

CLAY COUNTY
AGREEMENT/CONTRACT No. 2021/22-_____

DONATION AGREEMENT FOR COMMUNITY PARK AND CIVIC SITE
Re: Peters Creek Investments, LLP

This Donation Agreement for a Community Park and Civic Site (the “Agreement”) is made and executed as of this _____ day of March, 2022, by and between Clay County, Florida, a political subdivision of the State of Florida (the “County”), and Peters Creek Investments, LLP, a Florida limited liability partnership (“PCI”).

Recitals

WHEREAS, PCI is the owner of real property in the County (the “Property”), which is more particularly described in **Exhibit A** attached hereto and by reference made a part hereof, and which is intended to be developed as a mixed use development as a successor to the Saratoga Springs Development of Regional Impact (the “DRI”) after abandonment of the DRI (the “Project”); and

WHEREAS, the re-entitlement plan, post DRI abandonment, for the Project includes a 19 acre public community park consistent with the commitment in the DRI (the “DRI Community Park”); and

WHEREAS, the County has determined that an alternative location within the Property to that identified in the DRI is preferred (the “Alternative Community Park”); and

WHEREAS, the County has determined that its recreation master plan includes a public community park in the vicinity of the Project; and

WHEREAS, the DRI includes a commitment for a 2 acre civic site to be used for a library or other government use (the “Civic Site”); and,

WHEREAS, the County has determined that a civic site continues, post DRI abandonment, to be a desirable use to be co-located with the Alternative Community Park within the Property (combined, the “Alternative Site”); and,

WHEREAS, the County has determined and PCI agrees that a future community park and civic site within the Property will be necessary to support future growth; and,

WHEREAS, the location of the Alternative Site, depicted in **Exhibit B** attached hereto and by reference made a part thereof, is appropriate to serve the need for a public community park in the vicinity of the Project; and,

WHEREAS, PCI intends to donate or cause to be donated to the County the 21 acre Alternative Site; and,

WHEREAS, the County agrees, pursuant to Section 163. 31801(5)(a), Florida Statutes to grant PCI impact fee credits on a dollar for dollar basis against the future adoption of impact fees for the same general categories or class of public facilities as the 19 acres the Alternative Community Park addresses; and,

WHEREAS, in the event of the future adoption of impact fees for park facilities and subject to the conditions provided for herein for the donation of 19 acres for the Alternative Community Park, PCI shall be entitled to credit, the amount of which has been determined in accordance with Section 163.31801 (5)(a), Florida Statutes (the “Credit”); and,

WHEREAS, the Credit, once granted pursuant to the requirements of this Agreement, may be used to reduce or eliminate any impact fee collected by the County for the general categories or class of public facilities or infrastructure that includes land for parks (the “Future Park Impact Fee”) associated with development within the impact fee district(s) established for any Future Park Impact Fee; and,

WHEREAS, the administration of the Credit against any Future Park Impact Fee is the responsibility of the Impact Fee Coordinator, or their designee; and,

WHEREAS, PCI and the County desire to formalize their respective rights and obligations with regard to the donation of land for a community park and civic site; and,

WHEREAS, PCI and the County desire to formalize their respective rights and obligations with regard to any Credit to which PCI may become entitled to pursuant to this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein, it is agreed as follows:

1. **Recitals.** The recitals set forth hereinabove form an integral part of this Agreement. When construing this Agreement, the parties shall refer to the recitals to the extent necessary to give full effect to the intent of the parties as reflected in this Agreement; provided, however, that if the recitals and a substantive provision of this Agreement are in direct conflict and cannot be reconciled, then the substantive portion shall control.

2. **Donation of Property.**

a. PCI and any transferee, or its successor, as applicable, shall donate and the County shall accept the Alternative Site

b. PCI and the County shall finalize the boundary for the Alternative Site within 60 days of the conveyance of Public School Site 2 pursuant to Exhibit D of Clay County Agreement 2021/2022-64. PCI shall then provide a signed and sealed survey within 60 days of the date the boundary is finalized. The parties may upon mutual agreement extend the date for finalizing the boundary; such extension shall also extend the date for delivery of the signed and sealed survey by PCI to a date 60 days after finalization of the boundaries.

c. Within 120 days of the date the boundary is finalized the County shall prepare a warranty deed for the Alternative Site and obtain a title opinion, if required. The warranty deed shall include a deed restriction limiting the use of the Alternative Site to public community park use and/or a public library/community center.

d. PCI shall execute the warranty deed(s) prepared by the County consistent with this Agreement when presented for execution which shall occur no later than 150 days after the date the boundary is finalized.

e. PCI shall provide access from Feed Mill Road to the Alternative Site concurrent with access provided to School Site 2, said access being provided no later than twelve (12) months

after the date of commencement of construction of the school on School Site 2 by the School District.

3. **Credit for the Alternative Site Donation.**

a. **Entitlement to Credit.** PCI and the County agree that if the County adopts an impact fee for park facilities in exchange for PCI's donation of acreage from the Alternative Site for a park, PCI shall receive \$760,000 Credit.

b. **Use of Credit.** If the County adopts a Future Park Impact Fee applicable to the Property, the Credit established under Section 3.a. of this Agreement shall be applied on a dollar for dollar basis to the payment of the Future Park Impact Fee obligations arising from the development within PCI Lands (the "New Construction") or may be transferred to New Construction within the impact fee district established by the County for the Future Park Impact Fee until the total Credit is exhausted. Failure to donate the Alternative Site for park use will cause the entitlement to Credit under this Agreement to be revoked and all applicable Future Park Impact Fee obligations due shall be due and payable as and when otherwise required by the ordinance implementing the Future Park Impact Fee and collected in any manner authorized by law.

4. **Development of Park and Civic Sites.** County shall be responsible for any development of the Alternative Site. In connection with any development, County shall be responsible for the design, permitting and construction of any improvements on the Alternative Site. No wetlands have been identified as being located within the Alternative Site; however if wetland mitigation is required, the County shall be responsible for mitigation of any impacts to on-site wetlands determined by the County to be necessary to construct the desired improvements.

5. **The County's Obligations.** The County shall:

a. Accept the Alternative Site.

b. Prepare warranty deed(s) for the Alternative Site and obtain a title opinion, if required. The warranty deed shall include a deed restriction limiting the use of the Alternative Site to public community park use and/or a public library/community center.

c. Present the warranty deed for the Alternative Site to PCI for execution no sooner than 120 days after finalization of the boundary of the Alternative Site.

d. Deliver to PCI the form(s) for the Credit Voucher to be utilized in the administration of this Agreement that provides for the identification of the transferee or its successors of any Credit, the dollar amount of the Credit transferred, and a legal description of the lands within which the Credit may be used.

e. Maintain a ledger reflecting the availability of the Credit.

f. Require that, in connection with payment of Future Park Impact Fee obligations, when a Credit Voucher from PCI, a transferee, or its successor, as applicable, stating the dollar amount of the Credit transferred is presented to the County, the County shall deduct the amount of the Credit Voucher from the balance of the Credit then available to PCI, a transferee, or its successor, as applicable; and issue such documentation as is necessary to reflect the amount credited against those Future Park Impact Fee obligations due.

g. Not be responsible for determining whether any particular Credit Voucher is valid as between PCI or any transferee or its successor, as applicable, for any development, and shall accept any Credit Voucher on the applicable form and signed by the person(s) identified pursuant to Section 6 below who is authorized to execute the Credit Voucher for any particular development at the time any Future Park Impact Fee obligation is otherwise due.

h. Periodically, PCI may request from the County the opportunity to inspect and copy Credit Vouchers accepted by the County. If, based on its inspection of such Credit Vouchers, PCI believes that the County has accepted an invalid Credit Voucher(s) or has otherwise processed a Credit Voucher(s)

improperly, PCI may notify the County of its objection to such Credit Voucher(s). Upon receipt of a PCI objection, the County shall make any necessary adjustments to the County's ledger and take whatever steps lawfully available to the County to withhold, suspend, or revoke any permits, plans, or other approvals issued based upon the acceptance of such Credit Voucher(s). If the County determines that the Credit Voucher(s) to which PCI objected is valid and was processed properly, then the County may restore any permits, plans, or approvals issued based upon the acceptance of such Credit Voucher(s).

i. The County may accept a monetary payment by an applicant for Park Impact Fee obligations due for New Construction, or, where no applicable Credit Voucher is presented from PCI, a transferee, or a successor. Any such payment is non-refundable.

j. In the event that the Credit established under Section 3.a. is exhausted, advise PCI in writing of said occurrence.

6. **PCI's Obligations.** PCI and any transferee, or its successor, as applicable, shall:

a. Donate to the County the Alternative Site. .

b. Provide a signed and sealed survey of the Alternative Site.

c. Execute the warranty deed(s) prepared by the County consistent with this Agreement when presented for execution as provided in Section 2.

d. Provide to the County written notification of any transfer of Park Credit to a transferee, executed by PCI, identifying the transferee, the person(s) authorized to execute the Park Credit Voucher on behalf of the transferee, the dollar amount of the Credit transferred, and a description of the transferee's lands within which the Park Credit may be used.

e. Notify any transferee that it shall provide the County written notification of any transfer of Credit to a successor in title, executed by the transferee and the successor, identifying the successor, the person(s) authorized to execute the Credit Voucher on behalf of the successor, the dollar amount of the Credit, and a description of the successor's land within which the Credit may be used.

7. **Credit Vouchers.** A Credit Voucher shall be submitted to and accepted by the County no later than such time(s) as the applicable Future Park Impact Fee obligation is otherwise due pursuant to County ordinance; submittal may be made for acceptance of multiple fees under a single application.

8. **Annual Report.** On or before January 31 of each year, commencing the year following the year in which the Credit is issued by the County and for so long as there remains any Credit under this Agreement, PCI or any transferee, as may be designated by PCI in writing to the County, shall prepare and deliver to the County, through its Impact Fee Coordinator, an annual report setting forth the amount of Credit transferred to transferees and successors during the prior year and the balance of the Credit remaining. If PCI's conclusions in its annual report, when compared to the County's ledger listing the use of Credit, disagree with the County's ledger, then PCI shall notify the County in writing and state the specific reasons for such disagreement. In the event that PCI and the County are unable to resolve such a disagreement within 60 days of submittal of an Annual Report in which the disagreement is identified, PCI may request a meeting with the County Manager. If the County Manager affirms the disagreement with the conclusions of the Annual Report, then PCI may pursue remedies as provided in paragraph 9.a. below.

9. **Defaults and Remedies.**

a. **County/Defaults.** If the County defaults in the performance of any obligation required to be performed by it under this Agreement, then PCI may deliver written notice of such default to the County. The County shall cure such default within sixty (60) days after the delivery of such notice of default. If the County does not cure such default within the time period provided, then PCI may pursue any available remedies in law or equity.

b. **PCI Defaults.** If PCI or any transferee or successor defaults in the performance of any obligation required to be performed by it under this Agreement (the Defaulting Party), then the County may deliver written notice of such default to the Defaulting Party. The Defaulting Party shall cure such default within sixty (60) days after the delivery of such notice of default. If the Defaulting Party does not

cure such default within the time period provided, then the County may pursue any available remedies in law or equity.

10. **Future Revisions.** If the Clay County Comprehensive Plan or any other Clay County regulation is adopted or amended to replace any or all of any Future Park Impact Fee obligations with another form of exaction for the same general category or class of public facilities or infrastructure for which the Community Park Site donation was made in a manner which affects adversely the value or viability of the Credit, then such amendment shall serve as grounds for PCI to request the County to amend this Agreement in a manner which may maintain the value or viability of the then remaining Credit. The parties agree that the Future Park Impact Fee obligation to which the Credit may be applied shall be those in effect at the time the Future Park Impact Fee obligations for applicable New Construction would otherwise be due.

11. **Miscellaneous Provisions.**

a. **Notices, Demands, and Communications Between the Parties.** Notices, demands and communications between the parties shall be given by depositing the same in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

Notices, demands, and communications to the County:

Clay County
Attn: Howard Wanamaker, County Manager
P.O. Box 1366
Green Cove Springs, Florida 32043

With Copy to:
Clay County
Attn: Courtney Grimm, County Attorney
P.O. Box 1366
Green Cove Springs, Florida, 32043

Notices, demands and communications to Peters Creek Investments, LLP:

George M. Egan
Peters Creek Investments, LLP

1845 Town Center Parkway Suite 105
Fleming Island, Florida 32003

And

Gerald Agresti
Managing Partner
6833 Old Church Road
Fleming Island, Florida 32003

b. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and assigns. PCI may assign any or all of its rights and obligations under this Agreement. In the event of such assignment, the term “PCI” in this Agreement shall refer to such assignee(s). At least thirty (30) days prior to any such assignment, a notice of such assignment, identifying the assignee(s) and containing an acknowledgement by the assignee(s) of its assumption of any rights and obligations assigned to it by PCI under this Agreement, shall be provided to the County. Upon the date of the assignment of all obligations and liabilities under this Agreement and providing notice of such assignment to the County, the original contracting party to this Agreement, Peters Creek Investments, LLP will have no further obligations under this Agreement. Any assignment by PCI of its rights and obligations under this Agreement (by way of example and not by limitation, assignment to a community development district) may provide for a reassignment by the assignee back to PCI of the Credit to which the assignee may be entitled as a consequence of the donation of the Community Park Site; and, under such reassignment, PCI shall own and hold the Credits prior to or as of the date of the Credit approval as defined in Section 3. herein, and shall be authorized to submit documentation to the County and seek approval of the amount of Credit as provided in Section 3. herein.

c. Waiver. No waiver by either party of any term or condition of this Agreement will be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, subparagraph, clause, phrase, or other provision of this Agreement.

d. Voluntariness. The parties have voluntarily entered into this Agreement in consideration of the benefits and the rights of the parties arising hereunder.

e. Agreement Executed in Counterparts. This Agreement may be executed in two or more counterparts, each of which is considered and shall be deemed to be an original, but only one agreement is intended hereby.

f. Merger of Agreement Terms. This Agreement constitutes the entire understanding and agreement of the parties as to the subject matter hereof, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter.

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

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

i. Amendment to Agreement. Unless otherwise provided in this Agreement, no amendment or modification of this Agreement shall be effective or binding upon the parties unless such amendment or modification is in writing and has been executed by the parties.

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

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

l. Applicable Law, Jurisdiction and Venue. This Agreement and the rights and obligations of the parties under this Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter of this Agreement shall be exclusively in Clay County, Florida. If any provision of this Agreement, or the application of this Agreement to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

m. Time is of the Essence. Time is of the essence with respect to this Agreement and each of its terms and provisions.

n. This Agreement shall be binding on the parties and their respective successors and specific assignees.

o. Authority. The parties agree to utilize electronic signatures and that the digital signatures of the parties set forth below are intended to authenticate this Agreement and have the same force and effect as manual written signatures. Each person signing on behalf of the parties represents and warrants that he/she has full authority to execute this Agreement on behalf of such party and that the Agreement will constitute a legal and binding obligation of such party.

p. Effective Date. The effective date of this Agreement shall be the date the notice of abandonment of the Saratoga Springs Development of Regional Impact is recorded in the Clay County public records by the County.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PETERS CREEK INVESTMENTS LLP
a Florida limited liability partnership

By: _____
George M. Egan
Managing Representative

CLAY COUNTY, FLORIDA

By: _____
Wayne Bolla, Its Chairman

Attest:

Tara S. Green,
Clay County Clerk of Court and Comptroller
Ex Officio Clerk to the Board

Exhibit A

Peters Creek Investments, LLC Ownership

A parcel of land consisting of a portion of Sections 24, 25, 26 and 36, Township 5 South, Range 25 East; together with a portion of Sections 30, 31 and 32, Township 5 South, Range 26 East; also together with a portion of Section 6, Township 6 South, Range 26 East; all in Clay County, Florida; said parcel being more particularly described as follows:

Begin at the northwest corner of said Section 6; thence on the south line of said Section 36 run South 89 degrees 31 minutes 43 seconds West, 3817.08 feet; thence northwesterly, along the arc of a curve concave northeasterly and having a radius of 1025.0 feet, an arc distance of 646.24 feet, said arc being subtended by a chord bearing and distance of North 72 degrees 24 minutes 34 seconds West, 635.59 feet; thence North 54 degrees 20 minutes 51 seconds West, 1882.92 feet to the west line of said Section 36; thence on said west line run the following 2 courses: 1) North 00 degrees 47 minutes 23 seconds East, 1064.88 feet to the west ¼ corner of said Section 36; 2) North 00 degrees 21 minutes 49 seconds West, 2575.50 feet to the northwest corner thereof; thence on the south line of said Section 26 run South 89 degrees 50 minutes 00 seconds West, 1288.35 feet; thence North 02 degrees 13 minutes 00 seconds East, 1836.89 feet; thence North 13 degrees 34 minutes 21 seconds East, 729.84 feet; thence North 48 degrees 02 minutes 30 seconds East, 388.01 feet; thence North 23 degrees 27 minutes 36 seconds East, 806.59 feet; thence North 51 degrees 19 minutes 48 seconds West, 97.01 feet; thence North 36 degrees 46 minutes 25 seconds East, 526.64 feet; thence North 40 degrees 33 minutes 38 seconds East, 765.54 feet; thence North 23 degrees 17 minutes 21 seconds East, 685.34 feet; thence South 53 degrees 00 minutes 54 seconds East, 236.48 feet; thence North 13 degrees 52 minutes 34 seconds East, 612.20 feet; thence North 60 degrees 20 minutes 29 seconds East, 1501.14 feet; thence North 44 degrees 44 minutes 37 seconds East, 251.08 feet; thence North 31 degrees 08 minutes 15 seconds West, 649.70 feet; thence North 54 degrees 54 minutes 20 seconds East, 272.23 feet; thence South 39 degrees 58 minutes 26 seconds East, 9873.41 feet; thence South 39 degrees 57 minutes 40 seconds East, 1212 feet, more or less, to the centerline of Peters Creek; thence along said centerline in a general southwesterly direction, following the meanderings thereof, 268 feet, more or less, to the west line of the Southeast 1/4 of the Northeast 1/4 of said Section 31; thence on last said line, South 00 degrees 09 minutes 57 seconds East, 1090 feet, more or less, to the north line of lands described in Official Records Book 580, page 590, of the public records of said county; thence on last said line, and then on the north line of lands described in Official Records Book 580, page 592, of said public records, and then on the easterly projection thereof, run South 87 degrees 53 minutes 11 seconds East, 1376.17 feet to the west line of County Road C-315; thence on last said line, run South 01 degree 47 minutes 45 seconds West, 2417.43 feet; thence continue on said west line and along the arc of a curve concave easterly and having a radius of 11,499.16 feet, an arc distance of 437.86 feet, said arc being subtended by a chord bearing and distance of South 00 degree 42 minutes 22 seconds West, 436.83 feet; thence continue on said west line, South 00 degrees 23 minutes 01 second East, 5115.13 feet to the south line of said Section 6; thence on last said line, South 89 degrees 28 minutes 50 seconds West, 1285.86 feet to the west line of the East 1/2 of the East 1/2 of said Section 6; thence on last said line, North 00 degrees 23 minutes 40 seconds West, 2228.83 feet; thence North 75 degrees 23 minutes 40 seconds West, 700.00 feet; thence North 58 degrees 31 minutes 48 seconds West, 1725.03 feet; thence North 74 degrees 08 minutes 00 seconds West, 1890.87 feet to the west line of said Section 6; thence on last said line, North 01 degree 02 minutes 42 seconds West, 1430.62 feet to the point of beginning.

Less and Except those lands described in Official Records Book 4327, page 193 of said public records.

Less and Except those lands described in Official Records Book 3729, page 53 of said public records.

Being 2,404 acres, more or less, in area.

Exhibit B

Community Park and Civic Site (Alternative Site)

Location Map

