

This instrument was prepared
under the supervision of:
Stephen W. Flanagan, Utility Dir.
City of Palm Coast

Return to:
City Clerk's Office
City of Palm Coast
160 Lake Avenue
Palm Coast, FL 32164

UTILITY AGREEMENT
FOR
WATER AND WASTEWATER SERVICE

The **City of Palm Coast** ("CITY"), a municipal corporation organized under the laws of the State of Florida, whose address is 160 Lake Avenue, Palm Coast, FL 32164, and **KL Seminole Trace, LLC**, whose address is 14025 Riveredge Drive Suite 175, Tampa, FL 33637 ("DEVELOPER"), for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, hereby covenant and agree as follows:

1. **REQUEST FOR SERVICES BY DEVELOPER.** DEVELOPER desires to make water and wastewater service available to the property known as the **Seminole Trace 386 SFH** ("Property") described on Exhibit "A" attached hereto and incorporated by reference herein for the benefit in perpetuity of DEVELOPER, its successors, administrators, and assigns and requests that the CITY provide such services.

2. **AGREEMENT OF CITY.**

(a) CITY agrees to make water and wastewater service (sometimes collectively referred to as "utility service") available to the Property for the benefit of DEVELOPER, its successor, administrators, and assigns, subject to the terms and conditions as set forth below and at such rates and changes as may from time to time be established.

(b) This Agreement does not include any provision or authorization for water to be used by the DEVELOPER for irrigation purposes. The DEVELOPER shall provide an alternative means of irrigation separate from the potable water system and is prohibited from using potable water supplied by the City for irrigation.

3. **DEVELOPER'S AGREEMENT TO CONSTRUCT.** DEVELOPER is willing to construct water and wastewater facilities and other established appurtenant facilities as may be required to serve the Property ("Developer Utilities") and to convey the water and wastewater facilities and appurtenant facilities to the CITY in return for the consideration set forth herein.

(a) In addition to constructing the Developer Utilities, DEVELOPER agrees to construct, extend and upsize City utilities ("City Upsizing") as further described herein, including but not limited to extending and upsizing the City's existing offsite forcemain to provide service to both the Property and other area properties.

(b) The Developer Utilities and the City Upsizing shall be collectively referred to as the "Utility Project."

(c) The Utility Project shall consist of approximately 13,175 feet of newly constructed 12" forcemain and associated valves, fittings and appurtenance. The DEVELOPER shall extend and upsize the City Forcemain with said extension ("Forcemain Extension") running parallel to Seminole

Woods Blvd. to the Developer's site as depicted on Exhibit "F".

(d) The City will pay a contribution to the DEVELOPER in the total amount of **\$1,856,552.00** for the upsizing and extension of the City Forcemain from a 6" to a 12" with such payment to be made in the form of capacity credits to be deducted from the amount due to the development of the Property.

<i>Difference for Upsizing</i>	\$ 712,808.68
Total Cost	\$ 2,569,360.68
Impact Fee Creditable (upsizing & extension)	\$ 1,856,552.00

(e) As a condition precedent to acceptance of the completed Utility Project, the completed improvements shall be conveyed to the City by a Bill of Sale together with: 1) accurate cost records for the construction of the completed forcemain extension and upsizing (Forcemain Extension) which shall include a copy of all related construction contracts duly certified by a Notary Public in the State of Florida as true and correct copies of the originals, 2) perpetual rights of way and easements relating to the Forcemain Extension and 3) complete as-built plans for the Utility Project. Once accepted, the City will be responsible for all subsequent maintenance of the Utility Project

4. **ENCUMBRANCE ON PROPERTY.** The obligations incurred by DEVELOPER as a result of this Agreement shall constitute an encumbrance on the Property. This Agreement is made subordinate to any mortgage liens on the Property now existing or hereafter placed on the Property, except that such subordination is only to subordinate CITY's interest to the mortgage lien and in no way waives or releases CITY's rights arising from this Agreement.

5. **DEFINITIONS.** The following definitions of terms used in this Agreement shall apply unless the context indicates a different meaning:

(a) **"Application"** - A request in writing from DEVELOPER or a consumer on forms provided by CITY requesting, pursuant to this Agreement, specific water and wastewater service.

(b) **"Connection Fees"** - A fee or charge paid to the CITY by DEVELOPER for the purpose of obtaining water and wastewater capacity. Connection fees will be utilized for the acquisition, improvement, expansion and construction of facilities required to furnish present or future water and wastewater capacity and service to the Property. The amount shall be determined in accordance with the CITY schedule of rates in effect from time to time.

(c) **"Consumer Installation"** - All facilities ordinarily on the consumer's side of the point of delivery (e.g. curb stop, lateral connections.)

(d) **"Contribution-in-Aid-of-Construction (CIAC)"** - The sum of money and/or the value of property required as a prerequisite to utility service to the Property.

(e) **"DEP"** - The Florida Department of Environmental Protection, or its successor agency.

(f) **"Development Phase"** - A subdivision or construction phase of the construction of utility facilities on Property.

(g) **"Developer's Point of Delivery"** - The point where the water or wastewater service

enters the DEVELOPER 's property or the point of connection of DEVELOPER's off-site installation to the CITY's System pursuant to Paragraph 16.

(h) **"Equivalent Residential Connection (ERC)"** - A factor used to convert a given average daily flow (ADF) to the equivalent number of residential connections. (Note: ERC is calculated as a whole number).

(i) **"Facilities"** - See Utility Facilities.

(j) **"GPD"** - Gallons per day.

(k) **"Installation"** - See Utility Facilities.

(l) **"Property"** - The land described in Exhibit "A".

(m) **"Service Rates" or "Rates"** - The CITY's existing and future schedules of rates and charges for water and wastewater service including, but not limited to, connection fees, meter set fees, and all other fees and charges which from time to time are in effect pursuant to ordinances, resolutions or policies adopted by CITY. The schedules of Service Rates shall be of general and uniform application within the CITY-wide water and wastewater utility systems; provided, however, that rates may be different in accordance with State law outside of the CITY's city limits.

(n) **"Service" or "Utility Service"** - The readiness and ability of the CITY to furnish and maintain water and wastewater service to the point of delivery.

(o) **"Utility Facilities" or "Facilities" or "Installations"** - Utility facilities means and includes, but is not limited to, all equipment, fixtures, wells, pumps, lines, mains, manholes, lift stations, pumping stations, laterals, service connections, and appurtenances together with all real property, easements and rights-of-way necessary to provide water and wastewater service to the Property whether located on-site or off-site. The words "Utility Facilities," "Water Facilities," "Wastewater Facilities", "Facilities," or "installations" shall be interchangeable unless otherwise indicated by context.

6. **CONTRIBUTION IN AID OF CONSTRUCTION (CIAC).**

(a) The Contribution-In-Aid-of-Construction (CIAC) required by CITY to provide water and wastewater service is estimated to be \$2,569,360.68. A breakdown of the CIAC estimate is provided in Exhibit "B" attached hereto and incorporated into this Agreement. This amount must be paid to CITY, pursuant to Exhibit "C" of this Agreement, and before water and wastewater service is provided. Additional charges as set forth in Exhibit "D" attached hereto and incorporated herein shall be paid at time of connection, or as otherwise provided in this Agreement.

(b) The estimated CIAC of \$2,569,360.68 includes a charge of \$2,500.00 for plan and specification review as well as inspection efforts related to the construction of facilities, as described in Paragraph 17 (f). If full costs associated with coordination and inspection efforts related to the construction of facilities described in Paragraph 17 (f), as determined by the CITY, should exceed the estimated amount, the excess amount will be billed to DEVELOPER and be payable to CITY upon thirty (30) days written notice.

(c) The estimated CIAC of \$2,569,360.68 is further based upon an estimate of \$200.00 for recording fees associated with this Agreement.

7. **WATER AND WASTEWATER MAIN EXTENSIONS/ERC.** DEVELOPER will install at its expense, in accordance with CITY approved plans, the necessary water and wastewater and main extension to serve 386 WATER ERC's, and 386 WASTEWATER ERC's for **Seminole Trace 386 SFH**, and all infrastructure will be dedicated to the CITY up to the DEVELOPER'S Point of Delivery.

8. **CAPACITY ALLOCATION.**

(a) Subject to the DEVELOPER's compliance with the terms and conditions of this Agreement, the CITY hereby agrees to allocate and reserve 86,850 gpd of water service capacity and 69,480 gpd of wastewater service capacity to the DEVELOPER for use by the DEVELOPER with its improvements to **Seminole Trace 386 SFH**. Any such water and wastewater service which is not connected or used by the DEVELOPER within five (5) years from the date of execution of this Agreement shall revert back to the CITY, and in such an event, the CITY shall not be obligated to refund these charges paid by the DEVELOPER.

(b) Capacity allocation is subject to the DEP (Section 403.021, Florida Statutes, and FAC 17-4.07 and 17-4.15) approval of applicable permits for the Property. Should the DEP refuse to issue applicable permit(s) or **certify activation of system improvements** solely because capacity is not available, the DEVELOPER may request CITY to rescind the allocation of capacity.

(c) **Potable Water.** If applicable, potable water for irrigation purposes is included in capacity allocation. When **reuse water** becomes available to the Property in the future, the DEVELOPER or customer shall be required to connect to the CITY'S reuse water system, and, in such an event, the CITY shall not be obligated to refund the capacity allocation charges paid by the DEVELOPER.

9. **EQUIVALENT RESIDENTIAL CONNECTIONS.** DEVELOPER will install at its expense, in accordance with UTILITY approved plans, the necessary water and wastewater main extension to serve 386 WATER ERC's and 386 WASTEWATER ERC's Equivalent Residential Connections (ERCs), respectively, for **Seminole Trace 386 SFH** and connect the entire system to UTILITY's existing water and wastewater system. Plans and specifications will be designed, produced and submitted by a Florida registered professional engineer to the UTILITY for review and approval in accordance with the UTILITY's specifications and standards. Acceptance of the DEVELOPER's completed water and wastewater system extension will be subject to review and approval by UTILITY. As a condition precedent to acceptance of the completed water and wastewater system extension by UTILITY and prior to receiving service, the items listed in Exhibit "E" shall be submitted and accepted by the UTILITY. Acceptance will not unreasonably be withheld. Once accepted, UTILITY will be responsible for all subsequent maintenance of the water and wastewater system extension not related to warrantees.

10. **AGREEMENT TO SERVE.** Upon the completing of construction of water and wastewater facilities by DEVELOPER, satisfactory inspections, the issuance of the final letter of acceptance by CITY, and subject to the terms of this Agreement, CITY agrees to permit connection of the water and wastewater facilities installed by the DEVELOPER to the central facilities of CITY and to provide utility service in accordance with the terms and intent of this Agreement. Such connections shall at all times be in accordance with rules, regulations and orders of all applicable governmental authorities including, but not limited to, the DEP and CITY. CITY agrees that once DEVELOPER or others have connected consumer installations to CITY's central facilities, CITY will continuously, consistent with the provisions of this Agreement, provide water and wastewater service to the Property subject to continued compliance by DEVELOPER or consumer with all applicable CITY requirements for such service.

11. **BACKFLOW PREVENTION.** Backflow prevention is required for all water service. DEVELOPER agrees to install backflow prevention devices as deemed necessary by the CITY to protect the water supply and shall follow the Land Development Code and City ordinances (Ord. 2003-23) regarding same.

12. **FIRE PROTECTION.** DEVELOPER desires and CITY agrees to make fire protection service available to the Property, by means of the CITY's Fire Department and mutual aid/first response agreements with other jurisdictions. All water mains installed by the DEVELOPER shall be sized in order to meet the fire flow requirements of the CITY.

13. **PRE-TREATMENT DEVICES.** CITY accepts only domestic wastewater to its wastewater collection system. At this time the DEVELOPER has no facilities requiring pretreatment; however, the CITY reserves the right, in its sole discretion, to require the DEVELOPER, successor or assigns to install pretreatment devices should they be required in the future. CITY reserves the right to inspect DEVELOPER's devices, if any, prior to rendering wastewater service and from time to time thereafter, but assumes no responsibility for DEVELOPER's devices.

14. **CONNECTION AND OTHER FEES.**

(a) In addition to the CIAC, the DEVELOPER hereby agrees to pay to the CITY all applicable connection and other fees in accordance with Exhibits "D" attached hereto and made a part of this Agreement. Such fees shall be due and payable pursuant to Exhibit "C" of this Agreement. Payment of the connection fees shall not excuse the DEVELOPER from payment of any other charges. The CITY shall not be obligated to refund any portion of connection fees paid nor shall the CITY pay interest on connection fees paid.

(b) Should the DEP not issue the applicable permit(s) or certify activation of system improvements solely because capacity is not available, refunds of the connection fees shall be made by the CITY within thirty (30) days of written notification by the DEVELOPER of the DEP's denial. Upon receipt of such written request, the CITY shall rescind the capacity allocation.

(c) No user or consumer of water service shall be entitled to offset any bill rendered by the CITY for such service against connection fees paid. The DEVELOPER shall not be entitled to offset connection fees paid or payable against any claims of the CITY.

15. **SUBDIVISION INSTALLATIONS.** To induce CITY to provide service to the Property, DEVELOPER agrees to construct and to transfer ownership and control to CITY, as a CIAC, the water and wastewater facilities constructed by DEVELOPER which is located on the Property. Subdivision facilities include, but are not limited to, all water distribution and supply mains, lines and pipes, sewage collection lines, lift or pumping stations, reuse, and all related facilities, from the point of entry of CITY facilities at DEVELOPER's property line to the Consumer's Point of Delivery, excluding consumer's installations, adequate in size and design to serve each lot or unit within the Property or as otherwise required by CITY. DEVELOPER shall install at its sole expense, all of the aforesaid facilities within the Property in accordance with the plans, specifications and all other pertinent documents approved by the CITY and in accordance with Paragraph 17. For the purpose of this paragraph, "consumer's point of delivery" means the point where the water meter or wastewater service is connected to the DEVELOPER's or consumer's service lateral. The water meter or wastewater connection will be set at the consumer's property line unless otherwise permitted by CITY.

16. **OFF-SITE INSTALLATIONS.** To induce CITY to provide service to the Property, DEVELOPER agrees to construct and to transfer ownership and control to CITY, as a CIAC, all necessary off-site installations from DEVELOPER's Property to the CITY's existing facilities. The term "off-site installations" means and includes, but is not limited to, all water distribution and supply mains, lines, pipes, gravity wastewater lines, lift or pumping stations, force mains, and related facilities adequate in size and design to serve the Property or as otherwise required by CITY. Such off-site installations shall be in accordance with the master plans of the CITY as they relate to the water and wastewater utility system. DEVELOPER shall install all of the off-site installations at its sole expense and in accordance with the plans, specifications and other significations and other pertinent documents approved by CITY. DEVELOPER shall construct the off-site installations in accordance with Paragraph 17.

17. **PROCEDURES FOR CONSTRUCTION OF INSTALLATIONS.** DEVELOPER agrees

that construction of all installations as defined in Paragraphs 15 and 16 respectively, shall be in strict accordance with the following requirements:

(a) **Compliance with Rules.** DEVELOPER shall be responsible for assuring that all work is accomplished in accordance with any and all applicable laws, rules and regulations including, but not limited to, those promulgated by EPA, DEP and OSHA; and the presence of a CITY representative on the construction site shall in no way transfer responsibility to CITY for any actions of the DEVELOPER, DEVELOPER'S employees, and/or DEVELOPER'S contractors.

(b) **Permits.** DEVELOPER shall submit applicable permit applications to the appropriate agency or local government.

(c) **Plans and Specifications** DEVELOPER shall as required by CITY, furnish CITY with all plans and specifications (Plans) for the installation to be constructed. Such Plans shall be prepared and sealed by a Florida registered professional engineer. The Plans shall be prepared, reviewed and approved in accordance with the CITY's specifications, standards and policies. If the Property is within the CITY limits, the DEVELOPER shall comply with all applicable provisions of the Land Development Code. If the Property is outside of the City limits, the DEVELOPER shall furnish plans and specifications as is required by the Utility Department. DEVELOPER shall obtain approval of the Plans from all agencies having jurisdiction including, but not limited to, the DEP and County, if applicable, and submit to CITY one (1) copy of any construction permits. No construction shall commence until the CITY and appropriate regulatory agencies have approved such Plans in writing and the CITY has received copies of the construction permits. If construction commences prior to all such approvals, CITY shall have no responsibility to accept any of the installations and CITY may elect to terminate this Agreement or withhold service until such time as DEVELOPER has obtained all required approvals.

(d) **Pre-construction Conference.** After securing all permits and approvals of Plans by CITY and the other agencies, DEVELOPER or the engineer of record shall set up a preconstruction conference with the engineer of record, utility contractor, the appropriate building officials, and the CITY's Utility Department.

(e) **Notices to City.**

(1) **Commencement of Construction.** DEVELOPER shall provide to CITY not less than seventy-two (72) hours written notice prior to commencement of construction or a connection to the CITY's existing system. CITY shall not be required to accept any facilities which were constructed without prior notification. If the DEVELOPER fails to give said written notice, the CITY may require DEVELOPER to uncover and expose said connections or contributed facilities for inspection, at the sole cost of DEVELOPER, or the CITY may disconnect DEVELOPER installations from the CITY's system at the DEVELOPER's expense.

(2) **As-built Surveys.** As-built surveys shall be submitted by DEVELOPER to the CITY seven (7) days prior to final inspection.

(3) **Notices of Inspections and Tests.** DEVELOPER shall provide verbal or written notification to the CITY no sooner than forty-eight (48) hours prior to any inspections or tests (other than final inspection) to be performed as described below. Notices shall be deemed given upon actual receipt of same by CITY.

(f) **Inspection and Tests.** During construction of any installation by DEVELOPER, CITY shall have the right, but not the obligation, to inspect such installation including, but not limited to, the materials, equipment, piping, and connections to determine compliance with the approved Plans. Any identified deficiencies shall be corrected by DEVELOPER immediately. The DEVELOPER shall cause the engineer of record to inspect construction to ensure compliance with approved Plans, permits and other applicable requirements. All standard tests and inspections for pressure, exfiltration, line and grade, and

all other engineering tests and inspections shall be performed with the engineer of record and utility contractor present to determine that the systems have been installed in accordance with the approved Plans, permits and good engineering practices and are functioning satisfactorily for the purpose for which the installation was designed. It shall be the DEVELOPER's responsibility to ensure that all construction and the installation fully meet approved Plans, permits and applicable requirements of law and, upon completion, that the installation functions satisfactorily for the purpose for which it was designed.

(g) **Completion.** Upon completion of construction, DEVELOPER's engineer of record shall submit a signed and sealed certificate of completion certifying to CITY that the construction of the installation is complete, that the installation has been constructed in accordance with all permits, approved Plans, and applicable requirements of law, and as constructed, it will function for the purpose for which it was designed. If the certification is for a water distribution system, a copy of the bacteriological results and a sketch showing locations of all sample points shall be provided.

(h) **As-Built and Other Plans.** At least seven (7) days prior to final inspection, DEVELOPER, or DEVELOPER's engineer shall also provide CITY, as required by CITY, "as-built" surveys prepared and sealed by the engineer of record showing the location of all installations as constructed. If the Property is within the City limits, the DEVELOPER shall comply with all applicable provisions of the Land Development Code. If the Property is outside of the City limits, the DEVELOPER shall furnish plans and specifications as is required by the Utility Department. DEVELOPER shall provide proof satisfactory to CITY that the installation and all contractors, subcontractors, materialmen and laborers have been paid in full together with the engineer's certificate of the total cost of the installation.

18. **WATER METERS.** A water meter or meters necessary to serve the Property shall be installed by DEVELOPER at the Point of Delivery. CITY will approve the number, type, quality and size of said meter or meters. The water meter or meters and enclosures shall be installed by the DEVELOPER prior to final CITY inspection. The cost thereof and associated labor charges shall be paid by DEVELOPER prior to installation at the rates set forth in Exhibit "B-1" attached hereto. All water meters and enclosures shall remain the property of CITY.

19. **ACCEPTANCE BY CITY; TITLE TO INSTALLATION CONSTRUCTED BY DEVELOPER.** As a condition precedent to the acceptance of the completed water and wastewater system and prior to receiving service, the DEVELOPER shall submit the items listed on Exhibit "E" of this Agreement and made a part hereof. Additional conditions of acceptance are as follows:

- (a) **Compliance.** DEVELOPER shall be in compliance with this Agreement.
- (b) **Time and Place of Conveyance Prior to Acceptance.**

(1) Unless otherwise agreed upon in writing, conveyance shall be made when the CITY is prepared to issue its letter of acceptance to DEVELOPER and commence delivery of service to the Property. Upon completion of the installations, DEVELOPER shall deliver the necessary instruments of conveyance in form(s) satisfactory to the CITY, properly executed, as set forth in Exhibit "E", together with funds sufficient to pay all costs of conveyance and recording. Delivery shall be made to CITY's Utility Department Director or designee.

(2) CITY will issue its letter of acceptance upon all conditions of acceptance as set forth herein being met. Acceptance will not be unreasonably withheld. Once accepted, CITY will be responsible for all subsequent maintenance of the water and wastewater system extension not related to warranties.

(3) It is estimated that the above noted CITY services can be made available within approximately thirty (30) days after CITY acceptance of the above mentioned contributed facilities. Such time period is subject to change for Acts of God, riot, strikes, material shortages, weather disturbances, permitting, war, terrorism, civil disobedience, geologic subsidence, electrical failure,

malfunctions, and events of a similar nature, and other delaying conditions beyond the control or responsibility of CITY.

(c) **Conveyance.** DEVELOPER shall convey all of its interest in the installations pursuant to Exhibit "E", including, but not limited to, any necessary permits, as shall be effective to vest in CITY good and marketable title to and rights in the installations free and clear of all liens and encumbrances. Transfer of all manufacturers' and contractors' warranties, maintenance bonds and construction contracts shall be conveyed by unconditional assignment by DEVELOPER. DEVELOPER shall remain secondarily liable on such warranties and hereby agrees to indemnify and hold harmless the CITY from any losses, damages, costs, claims, suits, debts or demands by reason of latent defects in the installations which were not withheld from disclosure or could not have been reasonably discovered upon normal engineering inspection, for a period of one (1) year from the date of acceptance by the CITY of said utility installations.

(d) **Maintenance Bond.** DEVELOPER shall provide any maintenance bonds as required by the CITY's Land Development Code in effect at the time of conveyance or as may otherwise be reasonably required by the CITY.

(e) **Manuals.** DEVELOPER shall provide CITY with all operation, maintenance and parts manuals necessary for the operation and maintenance of the installations.

20. **EASEMENTS.**

(a) DEVELOPER hereby grants to CITY, subject to the terms of this Agreement, the exclusive right to construct, own, maintain and operate water and wastewater facilities to serve the Property.

(b) DEVELOPER hereby further agrees that the foregoing grants include, but are not limited to, the necessary right of ingress and egress to any part of the DEVELOPER's property upon which CITY is constructing or operating utility facilities. The foregoing grants shall continue for as long as CITY requires such rights for the construction, ownership, maintenance, operation or expansion of the facilities in its discretion.

(c) The parties agree that in the event DEVELOPER and CITY agree to install any of the facilities in lands within the Property lying outside the streets and easement areas described above, then DEVELOPER or the owner shall grant to CITY, the necessary easements for such "private property" installation.

(d) Subject to CITY's prior written discretionary consent, the use of easements granted by DEVELOPER to CITY shall not preclude the use by other utilities of these easements, such as cable television, telephone, electric, or gas utilities, provided each does not interfere with CITY's use thereof.

(e) CITY hereby agrees that all easement grants will be utilized without warranty in accordance with generally accepted practices of publicly owned water and wastewater utilities with respect to the installation of all its facilities in any of the easement areas.

(f) Where water and wastewater utilities are to be installed in, under and across privately owned streets, right-of-way, tracts and easements, the DEVELOPER agrees that the quality of restoration of landscaping and pavement associated with the CITY's maintenance activities on those utilities will only equal that which would be in a discretionary manner performed in streets, rights-of-way, tracts and easements dedicated to the public.

21. **MORTGAGE LIENS.** Mortgagees, if any, holding prior liens on the property shall be required to release such liens, subordinate their positions or join in any conveyance, grant or dedication of the easements or right-of-way, or give to CITY assurance by way of a "non-disturbance agreement"

that in the event of foreclosure, mortgagee would continue to recognize the ownership and easement rights of CITY, as long as CITY substantially complies with the terms of this Agreement. All facilities, save and except consumer installations, shall be covered by easements or rights-of-way if not located within platted or dedicated roads or rights-of-way for utility purposes.

22. **CITY'S EXCLUSIVE RIGHT TO UTILITY FACILITIES.** DEVELOPER and CITY agree that all water and wastewater facilities accepted by CITY in connection with providing services to the Property shall at all times remain in the sole and exclusive ownership of CITY. Any person or entity owning any part of the Property or any residence, building or unit constructed or located thereon, shall not have any right, title, claim or interest to such facilities for any purpose whatsoever such as the furnishing of water or wastewater services to others located within or beyond the limits of the Property. Subject to CITY's written discretionary consent, DEVELOPER may utilize other water sources for the Property for "non-domestic" uses, such as for irrigation purposes.

23. **EXCLUSIVE RIGHT TO PROVIDE SERVICE.** Unless otherwise approved by the CITY, DEVELOPER shall not engage in the business of providing water or wastewater services to the Property. DEVELOPER hereby grants CITY the sole and exclusive right to provide water and wastewater services to the Property and to the consumers and occupants thereon.

24. **SERVICE RATES.** The rates to be charged by CITY to the DEVELOPER or to a consumer or occupant for water or wastewater service on the Property shall be those rates charged by CITY to its other consumers pursuant to service rates from time to time in effect. The service to the Property shall be subject to such other regulations which from time to time may be imposed by or upon the CITY with respect to the operations of its water and wastewater systems; and except as may be limited by such regulations, the amounts of utility deposits, billing practices and times, liability for damages to CITY's property and rate changes shall be exclusively within the discretion and control of CITY.

25. **APPLICATION FOR SERVICE TO CONSUMER INSTALLATIONS.** DEVELOPER, or owner or occupant on the Property (consumer) shall not connect any consumer installation to the facilities of CITY until application has been made to CITY by the DEVELOPER or consumer or occupant and approval for such connection has been granted. DEVELOPER or consumer or occupant shall be responsible for connecting the consumer installation to the meter and/or lines of CITY at the point of delivery in accordance with, at a minimum, the following requirements:

(a) Application for the installation of water meters and backflow preventers shall be made.

(b) All consumer installations may at CITY's sole option be inspected by CITY before backfilling and covering of any pipes.

(c) The cost of construction, operation, maintenance, repair or replacement of DEVELOPER installations shall be the responsibility of DEVELOPER.

(d) Should any non-domestic wastes, grease or oils, including, but not limited to, floor or abnormal strength wax or paint, be delivered to the lines, the DEVELOPER or consumer will be responsible for payment of the cost to correct or repair any resulting damage to the treatment process and/or facilities. Thereafter, DEVELOPER or consumer may be required to install, at its own expense, and at the discretion of the CITY, a pretreatment device pursuant to Paragraph 13.

26. **HIGH STRENGTH WASTE.** The DEVELOPER agrees that waste or sewage to be treated by CITY from the Property will consist solely of domestic wastewater, and further agrees that it will not allow any abnormal strength sewage to flow to the Utility Facilities, except upon payment of a surcharge promulgated by the CITY. DEVELOPER grants to CITY the right to sample sewage from the Property to verify DEVELOPER's compliance with this paragraph. No swimming pool filter backwash

water, or any other swimming pool wastewater shall be discharged to the sanitary wastewater system.

27. **WATER CONSERVATION.** DEVELOPER shall employ water conservation measures as required by State law and CITY ordinance. Upon CITY having sufficient reuse/reclaimed water, as determined by the CITY, the DEVELOPER shall install reuse/reclaimed water lines and facilities at its expense for irrigation purposes.

28. **INSPECTION.** CITY may, at its option and without notice, inspect DEVELOPER's utility facilities at all times whether before or after completion of construction and acceptance of same by the CITY. CITY, by inspecting or not inspecting to any extent whatsoever, shall not assume responsibility for construction or installation or maintenance of DEVELOPER's utility facilities and shall in no way be deemed to waive any rights available to CITY for defaults on the part of DEVELOPER, or to consent to any defects, omissions or failures in the design, construction and installation of DEVELOPER's utility facilities.

29. **RELOCATION OF UTILITY FACILITIES.** Any relocation of utility facilities, if approved by the CITY, required for DEVELOPER's convenience or necessity shall be accomplished at DEVELOPER's sole expense provided such relocation can be accomplished without adverse impact on any other part of the facilities, to other consumers, or to the CITY's systems.

30. **NOTICES.**

(a) Any payment or notice required or permitted hereunder shall be in writing and be deemed properly made (a) when hand delivered to the official hereinafter designated, or (b) upon actual receipt when deposited in the United States mail, postage prepaid, addressed as set forth herein, or at such other address as shall have been specified by written notice to the other party delivered in accordance herewith:

CITY:

Utility Director, City of Palm Coast Utility Department
2 Utility Drive
Palm Coast, Florida 32137

DEVELOPER:

KL Seminole Trace LLC
105 NE 1st Street
Delray Beach, FL 33444

(b) Each party shall by written notice, notify the other of any change in address to which subsequent notices or other communication shall be sent.

31. **COSTS AND ATTORNEY'S FEES.** In the event CITY or DEVELOPER brings an action to enforce this Agreement by court proceeding or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, together with reasonable attorneys' fees at all levels, including appeals.

32. **INTERPRETATION.** DEVELOPER and CITY agree that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one heading may be considered to be equally applicable under another in the interpretation of this Agreement. This Agreement shall not be construed more strictly against either party on the basis of being the drafter thereof, and both parties have contributed to the drafting of this Agreement.

33. **ASSIGNMENT.** Except as expressly provided herein, the DEVELOPER agrees not to assign or transfer all or any portion of this Agreement. The allocation of water and wastewater service

capacity granted to DEVELOPER may be assigned or transferred if and only if: a) the DEVELOPER has obtained the prior written consent of the CITY to such an assignment, sale or disposition; b) the assignment is in direct connection with a bona fide sale of the Property or a portion thereof to which the water and wastewater service capacity reserve relates, and the CITY is notified in writing of such an assignment; and c) the assignee pays all of the CITY's administrative costs incurred in connection with such assignment and assumes all of the duties and obligations of the assignor under this Agreement. The CITY shall have the right to assign or transfer this Agreement or the rights and responsibilities contained herein to any properly authorized commission, authority, corporation, or other public or private person, firm or entity without the consent of the DEVELOPER.

34. **STRICT COMPLIANCE.** Failure to insist upon strict compliance of any of the terms, covenants, or conditions in this Agreement shall not be deemed a waiver thereof, nor shall any waiver of any right hereunder at any one time be deemed a waiver of such right at any other time.

35. **TIME OF THE ESSENCE.** Time is hereby made of the essence of this Agreement in all respects.

36. **ENTIRE AGREEMENT AND INCORPORATION BY REFERENCE.** This Agreement constitutes the entire agreement of the parties and expressly supersedes all negotiations, previous agreements or representations whether verbal or written, and may not be amended in any way whatsoever except by a writing executed by both parties hereto in a manner equal in dignity to the execution of this Agreement; provided, however, that documents for the implementation of this Agreement, including all permits, engineering design and construction contracts, plans and specifications for the utility facilities as and when approved and filed with the CITY'S Utility Department are incorporated herein by reference.

37. **BINDING EFFECTS.** This Agreement shall inure to the benefit of and be binding upon the heirs, successors, personal representatives and assigns of the parties hereto and shall constitute a covenant running with the Property. The terms DEVELOPER, owner, consumer and customer are used interchangeably, and, notwithstanding changes in ownership or use of the Property, this Agreement shall burden the Property perpetually.

38. **LIABILITY.** The DEVELOPER and successors and assigns agree to hold harmless and indemnify the CITY, the Palm Coast City Council, its employees and agents from any all claims, damages, causes of actions or other liabilities that arise out of or in relation to the DEP denial of applicable permits to provide wastewater service to the Property. Nothing herein shall be deemed in any way to constitute a waiver of sovereign immunity by the CITY.

39. **FURTHER AGREEMENTS.** The parties further agree to the following:

- (a) In the event of any lawsuit, venue shall be in Flagler County, Florida.
- (b) This Agreement is intended to benefit only the parties who sign it and their authorized assigns and does not create any right for other persons or entities.
- (c) This Agreement is binding on both parties and each has the power and authority to bind themselves by signing below.

40. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Florida and the Ordinances, Resolutions and policies of CITY not prohibited thereby.

41. **FORCE MAJEURE.** CITY's obligations hereunder shall be subject to the concept of force majeure. Accordingly, in the event of Acts of God, riot, weather disturbances, permitting, war, terrorism, civil disobedience, geologic subsidence, electrical failure, malfunctions, and events of a similar nature, CITY shall be excused from providing continual utility service until the cause or causes thereof

have been remedied.

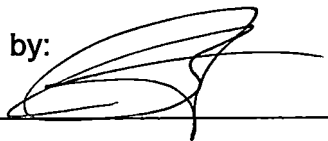
42. **EFFECTIVE DATE.** This Agreement shall be effective upon proper execution by both parties hereto.

43. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which is properly executed by both parties, and shall be considered an original.

Unofficial Copy

IN WITNESS WHEREOF, the parties to this Developer's Agreement have caused the same to be signed by their duly authorized representatives this 29th day of April 2024.

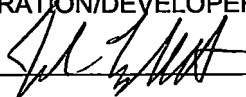
Attested by:



Title: Witness

KL Seminole Trace LLC
CORPORATION/DEVELOPER

By:



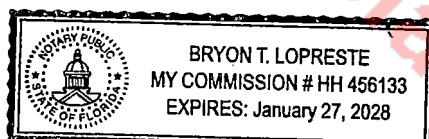
Printed Name: Bryon T. LoPreste

Title: Authorized Signatory

Printed Name: Jared Lybbert

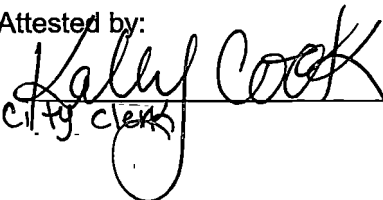
STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29th day of April, 2024, by Jared Lybbert the Authorized Signatory of KL Seminole Trace LLC (check one) ☒ who is personally known to me or ☐ who has produced _____ as identification.




Notary Public
Print Name: Bryon T. LoPreste
My Commission expires: 01/27/28

Attested by:


CITY CLERK

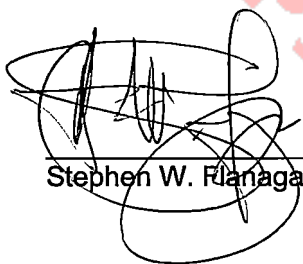

Stephen W. Flanagan, Utility Director

Exhibit A

Legal Description

DESCRIPTION

PART OF GOVERNMENT SECTIONS 29, 30, 31 AND 32, TOWNSHIP 12 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 32, THENCE SOUTH 00°45'50" WEST ALONG THE WEST LINE OF SAID SECTION 32 A DISTANCE OF 1224.55 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY OF SEMINOLE WOODS BOULEVARD, AN 80 FOOT RIGHT OF WAY; THENCE NORTH 54°30'21" EAST ALONG SAID RIGHT OF WAY A DISTANCE OF 51.61 FEET TO THE POINT OF BEGINNING, THENCE NORTH 35°28'37" WEST, A DISTANCE OF 135.79 FEET; THENCE NORTH 01°32'11" WEST, A DISTANCE OF 552.39 FEET; THENCE NORTH 19°37'47" WEST, A DISTANCE OF 412.10 FEET; THENCE NORTH 32°40'10" WEST, A DISTANCE 110.81 FEET; THENCE NORTH 17°11'33" WEST, A DISTANCE OF 238.96 FEET; THENCE NORTH 72°48'27" EAST, A DISTANCE OF 330.00 FEET; THENCE NORTH 17°11'33" WEST, A DISTANCE OF 200.00 FEET; THENCE SOUTH 72°48'27" WEST, A DISTANCE OF 300.00 FEET; THENCE NORTH 17°11'33" WEST, A DISTANCE OF 288.37 FEET; THENCE NORTH 30°45'57" EAST, A DISTANCE OF 156.00 FEET; THENCE NORTH 50°34'11" EAST, A DISTANCE OF 436.26 FEET; THENCE NORTH 16°53'57" WEST, A DISTANCE OF 207.43 FEET; THENCE NORTH 26°57'36" WEST, A DISTANCE OF 468.07 FEET; THENCE NORTH 15°17'20" WEST, A DISTANCE OF 724.55 FEET; THENCE NORTH 39°35'09" WEST, A DISTANCE OF 330.89 FEET; THENCE NORTH 26°47'41" WEST, A DISTANCE OF 266.83 FEET TO THE ARC OF A CURVE LEADING NORTHERLY; THENCE NORTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 945.00 FEET, AN ARC DISTANCE OF 204.23 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 11°01'12" WEST, 203.83 FEET; TO THE POINT OF COMPOUND CURVATURE OF A CURVE LEADING NORTHERLY; THENCE NORTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 545.00 FEET, AN ARC DISTANCE OF 77.67 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 00°44'45" WEST, A DISTANCE OF 77.61 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE NORTH 03°20'13" EAST, A DISTANCE OF 504.26 FEET; THENCE NORTH 86°33'58" EAST, A DISTANCE OF 1262.17 FEET; THENCE NORTH 74°58'14" EAST, A DISTANCE OF 658.11 FEET; THENCE SOUTH 37°31'09" EAST, A DISTANCE OF 306.12 FEET; THENCE SOUTH 29°41'56" EAST, A DISTANCE OF 992.84 FEET; THENCE SOUTH 56°05'17" WEST, A DISTANCE OF 747.71 FEET; THENCE SOUTH 04°26'11" EAST, A DISTANCE OF 981.36 FEET; THENCE SOUTH 47°18'59" EAST, A DISTANCE OF 280.03 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 783.09 FEET; THENCE SOUTH 58°20'26" WEST, A DISTANCE OF 341.06 FEET; THENCE SOUTH 37°50'12" EAST, A DISTANCE OF 669.89 FEET TO A POINT ON THE SAID NORTHERLY RIGHT-OF-WAY LINE OF SAID SEMINOLE WOODS BOULEVARD; THENCE SOUTHWESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY THE FOLLOWING CALLS; THENCE SOUTH 64°15'15" WEST, A DISTANCE OF 548.05 FEET TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHWESTERLY; THENCE SOUTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2000.00 FEET, AN ARC DISTANCE OF 340.28 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 59°22'48" WEST, 339.87 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 54°30'21" WEST, 863.21 FEET TO THE POINT OF BEGINNING.

Exhibit B**CALCULATION OF CONTRIBUTION IN AID OF CONSTRUCTION**

Project Name:	Seminole Trace 386 SFH	Date of Calculation:	4/22/2024
Project #			

	Gallons per Day	WATER	WASTEWATER	OTHER
A. Plant Capacity:				
Water Demand (GPD)	86,850 gal			
386 SFH Lots @ 225gpd				
per lot		\$1,236,350.28		
at current rate \$3,202.98				
Payment Plan 20% \$80,832.74				
Wastewater Demand (GPD)	69,480 gal			
386 SFH Lots @ 180gpd				
per lot			\$1,330,310.40	
at current rate \$3,446.40				
Payment Plan 20% \$101,085.28				
Offsite 12" Forcemain Extension				
Credit 1,856,552.00				
B. Main Extension:				
Water Demand (GPD)	gal			
Wastewater Demand (GPD)	gal			
C. Miscellaneous Fees				
Utility Review and Inspection				\$2,500.00
Administrative and Legal				
Recording Fees				\$200.00
D. Off-Site Forcemain Credit		\$928,276.00	\$928,276.00	
TOTAL CIAC		\$308,074.28	\$402,034.40	\$2,700.00
		TOTAL DUE		\$712,808.68

E. Fees due at time of connection

-
- Service Installation/Tap Charge - See Exhibit B-1
- Meter Installation Charge - See Exhibit B-1
- Backflow Prevention Charge - See Exhibit B-1
- Administrative Charge - \$15.00 per account
- Deposits - See Exhibit B-1

EXHIBIT C**Seminole Trace 386 SFH Lots****OPTION A:****Current City of Palm Coast Contribution in Aid of Construction (CIAC) Fees:**

Water	\$ 1,236,350.28
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Sewer	\$ 1,330,310.40
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Under Option A, all CIAC Fees are due at the time FDEP permit applications are signed by the City and returned to the developer. This is usually immediately prior to Preliminary Plat submittal.

OPTION B:**Proposed Reservation and Payment Schedule for City of Palm Coast CIAC Fees (water and sewer):**

First payment due at the time FDEP permit applications are requested. Developer has a credit of \$1,856,552.00 for the 12" Off-site Forcemain Extension (20% \$513,332.14)	\$ 2,700.00
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Second payment of CIAC is due 36 months after initial payment.* (20% 513,332.14 less remaining credit \$1,343,219.86-)	\$ 0.00
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Balance of CIAC is due 48 months after initial payment.	\$ 710,108.68
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* Developer has a credit of \$1,856,552.00 for 386 SFH Lots (see Exhibit B) which shall be first applied to the payments due under the Payment Schedule above. Developer shall owe \$0 for the first initial 20% payment on CIAC, only Inspection & Recording fee of \$2,700.00 due at this time and shall pay \$0.00 at the time the second 20% payment on CIAC is due. Developer shall pay the balance of CIAC as provided in the Payment Schedule above.

The outstanding balance of water and sewer CIAC for individual units is to be paid prior to any individual residential building permit application being submitted to the City.

As long as the required deposits and payments are made, the project's water and sewer capacity reservations will be vested and FDEP permit applications will be approved by the City. If the required deposits and/or payments at CO are not made in accordance with this policy, the project's water and sewer capacity reservations will be null and void.

The deposit and total payment amounts will be adjusted anytime the water and/or sewer CIAC amounts are revised.

Note:

1. These costs do not reflect any offsite construction costs or Utility Dept. Inspection Fees. Those costs (if any) will be required at the same time as the initial deposit.

*Final payment reconciliation is adjusted based on capacity fees in place at the time of final payment.

2. Any deposits, capacity reservations, or payments made pursuant to option B are forfeited if any payment deadline is not met.

Exhibit D
STANDARD CHARGES SHEET

Project Name: Seminole Trace - 386 SFH Lots	Plant Name: Palm Coast
0	Date of Calculation: 6/27/2023

WATER (per meter)

Service Installation Charge

5/8" X 3/4" Meter:	\$672.77	1 1/2" Meter:	Actual Cost
3/4" Meter:	\$672.77	2" Meter:	Actual Cost
1" Meter:	Actual Cost	Greater than 2" Meter:	Actual Cost

Meter Fee

5/8" X 3/4" Meter:	\$514.49	1 1/2" Meter:	Actual Cost
3/4" Meter:	\$514.49	2" Meter:	Actual Cost
1" Meter:	Actual Cost	Greater than 2" Meter:	Actual Cost

Meter with Built-in Backflow Prevention Device):

All Meter Sizes Actual Cost

Stand Alone Backflow Prevention Device:

1" Meter or less:	Actual Cost
1 1/2" Meter:	
2" Meter:	
Greater than 2" Meter:	

Deposits

5/8" X 3/4" Meter:	\$ 60.00	4" Meter:	\$ 1,500.00
1" Meter:	\$ 150.00	6" Meter:	\$ 3,000.00
1 1/2" Meter:	\$ 300.00	8" Meter:	\$ 4,800.00
2" Meter:	\$ 480.00	10" Meter:	\$ 6,900.00
3" Meter:	\$ 900.00		

WASTEWATER (per meter)

Service Installation Charge

Sewer Lateral Inspection Charge (Palm Coast Only)

4" Lateral		Lateral (ea.)	\$ 25.00	#
Unpaved	N/A			
Paved	N/A			
6" Lateral				
Unpaved	N/A			
Paved	N/A			

Deposits

5/8" X 3/4" Meter:	\$50.00	4" Meter:	\$ 1,250.00
1" Meter:	\$ 125.00	6" Meter:	\$ 2,500.00
1 1/2" Meter:	\$ 250.00	8" Meter:	\$ 4,000.00
2" Meter:	\$ 400.00	10" Meter:	\$ 5,750.00
3" Meter:	\$ 750.00		

Exhibit E

Documents Required Prior to Utility Acceptance of Developer Addition

1. Easements dedicated to City of Palm Coast (Recorded with the County)
2. Final plat in (AutoCAD format version 14 or later) and list of S.T.R.A.P (Section, Township Range and Parcel) numbers for all lots in the project.
3. Electronic "Record" or "As-Built" drawings on AutoCAD format release 14 minimum, 2000 or 2000i and one (1) full set of hard copy record drawings
4. Contractor's Letter of Warranty for a one year period after Utility Acceptance (signed and sealed by P.E. or Notarized)
5. Contractor's Letter of Waiver and Release of Lien (Recorded with County)
6. Engineer's Letter of Certification (Signed and sealed by Engineer)
7. Copies of all tests required by the Florida Department of Environmental Protection or governing State or local Health Department as well as any other tests deemed necessary by the UTILITY standards and specifications.
8. Applications for certification of completion required by the Florida Department of Environmental Protection or governing State or local Health Department.
9. Bill of Sale for Water and Wastewater contributed property with accurate cost records establishing the construction cost of the completed additions (a copy of related construction contracts duly certified by a Notary of the State of Florida as true and correct copies of the originals required).