

**AGREEMENT BETWEEN
THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA,
AND
PCCD, LLC**

This Agreement is made and executed as of this ____ day of _____, 2006, by and between **THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA** (hereinafter the “**SCHOOL BOARD**”), and **PCCD, LLC**, a Delaware limited liability company (hereinafter “**PCCD**”).

Recitals

WHEREAS, the Board of County Commissioners of Clay County, Florida, on the 25th day of March, 2003, adopted Clay County Ordinance No. 2003-30, as amended by Ordinance 2005-21 (hereinafter the “Ordinance”) creating Article IV of Chapter 16 of the Clay County Code and imposing thereunder public school impact fees (hereinafter “school impact fees”) on new residential development throughout Clay County, Florida, which ordinance may be amended from time to time, and

WHEREAS, the **COUNTY**, pursuant to the Ordinance, is charged with the responsibility of collecting the school impact fees for any new residential development within the **SARATOGA SPRINGS DEVELOPMENT OF REGIONAL IMPACT** (hereinafter “**SARATOGA SPRINGS DRI**”) before the issuance of a building permit for said new residential development, and

WHEREAS, the Ordinance contains provisions for credits to be granted against the school impact fees imposed within a development of regional impact, and

WHEREAS, the **SARATOGA SPRINGS DRI** is a proposed development of regional impact as defined by the Ordinance, and **PCCD** is the master developer and holds an option to acquire the property within the DRI from Peters Creek Investments, LLP (“Peters Creek”), and

WHEREAS, the Ordinance requires that a determination be made of the amount of credit to be applied against school impact fees for each existing development of regional impact in accordance with the terms of the Development Order applicable to the same, and

WHEREAS, the parties anticipate that the DRI development order for Saratoga Springs (the “Development Order”) will provide for certain exactions to offset the regional impacts of the project on educational facilities, and

WHEREAS, each of the parties to this Agreement desires to delineate their respective rights and obligations with regard to the implementation of the Ordinance and the collection of the school impact fees collected pursuant thereto,

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

1.(a) **PCCD** shall convey to the **SCHOOL BOARD** a 35 acre Junior High school site and a 25 acre Elementary school site within the boundary of the **SARATOGA SPRINGS DRI**. The conveyance of the 25 acre elementary school site shall occur within 30 days of the date the **SCHOOL BOARD** gives notice to **PCCD** that the county has issued the 400th residential unit building permit for a residential unit within the boundaries of Saratoga Springs DRI (exclusive of any age-restricted residential units as referenced in Paragraph 5), or at such later time as is directed by the **SCHOOL BOARD**. The conveyance of the 35 acre Junior High school site shall occur within 30 days of the date the **SCHOOL BOARD** gives notice to **PCCD** that the county has issued the 1000th residential unit building permit for a residential unit within the boundaries of Saratoga Springs DRI (exclusive of any age-restricted residential units as referenced in Paragraph 5), or at such later time as is directed by the **SCHOOL BOARD** in compliance with Agreement dated November 21, 2000, between the **SCHOOL BOARD** and Peters Creek. As part of these conveyances, **PCCD** shall provide a boundary survey, topographic survey, Phase 1 environmental site assessment and special warranty deed. The general location of these sites shall be determined as part of the DRI approval by **CLAY COUNTY**, with the final surveyed boundaries of these sites to

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be determined by the **SCHOOL BOARD** and **PCCD** and shall be mutually acceptable in size, location, conformation, and proximity, and no site shall be placed adjacent or contiguous to the county landfill. At the time of conveyance **PCCD** shall provide access to said sites by roads that are suitable for construction traffic. **PCCD** shall complete the remaining infrastructure described in this agreement within twelve (12) months of the date of the site conveyance.

(b) **PCCD**, in compliance with said Agreement, shall convey to the **SCHOOL BOARD** a site consisting of seventeen (17) developable acres located outside the boundary of the **SARATOGA SPRINGS DRI** but within the general vicinity of the DRI, at such exact location as to be determined by mutual agreement between **PCCD** and the **SCHOOL BOARD** (the “Ancillary Site”) within one (1) year of commencement of horizontal construction within the **SARATOGA SPRINGS DRI** or at such later time as is directed by the **SCHOOL BOARD**. As part of these conveyances, **PCCD** shall provide a boundary survey, topographic survey, Phase 1 environmental site assessment and special warranty deed. Said acreage shall be considered “developable” so long as it does not require excessive fill or more than minor wetlands mitigation.

2. The school sites described in paragraph 1(a) (collectively, the “School Sites”) shall be developable for school purposes as determined by the **SCHOOL BOARD**. Any wetlands mitigation required to develop the School Sites shall be mitigated by **PCCD** at its expense, provided that the **SCHOOL BOARD** shall provide **PCCD** adequate information regarding the expected impacts of their development with which to process wetlands permit applications and adequate time in advance of the need for the impact to obtain final permits, and provided that the **SCHOOL BOARD** shall be responsible at its expense for permitting and construction of the stormwater collection systems for the surface water management systems located on each of the School Sites. Stormwater treatment and retention for the School Sites shall be provided as part of a master stormwater treatment system that is outside the boundaries of the School Sites, with stormwater conveyances (i.e., curbs, gutters, and culverts) necessary to direct stormwater from the School Sites to the master stormwater system

to be constructed by the **SCHOOL BOARD** at its expense to the extent that such stormwater conveyances are located on the School Sites. Water, sewer (without the need of the **SCHOOL BOARD** to construct a lift station), road access, power, telephone and stormwater treatment shall be provided to the School Sites by **PCCD**, such that general contractors constructing the schools need only connect to power, telephone, water, stormwater and sewer lines running to the edge of the school sites or on the school sites. Sidewalks shall be provided within the **SARATOGA SPRINGS DRI** so as to provide a pedestrian network connecting to the School Sites, as to be described and approved by **CLAY COUNTY** as part of the Planned Unit Development zoning of the project. **PCCD** agrees to waive any impact fee credits due to it under the Ordinance, as may be amended, or under Florida Statutes or common law, for conveyance of the School Sites and the Ancillary Site, and for the obligations set forth in Paragraphs 1 and 2.

3. **PCCD** shall make two cash contributions to the **SCHOOL BOARD**. Each contribution shall be in the amount of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00). The first contribution shall be due not later than thirty (30) days from the date the **SCHOOL BOARD** gives **PCCD** written notice that a construction contract has been awarded by the **SCHOOL BOARD** to the general contractor or construction manager responsible for constructing the first school to be constructed within **SARATOGA SPRINGS DRI** and following conveyance of the site to the **SCHOOL BOARD**, with an attached executed copy of such contract. The second contribution shall be due not later than thirty (30) days from the date the **SCHOOL BOARD** gives **PCCD** written notice that a construction contract has been awarded by the **SCHOOL BOARD** to the general contractor or construction manager responsible for constructing the second school to be constructed within the **SARATOGA SPRINGS DRI** and following conveyance of the site to the **SCHOOL BOARD**, with an attached executed copy of such contract. **PCCD** agrees to waive any

impact fee credits due to it under the Ordinance, as may be amended, or under Florida Statutes or common law, for the cash contributions set forth above.

4. Development within the **SARATOGA SPRINGS DRI** shall pay the applicable school impact fee due in accordance with the terms of the Ordinance and any amendments then in effect and at such time as is required under the then-applicable school impact fee ordinance.

5. Nothing in this Agreement is intended to change the existing law exempting age-restricted adult communities from school impact fees. No school impact fee is owed under this Agreement as a result of constructing age-restricted adult communities within the **SARATOGA SPRINGS DRI** so long as said communities meet the requirements set forth in Clay County's public school impact fee ordinance which is in effect at the time a building permit is issued.

6. The rights and obligations of the parties to this Agreement are contingent upon the final approval of the **SARATOGA SPRINGS DRI** development order, including resolution of any appeals, allowing the following development rights: 4,256 dwelling units, 344,146 square feet of retail/service uses, 387,139 square feet of office uses, 250 hospital beds, and 18 golf course holes, buildable over the course of two phases of at least 5 years each, with a buildout period not sooner than December 31, 2017. The parties recognize and agree that the applicant for the DRI Development Order may withdraw its application for development approval of the DRI at any time for any reason including but not limited to changing market conditions, even if the **SCHOOL BOARD** and County are willing to agree to allow a project meeting the above-described criteria, and that such withdrawal by the applicant would not constitute a breach of this Agreement. Such

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withdrawal shall automatically terminate this Agreement and relieve the parties of any and all obligations under this Agreement, but shall have no effect upon the rights or obligations of the parties or their successors in interest, as set forth in the agreement dated November 21, 2000, which is the agreement referred to in Paragraph 1.

7. The **SCHOOL BOARD** acknowledges and agrees that the contributions and payments required of **PCCD**, its successors and assigns, under this Agreement and the **SARATOGA SPRINGS DRI**, would adequately address the regional impacts of this project upon public schools. Under sections 163.3180(13) and 163.3177(12)(i), Florida Statutes, and the schedule published by the Department of Community Affairs, Clay County must submit revisions to its comprehensive plan and revise the interlocal agreement with the **SCHOOL BOARD** to implement school concurrency by May 1, 2008. School concurrency has not been implemented at this time. With the commitments made herein by **PCCD** to mitigate for the impacts of the **SARATOGA DRI**, the **SCHOOL BOARD** hereby agrees that development within the **SARATOGA DRI** by **PCCD**, its successors and assigns, shall be fully vested from school concurrency. Furthermore, the **SCHOOL BOARD** agrees that the commitments made by **PCCD** in this Agreement constitute adequate proportionate-share mitigation under the provisions of section 163.3180(13)(e)1, Florida Statutes, should a court having jurisdiction determine that the **SARATOGA SPRINGS DRI** is not vested from school concurrency for reasons other than noncompliance with this Agreement by **PCCD**, its successors and assigns.

8. This Agreement may only be modified in writing by written agreement approved and executed in a manner consistent with this Agreement by all parties to this Agreement.

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9. Any notices required under this Agreement, proposed changes to this Agreement, or any proposed termination of this Agreement shall be sent by overnight express delivery (return receipt requested), certified United States Mail (return receipt requested) or by hand delivery to the addresses presented below. Any changes to the addresses required for notification shall be provided to the other party in writing using the addresses below or the most recent contact information provided by the other party using the notice procedure in this Paragraph if such contact information has been revised.

For the **SCHOOL BOARD**:

Superintendent of Schools
THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA
900 Walnut Street
Green Cove Springs, FL 32043

For **PCCD**:

Margaret H. Jenesse
LandMar Group
10739 Deerwood Park Boulevard,
Suite 300
Jacksonville, FL 32256

10. Should the development order for the **SARATOGA SPRINGS DRI** or its companion comprehensive plan amendment or Planned Unit Development (rezoning) approval be appealed or otherwise litigated in an administrative or judicial forum, the timing for conveyance of the School Sites and the Ancillary Site shall be tolled until the time a final order is issued in the appeal or litigation, including expiration of any periods during which further appeal may be taken. In the event that the DRI development order or related comprehensive plan amendment or rezoning is appealed or challenged by third parties or government agencies such that the challenge either results in delay that is unacceptable to **PCCD** or results in a determination which would prevent

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development of the project as described in section 6 above, **PCCD** may terminate this Agreement by sending written notice to the parties.

11. **PCCD** shall assign this Agreement to any future master developer of the **SARATOGA SPRINGS DRI** contemporaneous with the transfer of its rights and obligations as master developer of the **SARATOGA SPRINGS DRI** and may assign this Agreement to a Community Development District formed to fund infrastructure and other needs of the **SARATOGA SPRINGS DRI**.

12. This Agreement shall become effective the date this Agreement is executed by all parties.

13. This Agreement may be enforced by the parties by specific performance as the sole remedy.

14. Nothing in this Agreement shall be construed to modify or void the terms, rights, or obligations of the parties set forth in the agreement between Peters Creek and the **SCHOOL BOARD** entered into on November 21, 2000. Satisfaction by **PCCD**, its successors or assigns of the terms and conditions of this Agreement shall satisfy all obligations of Peters Creek, its successors and assigns, under the November 21, 2000 agreement between Peters Creek and the **SCHOOL BOARD**. Peters Creek is a third party beneficiary of this Paragraph.

15. The parties agree to cooperate fully in the implementation of this Agreement and the Ordinance, and to negotiate in good faith such further agreements as may be necessary to implement this Agreement and the Ordinance or amendments thereto within their respective jurisdictions.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this day and year below written.

**THE SCHOOL BOARD OF CLAY COUNTY,
FLORIDA**

By _____
CAROL VALLENCOURT, Chairman

DATED: _____

ATTEST:

By _____
DAVID L. OWENS
Superintendent of Schools

APPROVED ON BEHALF OF THE SCHOOL
BOARD AS TO FORM AND LEGAL
SUFFICIENCY ONLY

By _____
J. BRUCE BICKNER
Attorney for School Board

PCCD, LLC,
a Delaware limited liability company

By: LANDMAR GROUP, LLC,
a Delaware limited liability company
Its: Manager

By: LANDMAR MANAGEMENT,
LLC, a Delaware limited liability
company,
Its Manager

By: _____
Edward E. Burr
Its: President

DATED: _____

JOINDER AND CONSENT BY PETERS CREEK

Peters Creek joins in and consents to this Agreement as the owner and holder of fee-simple title to substantially all of land included within the Saratoga Springs DRI and as a party to the agreement between the SCHOOL BOARD and Peters Creek dated November 21, 2000. In the event that PCCD is no longer the master developer of the Saratoga Springs DRI and a subsequent developer enters into an agreement with Peters Creek to act as the master developer of the remaining undeveloped portions of the Saratoga Springs DRI, Peters Creek shall include in the contract document (or documents) between Peters Creek and such master developer provisions requiring such successor master developer to perform any and all obligations of PCCD under this Agreement which, as of that date, have not yet been performed or satisfied by PCCD; such Agreement by the successor master developer shall be embodied either (i) in a written assignment and assumption document whereby such successor developer assumes and agrees to perform such remaining unperformed obligations of PCCD or (ii) in a separate, written agreement between such successor developer and the SCHOOL BOARD, which written Agreement shall have terms substantially similar to those of this Agreement addressing the remaining unperformed obligations of PCCD under the foregoing Agreement.

PETERS CREEK INVESTMENTS, LLP, a
Florida limited liability partnership

By: DEVELOPERS THREE, INC., a
Florida corporation, Partner

By: _____
G. R. Agresti, President

By: THE PAUL E. & IDA KLARE
REINHOLD FAMILY TRUST u/a
dated 12/22/65, Partner

By: _____
John C. Myers, III, Trustee

By: THE KLARE N. REINHOLD
IRREVOCABLE TRUST u/a dated
12/22/67, Partner

By: _____
John C. Myers, III, Trustee

