhibit "H" of the DRI-DO, Land Uses and Development:

Amend **Section 2(b) Business/Institutional Areas** to delete Tract 13A,
Amend **Section 2(c) Mixed-Use Areas** to include Tract A, and 13A,
Amend **Section 2(d) Public/Semipublic Areas** to delete Tract A.

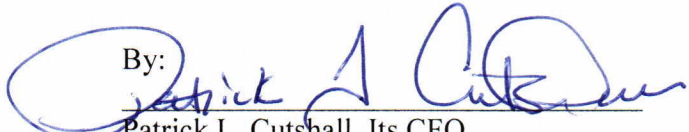
C. Except as modified or clarified herein, the DRI DO remains in full force and effect in accordance with its terms.


WHEREFORE, the parties hereto have caused these presents to be signed all as of the date and year first written above.

WITNESSES: 

Walker Douglas
Print Name:

“OWNER”
PALM COAST LAND, LLC, a Florida limited liability company

By: 
Patrick L. Cutshall, Its CFO


Kristy Douglas
Print Name:

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 16 day of November, 2018, by Patrick L. Cutshall, its CFO, on behalf of the Palm Coast Land, LLC, a Florida Limited Liability Company, who is personally known to me or who has produced Driver's License as identification.




NOTARY PUBLIC

CITY OF PALM COAST, FLORIDA

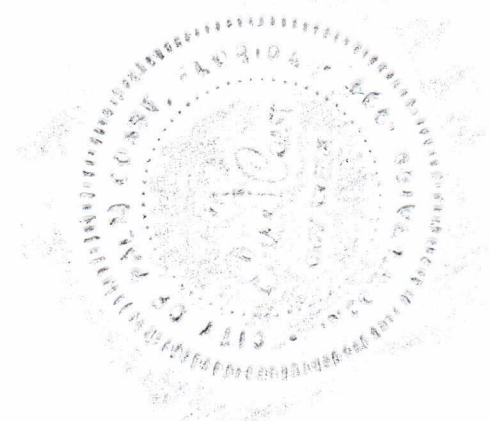
M Holland
Milissa Holland, Mayor

ATTEST:

Virginia A Smith
Virginia A. Smith, City Clerk

APPROVED AS TO FORM AND LEGALITY:

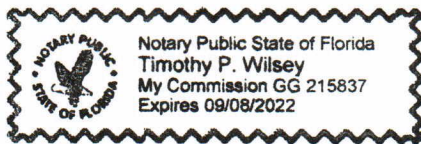
W. E. Reischmann, Jr.
William E. Reischmann, Jr., Esq.
City Attorney



STATE OF Florida

COUNTY OF Flagler

The foregoing instrument was acknowledged before me this 27th day of November, 2018, by Mayor of the City of Palm Coast, who is personally known to me or who has produced _____ as identification.



Timothy P. Wilsey
NOTARY PUBLIC

Exhibit 1. Tract A.

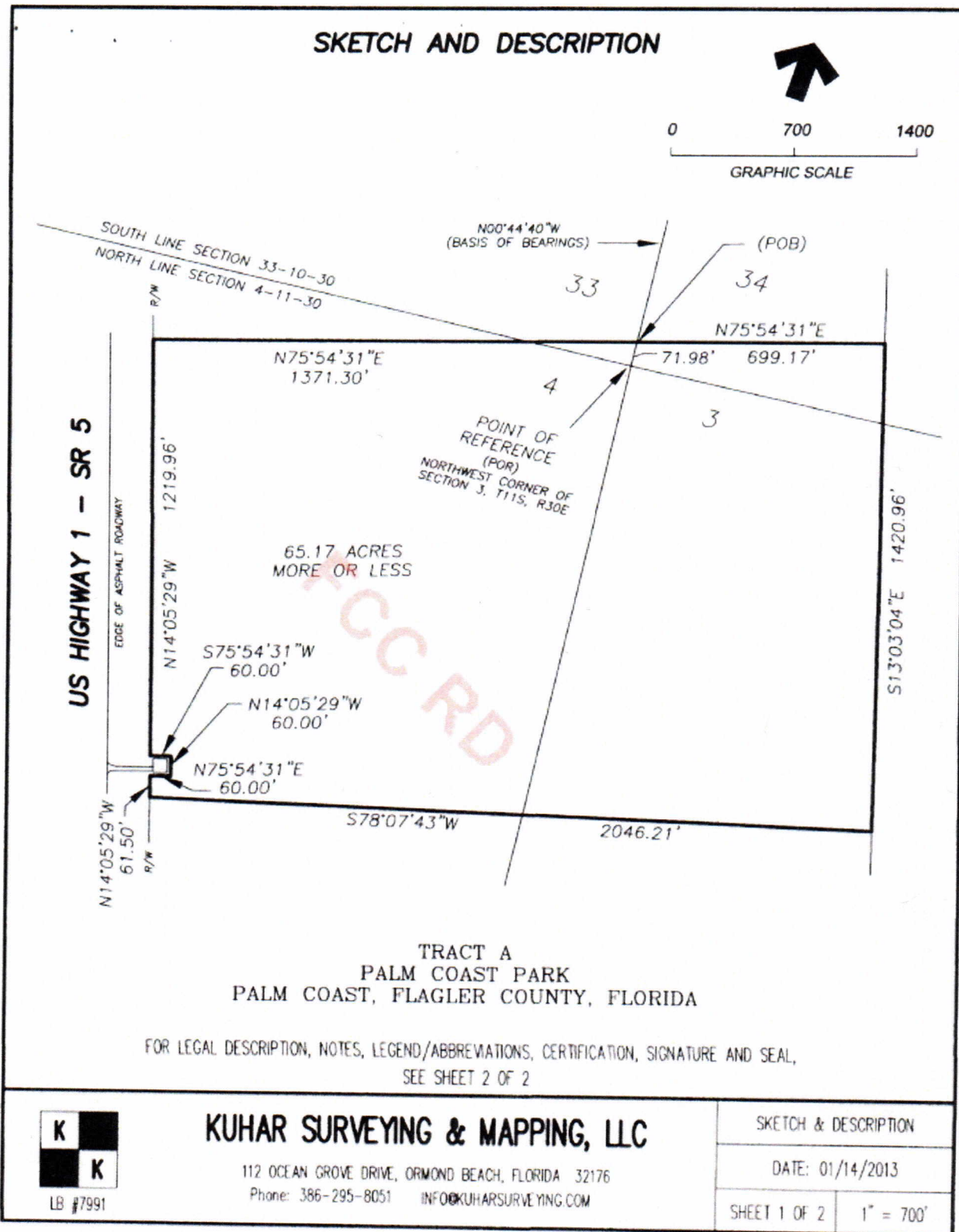


Exhibit 1. Tract A.

SKETCH AND DESCRIPTION

LEGAL DESCRIPTION:

A PARCEL OF LAND LYING EAST OF U.S. HIGHWAY No. 1 IN GOVERNMENT SECTIONS 33 AND 34, TOWNSHIP 10 SOUTH, RANGE 30 EAST, AND IN SECTIONS 3 AND 4, TOWNSHIP 11 SOUTH, RANGE 30 EAST, BEING A PORTION OF PARCEL 1003, RECORDED IN OFFICIAL RECORDS BOOK 788, PAGES 2 THROUGH 21, AND A PORTION OF PARCEL 902, RECORDED IN OFFICIAL RECORDS BOOK 792, PAGES 1902 THROUGH 1917, OF THE PUBLIC RECORDS OF AND LYING WITHIN FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A POINT OF REFERENCE BEING THE NORTHWEST CORNER OF GOVERNMENT SECTION 3, TOWNSHIP 11 SOUTH, RANGE 30 EAST, THENCE N00°44'40"W ALONG THE EAST LINE OF SECTION 33, TOWNSHIP 10 SOUTH, RANGE 30 EAST, A DISTANCE OF 71.98 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE DEPARTING SAID EAST LINE OF SECTION 33 N75°54'31"E FOR A DISTANCE OF 699.17 FEET; THENCE S13°03'04"E FOR A DISTANCE OF 1420.96 FEET; THENCE S78°07'43"W FOR A DISTANCE OF 2046.21 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY No. 1; THENCE N14°05'29"W ALONG SAID RIGHT-OF-WAY LINE FOR A DISTANCE OF 61.50 FEET; THENCE N75°54'31"E DEPARTING SAID RIGHT-OF-WAY FOR A DISTANCE OF 60.00 FEET; THENCE N14°05'29"W FOR A DISTANCE OF 60.00 FEET; THENCE S75°54'31"W FOR A DISTANCE OF 60.00 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY No. 1; THENCE N14°05'29"W ALONG SAID RIGHT-OF-WAY LINE FOR A DISTANCE OF 1219.96 FEET; THENCE N75°54'31"E FOR A DISTANCE OF 1371.30 FEET TO THE AFOREMENTIONED POINT OF BEGINNING OF THIS DESCRIPTION.

PARCEL CONTAINING 65.17 ACRES, MORE OR LESS.

SURVEYOR'S NOTES:

1. BEARINGS BASED ON THE EAST LINE OF GOVERNMENT SECTION 33, TOWNSHIP 10 SOUTH, RANGE 30 EAST, FLAGLER COUNTY, FLORIDA, BEING N00°44'40"W (ASSUMED).
2. THERE MAY BE ADDITIONAL EASEMENTS, RESTRICTIONS AND/OR OTHER MATTERS NOT SHOWN ON THIS SKETCH WHICH MAY BE FOUND IN THE FLAGLER COUNTY PUBLIC RECORDS.
3. THIS IS NOT A BOUNDARY SURVEY OR FIELD SURVEY OF ANY KIND.
4. THIS SKETCH IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR/MAPPER.

LEGEND/ABBREVIATIONS:

R/W - RIGHT-OF-WAY
 SR - STATE ROAD
 CL - CENTERLINE
 MB - MAP BOOK
 PG - PAGE
 POB - POINT OF BEGINNING
 POR - POINT OF REFERENCE
 ORB - OFFICIAL RECORDS BOOK
 MB - MAP BOOK
 PG - PAGE
 PRFC - PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA

THIS SKETCH AND LEGAL DESCRIPTION COMPLIES WITH THE TECHNICAL STANDARDS FOR LAND SURVEYS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, CHAPTER 17, PART 17.050 THRU 17.052, FLORIDA ADMINISTRATIVE CODE.

Kenneth J. Kuhar

KENNETH J. KUHAR
 FLORIDA PROFESSIONAL SURVEYOR/MAPPER #6105



LB #7991

KUHAR SURVEYING & MAPPING, LLC

112 OCEAN GROVE DRIVE, ORMOND BEACH, FLORIDA 32176
 Phone: 386-295-8051 INFO@KUHARSURVEYING.COM

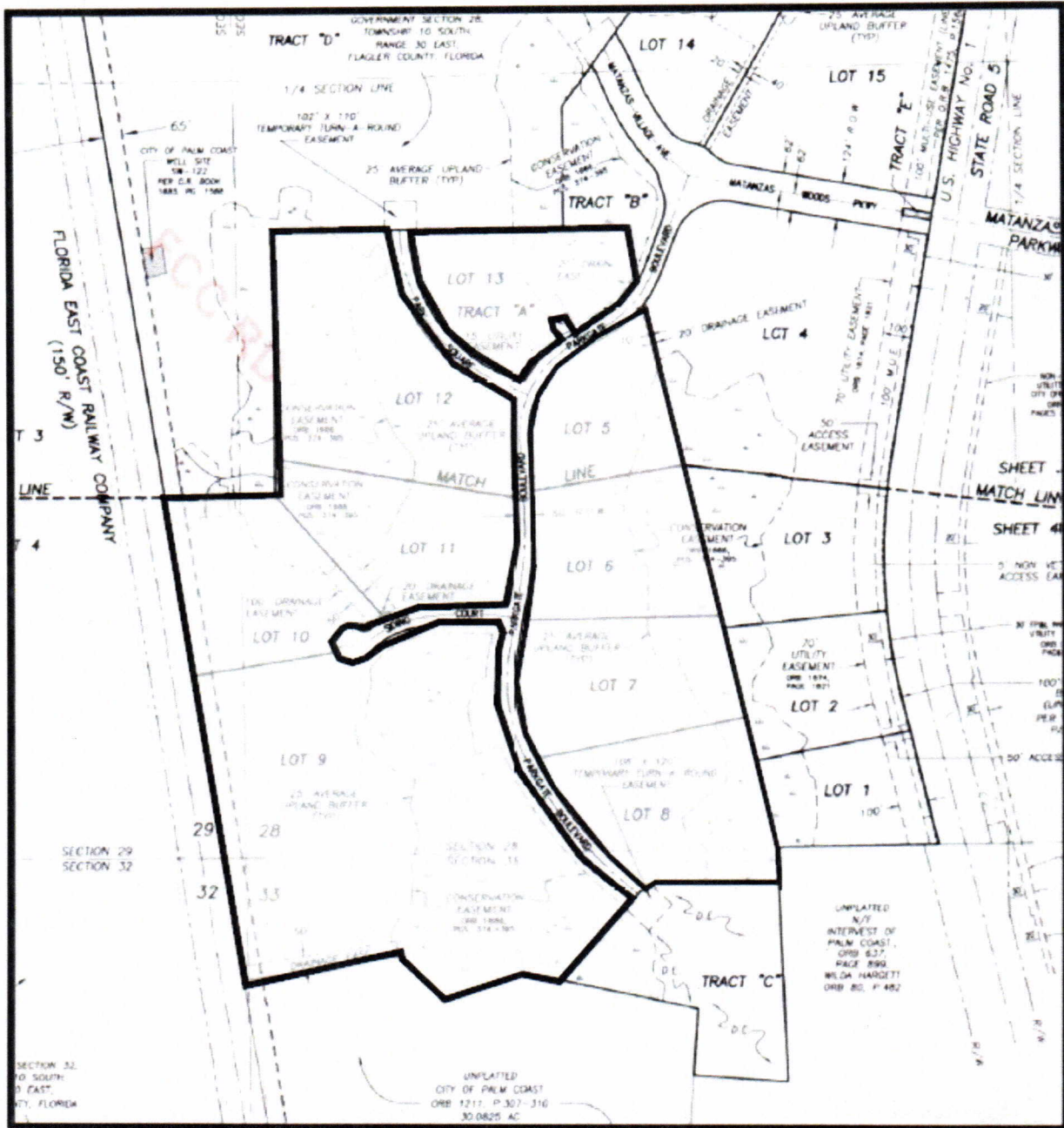
SKETCH & DESCRIPTION

DATE: 01/14/2013

SHEET 2 OF 2

1" = 700'

Exhibit 2. Alternate City Park Site



Legal Description of Alternate City Park Site

Palm Coast Park Tracts 18 & 20, Lots 5, 6, 7, 8, 9, 10, 11, 12, & 13

Exhibit 3. Revised Master Development Plan

