

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: April 3, 2023

RE: **Development Agreement with Pipkin Creek Properties, LLC**

Attached for your consideration is a Development Agreement between the City of Lakeland and Pipkin Creek Properties, LLC (Pipkin Creek Properties). Pipkin Creek Properties is developing a single-family residential development known as Lakeside Preserve, consisting of 426 units on 428.2 acres located south of State Road 572 (Drane Field Road-South Parkway Frontage Road) and east of Pipkin Creek Road. Given the location of Lakeside Preserve within a larger Planned Unit Development (PUD) within which the adjacent Prose Lakeland multi-family residential development is proposed, the PUD requires that both Pipkin Creek Properties and Prose Lakeland establish and pay their fair share percentages for identified access and operational improvements at the State Road 572/Pipkin Creek Road intersection, including the signalization of the intersection. A separate Development Agreement with Prose Lakeland has been negotiated and is also included on this agenda to provide for Prose Lakeland's share of the intersection improvement costs.

Inflated to Year 2027 values, the final cost estimate for the State Road 572/Pipkin Creek Road signalization project totals \$547,833.78. State Road 572 is operated by the Florida Department of Transportation and Pipkin Creek Road is operated by Polk County. Therefore, the final access and operational improvements at the subject intersection may be different from what is currently proposed once reviewed through the permitting processes for both agencies. Based on the uncertainty of the final mitigation project at the intersection and the expected construction schedules for the Prose and Lakeside Preserve developments, the attached Development Agreement requires Pipkin Creek Properties to pay the City its proportional share of the State Road 572/Pipkin Creek Road intersection improvements, to be included in a dedicated account for future implementation by the City in accordance with FDOT and County permitting requirements. The separate Development Agreement with Prose Lakeland likewise requires Prose Lakeland to deposit its proportional share with the City.

Under the attached Development Agreement, Pipkin Creek Properties will be required to take the following action:

1. Concurrent with construction plan approval, Pipkin Creek Properties shall pay one-half of its proportional share of the costs for the State Road 572/Pipkin

Creek Road Traffic Signal, or a package of access/operational mitigation improvements of an equal cost as approved by FDOT and Polk County. This payment would account for \$180,785.15 of Pipkin Creek Properties' total proportional share cost of \$361,570.29.

2. Concurrent with notice of commencement of on-site infrastructure improvements, Pipkin Creek Properties shall provide the remaining \$180,785.14 of its proportional share costs.

Upon satisfaction of the conditions of the proposed Development Agreement, the City will grant transportation concurrency for this development, resulting in vesting for a cumulative of 4,088 Daily and 429 PM Peak Hour Trips.

It is recommended that the City Commission approve the attached Development Agreement with Pipkin Creek Properties, LLC and authorize the appropriate City officials to execute the Agreement.

Attachment

This instrument prepared by and return to:

Lee Saunders
Pipkin Creek Properties, LLC
5529 US Highway 98N
Lakeland, Florida 33809
lee@landsearchfl.com

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, effective as of the Effective Date (defined below) by and between Pipkin Creek Properties, LLC, a Florida limited liability company (the “**Developer**”), and the City of Lakeland, a Florida municipal corporation (the “**City**”).

WHEREAS, the Developer proposes to develop real property generally located south of South Parkway Frontage Road and east of Pipkin Creek Road, as described in Exhibit A and as depicted in Exhibit B (the “**Property**”); and

WHEREAS, the Developer is proposing to develop a community consisting of up to 426 single family dwelling units (the “**Project**”), less than the 461 single family units allowed pursuant to Ordinance No. 5810 (the “**PUD**”), as depicted in the site development plan attached to the PUD, and which includes an internal transportation plan with general location of proposed streets and pedestrian pathways, as depicted in Exhibit C; and

WHEREAS, the Developer provided the City with a traffic study prepared pursuant to Section 1.C.3.a of the PUD, which identified the Developer’s sixty-six percent (66%) fair share percentage (“**Developer’s Proportional Share**”) of the costs to implement access improvements at the Pipkin Creek Road/State Road 572 (Drane Field Road) intersection (the “**Intersection**”), assumed to consist of the installation of a traffic signal (the “**Traffic Signal**”) at the Intersection, based upon the final Project trip generation estimate as further described in the attached Exhibit D; and

WHEREAS, the Florida Local Government Development Agreement Act, Florida Statutes §§ 163.3220 - 163.3243, (the “**Act**”), authorizes local governments to enter into development agreements with developers to encourage a stronger commitment to comprehensive and capital facilities planning, to ensure the provision of adequate public facilities for development, to encourage the efficient use of resources, to reduce the economic cost of development and to provide certainty to developers in the approval of development and assurances that they may proceed in accordance with existing laws and policies, subject to the conditions of such development agreements; and

WHEREAS, such development agreements strengthen the public planning process, encourage sound capital improvement planning and financing, assist in assuring there are adequate capital facilities for the development, encourage private participation and comprehensive planning and reduce the costs of development; and

WHEREAS, the Project is consistent with the City of Lakeland's Comprehensive Plan and Land Development Code; and

WHEREAS, the Project will comply with all applicable land development regulations in effect at the time of permitting unless otherwise provided herein; and

WHEREAS, the southwestern Lakeland area continues to face transportation challenges that could impact long-term growth potential if not addressed; and

WHEREAS, the Project will provide a major single-family housing opportunity for City residents, and

WHEREAS, the Developer has agreed to assist the City to address the transportation impacts from the Project through the payment of Developer's Proportional Share of the costs of the Traffic Signal as determined from the traffic study, or payment of any other geometric or operational improvements of equal cost at the Intersection that is accepted by the Florida Department of Transportation and/or Polk County in the event that neither maintaining jurisdiction approves the installation of a Traffic Signal at the Intersection; and

WHEREAS, it is in the interest of the public health, safety and welfare for the City to facilitate the construction of the Traffic Signal by collecting Developer's Proportional Share of the costs of the Traffic Signal and the remaining proportional share from the adjoining multi-family developer as a condition of its certificates of occupancy;

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

A. **Whereas Clauses.** The Whereas clauses set forth above are incorporated herein by reference and made a part of this Development Agreement.

B. **Purpose.** The purpose of this Development Agreement is to establish the respective rights and obligations of the Developer and the City.

C. **Developer Obligations.**

1. **Payment of Developer's Proportional Share for Traffic Signal.** **Exhibit E** contains the signed and sealed engineer's estimate to complete the Traffic Signal installation, inflated to Year 2027 costs (\$547,833.78), with the Developer's Proportional Share amounting to \$361,570.29 (the "Developer's Proportional Share Payment Amount"). Developer shall, concurrent with construction plan approval, pay one-half (\$180,785.15) of the Developer's Proportional Share Payment Amount of the costs for the Traffic Signal or package of access/operational mitigation improvements of an equal cost as approved by FDOT or Polk

County. The Developer shall provide the balance of the Developer's Proportional Share Payment Amount (\$180,785.14) concurrent with Notice of Commencement of on-site infrastructure.

2. Right-of-Way Dedication. Developer's predecessors in title have dedicated the required right-of-way along South Pipkin Road pursuant to the requirements of the PUD (the "**Right-of-Way**").

3. Satisfaction of PUD Conditions. The Developer shall have fully satisfied the transportation conditions set forth in Section 1.F.3 of the PUD (Ordinance Number 5810) upon the completion of Developer's payment of the Developer's Proportional Share of the Traffic Signal Costs (or equivalent access/operational mitigation),.

4. No Waiver. Developer acknowledges and agrees that the City's willingness to enter into this Development Agreement shall not be construed as a waiver by the City of any applicable law, ordinance, rule, or regulation for the construction of the Project.

5. Notice Costs. The Developer will be responsible for and shall pay all costs related to providing notice and advertising this Development Agreement under Section 163.3225, Florida Statutes, and the recording of this Development Agreement.

D. City Obligations.

1. Concurrency. Subject to the Developer's performance of its obligations set forth in this Development Agreement, the Project will be deemed to be approved for transportation concurrency. Concurrency for the Project for non-transportation matters shall be addressed at the final plat approval for the Project.

2. Trip Vesting and Reserved Capacity. The Developer shall, upon payment of the Developer's Proportional Share of the Traffic Signal costs, be vested for 4088 Daily and 429 PM Peak Hour transportation trips associated with, and be provided reserved capacity for, the Project (the "**Vested Trips and Reserved Capacity**").

E. Survival of Warranties, Representations. The warranties, representations, covenants and obligations of the parties hereto shall be binding upon the parties and their respective successors in interest.

F. Comprehensive Plan and Land Development Regulations. The City's Comprehensive Plan has been found to be "in compliance" with Chapter 163, Florida Statutes, by the Florida Department of Economic Opportunity. The City has determined that the Project is consistent with its Comprehensive Plan and Land Development Regulations.

G. Binding Effect. The burdens of this Development Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all assignees or successors in interest to the parties of this Agreement. The Developer may assign the Vested Trips and Reserved Capacity to subsequent purchasers or developers of land within the Project by designating such assignees and the amount of the Vested Trips and Reserved Capacity to be assigned to them in writing with a copy provided to the Director of Community and Economic Development

Department. Nothing regarding the Developer's right to assign the Vested Trips and Reserved Capacity shall affect the City's ability to enforce this Development Agreement or the terms of the Planned Unit Development zoning on the Project.

H. **Applicable Law; Jurisdiction; Venue.** This Development Agreement, and the rights and obligations of the City and the Developer hereunder, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. This Agreement may be enforced as provided in Florida Statutes § 163.3243. Pursuant to Florida Statutes § 163.3233(1), the City's laws and policies governing the development of the Project at the time of the execution of this Development Agreement shall govern the development of the Project for the duration of the Development Agreement. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Polk County, Florida. If any provision of this Development Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Development Agreement shall be valid and enforceable to the fullest extent permitted by law. The fact that this Development Agreement does not detail all laws, rules, regulations, permits, conditions, terms and restriction that must be satisfied to complete the Project shall not relieve the Developer or its successor in interest of the obligation to comply with the law governing such permit requirements, conditions, terms and restrictions.

I. **Joint Preparation.** Preparation of this Development 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.

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

K. **Effective Date and Duration.** In accordance with Section 163.3239, Florida Statutes, this Agreement shall be recorded within fourteen (14) days of approval by the City and shall become effective upon recording in the public records of Polk County (the "**Effective Date**"). This Development Agreement shall remain in effect until the earlier of the completion of the Project, including the satisfaction of all of Developer's and City's obligations under this Agreement, or the expiration of years (30) years from the Effective Date, unless terminated or extended as provided for herein or in Section 163.3229 of the Act. This Development Agreement may be terminated only by mutual consent of the parties or by Developer as provided below.

L. **Amendment.** This Development Agreement may be amended by mutual written consent of the parties so long as the amendment meets the requirements of the Act. If the Developer, in its sole and absolute discretion, determines that the Project will not be constructed, the Developer may notify the City in writing that this Development Agreement is terminated, in which event the City will return the Developer's Proportional Share to the Developer and the parties hereto will have no further rights, obligations or liabilities hereunder.

M. **Further Assurances.** Each of the parties hereto agrees to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such

further acts, and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Development Agreement and give effect thereto.

N. **Notices.** Any notices or reports required by this Development Agreement shall be sent to the following:

For the City: Shawn Sherrouse, City Manager
City of Lakeland
228 S. Massachusetts Avenue
Lakeland, FL 33801

With a Copy to: Palmer C. Davis, City Attorney
City of Lakeland
228 S. Massachusetts Avenue
Lakeland, FL 33801

For the Developer: Lee Saunders, Member
Pipkin Creek Properties, LLC
5529 US Highway 98N
Lakeland, Florida 33809

With a Copy to: Richard A Miller, Esquire
Miller Troiano, P.A.
2323 South Florida Avenue,
Lakeland, Florida 33803

O. **Force Majeure.** All time periods or deadlines provided in this Agreement shall be automatically extended for delays caused by Acts of God, strikes, riots, hurricanes or other causes beyond the reasonable control of the affected party.

P. **Minor Non-Compliance.** The parties will not be deemed to have failed to comply with the terms of this Agreement in the event such non-compliance is of a minor or inconsequential nature.

Q. **Covenant of Cooperation.** The parties shall cooperate with and deal with each other in good faith in the performance of the provisions of this Agreement and in achieving the completion of development of the Project, including in processing future development approvals and amendments to this Agreement, and including Developer requests for extensions of this Agreement. Whenever an approval or consent is required under or contemplated by this Agreement, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

(Signature Blocks on Following Pages)

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

Pipkin Creek Properties, LLC
A Florida limited liability company

By: _____
Lee Saunders, Member

Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2023, by Lee Saunders, on behalf of Pipkin Creek Properties, LLC, a Florida limited liability company, who is personally known to me or who produced _____ as identification.

(NOTARY SEAL)

Notary Public – State of Florida
Print Name: _____
My Commission Expires: _____

CITY COMMISSIONERS OF THE
CITY OF LAKE LAND

By: _____
H. William Mutz, Mayor

Date: _____, 2023

Attest:

City Clerk

Approved as to Form and Correctness

Palmer C. Davis, City Attorney