

Meeting Date
August 18, 2015



AGENDA	
Section	New Business
Item No.	VI F 2

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	County joinder in proposed Consolidated Mitigation and Concurrency Agreement Regarding School Facilities for the Viera Development of Regional Impact between the School Board of Brevard County and The Viera Company (the Consolidated School Agreement).
DEPT/OFFICE:	Citizen Request – The Viera Company

Requested Action:

It is requested that the Board authorize the Chairman to execute a joinder to the Consolidated School Agreement, consenting to the school mitigation measures proposed thereunder and acknowledging that residential units authorized under the Master Development Plan of the Viera Development Order shall not be subject to the County's school concurrency review process so long as the Agreement remains in effect without any default thereunder.

Summary Explanation & Background:

Pursuant to the Viera Development Order adopted by the Board under Resolution 09-272 (Substantial Deviation #2), The Viera Company ("TVC") and the School Board of Brevard County ("School Board") are required to amend their existing "School Facilities Agreement" with respect to residential units authorized under the prior Substantial Deviation #1 and enter into a new school facilities agreement regarding the additional residential units authorized under Substantial Deviation #2. To meet these requirements, TVC and the School Board's staff propose that the objectives set forth in the Development Order may be best accomplished with a single "consolidated" agreement addressing school mitigation and concurrency for both units authorized under Substantial Deviation #1 and Substantial Deviation #2.

The resulting Consolidated School Agreement provides for sufficient mitigation to offset the applicable units' impact to school facilities and memorializes the satisfaction of school concurrency in connection therewith. Although not yet approved by the School Board, the School Board's staff has reviewed the Consolidated School Agreement and supports its approval. The major provisions of the Consolidated School Agreement are:

1. TVC shall complete the conveyance of school sites previously required for units authorized under Substantial Deviation #1 and donate 4 additional school sites in connection with units authorized under Substantial Deviation #2;
2. TVC shall waive the educational facilities impact fee credits not yet redeemed with respect to all prior and future school sites conveyed by TVC; and
3. TVC shall extend roads and all other necessary infrastructure to each school site at its sole cost and expense.

Under the Public School Facilities Element of the Brevard County Comprehensive Plan, the County has adopted a concurrency management system and established a school concurrency review process for residential projects; and on or about September 16, 2014, the Board approved and entered into the Interlocal Agreement for Public School Facility Planning and School Concurrency under which the County is a participant in the school concurrency and mitigation approval process. Pursuant to the County's Comprehensive Plan and the referenced Interlocal Agreement, the County (as the local government having jurisdiction over development within the Viera DRI) is requested to join in the proposed Consolidated School Agreement.

The Viera Company, Todd Pokrywa, SVP Land Use Planning & Development, todd.pokrywa@duda.com, 321.242.1200.

Clerk to the Board Instructions:

Exhibits Attached: Draft Consolidated Schools Agreement, Exhibit A - Sketch Showing General Location of Remaining Central Viera School Site (Draft), Exhibit B - Sketch Showing General Location of SD #2 Required School Sites (Draft), Exhibit C - Form of Deed (Draft), Exhibit D - Permitted Exceptions to Title (Draft)

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager	Assistant County Manager	Department Director / Extension
Stockton Whitten	Assistant County Manager	



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
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August 19, 2015

MEMORANDUM

TO: Scott Knox, County Attorney Attn: Eden Bentley

RE: Item VI.F.2., County Joinder in Proposed Consolidated Mitigation and Concurrency Agreement Regarding School Facilities for the Viera Development of Regional Impact Between the School Board of Brevard County and The Viera Company (Consolidated School Agreement)

The Board of County Commissioners, in regular session on August 18, 2015, executed a Joinder to the Consolidated Mitigation and Concurrency Agreement Between the School Board of Brevard County and The Viera Company, consenting to the school mitigation measures proposed thereunder and acknowledging that residential units authorized under the Master Development Plan of the Viera Development Order shall not be subject to the County's school concurrency review process so long as the Agreement remains in effect without any default thereunder. Enclosed are three executed copies of the Agreement.

Upon execution by the School Board of Brevard County, please return a fully-executed Agreement to this office for inclusion in the official minutes of the Board.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

Encls. (3)

cc: Contracts Administration
County Manager

CONSOLIDATED MITIGATION AND CONCURRENCY AGREEMENT
REGARDING SCHOOL FACILITIES
FOR THE VIERA DEVELOPMENT OF REGIONAL IMPACT

THIS CONSOLIDATED MITIGATION AND CONCURRENCY AGREEMENT REGARDING SCHOOL FACILITIES FOR THE VIERA DEVELOPMENT OF REGIONAL IMPACT (hereinafter referred to as the “**Agreement**”) is made and entered into as of the 18 day of August, 2015, by and between the SCHOOL BOARD OF BREVARD COUNTY, a legal governmental body established under the Florida Constitution (hereinafter referred to as the “**School Board**”), and THE VIERA COMPANY, a Florida corporation (hereinafter referred to as “**TVC**”); joined by Brevard County, Florida, a political subdivision of the State of Florida (hereinafter referred to as “**Brevard County**”).

R E C I T A L S:

A. TVC is the owner and master developer of that certain mixed-use development of regional impact, as such term is defined in Chapter 380 of the Florida Statutes, located in central Brevard County, Florida, known as the master planned development of Viera (hereinafter referred to as the “**Viera DRI**”).

B. Brevard County issued the initial development order for the Viera DRI on November 13, 1990, which pertained primarily to approximately 3,231 acres located east of Interstate Highway 95 (hereinafter referred to as “**Viera East**”); and thereafter adopted Resolution 95-106 on April 5, 1995 (hereinafter referred to as “**Substantial Deviation #1**”), amending the initial development order to include 5,848 additional acres west of Interstate Highway 95 (hereinafter referred to as “**Central Viera**”) and authorizing the development of up to a total of 18,945 residential dwelling units within the Viera DRI (hereinafter referred to as the “**SD #1 Units**”); which initial development order as modified by Substantial Deviation #1 is hereafter referred to as the “**Prior Development Order**”.

C. The Prior Development Order was thereafter amended and restated by Brevard County pursuant to Resolution No. 09-272, adopted and approved by the Brevard County Board of County Commissioners on December 15, 2009; which amended and restated development order was subsequently modified by Resolution No. 10-105 and Resolution No. 14-120, respectively adopted and approved by the Brevard County Board of County Commissioners on May 27, 2010 and July 22, 2014 (hereinafter collectively referred to as the “**Restated Development Order**”).

D. The Restated Development Order modified the geographical boundaries of the Viera DRI to include an additional 11,567 acres located west of Interstate Highway 95, including 5,258 acres reserved for the Viera Wilderness Park in which non-agricultural development is prohibited (hereinafter referred to as “**West Viera**”); and authorized the development of an additional 11,000 residential dwelling units within the Viera DRI (hereinafter referred to as the

“SD #2 Units”); so that pursuant to the Restated Development Order, the Viera DRI contains a total of approximately 20,646 acres and its approved development program authorizes development of up to 29,945 residential dwelling units.

E. The Prior Development Order imposed certain requirements on TVC intended to mitigate the impacts of the Viera DRI on public schools in accordance with the Florida Statutes, including but not limited to, requiring the conveyance of one (1) public elementary school site in Viera East and five (5) additional public school sites in Central Viera consisting of three (3) elementary school sites, one (1) junior high/middle school site and one (1) high school site (hereinafter referred to collectively as the “SD#1 Required School Sites”); and requiring that TVC enter into agreements with the School Board regarding (i) the location and re-location of public school sites in the Viera DRI, the timing of the conveyance of such school sites, and other matters relating to public school facilities serving the Viera DRI.

F. Anticipating Brevard County’s adoption of the initial development order for the Viera DRI, the Board and TVC entered into that certain Agreement Regarding School Facilities dated July 24, 1990, which Agreement was subsequently modified by that certain Amendment to Agreement Regarding School Facilities dated as of July 30, 1998, to facilitate compliance with Substantial Deviation #1, including establishing the terms and conditions by which TVC would convey the SD#1 Required School Sites to the School Board; and subsequently further amended by that certain Second Amendment to Agreement Regarding School Facilities dated as of August 27, 2002.

G. Such prior agreement, as twice amended, was thereafter amended and restated in its entirety by that certain Amended and Restated Agreement Regarding School Facilities entered by the School Board and TVC as of August 11, 2003, which Amended and Restated Agreement was subsequently modified by that certain Amendment to Amended and Restated Agreement Regarding School Facilities dated as of October 11, 2004 (hereinafter collectively referred to as the “**Prior School Facilities Agreement**”).

H. Pursuant to the Prior School Facilities Agreement, TVC has heretofore conveyed five (5) of the six (6) SD#1 Required School Sites to the School Board as follows: 1) Viera East Elementary School Site (Ralph M. Williams Elementary School) conveyed on October 30, 1998; 2) Central Viera Elementary School Site No. 1 (Manatee Elementary School) conveyed on July 1, 2003; 3) Central Viera Elementary School Site No. 2 (Quest Elementary School) conveyed on May 7, 2004; 4) Senior High School Site (Viera High School) conveyed on December 2, 2004; and 5) Junior High/Middle School Site (school to be constructed) conveyed on December 2, 2004 (hereafter referred to as the “**Central Viera Middle School Site**”); and the only remaining school site to be conveyed under the Prior School Facilities Agreement is Central Viera Elementary School Site No. 3 (hereinafter referred to as the “**Remaining Central Viera School Site**”).

I. Prior to Brevard County's adoption of the Restated Development Order, Brevard County amended its comprehensive plan to adopt a public school facilities element, a capital improvement element and an intergovernmental coordination element in accordance with Chapter 163, Florida Statutes, to establish school concurrency and, in connection therewith, establish jointly adequate county-wide public school level-of-service standards as provided in Section 163.3180(6)(b), Florida Statutes (hereafter referred to as the "**Applicable LOS**").

J. The Restated Development Order requires that TVC engage the School Board to modify the Prior School Facilities Agreement to release TVC's reversionary interest in the previously conveyed Central Viera Middle School Site and waive TVC's right to receive reimbursement from educational impact fees with respect to certain SD#1 Required School Sites; and to enter into an agreement determining and providing appropriate mitigation for impacts to public school facilities hereafter arising from the development of the SD#2 Units.

K. Brevard County and the School Board, together with certain municipalities located in Brevard County, have entered into an Interlocal Agreement for Public School Facility Planning and School Concurrency, dated June 2014 (hereinafter referred to as the "**Interlocal Agreement**"), which requires the School Board to negotiate with developers to establish contributions that will satisfy school concurrency requirements for non-exempt residential development.

L. The parties desire to memorialize herein their mutual agreements regarding the restatement and amendment of the Prior School Facilities Agreement addressing the mitigation of public school impacts relating to the SD#1 Units and its consolidation with the parties' agreements applying school concurrency to the SD#2 Units and appropriately mitigating the impacts to public school facilities arising from the SD#2 Units, all in accordance with the applicable Florida Statutes, including but not limited to Chapter 163 and Chapter 380, Brevard County's comprehensive plan, Brevard County's land development regulations and all other applicable regulations, and the Interlocal Agreement, as each may be amended from time to time (hereinafter collectively referred to as "**Applicable Law**").

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby mutually acknowledged by the parties hereto, TVC and the School Board hereby agree as follows:

1. Recitals; Status of Prior School Facilities Agreement. The recitals set forth hereinabove are true and correct and are incorporated herein by reference as if set forth herein verbatim. This Agreement amends and restates in its entirety the terms, conditions and provisions of the Prior School Facilities Agreement and sets forth the restated and additional agreements of the parties hereto with respect to the SD#1 Required School Sites and the mitigation of impacts to public school facilities arising in connection with development of the SD#1 Units; and, additionally, this Agreement addresses school concurrency as it shall be hereafter applied to the SD#1 Units and the SD#2 Units and the mitigation of impacts to public school facilities arising from the development of the SD#2 Units.

2. Central Viera Middle School Site - Release of Reversionary Interest. TVC previously conveyed the Central Viera Middle School Site to the School Board by a deed providing that if construction of a public junior high/middle school did not commence on the site within five (5) years after the date of conveyance, title to the Central Viera Middle School Site will revert to TVC. The School Board has requested that TVC release such reverter and quit-claim to the School Board all of TVC's right, title and interest in and to the Central Viera Middle School Site arising in connection with such reverter. TVC agrees that simultaneously with the full execution of this Agreement, TVC shall release, convey and quit-claim its reversionary interest in and to the Central Viera Middle School Site to the School Board, whereupon such reverter shall be null and void and of no further force and effect. Such release, conveyance and quit-claim shall be by written instrument satisfactory to the School Board and recorded in the Public Records of Brevard County, Florida.

3. Conveyance of Remaining Central Viera School Site. The Remaining Central Viera School Site containing not less than eighteen (18) "Useable Acres" (as defined below) shall be situated within the area generally shown on Exhibit "A" attached hereto or at such other location within that portion of the Viera DRI described as the "West Viera Expansion Area" in the Restated Development Order, as TVC and the School Board may hereafter mutually agree in accordance with paragraph 8 below. The Remaining Central Viera School Site shall be conveyed to the School Board for purposes of constructing and operating a public elementary school thereon, provided, however, that the School Board shall have the sole and absolute right to determine the grade configuration of such elementary school. Upon the School Board and TVC designating the specific location and boundaries of the Remaining Central Viera School Site, TVC shall obtain and deliver to the School Board a "Survey" and "Title Commitment" (as such terms are defined below) for the Remaining Central Viera School Site in accordance with paragraph 7 below.

4. Conveyance of West Viera School Sites. In addition to the SD#1 Required School Sites previously conveyed by TVC to the School Board and the prospective conveyance of the Remaining Central Viera School Site, TVC shall convey to the School Board four (4) additional school sites located in West Viera, which additional school sites are hereinafter collectively referred to as the "**SD#2 Required School Sites**" and are more particularly described as follows:

(a) TVC shall convey to the School Board two (2) additional elementary school sites in West Viera, each containing not less than eighteen (18) Useable Acres, in accordance with the terms and conditions applicable to such donation set forth in this Agreement (hereinafter referred to individually as "**West Viera Elementary School Site No. 1**" and "**West Viera Elementary School Site No. 2**" and collectively as the "**West Viera Elementary School Sites**"). Each West Viera Elementary School Site shall be conveyed to the School Board for purposes of constructing and operating a public elementary school thereon, provided, however, that the School Board shall have the sole and absolute right to determine the grade configuration of each such elementary school, including, but not limited to, the inclusion of grades in addition to kindergarten through sixth grade. West Viera Elementary School Site No. 1 and No. 2 shall be situated within the areas generally shown on Exhibit "B" attached hereto and made a part

hereof, or at such other locations as TVC and the School Board may from time to time hereafter mutually agree pursuant to paragraph 8 below. At such time as the School Board and TVC agree as to the specific location and boundaries of each West Viera Elementary School Site, TVC shall obtain and deliver to the School Board a Survey and Title Commitment for the applicable school site in accordance with paragraph 7 below.

(b) TVC shall convey to the School Board one (1) additional middle school site located in West Viera containing thirty-five (35) Useable Acres, in accordance with the terms and conditions applicable to such donation set forth in this Agreement (hereinafter referred to as the “**West Viera Middle School Site**”). The West Viera Middle School Site shall be conveyed to the School Board for purposes of constructing and operating a public middle school thereon, provided, however, that the School Board shall have the sole and absolute right to determine the grade configuration of such middle school. The West Viera Middle School Site shall be situated within the area generally shown on Exhibit “B” attached hereto or at such other location as TVC and the School Board may from time to time hereafter mutually agree pursuant to paragraph 8 below. At such time as the School Board and TVC agree as to the specific location and boundaries of the West Viera Middle School Site, TVC shall obtain and deliver to the School Board a Survey and Title Commitment for the West Viera Middle School Site in accordance with paragraph 7 below.

(c) TVC shall convey to the School Board one (1) additional senior high school site located in West Viera containing fifty (50) Useable Acres, in accordance with the terms and conditions applicable to such donation set forth in this Agreement (hereinafter referred to as the “**West Viera High School Site**”). The West Viera High School Site shall be conveyed to the School Board for purposes of constructing and operating a public senior high school thereon, provided, however, that the School Board shall have the sole and absolute right to determine the grade configuration of such high school. The West Viera High School Site shall be situated within the area generally shown on Exhibit “B” attached hereto, or at such other location as TVC and the School Board may hereafter mutually agree pursuant to paragraph 8 below. At such time as the School Board and TVC agree as to the specific location and boundaries of the West Viera High School Site, TVC shall obtain and deliver to the School Board a Survey and Title Commitment for the West Viera High School Site in accordance with paragraph 7 below.

5. Waiver of Right to Receive Impact Fee Reimbursements. With respect to the Central Viera Middle School Site, the Remaining Central Viera School Site and each of the SD#2 Required School Sites, TVC waives, releases and assigns to the School Board all of its right and interest to receive educational facilities impact fee credits and the “School Impact Fee Credit Reimbursement” (as defined below) under Brevard County Ordinance No. 04-34 (hereinafter referred to as the “**School Impact Fee Ordinance**”) and the Educational Facilities Impact Fee Credit/Redemption Agreement dated as of September 28, 2004, between Brevard County, the School Board, and TVC (together with all related Educational Facilities Impact Fee Credit Redemption Disbursement Agreements executed by the parties in accordance therewith) (hereinafter collectively referred to as the “**Impact Fee Credit Agreement**”), as expressly provided in paragraph 11 below. Notwithstanding any other provision of this Agreement, the Central Viera Middle School Site, the Remaining Central Viera School Site and each of the

SD#2 Required School Sites shall be conveyed to the School Board for nominal consideration and each conveyance shall be construed as a donation to the School Board in consideration of the mutual agreements and covenants set forth herein and, in conjunction with the previously conveyed SD#1 Required School Sites, as full and complete mitigation of the impacts to public educational facilities arising from or in connection with the development of the SD#1 Units and the SD#2 Units.

6. General Terms and Conditions of Closing the Conveyance of the Remaining Central Viera School Site and Each SD#2 Required School Site.

(a) Conditions Precedent to Closing Each Conveyance. The obligation of TVC to convey the Remaining Central Viera School Site and each SD#2 Required School Site to the School Board, including without limitation, the delivery of the deed described below, is expressly subject to and conditioned upon the satisfaction of each of the following conditions:

(i) Need. The School Board shall have notified TVC that the proposed school facility to be constructed on the subject school site is required to provide sufficient school capacity within the Viera DRI's school concurrency service areas to maintain the Applicable LOS and to mitigate impacts on school facilities directly attributable to students of the applicable type generated within the Viera DRI;

(ii) Preliminary Plan. The general design and site plan for the proposed school facility to be constructed on the subject school site shall have been delivered to TVC, which design and site plan shall identify the construction materials, exterior elevations and general location of all school facilities (including without limitation parking areas, driving lanes, driveways to and from the site and stormwater drainage discharge structures) proposed for such school site (hereinafter collectively referred to as the "**Pre-Donation Preliminary Plan**");

(iii) Funding.

a. The School Board shall have received a written commitment from the Florida Department of Education or an agency thereof, to provide funding sufficient to commence and complete the construction of a public school of the type permitted under this Agreement for the subject school site; specifically the State Board of Education of Florida shall have approved in writing (i) the construction of such public school on the subject school site as a school capital outlay project, and (ii) the School Board's request for project encumbrance authorization permitting the expenditure of state capital outlay funds in an amount sufficient to build such public school on the subject school site; or

b. The School Board shall have otherwise confirmed that sufficient funding to commence and complete construction of the proposed public school on the subject site has been obtained;

(iv) Contract Authorization. The School Board shall have authorized the Superintendent of Schools to enter into a contract for the construction of a public school of the type permitted under this Agreement for the subject school site;

(v) Approval of Plat. If the Brevard County Land Development Regulations require that the subject school site be platted prior to development, Brevard County shall have approved a subdivision plat of the subject school site and such plat shall have been recorded in the Public Records of Brevard County. A recorded subdivision plat as a condition precedent to TVC's conveyance of the Remaining Central Viera School Site and each of the SD#2 Required School Sites set forth in this subparagraph may be waived upon the mutual agreement of the School Board and TVC; and

(vi) Amendment of Applicable PUD Agreement. If the location of a subject school site is designated pursuant to paragraph 8 in an area of the Viera DRI not approved for immediate development, TVC shall have received final governmental approval of an amendment to the applicable PUD Agreement or such other governmental approval necessary to facilitate the immediate development of the designated school site as a public education facility.

(b) Closing. The conveyance of the Remaining Central Viera School Site and each of the SD#2 Required School Sites shall be closed within ninety (90) days following the satisfaction of the conditions precedent set forth above with respect to the applicable school site, on such date and at such time as the parties may mutually agree upon. At and as a part of each closing, TVC and the School Board shall stipulate and agree as to the fair market value of the subject school site and TVC shall execute and deliver to the School Board a special warranty deed subject only to matters set forth in Exhibit "D" attached hereto and made a part hereof, including, but not limited to, the Restated Development Order, as same may be hereafter amended and/or modified from time to time (hereinafter referred to as the "**Permitted Exceptions**"), and matters otherwise permitted in accordance with this Agreement. The special warranty deed shall be in form and content substantially as set forth in Exhibit "C" attached hereto and made a part hereof, and include: (i) a restrictive covenant restricting the primary use of such site in accordance with subparagraph 6(d) below, (ii) a reservation of the reversionary interest as described in subparagraph 6(d) below, and (iii) a reservation of non-exclusive easements as described in items (ii) and (iii) in subparagraph 7(b) below. At each closing, TVC shall also execute and deliver to the School Board two (2) duplicate original closing statements and such additional closing documents as may be reasonably required by the School Board or the "Title Insurer" (as defined below) to consummate the conveyance of the applicable school site. Simultaneously therewith, the School Board shall execute and deliver to TVC two (2) duplicate original closing statements and such additional closing documents as may be reasonably required by TVC or the Title Insurer to consummate the conveyance of such school site to the School Board. Each closing shall be held at the School Board's offices at the Brevard County Educational Services Center located in Viera or at the office of the Title Insurer.

(c) Closing Costs and Other Expenses. Closing costs relating to the conveyance of each school site shall be allocated and real estate taxes shall be prorated as

follows: TVC shall pay the cost of all title search fees incurred in connection with issuing the "Title Commitment" (as defined below) with respect to such site, the cost of the "Survey" (as defined below), and the cost of recording curative documents, if any, necessary to convey good and marketable title to the School Board; the School Board shall be responsible for paying the cost of documentary tax applicable to the special warranty deed conveying such site, the cost of recording such special warranty deed, and the title insurance premium due in connection with the fee owner's title insurance policy issued with respect to such site. Each party shall pay its respective attorneys' fees and costs incurred in connection with closing the conveyance of each school site. If any closing shall occur between January 1 and November 1 of any year, TVC shall deposit in escrow with the county tax collector the prorated real estate taxes for such year applicable to the school site which is the subject of such closing in accordance with the requirements of Section 196.295, Florida Statutes.

(d) Restriction as to Primary Use; Reservation of Reversionary Interest. The special warranty deed conveying the Remaining Central Viera School Site and each SD#2 Required School Site from TVC to the School Board shall contain a restrictive covenant limiting the primary use of each school site to the development, construction and operation of a public school thereon complying with the construction requirements set forth in subparagraph 10(a) below. Notwithstanding any other provision of this Agreement, the following reversionary interest shall be reserved unto TVC in each special warranty deed hereafter conveying a school site to the School Board: The fee simple title to such school site shall revert to TVC in the event the School Board fails to commence construction of the type of public school contemplated for such site under this Agreement within two (2) years after the date on which the site is donated and conveyed to the Board. For purposes of this subparagraph, the term "commence construction" shall be deemed to mean the following: (i) the State Board of Education of Florida has approved the construction of such public school and the expenditure of capital outlay funds in connection therewith, or the School Board has otherwise obtained funds sufficient to finance the complete construction of such public school and committed such funds to such construction, (ii) the School Board has entered into a Contract or Contracts to construct such public school in its entirety, (iii) the School Board has issued a "notice to proceed" or other written instructions to the contractors under such Contract(s) authorizing work to commence in accordance therewith, and (iv) the construction of the proposed public school has actually commenced on the subject school sites in accordance with such Contract(s).

7. Boundary Survey and Evidence of Title.

(a) Boundary Survey. At such time as a "Notice of Designation" (as defined below) is issued designating the specific location of any school site required to be conveyed hereunder and after the expiration of the "Inspection Period" (as defined below) with respect to such site (or waiver thereof by the School Board) or, if applicable, concurrently with platting such site, TVC, at TVC's expense, shall obtain and furnish to the School Board a boundary survey prepared by a registered Florida professional land surveyor and meeting the minimum technical standards promulgated by the Florida Board of Professional Land Surveyors (herein referred to as the "**Survey**"). The Survey shall be certified to the School Board, TVC and the Title Insurer and the law firm of Dean Mead or other title insurance agent (hereinafter referred to

as the “**Issuing Agent**”). Should the Survey disclose any material encroachment involving the subject school site or other material survey defect, the School Board may object to such defects in the same manner as provided for an objection to title pursuant to subparagraph 7(c) below and, in such event, the survey objection shall be treated as a title defect in the manner provided in such subparagraph.

(b) **Title Commitment.** Prior to closing the conveyance of any school site required to be conveyed hereunder, TVC shall procure issuance by the Issuing Agent, as agent for Chicago Title Insurance Company or other national title insurance company doing business in the State of Florida (herein referred to as the “**Title Insurer**”), of a commitment for title insurance for the particular site at the lowest promulgated rate (herein referred to as the “**Title Commitment**”), wherein the Title Insurer agrees to issue to the School Board, upon recording the deed to the School Board, a fee owner's title insurance policy (ALTA Form “B”) in the amount of the fair market value of the applicable school site (as stipulated and agreed to by the parties at and as a part of closing), subject only to the **Permitted Exceptions**, (ii) a fifty foot (50') easement along the boundary of any site adjacent to an arterial or collector road and, with respect to a corner site, a twenty-five foot (25') easement along the boundary of any site adjacent to a secondary road, which easements shall be for drainage, utilities, sidewalk, landscaping and related improvements, (iii) a ten foot (10') easement along all other boundaries of the site for drainage, utilities, landscaping and related improvements, (iv) such additional utility easements, as reasonably necessary, for service providers to extend and maintain utilities to the site, and (v) the so-called “standard exceptions” contained on the inside jacket cover of the Title Insurer's standard form of commitment. The Title Commitment shall contain a statement whereby the Issuing Agent agrees to comply with Section 627.7842, Florida Statutes, concerning the deletion of standard exceptions upon receipt of the Survey and a construction lien and possession affidavit provided by TVC in form and content acceptable to the Title Insurer.

(c) **Examination of the Title Commitment.** The School Board shall have fifteen (15) days from the date of receipt of the Title Commitment relating to the applicable school site to examine the same and, if the Title Commitment discloses that title to such school site is subject to matters other than the Permitted Exceptions, the standard exceptions and matters otherwise permitted under this Agreement, which matters render title unmarketable, the School Board shall notify TVC in writing within the aforesaid fifteen (15) day period, specifying the defects. TVC shall have thirty (30) days from the date of receipt of said notice from the School Board within which to attempt to cure such defects. TVC shall use diligent effort to cure such defects within the time provided therefor; provided, however, that the term “diligent effort” shall not include the obligation to bring any legal or administrative proceeding or the obligation to spend funds in excess of Five Thousand Dollars (\$5,000.00). If TVC is unsuccessful in curing the defects within said thirty (30) day period, the School Board shall have the option to either (i) accept title as it then is, without any claim on the part of the School Board for damages as a result of such defects, or (ii) notify TVC that title to such school site is not acceptable, whereupon TVC and the School Board shall then cooperate in good faith to select another school site located within the Viera DRI for conveyance in lieu of such unacceptable school site, which alternate site shall be mutually agreeable to TVC and the School Board in all respects.

8. Location of School Sites and Other Facilities.

(a) Designation of Specific Site Locations. The School Board and TVC acknowledge and agree that the approximate location of the Remaining Central Viera School Site shown on attached Exhibit "A" and of each of the SD#2 Required School Sites shown on attached Exhibit "B" is conceptual and is intended only to provide for the general location of the Remaining Central Viera School Site, West Viera Elementary School Sites No. 1 and No. 2, the West Viera Middle School Site and the West Viera High School Site within a specific area of the Viera DRI. Accordingly, the School Board and TVC agree that the final and specific location of the Remaining Central Viera Elementary School Site and each of the SD#2 Required School Sites shall be hereafter designated by the School Board and TVC as provided in subparagraph 9(a) below. Notwithstanding any other provision of this Agreement, unless otherwise mutually agreed by TVC and the School Board, each school site shall contain not less than the number of Useable Acres specified in this Agreement for such school site. For purposes of this Agreement, the term "**Useable Acres**" shall mean and refer to the total acreage contained within any school site, excluding jurisdictional wetlands and areas in which the construction of a public school would be prohibited under applicable laws, regulations or rules intended to protect any species of regulatory concern other than the gopher tortoise, eastern indigo snake and caracara. The mitigation of impacts to the eastern indigo snake, caracara and gopher tortoise, if any, arising from the development and operation of school facilities on any school site conveyed to the School Board pursuant to this Agreement shall be the responsibility of the School Board as more particularly discussed in paragraph 9 below. Any impacts to isolated floodplains requiring compensatory storage in accordance with Chapter 62, Article X, Division 5, Brevard County Code of Ordinances, as a result of filling any part of the Useable Acres contained within any school site shall be provided by TVC outside the boundary of such school site.

(b) Relocation of School Sites. The School Board and TVC further agree that the general location of the Remaining Central Viera School Site and each of the SD#2 Required School Sites is subject to change based upon various factors including, but not limited to, the type and location of development and associated infrastructure occurring in the Viera DRI prior to the time such school site is conveyed to the School Board and the type and location of development expected to occur thereafter based on then current market factors and trends. Therefore, prior to the specific designation of the location of the Remaining Central Viera School Site or of any of the SD#2 Required School Sites as provided in paragraph 9(a) below, TVC may propose the relocation of such school site to another location within the Viera DRI which is more suitable for the school facility contemplated for such site based on development and land uses occurring within the Viera DRI, or projected to occur under TVC's then current planning and land development policies, which proposal may not be unreasonably disapproved by the School Board. In such event, TVC shall provide written notice of such re-location proposal to the School Board and thereafter TVC and the School Board shall cooperate in good faith to identify an alternative location for the subject school site which is mutually satisfactory.

(c) Co-location of Compatible Facilities. TVC acknowledges that the master development plan for the Viera DRI contemplates the construction of various recreational facilities for the use and benefit of the public, including without limitation, parks and athletic

fields. TVC and the School Board agree that the construction of such public facilities adjacent or proximate to public school sites conveyed to the School Board in accordance with this Agreement will facilitate the joint use of such facilities by the public and students attending the adjoining or proximate public school facilities. Therefore, TVC agrees to give due consideration to the joint use of public facilities by students in selecting the location of such facilities, and TVC shall attempt in good faith to cause such public facilities to be located adjacent or proximate to one or more of the school sites hereafter conveyed to the School Board by TVC pursuant to this Agreement, except and unless the co-location of such facilities would be inconsistent with the master development plan for the Viera DRI, as such plan is amended and/or modified from time to time. In consideration of TVC's efforts to cause the location of such public facilities adjacent or proximate to school sites to be conveyed hereunder, the School Board agrees to permit the joint use of certain school facilities such as auditoriums, meeting rooms, athletic fields and tracks, and playgrounds by students and the public, provided such joint use can be accommodated without unreasonably disrupting school operations or impairing the security and safety of students and employees of the School Board. The joint use of public facilities and school facilities contemplated under this subparagraph shall be in accordance with a separate joint use agreement or agreements to be entered into by and between the School Board and all other appropriate parties as the need from time to time arises.

9. Facilitating School Planning. To facilitate the School Board's orderly and timely planning, design and construction of school facilities on the Remaining Central Viera School Site and each of the SD#2 Required School Sites, the designation, platting and conveyance of each school site shall progress as follows:

(a) Notice of Intent to Commence Construction of School Facilities. To facilitate the timely designation and platting of an applicable school site and the completion of all permanent and temporary off-site infrastructure and related improvements to be constructed by TVC in accordance with paragraph 10 below, the School Board shall endeavor to deliver to TVC written notice of the School Board's intent to commence the construction of the proposed school facilities on the applicable school site not less than two (2) years prior to such commencement; provided, however, that in no event shall the School Board deliver such notice to TVC less than twelve (12) months prior to the School Board's proposed commencement date for such school facilities.

(b) Designation of Site. Upon TVC's receipt of written notice of the School Board's intention to commence construction of proposed school facilities on an applicable school site in accordance with subparagraph 9(a) above, TVC and the School Board shall cooperate in good faith to designate the specific location and boundaries of the applicable school site in an efficient and prompt manner. The School Board and TVC each acknowledge and agree that the criteria for designating the specific location of each school site shall include a reasonable consideration of TVC's development program and construction timetable for the area containing the school site upon which such school facilities are proposed so that any off-site community infrastructure necessary to accommodate the proposed school facilities may be constructed and/or extended to the designated site in a timely, efficient and economical manner in accordance with paragraph 10 below. Upon mutually agreeing on the specific location and

boundaries of a site on which the School Board proposes to construct the applicable school facilities pursuant to this Agreement, the parties shall confirm the designation of such site in writing, signed on behalf of each party, which writing shall include a sketch of the designated site (herein referred to as the “**Notice of Designation**”).

(c) Inspection of Designated Site. Unless waived in writing by the School Board, commencing on the date a Notice of Designation is issued with respect to a school site to be conveyed hereunder and continuing for forty-five (45) days thereafter (herein referred to as the “**Inspection Period**”), the School Board shall have the right to conduct, at the School Board’s sole cost and expense, such feasibility studies, environmental assessments, surveys, soil borings, engineering studies and other studies, tests and investigations as the School Board deems necessary to determine the suitability of such site for the proposed school facilities (hereinafter referred to as the “**Inspections**”). The School Board and its independent contractors shall have the right to enter upon the site as reasonably necessary during the Inspection Period to conduct the Inspections, provided such entry and Inspections shall not damage the site or any adjacent property. In consideration of the foregoing right of entry, the School Board (subject to the limitations set forth in Section 768.28, F.S.) shall at all times during the Inspection Period, indemnify, hold harmless and defend TVC from and against any and all claims, liabilities, losses, costs, damages and expenses (including reasonable attorneys’ fees at or before the trial level and in any appellate proceeding) suffered or incurred by TVC as a result of the School Board or its independent contractors entering upon the site, including, but not limited to, claims, liabilities, losses, costs, damages and expenses arising from any property damage or any personal injury, or the filing of any construction lien or other lien, claim or demand against the site and/or TVC by an independent contractor of the School Board. The foregoing obligation of the School Board to indemnify, hold harmless and defend TVC shall survive the conveyance of the site and the expiration or termination of this Agreement.

(i) Wildlife Surveys and Mitigation. The School Board acknowledges that several animal and plant species currently or hereafter listed as threatened, endangered or protected under federal and/or Florida law are present or may be present on a permanent or transitory basis within the Viera DRI (hereinafter referred to collectively as the “**Listed Species**”). The Listed Species currently include without limitation, caracara, bald eagle, Florida sandhill crane, gopher tortoise, Southeastern American kestrel, eastern indigo snake, American alligator, limpkin, blue heron, roseate spoonbill, snowy egret, tricolored heron, white ibis, wood stork, and various plant species including without limitation blue butterwort, yellow butterwort, cinnamon fern and royal fern. The School Board shall be solely responsible for determining whether any of the Listed Species affect a school site which is hereafter the subject of a Notice of Designation by conducting such surveys as the School Board deems necessary during the Inspection Period. If the Inspections for any designated school site hereafter indicate that one or more of the Listed Species affect such site or is thereafter determined to affect such site, the School Board shall be solely responsible to mitigate the impacts on the applicable species arising from the development and use of such site, which mitigation shall be in accordance with applicable law and governmental permits at the School Board’s sole cost and expense; including but not limited to, the relocation of gopher tortoises and eastern indigo snakes residing on such site to a recipient area approved by each regulatory agency having jurisdiction. To the extent the

Viera Wilderness Park is an approved recipient area for gopher tortoises and eastern indigo snakes at the time of any such relocation, such species may be relocated to the Viera Wilderness Park.

(ii) Biological Opinions. The School Board acknowledges that portions of West Viera are subject to the following biological opinions issued by the U.S. Fish and Wildlife Service (hereinafter referred to as the “USFWS”): (i) Biological Opinion issued on August 16, 2006 addressing direct and indirect effects of actions permitted under Department of the Army permit number SAJ-2000-1264 (IP-ST), (ii) Biological Opinion issued on March 20, 2012 addressing direct and indirect effects of actions permitted under Department of the Army permit number SAJ-2008-03508 (IP-JSC) and (iii) potentially additional biological opinions affecting portions of the Viera DRI as development progresses (hereinafter referred to collectively as the “**Biological Opinions**”). The Biological Opinions contain specific “Reasonable and Prudent Measures” which must be applied to minimize impacts of incidental take of the applicable Listed Species (hereinafter referred to as “**RPMs**”), and non-discretionary “Terms and Conditions” which must be followed in conjunction with implementing the RPMs (hereinafter referred to as the “**T/Cs**”). Therefore, if a designated site which is the subject of a Notice of Designation contains or is proximate to a caracara nest or otherwise impacts any of the Listed Species, the RPM’s and T/C’s in a Biological Opinion may require the mitigation of impacts arising from the development of such school site, including, but not limited to, restricting development/construction activities, conducting nest surveys prior to commencing land development activities, establishing protections zones, monitoring the effects of development/construction activities and coordinating with the USFWS. Any and all mitigation required under any Biological Opinion in connection with the School Board’s development of any site which is the subject of a Notice of Designation shall be the responsibility of the School Board at its sole cost and expense.

(iii) Reinitiation of Consultation with the USFWS. If any Biological Opinion requires the reinitiation of formal consultation with the USFWS in connection with mitigating impacts to one or more of the Listed Species pursuant to such Biological Opinion, the reinitiation of formal consultation shall be the responsibility of TVC at its sole cost and expense.

(iv) Designated Site Determined to be Unsuitable. If the Inspections, including without limitation, surveys for the Listed Species cause the School Board to determine that a site which is the subject of a Notice of Designation is unsuitable for the proposed school facilities, the School Board shall notify TVC not later than ten (10) days after the expiration of the Inspection Period that such site is not suitable. Upon TVC’s receipt of such notice, TVC and the School Board shall cooperate in good faith to select another school site located within the Viera DRI for conveyance in lieu of such unsuitable school site, which alternate site shall be mutually agreeable to TVC and the School Board in all respects.

(d) Preparation of Legal Description. Not later than sixty (60) days after the issuance of a Notice of Designation with respect to any school site upon which the School Board proposes to construct school facilities, TVC shall obtain and deliver to the School Board a legal description and sketch of the designated site. Such legal description and sketch shall be reflected

in the Survey to be subsequently provided by TVC pursuant to subparagraph 7(a) above, which legal description shall be prepared by a registered Florida professional land surveyor at TVC's sole cost and expense.

(e) Platting Designated School Site. If the Brevard County Land Development Regulations require that a designated school site be platted prior to development, then upon preparation of the legal description and sketch of the specific boundaries of the designated school site, TVC shall thereafter prepare and record a subdivision plat which includes the designated school site in accordance with the applicable ordinances of Brevard County. TVC shall complete the preparation, governmental approval and recording of such plat not later than the date on which such designated school site is donated and conveyed to the School Board.

(f) Conveyance of Designated School Site. After the expiration of the Inspection Period (or waiver thereof by the School Board) with respect to any site which is the subject of a Notice of Designation, preparation and delivery of the Survey for such designated school site, and the satisfaction of each of the conditions precedent set forth in subparagraph 6(a) above, TVC shall convey such school site to the School Board in accordance with the terms and conditions of this Agreement. TVC shall cooperate in good faith to coordinate such conveyance with the School Board's funding and planning schedule so that the designated school site is conveyed to the School Board in a timely manner to facilitate the orderly design and construction of the proposed school facilities thereon.

10. Construction of School Facilities and Off-Site Infrastructure.

(a) Construction Requirements Applicable to School Facilities. The School Board acknowledges and understands that the Viera DRI is a master-planned community in which all non-residential construction, including without limitation all buildings and related improvements, is subject to certain guidelines and requirements generally known as the Viera Non-Residential Design Guidelines adopted, and from time to time modified and amended, by TVC. However, recognizing that the proposed school facilities will be public improvements and that economic and funding constraints upon the School Board limit the extent to which the building, landscape and site architecture of the proposed school facilities may strictly conform to such guidelines and requirements, TVC agrees that the Remaining Central Viera School Site and each of the SD#2 Required School Sites shall be exempt from the application and requirements of the Viera Non-Residential Design Guidelines. Nevertheless, the School Board agrees to deliver with reasonable promptness to TVC, for TVC's review and comment, the School Board's design work, site plans and construction plans for the school facilities proposed for each school site as and when such documents are produced so as to facilitate TVC's timely and constructive participation in the planning and design process for the school facilities proposed for each school site. It is expressly understood and agreed that TVC's approval of such work and plans shall not be a prerequisite to constructing the proposed school facilities; provided, however, the School Board agrees that it will attempt in good faith to design the school facilities proposed for the Central Viera Middle School Site, the Remaining Central Viera School Site and each of the SD#2 Required School Sites in a manner which (1) fairly and reasonably considers TVC's comments with respect to such design and (2) conforms to the Viera Non-Residential Design

Guidelines to the greatest extent allowed by the School Board's applicable economic and funding constraints as determined by the School Board in its sole discretion. Notwithstanding the foregoing, the School Board represents that the school facilities to be constructed on the Central Viera Middle School Site, the Remaining Central Viera School Site and each of the SD#2 Required School Sites shall conform to the applicable standards promulgated by the Florida State Department of Education and the Pre-Donation Preliminary Plan submitted by the School Board to TVC prior to TVC's conveyance of the applicable school site. All governmental approvals and permits required in connection with the construction of school improvements on each school site, including, but not limited to, each site's stormwater management system, shall be obtained by the School Board at its sole cost and expense.

(i) Stormwater Drainage Requirements. Unless otherwise determined by TVC based on the capabilities of the community drainage system at the time of donation, all school facilities proposed by the School Board on the Central Viera Middle School Site, the Remaining Central Viera School Site and the SD#2 Required School Sites shall include a stormwater treatment area within the applicable school site upon which such facilities are proposed, sufficient to satisfy the then applicable stormwater quality criteria imposed by governmental agencies having jurisdiction. Excess treated stormwater shall be discharged in a controlled manner at a location which directly conveys such stormwater into the community drainage system, which location shall be approved by TVC and shown on the Pre-Donation Preliminary Plan, which plan shall also include allowable maximum discharge rates and, if known, all related stormwater drainage structures. The stormwater management system for the Central Viera Middle School Site, the Remaining Central Viera School Site and the SD#2 Required School Sites and all stormwater collection, treatment, control and discharge structures required in connection therewith, shall be constructed by the School Board as part of the proposed school facilities at the School Board's sole cost and expense. Each system and all stormwater discharges therefrom shall conform with all existing applicable St. Johns River Water Management District and Brevard County approvals and permits for the Viera DRI master drainage system.

(ii) Access Management and Driveway Connections. All driveway connections to roads and streets adjacent to the Central Viera Middle School Site, the Remaining Central Viera School Site and each of the SD#2 Required School Sites shall be constructed by the School Board at its sole cost and expense. The location of all such road and street connections and each related driveway shall be shown on the Pre-Donation Preliminary Plan and subject to the review and approval of TVC. Without limiting the foregoing, any and all road and street connections and each related driveway shall be approved by Brevard County and comply in all respects with the then applicable access management guidelines and design criteria promulgated by Brevard County.

(b) Construction of Off-Site Infrastructure. TVC shall be responsible for constructing (or causing the construction of) the off-site road improvements and off-site sanitary sewer, potable water, and master stormwater drainage facilities necessary to accommodate the school facilities hereafter constructed by the School Board on the Central Viera Middle School Site, the Remaining Central Viera School Site and each of the SD#2 Required School Sites; which off-site facilities are hereafter collectively referred to as the "**Off-Site Infrastructure**

Facilities”). The specific Off-Site Infrastructure Facilities required in connection with the school facilities proposed for a particular site shall be determined in accordance with the Brevard County Land Development Code and the Alternative Development Standards set forth in the West Viera DRI-PUD (as applicable), as each is amended or modified from time to time (hereinafter collectively referred to as the “**Applicable Infrastructure Code**”). Furthermore, the term “off-site road improvements” as used above, shall mean and refer to the specific road improvements required to provide vehicular and pedestrian access to and from a school in accordance with the Applicable Infrastructure Code including, but not limited to, travel lanes, turn lanes, medians, median openings, sidewalks and intersection improvements at the school’s entrance, right-of-way drainage, signalization (if warranted), pavement markings and regulatory signage. The Off-Site Infrastructure Facilities shall be extended to the boundaries of each school site as necessary to comply with the Applicable Infrastructure Code and completed not later than thirty (30) days prior to the substantial completion of the school facilities constructed on the applicable school site. The installation of all service lines to and from the school improvements constructed by the School Board and the Off-Site Infrastructure Facilities, and the connection of such school improvements to such facilities, together with all governmental charges and fees (including all connection, impact and water meter fees) relating to such connections and the resulting utility services, shall be the exclusive responsibility of the School Board. To facilitate the School Board's construction of school facilities and related improvements on any school site designated and conveyed prior to TVC's extension and completion of the Off-Site Infrastructure Facilities, TVC shall construct temporary facilities and right-of-ways to the extent reasonably necessary to accommodate the School Board's undertaking and completing the construction of its contemplated school facilities on such school site. For purposes of this Agreement, the term “off-site” shall mean and refer to locations which are not within the boundaries of the designated school site on which school facilities and related improvements will be constructed.

(i) Electric, Telephone and CATV/Telecommunication Services.

Electric, telephone and CATV/telecommunication services shall be extended to each designated school site by private utility companies. The School Board acknowledges and understands that utility services provided by such private utility companies are beyond TVC's control and that TVC shall not be responsible or liable for any delay in providing such utility services to any designated school site or the connection of school facilities thereto. The extension of private utility services to each school site and all connection fees, charges and deposits imposed by the private utility companies providing such utility services, shall be the exclusive responsibility of the School Board.

(c) TVC's Responsibility for On-Site Improvements. Except as otherwise specifically agreed in any subsequent modification or amendment of this Agreement entered into by TVC and the School Board, TVC shall not be responsible for constructing, or liable for the cost of, any school facilities or related improvements hereafter constructed within the boundaries of the Central Viera Middle School Site, the Remaining Central Viera School Site or within any of the SD#2 Required School Sites conveyed to the School Board in accordance with this Agreement, including, but not limited to, clearing, filling, compacting, grading and other site work, buildings, internal roadways and parking areas, and the stormwater drainage system necessary to collect and treat stormwater within any designated school site.

11. Waiver of Right to Receive Educational Facilities Impact Fee Credits and Redemptions. Pursuant to the Prior School Facilities Agreement, the School Impact Fee Ordinance, the Impact Fee Credit Agreement, and Chapter 380, Florida Statutes, TVC is entitled to receive educational facilities impact fee credits equal to the fee simple fair market value of each school site conveyed by TVC to the School Board as mitigation for impacts to public school facilities arising in connection with the Viera DRI. The School Impact Fee Ordinance and the Impact Fee Credit Agreement further provide that TVC is entitled to reimbursement through periodic distributions of educational facilities impact fee funds collected within the Viera DRI (herein referred to as the “**School Impact Fee Credit Reimbursement**”). TVC hereby waives, releases and assigns to the School Board all of its right and interest to educational facilities impact fee credits and to the School Impact Fee Credit Reimbursement under and pursuant to the School Impact Fee Ordinance and the Impact Fee Credit Agreement, respectively, as hereafter expressly provided.

(a) Waiver of Right to Receive School Impact Fee Credit Reimbursement for Central Viera Middle School Site and Remaining Central Viera School Site. In consideration of the mutual agreements and covenants set forth herein, TVC hereby waives, releases and assigns to the School Board all of its right and interest to receive educational facilities impact fee credits and the School Impact Fee Credit Reimbursement with respect to the prior conveyance of the Central Viera Middle School Site and the future conveyance of the Remaining Central Viera School Site in accordance with this Agreement. TVC’s release, waiver and assignment of educational facilities impact fee credits and the School Impact Fee Credit Reimbursement with respect to the Central Viera Middle School Site and the Remaining Central Viera School Site as provided herein shall become effective and operate as of the effective date of this Agreement. Notwithstanding any other provision of this Agreement, however, all disbursements of the School Impact Fee Credit Reimbursement paid or payable to TVC in connection with every other SD#1 Required School Site arising from and relating to educational facilities impact fees collected by Brevard County on or prior to the effective date of this Agreement shall be, and remain, the sole and exclusive property of TVC.

(b) Waiver of Right to Receive School Impact Fee Credit Reimbursement for SD#2 Required School Sites. In consideration of the mutual agreements and covenants set forth herein, TVC hereby waives, releases and assigns to the School Board all of its right and interest to receive educational facilities impact fee credits and the School Impact Fee Credit Reimbursement with respect to the conveyance of each of the SD#2 Required School Sites. TVC’s release, waiver and assignment of TVC’s right to receive educational facilities impact fee credits and the School Impact Fee Credit Reimbursement with respect to each SD#2 Required School Site shall become effective as of the effective date of this Agreement.

(c) Memorializing TVC’s Waiver of School Impact Fee Credit Reimbursement. TVC shall execute and deliver to the School Board, upon the School Board’s request, any and all documents that, in the reasonable opinion of the School Board or its legal counsel, are necessary or desirable to effectuate the intent of subparagraphs 11(a) and 11(b) above, including without limitation, notice required by Brevard County to evidence the waiver,

release and assignment of educational facilities impact fee credits and the School Impact Fee Credit Reimbursement, with respect to the Central Viera Middle School Site, the Remaining Central Viera School Site and each of the SD#2 Required School Sites as expressly provided in this Agreement.

(d) School Board's Use of Educational Facilities Impact Fee Credits and Reimbursements Waived by TVC. In consideration of TVC's waiver, release and assignment of the School Impact Fee Credit Reimbursement and of any and all educational facilities impact fee credits TVC is otherwise eligible to receive under law with respect to the conveyance of the Central Viera Middle School Site, the Remaining Central Viera School Site and each of the SD#2 Required School Sites, the School Board hereby agrees that all educational facilities impact fee funds hereafter received by the School Board corresponding to and representing the School Impact Fee Credit Reimbursement and/or educational facilities impact fee credits waived, released and assigned by TVC under this Agreement, shall be used by the School Board solely and exclusively to fund, create and provide additional student stations in public elementary and secondary school facilities located within the Viera DRI. Upon TVC's request, which request may not be made more often than annually, the School Board shall provide documentation reasonably evidencing (i) the total amount of educational facilities impact fee funds received by the School Board attributable to TVC's waiver of the School Impact Fee Credit Reimbursement and educational facilities impact fee credits under this Agreement, (ii) that such funds have been, or will be, utilized by the School Board in a manner complying with the preceding sentence, and (iii) that the Five-Year District Facilities Work Program, as annually adopted by the School Board, shall include such additional student stations.

12. Termination of the Impact Fee Credit Agreement. TVC and School Board shall cooperate with each other and Brevard County to terminate the Impact Fee Credit Agreement as soon as practicable after the effective date of this Agreement. Provided, however, that in no event shall such termination operate to void, cancel, revoke or require any refund of the disbursements of the School Impact Fee Credit Reimbursement previously paid or payable to TVC arising from and relating to educational facilities impact fees collected by Brevard County on or prior to the effective date of this Agreement and such amounts previously paid or payable to TVC as the School Impact Fee Credit Reimbursement shall be, and remain, the sole and exclusive property of TVC.

13. Concurrency; Status of School Facilities for the SD#1 Units. The School Board acknowledges and agrees that the prior conveyance of all SD#1 Required School Sites, excluding the Remaining Central Viera School Site, pursuant to the Prior School Facilities Agreement and the commitment to convey such remaining school site pursuant to this Agreement, together with the extension of infrastructure to such sites and the waiver of the School Impact Fee Credit Reimbursement as provided hereunder with respect to the Central Viera Middle School Site and the Remaining Central Viera School Site, constitute appropriate mitigation under Applicable Law for impacts to public school facilities arising from the development of the SD#1 Units; and that upon the conveyance of the Remaining Central Viera School Site to the School Board, (i) TVC shall have satisfied its obligation to mitigate impacts on public school facilities arising from the SD#1 Units in accordance with this Agreement and the Restated Development Order; and (ii)

the SD#1 Units shall be vested as to school concurrency (notwithstanding where the SD#1 Units are constructed within the Viera DRI) and, with respect to such units, TVC shall have fully satisfied the concurrency requirements of the School Board, the Brevard County concurrency management system and of Applicable Law. The School Board further agrees that adequate public school facilities currently exist and will exist in a timely manner to provide sufficient FISH Capacity (as defined in the Interlocal Agreement) to accommodate the SD#1 Units based on the prior construction of Ralph M. Williams Elementary School, Manatee Elementary School, Quest Elementary School and Viera High School, TVC's prior conveyance of the Central Viera Middle School Site, TVC's timely conveyance of the Remaining Central Viera School Site; and the School Board's following commitments:

(a) To construct a middle school on the Central Viera Middle School Site and an elementary school on the Remaining Central Viera School Site;

(b) To prepare, adopt and implement a financially feasible capital facilities program to achieve public schools operating at the Applicable LOS; and

(c) To annually update the School Board's Five-Year District Facilities Work Program to provide sufficient FISH Capacity (as such terms are defined in the Interlocal Agreement) to address projected growth to achieve and maintain the Applicable LOS for public school facilities within the Viera DRI's concurrency service areas adopted in accordance with Applicable Law.

14. Concurrency; Status of School Facilities for the SD#2 Units. The School Board acknowledges and agrees that the commitment to convey the SD#2 Required School Sites pursuant to this Agreement, together with the extension of infrastructure to such sites and the waiver of the School Impact Fee Credit Reimbursement as provided hereunder with respect to the SD#2 Required School Sites constitute appropriate mitigation under Applicable Law for impacts to public school facilities arising from the development of the SD#2 Units; and that as TVC conveys each of the SD#2 Required School Sites to the School Board pursuant to this Agreement, TVC shall have satisfied its obligation to mitigate impacts on public school facilities attributable to the developed or proposed SD#2 units necessitating the conveyance of the applicable SD#2 Required School Site. The School Board further agrees that upon TVC's conveyance of all of the SD#2 Required School Sites: (i) TVC shall have satisfied its obligation to mitigate impacts on public school facilities arising from the SD#2 Units in accordance with this Agreement and the Restated Development Order; (ii) the SD#2 Units shall be vested as to school concurrency (notwithstanding where the SD#2 Units are constructed within the Viera DRI); and (iii) TVC shall have fully satisfied the concurrency requirements of the School Board, the Brevard County concurrency management system and of Applicable Law with respect to the SD#2 Units. The School Board further agrees that adequate public school facilities currently exist and will exist in a timely manner to provide sufficient FISH Capacity (as defined in the Interlocal Agreement) to accommodate the SD#2 Units based on TVC's timely conveyance of the SD#2 Required School Sites pursuant to this Agreement and the School Board's following commitments:

(a) To construct appropriate and necessary public school facilities on each of the SD#2 Required School Sites;

(b) To prepare, adopt and implement a financially feasible capital facilities program to achieve public schools operating at the Applicable LOS; and

(c) To annually update the School Board's Five-Year District Facilities Work Program to provide sufficient FISH Capacity (as such terms are defined in the Interlocal Agreement) to address projected growth to achieve and maintain the Applicable LOS for public school facilities within the Viera DRI's concurrency service areas adopted in accordance with Applicable Law.

15. Status of Mitigation; Enforceability; Term of Agreement; Default. Provided this Agreement is in full force and effect and no "Default" (as defined below) by TVC exists hereunder, no further mitigation of impacts to school facilities arising from or in connection with the development of the SD#1 Units and the SD#2 Units within the Viera DRI shall be required by the School Board through the build-out of the Viera DRI pursuant to any existing or future requirements, including, but not limited to, Applicable Law, as it may be amended from time to time. This Agreement shall remain in full force and effect and inure to the benefit of and shall be enforceable by the School Board, Brevard County and TVC until the earlier of (i) the build-out of the Viera DRI or (ii) the expiration of the Restated Development Order, as such development order may be hereafter modified, changed or extended; whereupon this Agreement shall expire, be null and void, and have no further force or effect. Notwithstanding the foregoing and as conditions precedent to the expiration of this Agreement, there shall be no Default by either party under this Agreement (unless waived by the non-defaulting party) and, to the extent that any West Viera Elementary School Site, the West Viera Middle School Site, or the West Viera High School Site has not been conveyed to the School Board prior to such expiration, the School Board shall notify TVC which of the un-conveyed sites, if any, are needed to maintain the Applicable LOS. The un-conveyed sites determined by the School Board to be necessary shall then be conveyed by TVC to the School Board in accordance with this Agreement; and the School Board shall release the School Board's interest in the remaining un-conveyed site or sites determined by the School Board to be unnecessary. The School Board's determination of whether each un-conveyed site is necessary or is unnecessary to maintain the Applicable LOS shall be rendered not later than forty-five (45) days after receipt of TVC's request for a determination in advance of this Agreement's expiration. With respect to each un-conveyed site determined by the School Board to be unnecessary to maintain the Applicable LOS, an instrument signed on behalf of the School Board memorializing the release of the School Board's interest in and to such site arising by, through or under this Agreement shall be delivered to TVC within thirty (30) days after such determination. The release instrument shall be in recordable form and approved by TVC, which approval shall not be unreasonably withheld.

(a) Performance and Default. Each party to or joining in this Agreement shall perform, observe and comply in all material respects with the provisions of this Agreement; and in the event a party is in "Default" (as defined below) under this Agreement, the non-defaulting party or parties shall be entitled to the rights and remedies set forth below. For purposes of this

Agreement, the term “**Default**” means the failure of a party hereto to timely keep, perform and observe any material covenant, condition or agreement in this Agreement which is not cured as hereafter provided. A party’s failure to perform a covenant, condition or agreement hereunder shall not constitute a Default unless such failure is not cured within fifteen (15) days after written notice is received by the non-performing party from a performing party, which notice shall specify in reasonable detail the act, omission or circumstance which, if not timely cured, will constitute a Default. If the failure to perform is of a nature that cannot reasonably be cured within such fifteen (15) day period, then the non-performing party shall have such longer period as is reasonably necessary to cure the failure to perform, provided the non-performing party commences diligent action in good faith to cure the failed performance within such fifteen (15) day period and diligently continues such action until completed and the non-performance is cured. In the event of a Default, the non-defaulting party or parties shall have the equitable remedies of specific performance and/or injunctive relief. In addition, if TVC is the party in Default under this Agreement by failing to convey the Remaining Central Viera School Site or any SD#2 Required School Site to the School Board in accordance with this Agreement, the School Board shall be entitled to modify the “SCAD Letter” (as defined below) issued by the School Board pursuant to subparagraph 16(c) below to exclude those specific SD#1 Units or SD#2 Units which are dependent upon the un-conveyed school site for mitigation and a determination of concurrency from the SCAD Letter (hereinafter referred to as the “**Excluded Units due to Default**”). Upon receipt of notice of the School Board’s modification of the SCAD Letter, Brevard County shall be entitled to thereafter include the Excluded Units due to Default in its review process for school concurrency and suspend the issuance of building and other construction permits for any or all of the Excluded Units due to Default until such time as the applicable Default is cured or Brevard County is otherwise obligated to issue a Concurrency Evaluation Finding of Nondeficiency, or the functional equivalent thereof, with respect to the Excluded Units due to Default, or any portion thereof, in accordance with the Interlocal Agreement.

16. Cooperation of the School Board.

(a) The School Board acknowledges and agrees that, not later than the full execution of this Agreement, TVC shall submit this Agreement to Brevard County for the purpose of demonstrating compliance with Conditions 78 through 80, inclusive, set forth in the Restated Development Order (hereafter collectively referred to as the “**Schools Conditions**”). In the event, Brevard County determines that a modification of the Schools Conditions or any of them is necessary to facilitate a determination that this Agreement complies with the requirements of the Restated Development Order, the School Board shall support such modifications so long as such modifications are consistent with the agreements, terms and conditions contained in this Agreement. The School Board further agrees that, upon the request of TVC, it will furnish Brevard County and any other governmental entity with a statement that the School Board does not object to residential or other development within the Viera DRI on the basis of impacts to school facilities so long as this Agreement is full force and effect and no uncured default by TVC exists hereunder.

(b) The School Board and TVC agree that Brevard County shall be, and is hereby, named as an express third-party beneficiary of this Agreement, with full rights as such, including without limitation, the right to enforce each of TVC's mitigation measures memorialized under this Agreement.

(c) The School Board shall issue a "School Capacity Availability Determination Letter" (as defined in the Interlocal Agreement and herein referred to as the "SCAD Letter"), or its equivalent, to Brevard County, either prior to or at the time this Agreement is submitted to Brevard County, which (i) reflects the School Board's approval of the mitigation measures set forth in this Agreement as appropriate and sufficient to satisfy school concurrency applicable to the SD#1 and SD#2 Units; and (ii) confirms the School Board's commitment to provide sufficient FISH Capacity (as defined in the Interlocal Agreement) to serve the SD#1 Units and SD#2 Units when needed and maintain the Applicable LOS for public school facilities within the Viera DRI's concurrency service areas.

17. General Terms and Conditions.

(a) Notices. Any notices or other communications which may be required or desired to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or if mailed by United States certified mail, return receipt requested, postage prepaid, addressed to the respective party at the addresses set forth below:

To the Board: School Board of Brevard County
2700 Judge Fran Jamieson Way
Viera, Florida 32940-6699
Attn: Superintendent

With a copy to: Stromire, Bistline & Miniclier
1037 Pathfinder Way
Suite 150
Rockledge, Florida 32955
Attn: Harold Bistline, Esq.

To Brevard County: Brevard County
Attn: County Manager, Stockton Whitten
2725 Judge Fran Jamieson Way
Viera, Florida 32940

With a copy to: Brevard County
Attn: Director, Planning & Development Department,
Robin Sobrino
2725 Judge Fran Jamieson Way
Viera, Florida 32940

To TVC: The Viera Company
7380 Murrell Road, Suite 201
Viera, Florida 32940
Attn: Mr. Stephen L. Johnson, President and Jay A.
Decator III, Esq., General Counsel

With a copy to: Dean Mead
7380 Murrell Rd. , Suite 200
Viera, Florida 32940
Attn: R. Mason Blake, Esq.

Any notice so given, delivered or made by mail shall be deemed to have been duly given, delivered or made on the date the same is deposited in the United States mail in the manner specified hereinabove. Any notice which is not given, delivered or made by United States mail in the manner specified above shall be deemed to have been duly given, delivered or made upon actual receipt of the same by the party to whom the same is to be given, delivered or made. Either party may change the address to which notices are to be sent to such party by written notice to the other parties specifying such change of address.

(b) Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof, to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent possible.

(c) Exhibits. The exhibits attached hereto and referred to herein are by such attachment and reference made a part of this Agreement for all purposes.

(d) Venue; Governing Law. The venue in any litigation arising out of this Agreement shall be Brevard County, Florida. This Agreement and the interpretation and enforcement thereof shall be governed by and construed in accordance with the laws of the State of Florida.

(e) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(f) Recordation of Notice of Agreement. Notice of this Agreement shall be recorded by TVC in the Public Records of Brevard County, Florida; which notice shall reference the Viera DRI and state that this Agreement sets forth mitigation accepted by the School Board as fully satisfying school concurrency applicable to the Viera DRI and that a copy of the Agreement may be reviewed at the offices of the School Board. The notice shall not contain a copy of Exhibits "A" and "B" attached hereto and shall specifically state that it does not constitute a lien, cloud or encumbrance on any real property located within the Viera DRI, or actual or constructive notice of any such lien, cloud, or encumbrance.

(g) Attorneys' Fees. In connection with any litigation, including appellate proceedings or administrative proceedings, arising out of or relating to the enforcement, scope, meaning, interpretation, performance or non-performance of this Agreement, each party hereto or joining herein shall bear its own attorneys' fees, court costs and out-of-pocket costs arising from or in connection with such litigation.

(h) Entire Agreement. This Agreement (and all exhibits hereto) constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements, whether written or oral. No covenants, agreements, terms provisions, undertakings, statements, representations or warranties, whether written or oral, made or executed by any party hereto or any employee or agent thereof, shall be binding upon any party hereto unless specifically set forth in this Agreement.

(i) Modification and Waiver. This Agreement may not be changed, amended or modified in any respect whatsoever, nor may any covenant, agreement, condition, requirement, provisions, warranty or obligation contained herein be waived, except in writing signed by both parties hereto and Brevard County or, in the event that such change, amendment, modification or waiver is for the benefit of one of the parties and to the detriment of the other, then the same must be in writing signed by the party or parties to whose detriment the change, amendment, modification or waiver inures.

(j) Time. Time is of the essence of this Agreement.

(k) Construction of Agreement. The fact that one of the parties to this Agreement may be deemed to have drafted or structured any provision of this Agreement shall not be considered in construing or interpreting any particular provision of this Agreement, either in favor of or against such party.

(l) Paragraph Headings. The paragraph headings herein contained are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement; the paragraph headings shall be ignored in construing and interpreting this Agreement.

(m) Successors and Assigns. The terms and provisions of this Agreement shall bind, and inure to the benefit of, the parties hereto and the respective successors and permitted assigns. The rights of the School Board under this Agreement may not be assigned without the prior written consent of TVC.

IN WITNESS WHEREOF, TVC and the School Board have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

Witnesses:

[Signature]
Suzie Gelmore

The School Board:

SCHOOL BOARD OF BREVARD
COUNTY, FLORIDA

By: *[Signature]*
Amy Kneessy, Chairman

Attest: *[Signature]* *DOT*
Desmond Blackburn, Secretary and
Superintendent

(SEAL)

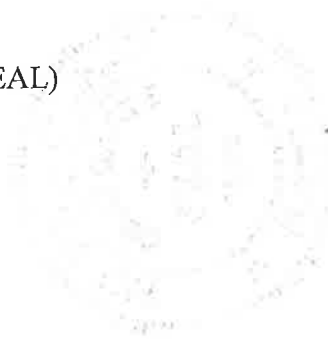
TVC:

THE VIERA COMPANY, a Florida
corporation

Charlene R. Spangler
Sandra Patrick

By: *[Signature]*
Stephen L. Johnson, President

(CORPORATE SEAL)



STATE OF FLORIDA]
]]
COUNTY OF BREVARD]

The foregoing instrument was acknowledged before me this 22 day of Sep, 2015, by Dr Blackburn and Ms. Kneessy, Chairman and Secretary, respectively, of the School Board of Brevard County, a legal governmental body established under the Florida Constitution, on behalf of the School Board. They are personally known to me and did (did not) take an oath.

(NOTARIAL SEAL)

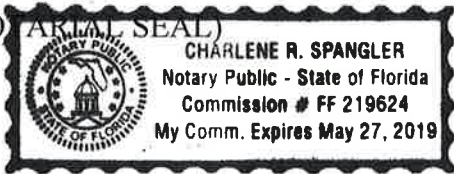


Name: Tammy Aguirre
Notary Public, State of Florida
My Commission No.: EE 126313
My Commission Expires: 12/30/15

STATE OF FLORIDA]
]]
COUNTY OF BREVARD]

The foregoing instrument was acknowledged before me this 13th day of August, 2015, by Stephen L. Johnson, as President of The Viera Company, a Florida corporation, on behalf of the corporation. He is personally known to me and did (did not) take an oath.

(NOTARIAL SEAL)



Charlene R. Spangler
Name: Charlene R. Spangler
Notary Public, State of Florida
My Commission No.: FF 219624
My Commission Expires: 5/27/19


ATTACHED EXHIBITS:

- Exhibit "A" - Sketch Showing General Location of Remaining Central Viera School Site
- Exhibit "B" - Sketch Showing General Location of SD#2 Required School Sites
- Exhibit "C" - Form of Deed
- Exhibit "D" - Permitted Exceptions to Title;

CONSENT AND JOINDER OF BREVARD COUNTY TO CONSOLIDATED MITIGATION
AND CONCURRENCY AGREEMENT REGARDING SCHOOL FACILITIES
FOR THE VIERA DEVELOPMENT OF REGIONAL IMPACT

Brevard County, a political subdivision of the State of Florida, referred to as "Brevard County" in the preceding Consolidated Mitigation and Concurrency Agreement Regarding School Facilities for the Viera Development of Regional Impact (hereinafter referred to as the "Agreement"), hereby joins in the Agreement to confirm its consent to the mitigation measures memorialized therein and acknowledge that so long as the Agreement remains in full force and effect in good standing without a "Default" (as such term is defined in the Agreement) by The Viera Company, school concurrency as administered by Brevard County in accordance with the Public School Facilities Element of the Brevard County Comprehensive Plan and the "Interlocal Agreement" (as such term is defined in the Agreement) is satisfied with respect to the "SD#1 Units" and the "SD#2 Units" (as such terms are defined in the Agreement), and the SD#1 Units and SD#2 Units shall not be subject to Brevard County's review process for school concurrency as described in the Brevard County Comprehensive Plan, the Brevard County land development regulations and the above-referenced Interlocal Agreement.

ATTEST:



Scott Ellis, Clerk

BREVARD COUNTY, FLORIDA, a political
subdivision of the State of Florida

Board of County Commissioners
Brevard County, Florida

By: 

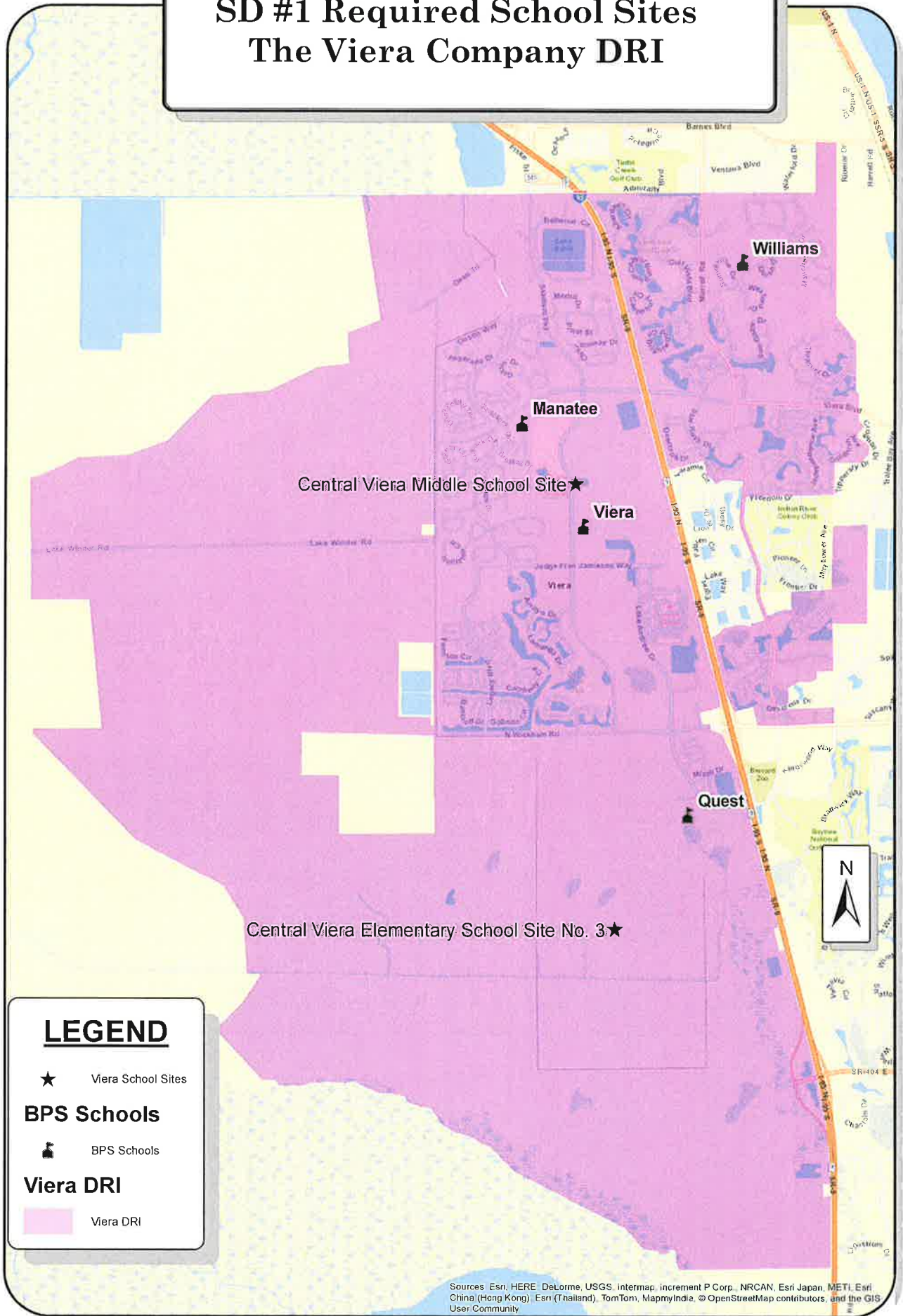
Name: ROBIN FISHER
Title: Chairman

APPROVED BY THE BOARD: 8/18/15

Exhibit A

SD #1 Required School Sites

The Viera Company DRI



LEGEND

★ Viera School Sites

BPS Schools

🏠 BPS Schools

Viera DRI

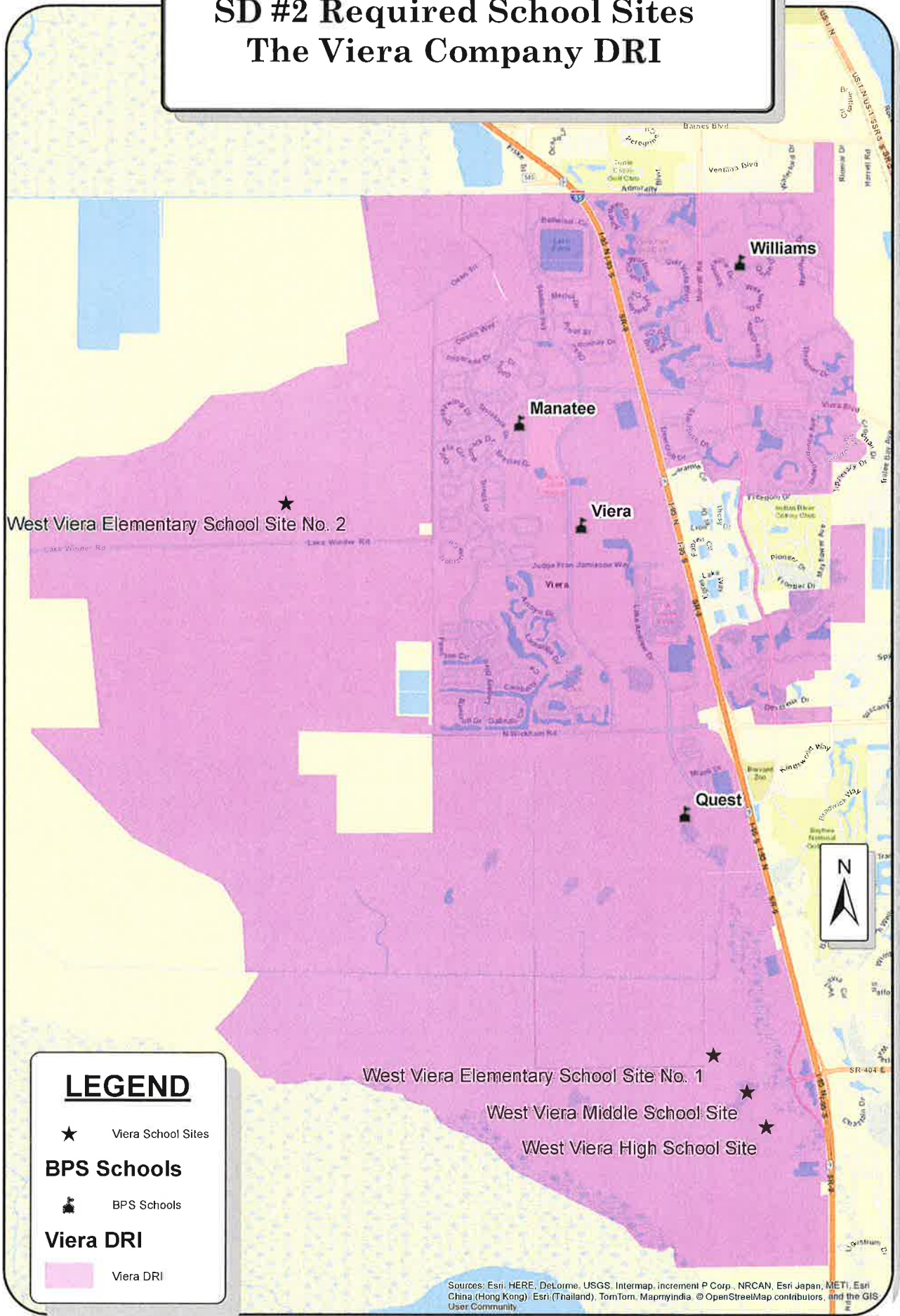
🟡 Viera DRI

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

Exhibit B

SD #2 Required School Sites

The Viera Company DRI



LEGEND

★ Viera School Sites

BPS Schools

🏫 BPS Schools

Viera DRI

🟡 Viera DRI

West Viera Elementary School Site No. 1

West Viera Middle School Site

West Viera High School Site

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

EXHIBIT "C"

FORM OF DEED

This instrument prepared by:
Jay A. Decator III, Esq.
The Viera Company
7380 Murrell Road, Suite 201
Viera, Florida 32940

SPECIAL WARRANTY DEED

(_____)

THIS SPECIAL WARRANTY DEED is made as of the ____ day of _____, 20____, by THE VIERA COMPANY, a Florida corporation, whose mailing address is Suite 201, 7380 Murrell Road, Viera, Florida 3940 (hereinafter referred to as "Grantor"), to the SCHOOL BOARD OF BREVARD COUNTY, a public corporation and governing body of the school district of Brevard County, duly created in accordance with the Florida Constitution, whose mailing address is 2700 Judge Fran Jamieson Way, Viera, Florida 32940-6699 (hereinafter referred to as "Grantee").

(Wherever used herein, the terms "Grantor" and "Grantee" include all the parties to this instrument, the heirs, legal representatives and assigns of individuals, and the successors and assigns of trustees, partnerships and corporations.)

W I T N E S S E T H:

THAT GRANTOR, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto Grantee, all of Grantor's right, title and interest in and to that certain real property situate, lying and being in Brevard County, Florida (hereinafter referred to as the "Property"), described in Exhibit "A", attached hereto and made a part hereof.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever, subject to those matters set forth on Exhibit "B", attached hereto and made a part hereof

AND Grantor hereby covenants with Grantee that Grantor is lawfully seized of the Property in fee simple; that Grantor has good right and lawful authority to sell and convey the Property; and that Grantor hereby warrants the title to the Property and will defend the same

against the lawful claims of all persons claiming by, through or under Grantor, but against no others.

RESERVATION OF EASEMENTS

(Describe non-exclusive easements reserved unto The Viera Company pursuant to subparagraph 7(b) of the Consolidated Mitigation and Concurrency Agreement Regarding School Facilities to which this Exhibit "C" is attached.)

RESTRICTIVE COVENANT

Grantor owns and holds the fee simple title to certain real property adjacent or in proximity to the Property. Accordingly, Grantor has, and will continue to have, a substantial interest in the manner of development and use of the Property and all portions thereof, as well as the kind, character and nature of improvements to be constructed from time to time upon any portion of the Property. By acceptance of this conveyance, Grantee, for itself, its assigns and successors in interest and/or title, agrees that the primary use of the Property shall be limited and restricted to the development, construction and operation of a public school thereon.

The foregoing restrictive covenant is intended to constitute a covenant running with the Property, and each part thereof, in all respects binding upon Grantee and all assigns and successors in interest and/or title of Grantee with respect to the Property and each part thereof. The restrictive covenant shall be binding and in full force and effect for a period of twenty (20) years from the day of recordation of this instrument in the Public Records of Brevard County, Florida, after which time said restrictive covenant shall be automatically extended for two (2) twenty (20) year periods unless sooner terminated by written instrument executed by Grantor. Grantor shall have the right, but not the duty, to enforce this restrictive covenant by actions or proceedings at law and/or in equity against any person or entity violating, or attempting to violate, the foregoing restrictive covenant, the permissible actions or proceedings to include, but not be limited to, actions for mandatory injunctive relief, prohibitory injunctive relief and/or damages. In connection with any action or proceeding brought by Grantor to enforce the foregoing restrictive covenant, Grantor shall be entitled to recover all costs incurred in connection therewith, including reasonable attorneys' fees at or before the trial level and in any appellate proceeding. The right to enforce the restrictive covenant set forth hereinabove shall be limited to Grantor and any persons or entities to which such right of enforcement is specifically granted by written instrument recorded in the Public Records of Brevard County, Florida.

RIGHT OF REVERTER

Grantee has represented to Grantor that Grantee will improve the Property by constructing a public _____ school thereon (hereinafter referred to as the "_____ School"). By acceptance of this conveyance, Grantee, for itself, its assigns and successors in interest and/or title, agrees that in the event funding is not obtained by Grantee for the construction of the _____ School and such construction has not

commenced on the Property prior to _____, then, in such event, all right, title, interest and estate of Grantee and its assigns and successors-in-interest and/or title with respect to the Property and all portions thereof shall in all respects cease, terminate and be and become null, void and of no further force and effect as of such date, whereupon all right, title, interest and estate of Grantee and Grantee's assigns and successors in interest and/or title in and to the Property shall automatically revert to and vest in Grantor, its successors and assigns.

For purposes of the foregoing right of reverter, construction of the _____ School shall be deemed to have commenced when (i) the State Board of Education of Florida has approved the construction of the _____ School and the expenditure of capital funds in connection therewith, (ii) Grantee has entered into a contract or contracts for the construction of the _____ School in its entirety, (iii) Grantee has issued a "notice to proceed" or other written instruction to the contractor(s) under such construction contract(s) authorizing work to commence in accordance therewith, and (iv) the construction of the _____ School is actually commenced upon the Property in accordance with such contract(s).

IN WITNESS WHEREOF, Grantor has caused these presents to be executed in its name, and its corporate seal to be hereto affixed, by its proper officer thereunto duly authorized, on the day and year first above written.

Signed, sealed and delivered
in the presence of:

THE VIERA COMPANY, a Florida corporation

Print Name: _____

By: _____, President

Print Name: _____

(CORPORATE SEAL)

STATE OF FLORIDA]
]
COUNTY OF BREVARD]

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as President of THE VIERA COMPANY, a Florida corporation on behalf of said corporation. Said person did not take an oath and is personally known to me.

(NOTARIAL SEAL)

Print Name: _____
Notary Public, State of Florida
Commission Expires: _____

EXHIBIT "D"

PERMITTED EXCEPTIONS

1. Declaration of Covenants, Conditions, Easements, Reservations and Restrictions for Central Viera Community recorded July 25, 1994, in Official Records Book 3409, Page 0624, as the same may be amended, supplemented or modified of record in the Public Records of Brevard County, Florida.
2. Amended and Restated Development Order Viera Development of Regional Impact approved by Resolution 09-272 adopted by the Brevard County Board of County Commissioners on December 15, 2009, record notice of which was provided by that certain Notice of Amendment to Development Order for a Development of Regional Impact known as the Viera Development of Regional Impact recorded in Official Records Book 6105, page 1085, Public Records of Brevard County, Florida. Such Amended and Restated Viera Development Order was amended (i) by Resolution 10-105 adopted by the Brevard County Board of County Commissioners on May 27, 2010, record notice of which was provided by that certain Notice of Amendment to Development Order for a Development of Regional Impact known as the Viera Development of Regional Impact recorded in Official Records Book 6511, page 1022, Public Records of Brevard County, Florida, (ii) by Resolution 14-120 adopted by the Brevard County Board of County Commissioners on July 22, 2014, record notice of which was provided by that certain Notice of Amendment to Development Order for a Development of Regional Impact known as the Viera Development of Regional Impact recorded in Official Records Book 7283, page 306, Public Records of Brevard County, Florida; and (iii) by Resolution 15-110 adopted by the Brevard County Board of County Commissioners on July 21, 2015, record notice of which was provided by that certain Notice of Amendment to Development Order for a Development of Regional Impact known as the Viera Development of Regional Impact recorded in Official Records Book ____, page ____, Public Records of Brevard County, Florida, as the same may be hereafter amended, restated, modified or supplemented.
3. Notice of Agreement between A. Duda & Sons, Inc. and the Florida Department of Community Affairs recorded in Official Records Book 3005, page 3575, together with First Amendment to Agreement recorded in Official Records Book 3951, page 1404, all in the Public Records of Brevard County, Florida.
4. Agreement Covering Water Service between The Viera Company and the City of Cocoa, Florida dated August 26, 1988, as amended by that certain Amendment #1 To Agreement To Provide Water Service dated June 13, 1989, as further amended by the certain Second Amendment to Agreement dated May 27, 1994 as recorded in Official Records Book 3404 page 0932, and re-recorded in Official Records Book 3407, page 3452, Public Records of Brevard County, Florida, and further amended by that certain unrecorded Third Amendment

to Agreement dated February 1, 2008, as the same may be hereafter amended, restated, modified or supplemented.

5. Notice of Creation and Establishment of the Viera Stewardship District recorded August 10, 2006 in Official Records Book 5683, page 2029, amended by the certain Notice of Boundary Amendment for the Viera Stewardship District recorded in Official Records Book 6081, page 1341 and in Official Records Book 6081, page 1354, all in the Public Records of Brevard County, Florida.
6. Disclosure of Public Financing and Maintenance of Improvements to Real Property Undertaken by Viera Stewardship District recorded May 20, 2013 in Official Records Book 6879, page 1970, Public Records of Brevard County, Florida
7. Restrictions, easements and matters appearing on any subdivision plat containing the subject school site which are otherwise common to the applicable subdivision, provided the same do not prevent the use of the subject site for school purposes.
8. Utility and drainage easements provided the same do not materially adversely affect the use of the subject school site for school purposes.
9. Zoning, restrictions, reservations, prohibitions and other requirements imposed by governmental authorities.
10. Taxes and assessments for the year of closing and subsequent years.
11. Restrictions, easements and matters provided for in the Consolidated Mitigation and Concurrency Agreement to which this exhibit is attached.
12. Any instrument establishing or promulgated by a community development district or other special district established pursuant to Florida law, provided the same does not impose any burden or obligation on the School Board.