SUMTER COUNTY BOARD OF COMMISSIONERS

EXECUTIVE SUMMARY

SUBJECT: Approve Villages Crossing Chapter 163 Agreement reviewed at the May 7, 2012, DRC Meeting (Staff recommends approval).

REQUESTED ACTION: **Approve Chapter 163 Agreement reviewed at the May 7, 2012, DRC Meeting**

☐ Work Session (Report Only) **DATE OF MEETING:** **May 22, 2012**
☒ Regular Meeting ☐ Special Meeting

CONTRACT: ☒ N/A Vendor/Entity: _____
Effective Date: _____ Termination Date: _____
Managing Division / Dept: **Planning**

BUDGET IMPACT: _____
☐ Annual **FUNDING SOURCE:** _____
☐ Capital **EXPENDITURE ACCOUNT:** _____
☒ N/A

HISTORY/FACTS/ISSUES:
The Development Review Committee is compiled of staff from several county agencies and consulting engineers. The Committee meets weekly to review applications for Use and Development Permits. The DRC's recommendations are then forwarded to the BOCC. The plans were reviewed and found to be in compliance with the Land Development Code with only minor changes required.

Villages Crossing Subdivision – Major Development – Chapter 163 Agreement
Property Owner: Ronald D. Brown – Property Developer: Harbor Retirement Associates, LLC –Property Location: Located southeast of the intersection of US 441 and NE 136th Avenue/Lady Lake – Total Acreage of Project: 39.44 acres MOL – Project Proposal: Construct 3700 lf of new roadway and related infrastructure on 39.44 acres MOL for a commercial subdivision.

DEVELOPMENT AGREEMENT BETWEEN
SUMTER COUNTY AND VILLAGES CROSSING COMMERCIAL
SUBDIVISION PROPERTY OWNERS' ASSOCIATION

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2012, by and between **SUMTER COUNTY**, a political subdivision of the State of Florida, (the "County"), and the **VILLAGES CROSSING COMMERCIAL SUBDIVISION PROPERTY OWNERS' ASSOCIATION, INC. a Florida not-for-profit corporation** (the "Developer"). In furtherance of this Agreement, the Parties hereby agree as follows:

RECITALS:

1. Developer is the owner of certain real property located in Sumter County, Florida, as depicted and legally described in Exhibit "A" and as depicted on Exhibit "B" (the "Property").

2. Developer desires to develop the Property into a commercial subdivision to be known as The Villages Crossing Commercial Subdivision (the "Subdivision").

3. Developer and the County wish to record within the Public Records of Sumter County, Florida, this Agreement regarding the development of the Property.

NOW THEREFORE, in consideration of the mutual terms, covenants, and conditions contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and, together with all exhibits attached hereto, are incorporated herein by reference, *in haec verba*. Where the pictorial depictions and descriptions set forth in the attached exhibits may conflict with County Approvals, the County Approvals shall govern.

2. Purpose. The purpose of this Agreement is to provide for the construction of certain improvements for the development of the Property pursuant to the County's Land Development Code, as well as other applicable laws, regulations and ordinances.

3. Construction of Facilities: The facilities that will serve the planned development of the Property, as described in this Development Agreement, are listed below, including the person or entity which shall provide these facilities or services, and the date or schedule for their construction so that these facilities and services will be available concurrent with the impacts of the Property's development:

- a. Roadways: The Property is located entirely within the jurisdictional boundaries of the County. No publicly dedicated roadway shall be constructed within the Property. The Property is planned to be developed in subsequent phases. Developer shall install and construct all required internal street areas and other travelways required for each development phase, and shall complete them in a timely manner before the opening of each such development phase. The County shall have no obligation to construct,

DRAFT

improve or maintain any of the roadways or travelways within the Property. All these internal travelways are planned to be owned by the OA or Character Oaks Real Estate, Inc. The OA shall be responsible for the subsequent maintenance and repair of these internal travelways, unless other comparable agreements are made with owners of individual tracts or parcels within the Property for the maintenance of same. Tracts within the subdivision may be developed as single or multiple lot parcels according to the following: Individual site plans submitted shall document with each site plan that the aggregate of all property currently being developed and previously developed within the subdivision does not exceed the Floor Area Ratio (FAR) allowed in the Land Development Code. Prior to the submittal by Developer to the County of a site plan for the first development phase or building within the Property, Developer shall complete a traffic analysis, to be prepared by a reputable and licensed traffic engineer for such traffic studies, whose report shall analyze and describe the offsite roadway impacts to be expected from the project's planned uses and vehicle trips (and not merely the traffic impacts of the first development phase). The traffic study shall be prepared consistent with the County's traffic study methodology and will be reviewed and approved by the County. If the traffic study indicates the need for mitigation to roadways impacted by the project to either maintain adopted level of service standards or bring existing roadways to an acceptable standard to accommodate the increased traffic demand of the project, the Developer shall be responsible to make the required improvements, or to fund their proportionate share of the cost of the required improvements consistent with the County's Proportionate Share Ordinance (Ordinance 2006-36), or to enter a comparable agreement with the County or the State of Florida that addresses and fulfills the additional improvement needs indicated by this traffic study. Any roadway improvement that is contiguous to or impacts State roadways such as US 27/441 must be coordinated with FDOT. This Development Agreement does not preclude the execution of road impact fee credit or reimbursement agreement between the County and Developer consistent with the County's ordinances. It is also understood that this Development Agreement does not obligate the County to approve any such future road impact fee credit or reimbursement agreement. In addition, this Development Agreement does not obligate the County to approve any such future road impact fee credit or reimbursement agreement.

b. Surface Water Management System: Developer shall be responsible to design, construct and maintain a surface water management system for all stormwater drainage, runoff and retention on the Property. This system shall be designed according to the regulations and criteria of the SWFWMD and the County, and shall be permitted by the SWFWMD. This system shall be installed in a timely manner so as to be complete and able to manage the stormwater requirements of each sequent development phase at the start of each such phase. The County shall have no obligation to install or maintain any of these stormwater improvements or system. Developer shall have the right, subject to the permits and approval by the SWFWMD, to assign to the OA the ownership rights to this surface water management system as well as the responsibility to inspect, maintain and repair these system improvements according to the above permit conditions.

c. Water and Sewer. Wastewater services and potable water services will be supplied by the Village Center Community Development District (the "VCCDD").

- d. Solid Waste Collection: Solid waste collection service for the Property will be provided by a private solid waste hauler. Solid

waste disposal will be provided a solid waste facility selected by the Developer or their hauler and be approved by FDEP for materials to be received.

e. Fire and Emergency Services: Fire and emergency services for the Property will be provided by the Villages Public Safety Service Area. The Developer represents that it has confirmed that the Villages Public Safety Service Area presently has sufficient permitted and constructed fire services capacity, and emergency services training and certifications, to provide these services to the Property without a decrease in the level of service provided.

4. A. Design, Setback, and Buffer Standards. The Property and portions of the Property may be developed and sold as single lots or as multiple lot parcels without the necessity of platting according to the following standards:

a. No minimum lot size is required;

b. No minimum lot width is required;

c. All structures shall have a zero (0) foot minimum setback from property lines located within the Property, a ten (10) foot minimum setback from contiguous property not zoned residential; and, a fifteen (15) foot minimum setback from contiguous property zoned residential. In addition, all structures shall have a fifteen (15) foot minimum setback from the right-of-way line for other roadways or streets which may be constructed within the Property, including without limitation the private roadways owned by the Association described in Exhibit "C" to this Agreement. The setback requirements with respect to the roadways shall not apply to walls, signage, and sign towers, provided that the County determines that such walls, signage, and sign towers are not habitable. All signs will meet the Sumter County Land Development Code's sign regulations. Except as required by the Life Safety Code, no other setback or separation imposed by the County, the County's zoning ordinances, the County's Land Development Regulations, or the County's Code of Ordinances shall require a greater setback or separation;

d. Parking requirements shall be as required under the County's Land Development Code existing on the date of this Agreement for the specific use at the time of site plan approval;

e. The maximum allowed impervious surface ratio calculations for the Property shall include the appurtenant drainage easement area and be limited to eighty percent (80%). However, nothing in this Agreement shall authorize the Developer to exceed those drainage design criteria set forth in the existing Southwest Florida Water Management District Permit (or amendments thereto) issued for this project;

DRAFT

f. All structures and site improvements shall be considered for permit approval by the County pursuant to site plans submitted to and approved by the County, and the owners shall install and complete all required site improvements. Site plan approval shall be based upon adherence to this Agreement and the County's Land Development Code, and all site plans submitted shall contain documentation on such site plan of compliance therewith. In case of conflict between this Agreement and the County's Land Development Code, this Agreement shall control. Matters not specifically addressed in this Agreement will be controlled by the County's Land Development Code. Site distance triangles within the Property will be according to standard engineering practices; and,

g. Individual site development plans may be submitted in phases.

B. Permissible Land Uses And Other Restrictions:

Permitted uses of the Property, or of portions of the Property, shall be in accordance with the County's Land Development Code. Currently, the Property carries a zoning designation of CH and CL. Permitted uses, as well as prohibited uses, are listed in **Table 13-362A** of the County's Land Development Code, which is incorporated into this Agreement, *in haec verba*.

5. Nothing contained in this Agreement authorizes the permitted maximum volumes of the storm water to be accepted in the drainage retention area servicing the Property and Tracts to exceed that which has been permitted with Sumter County and the Southwest Florida Water Management District or as hereafter amended.

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

7. The County has determined that the requirements of Section 163.3233 of the Florida Statutes have been met in that:

(a) The County has adopted a local Comprehensive Plan that is in compliance;

(b) The proposed development is consistent with the future land use designation applicable to the Land, and is consistent with other pertinent portions of the County Comprehensive Plan;

(c) The County's Comprehensive Plan includes a financially feasible capital improvements element that provides for transportation facilities adequate to serve the proposed development and the capital improvements element has not yet been implemented with respect to the Undeveloped Lands; and

(d) This Agreement shall constitute a binding commitment on the part of Developer to the County for the construction of facilities to serve the County Approvals.

8. **Regulations in Effect**. The County has numerous Comprehensive Plan and land development regulations in effect that govern the development of the Property, including, but not limited to, Land Development Code regulations and fees, stormwater requirements, wetland protection standards, utility concurrency requirements and building code requirements. The County acknowledges that the development of the Property is vested against any subsequently adopted Ordinances or new Comprehensive Plan policies or goals related thereto, which are not in effect as of the date of this Agreement, for the duration of this Agreement. Nothing herein shall be construed to modify, limit or eliminate any existing or future laws of statewide application affecting the development of land, as applied by governmental agencies having jurisdiction over the Undeveloped Lands.

9. **Building Permits**. Developer shall be entitled to issuance of building permits by the County to construct improvements on the Property provided that a site civil construction plan has been approved and remaining improvements are constructed according to County standards. Certificates of occupancy shall be approved and issued by the County in accordance with applicable law for development in each phase of the County once the improvements necessary to serve such development have been completed by the Developer and operating permits have been issued by FDEP.

10. **Authority and Duration**. This Agreement is made and granted pursuant to Florida Statutes Section 163.3220 - 163.3243 and is effective through the tenth (10th) anniversary of the Effective Date of this Agreement, or within any applicable extension of this Agreement issued or agreed to by the County as set forth in this Agreement.

11. **Extension of Agreement**. The duration of this Agreement may be extended by the County after conducting a public hearing in the manner specified in Section 163.3225, Florida Statutes, as amended from time to time.

12. **Necessity to Obtain Permits**. Developer acknowledges its obligation to obtain all necessary federal, state and local development permits. The failure of this Agreement to address any particular permit, condition, term, or restriction applicable to the development of the Undeveloped Lands shall not relieve Developer or any successor or assign of the necessity of complying with federal, state, and local permitting requirements, conditions, terms, or restrictions as may be applicable.

13. **Agreement Consistent with Comprehensive Plan and Florida Statutes Section 163.3180**. The County hereby acknowledges and agrees that (i) the development of the

Property is consistent with the Florida Statutes and with the County's Comprehensive Plan, (ii) that the County's Comprehensive Plan is in compliance with the State of Florida Comprehensive Plan, and (iii) Developer is, by execution of this Agreement, making a binding commitment to the County to construct improvements contemplated by this Agreement.

14. **Remedies**. Each party to this Agreement shall be entitled to seek enforcement of this Agreement against the other party and shall have all remedies available at law or in equity, including the remedy of specific performance and all forms of injunctive relief.

15. **Binding Effect**. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement from and after the effective date as defined in Section 18 below.

16. **Applicable Law; Jurisdiction and Venue**. This Agreement and the rights and obligations of the County and the Developer under this Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter of this Agreement shall be exclusively in Sumter County, Florida. If any provision of this Agreement, or the application of this Agreement to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The fact that this Agreement does not detail all laws, rules, regulations, permits, conditions, terms and restrictions that must be satisfied to complete the development contemplated by this Agreement shall not relieve Developer or its successors in interest of the obligation to comply with the law governing such permit requirements, conditions, terms and restrictions.

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

18. **Exhibits**. All exhibits attached to this Agreement contain additional terms of this Agreement and are incorporated into this Agreement by reference.

19. **Captions or Paragraph Headings**. Captions and paragraph headings contained in this Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope of intent of this Agreement, nor the intent of any provision of this Agreement.

20. **Counterparts**. This Agreement may be executed in counterparts, each constituting a duplicate original, but such counterparts shall constitute one and the same Agreement.

21. **Effective Date, Duration of Agreement**. Within fourteen (14) days after the Conditions Precedent have occurred or have been performed, and after the County enters into this Agreement, the County shall record the Agreement with the Clerk of Circuit Court for Sumter County, Florida, and shall become effective upon recording ("Effective Date"). This Agreement shall remain in effect until the earlier of the following dates: (i) the date on which the

DRAFT

construction is complete on all construction of improvements and infrastructure associated with the development of the Property, or (ii) the tenth (10th) anniversary of the Effective Date, unless otherwise extended or terminated as provided for herein or in the Act. This Agreement may be terminated at any time by mutual consent of the parties.

22. **Amendment**. This Agreement may be amended by mutual consent of the parties so long as the amendment meets the requirements of the Act and applicable County ordinances.

23. **Further Assurances**. Each party to this Agreement agrees to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, and assurances in a manner and to the degree allowed by law, as shall be reasonably requested by the other party in order to carry out the intent of and give effect to this Agreement. Without in any manner limiting the specific rights and obligations set forth in this Agreement or illegally limiting or infringing upon the governmental authority of the County, the parties declare their intention to cooperate with each other in effecting the purposes of this Agreement, and to coordinate the performance of their respective obligations under the terms of this Agreement.

24. **Owners Association**: Developer shall create for the Property an Owners Association (the "OA"), a Florida not-for-profit corporation, which is planned to own and maintain the common areas within the Property. The OA shall also establish and administer rules and regulations for the overall management and coordination of the various businesses within the Property and their activities, site maintenance, travel patterns and parking areas, etc., as will be appropriate for the nature and character of those individual businesses. The OA shall be charged with the authority and obligation to establish and enforce standards for the safety, appearance and general welfare of businesses within the Property, as well as ensuring that the Property's various businesses and their employees and visitors will maintain operations and premises so as to respect the rights and privileges of adjoining property owners. It is acknowledged and agreed by the Parties that the ownership and maintenance obligations of the OA may be transferred or assigned to another entity. Any document transferring or assigning ownership or maintenance obligations of the OA shall specifically incorporate this Agreement by reference, with an acknowledgment that the new owner agrees to be bound by said terms. Developer shall notify County of any such transfer or assignment within ten (10) days of said transfer or assignment.

25. **Joinders By Contract Vendors As Owners Of Legal Title To Property**: Attached to this Development Agreement, and incorporated herein for any and all purposes, are the Joinders and Consents of the current owners of legal title to the Property. By their Joinders herewith, said owners consent to and join in this Development Agreement, and acknowledge that the terms of this Development Agreement shall constitute an encumbrance on the Property, and that future development of the Property shall be subject to the terms and provisions of this Development Agreement.

26. Nothing in this Development Agreement shall be considered to excuse or obviate Developer's obligation to comply with the terms and provisions of each of the above identified permits or approvals, nor to obligate the County to grant any of the permits or approvals listed above.

27. The failure of this Development Agreement to address or fulfill any particular permit term or condition shall not relieve Developer of the obligation to comply with any law governing that permit term or condition in regard to the planned development of the Property, as applicable.

28. The Parties acknowledge that the County reserves the right to exercise its emergency rulemaking authority when deemed necessary by the Sumter County Board of County Commissioners, for the purposes of protecting the public safety, health or welfare of the citizens of Sumter County, Florida.

29. Developer acknowledges that, if Developer or any successor or assign shall divide the Property, or sell off portions of the Property, so as to create a "subdivision" as defined in Chapter 177.031, Florida Statutes, Developer or its successor or assign shall meet and fulfill any requirements for this subdivision according to Chapter 177, Florida Statutes, and the County's Land Development Code.

30. **Annual Report**: Consistent with Section 163.3235, Florida Statutes, Developer shall file an Annual Report with the County, to confirm its continuing compliance with the terms of this Development Agreement. During the term of this Development Agreement, Developer shall file its Annual Report no later than May 1 of each year. The Annual Report shall contain the information required to be submitted under the then-existing provisions of Chapter 163, Florida Statutes, and such other information as may be reasonably required by the County according to the terms and conditions of this Development Agreement. The County shall have the right, without modification of this Development Agreement, to agree to eliminate some or all of the reporting requirements for the Annual Report, by separate written agreement with Developer.

31. **Enforcement**: Enforcement of this Development Agreement may be undertaken through the Sumter County Board of County Commissioners. Upon approval of this Development Agreement, the Property shall be used only for the uses permitted herein. No changes to these permitted uses, nor any further expansion or addition to these permitted uses, nor any addition to the facilities, shall be permitted except as approved by formal amendment of this Development Agreement.

32. **Conflict**: In the event of any conflict between the terms or provisions of this Development Agreement and the County's Land Development Code, the terms or provisions of this Development Agreement shall control. Any matters which are not specifically addressed in this Development Agreement shall be controlled according to the terms or provisions of the County's Land Development Code, as amended.

33. **Termination**: Any termination of this Development Agreement shall only be in accordance with the following provisions:

a. Termination by Mutual Consent: This Development Agreement may be terminated by the mutual agreement of the County and the Developer, evidenced by writing and signed by appropriate representatives of each party.

b. Termination by the County: If the County determines that Developer has failed to comply with the terms of this Development Agreement, including but not necessarily limited to the requirement to file an appropriate Annual Report, the County, after written notice to Developer setting a reasonable time to cure any such non-compliance, may terminate or modify this Development Agreement, provided that if a modification order to be made by the County is not accepted in writing by Developer within the time reasonably prescribed by the County, this Development Agreement may be terminated by the County. A determination of non-compliance pursuant to this Section shall be made only after a public hearing, notice of which, specifying the alleged acts or omissions of Developer considered by the County to be a failure of compliance under the terms of this Development Agreement, shall be provided to Developer at least twenty (20) days prior to such public hearing. At the hearing the County's representatives and Developer's representatives shall be entitled to present evidence and argument on all issues presented, and also to submit rebuttal evidence and argument.

c. Effect of Termination: Upon the occurrence of either (i) the expiration of the term of this Development Agreement, or (ii) the termination of this Development Agreement under the provisions of Section 34(b) above, the provisions of Sections 3 and 4.A of this Development Agreement shall remain in full force and effect, and shall be binding upon Developer and any successor in title to Developer as to the Property or any portion thereof. In the event of termination of this Development Agreement under the provisions of Section 34(a) above, all rights of Developer and the County hereunder shall terminate, and subsequent development of the Property shall be limited to those uses permitted in the then existing land use designation(s) of the Property or any portions thereof, as set forth on the Future Land Use Map of the County's Comprehensive Plan and according to the then-existing zoning designation(s) of the Property or any portions thereof, or any subsequent amendments thereto.

34. Binding Effect: The terms and conditions set forth in this Development Agreement shall inure to the benefit of Developer as the contract purchaser of the Property, and to any successor in title to Developer as to the Property or any portion thereof, and shall additionally constitute a covenant running with title to the Property or any portion thereof, and shall be legally binding upon any heirs, assigns and successors in title or interest to Developer as the contract purchaser of the Property or any portion thereof.

35. **Litigation**: In the event of any litigation arising out of this Development Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorneys' fees, and including reimbursement for such reasonable attorneys' fees and costs incurred with respect to any bankruptcy, appellate or post-judgment proceeding related thereto.

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

For the County: For the Developer:

Bradley Arnold
County Administrator
7375 Powell Road
Wildwood, FL 34795

With a copy to:

George G. Angeliadis
The Hogan Law Firm, LLC
20 S. Broad Street
Brooksville, FL 34601

With copies to:

DRAFT

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, one of which is to be delivered to the Developer, one to the County Clerk for filing in the County's official records and one to the Sumter County Clerk of Court for filing in the Official Public Record.

ATTEST: SUMTER COUNTY, FLORIDA

_____

Print Name:_____ By:_____

CITY CLERK Garry Breeden, Chairman

COUNTY OF SUMTER

STATE OF FLORIDA

The foregoing instrument was acknowledged before me this ___ day of _____, 2012, by Garry Breeden, Chairman of the Sumter County Board of County Commissioners, who is personally known to me and who did (did not) take an oath.

_____

(Signature of Notary Public)

_____

(Print, Type or Stamp Name of Notary Public)

Commission No.:_____

My Commission Expires:_____

APPROVED AS TO LEGAL FORM & CONTENT FOR THE RELIANCE OF SUMTER COUNTY ONLY:

_____

Print Name:_____

County Attorney

DRAFT

Signed, sealed and delivered
in the presence of:

VILLAGES CROSSING COMMERCIAL SUBDIVISION PROPERTY OWNERS' ASSOCIATION, INC.

By:_____
Print Name:_____

By:_____
Ronald D. Brown
Its: _____

By:_____
Print Name:_____

COUNTY OF _____

STATE OF FLORIDA

The foregoing instrument was acknowledged before me this ___ day of _____, 2012, by Ronald D. Brown, the _____ of **VILLAGES CROSSING COMMERCIAL SUBDIVISION PROPERTY OWNERS' ASSOCIATION, INC**., on behalf of the company, who is personally known to me or has produced _____ as identification and who did (did not) take an oath.

_____
(Signature of Notary Public)

_____
(Print, Type or Stamp Name of Notary Public)

Commission No.:_____
My Commission Expires:_____

DRAFT

Schedule of Exhibits

DRAFT