

**BICE GROVE ROAD EXTENSION  
DEVELOPMENT AND REIMBURSEMENT AGREEMENT**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between **KRPC East Johnson, LLC**, a Florida limited liability company, the address of which is 121 Garfield Avenue, Winter Park, FL 32789 (hereinafter referred to as “KRPC”); the City of Haines City, a municipal corporation created under the laws of the State of Florida (the “City”); in Polk County, a political subdivision of the State of Florida (“Polk County” or the “County”) pursuant to the authority of Section 163.3180, Florida Statutes (2022) (hereinafter KRPC and the City may be referred to collectively as the “Parties” or individually as a “Party”).

**WITNESSETH:**

**WHEREAS**, KRPC is the Owner of real property in Haines City, Polk County, Florida, which property is located north of Johnson Avenue, east of Powerline Road, and south of Baker Dairy Road, as more specifically described in the legal description attached hereto as **Exhibit “A”** (the “Property”); and

**WHEREAS**, KRPC has received approval for a multi-phase residentially-based Planned Unit Development for up to seven hundred and eight (708) single family dwelling units through the City of Haines City’s land development process, which was approved in Ordinances No. 19-1663 and 20-1683 (collectively referred to herein as the “RPUD”), which is generally depicted on the RPUD Site Plan attached hereto as **Exhibit “B”**;

**WHEREAS**, KRPC has commissioned a traffic study from Wood & Associates Engineering, LLC dated February 17, 2020, (the “Traffic Study”), to identify traffic impacts of the project and any improvements necessary to alleviate existing infrastructure deficiencies, project related impacts, and maintain the functionality of the transportation network; and

**WHEREAS**, KRPC has commissioned an updated traffic study dated March 21, 2021 from Wood & Associates Engineering, LLC to amend the conclusions of the previous Traffic Study, (the “Updated Traffic Study”); and

**WHEREAS**, the Traffic Study and the Updated Traffic Study concluded the RPUD meets the County’s concurrency standards without Bice Grove Road Extension and providing access to Johnson Avenue, a county owned and maintained facility, Baker Dairy Road and through adjacent developments utilizing the inter-project connectivity as required by the RPUD; and

**WHEREAS**, the Parties acknowledge that the conditions of approval of the RPUD required the Parties to enter into an agreement for improvements, to be completed by plat approval for the Phase 3 of the RPUD, to the transportation infrastructure including the donation of right of way for Bice Grove Road Extension (“BGE”), as shown on **Exhibit “C,”** and to make certain infrastructure improvements to the Bice Grove Road Extension; and

**WHEREAS**, the Parties acknowledge the City required as a condition of the RPUD the construction of a two (2) lane collector road, six (6’) foot sidewalk, Type “F” Curb (as defined the City’s Land Development Code), drainage features (i.e. pipes, inlets, and structures), a pre-cast concrete wall, and a 15’ Type “B” Buffer with irrigation (the “BGE Improvements”); and

**WHEREAS**, The City may, at its discretion, require the additional improvements beyond the impacts of the RPUD subject to reimbursement through an agreement; and

**WHEREAS**, KRPC obtained an opinion of probable cost for the BGE Improvements from Gadd Engineering (the “Opinion of Probable Cost”), a copy of which is attached hereto and incorporated herein as **Exhibit “D”**; and

**WHEREAS**, the BGE Improvements are subject to partial reimbursement by the City to KRPC pursuant to the terms of this Agreement; and

**WHEREAS**, KRPC may enter into an agreement for payment of its proportionate share of the BGE Improvements in accordance with Section 163.3180, Florida Statutes; and

**WHEREAS**, the City has found that pursuant to Section 163.3180(5)(h)1.d, Florida Statutes, the proportionate fair share mitigation is sufficient, in whole, to address the transportation impacts resulting from the RPUD and Updated Traffic Study; and

**WHEREAS**, the development of the Property will provide economic development in an expanding and growing market and will provide a positive benefit to the local citizens and other members of Polk County; and

**WHEREAS**, KRPC and the City desire to enter into this Agreement to establish the respective rights and obligations of the Parties, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, it is therefore deemed to be in the interest of the public health, safety and welfare for the City to facilitate the construction of the BGE Improvements;

**NOW THEREFORE**, in consideration of the premises hereof, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto covenant and agree as follows:

1. **Recitals.** The recitals set forth above are true and correct, and are incorporated herein by reference.
2. **Definitions.** Terms which are capitalized herein shall be defined as set forth in the Recitals above or as otherwise defined in this Agreement.
3. **KRPC’s Obligations.** Pursuant to the terms and conditions set forth in this Agreement, the Parties hereby consent and agree as follows:

**3.1 Bice Grove Road Extension Right of Way.** The City has requested KRPC dedicate 120’ of right of way, which equates to approximately 6.0 acres, to facilitate the construction of Bice Grove Road Extension (“BGE Right of Way”) as a part of the City’s long term transportation network plans. The BGE Right of Way is shown as depicted on the BGE Right of Way Exhibit attached hereto as **Exhibit “C”**. Upon KRPC’s dedication and the City’s acceptance of the BGE Right of Way either dedicated by plat or by quitclaim deed for the BGE Right of Way, KRPC shall be reimbursed based on the fair market value of the land of residentially developed land dedicated in fee simple to the City. The Parties have agreed the fair market value of the BGE Right of Way shall be based on the appraisal of the BGE Right of Way, as further described in Section 3.7. The timing of the of the dedication shall not occur prior to

the completion of the BGE Improvements by KRPC and acceptance of the BGE Improvements by the City.

**3.2 Bice Grove Road Extension and Johnson Ave .** KRPC has permitted, designed, and constructed the intersection of the Bice Grove Road Extension and Johnson Avenue according to Polk County’s requirements. In addition, KRPC has constructed the portion of Bice Grove Road Extension, as shown on the RPUD, north from Johnson Avenue to connect to Phase 1 of the RPUD as generally depicted on Exhibit B. This section of the BGE Extension was constructed as a two (2) lane cross-section on the western portion of the BGE Right of Way. KRPC shall not receive any impact fee credits or reimbursement for the construction costs associated with this portion of the BGE improvement.

**3.3 Bice Grove Road Extension to Baker Dairy Road .** KRPC has permitted, designed, and constructed a portion of the Bice Grove Road Extension, as shown on the RPUD, from the northern intersection of the internal transportation network near the amenity center north to Baker Dairy Road, as generally depicted on Exhibit B. This section of the BGE Extension was constructed as a two (2) lane cross-section on the western portion of the BGE Right of Way. KRPC shall not receive any impact fee credits or reimbursement for the construction costs associated with this this portion of the BGE improvement.

**3.4 Bice Grove Road Extension Buffer.** KRPC shall be responsible for permitting, designing, and constructing landscaping and buffering along BGE Extension which the City has required enhanced buffering ~~in the event along~~ ~~–BGE Extension is completed as an arterial roadway~~ as defined in the City’s Comprehensive Plan, ~~and~~ Land Development Code, ~~and the RPUD~~. The required landscape and buffer shall include a 6’ pre-cast wall and a 15’ Type “B” Buffer with Irrigation (“BGE Buffer”). KRPC shall not receive any impact fee credits or reimbursement for the construction costs associated with this this portion of the BGE Buffer.

**3.5. Bice Grove Road Extension Proportionate Share.** Excluding the value of the land and costs of construction identified in Sections 3.2, 3.3, and 3.4, the estimated cost to construct the Bice Grove Road Extension, as indicated in the Opinion of Probable Cost, attached as Exhibit “D,” is \$1,155,118.55 (the “BGE Construction Cost”). KRPC’s proportionate fair share, as identified in the Updated Traffic Study, for the Bice Grove Road Cost is 19.06% of the Bice Grove Road Cost or \$220,165.60 (the “KRPC Proportionate Share”).

**3.6 Ownership of Bice Grove Road Extension.** KRPC agrees with the City that the BGE Improvements shall be conveyed to the City upon completion of BGE Improvements and from the time of acceptance of the BGE Right of Way shall be to the City and may be conveyed to the Polk County Board of County Commissioners ~~remain to be utilized solely for public right of way, at all times, in the complete and exclusive ownership of the City,~~ and any entity owning any part of the Property or any residence or building constructed or located thereon, shall not have the right, title, claim or interest in and to such facilities.

**3.7 Appraisal of BGE Right of Way.** The amount of reimbursement for the dedication of the BGE Right of Way shall be based on an appraisal of the highest and best use of the fee simple interest of the area to be dedicated (“BGE Right of Way Value”), which shall be performed by Mancuso Appraisal Services, Inc., a mutually agreeable MAI appraiser. The MAI appraisal and survey of the BGE Right of Way shall be commissioned by KRPC, at KRPC’s sole cost, within one hundred-eighty (180) days of the Effective Date of this Agreement. Upon completion of the appraisal, KRPC shall provide an original copy of the appraisal to the City and the value shall be used for purposes of the City’s reimbursement obligations for the BGE Right of

Way as indicated in Section 4.3(a). The parties acknowledge and agree that the City's reimbursement obligations for the BGE Right of Way shall not be subject to or require any additional formal approval by the City Commission of the City.

**4. City's Obligation to KRPC.** Pursuant to the terms and conditions set forth in this Agreement, the Parties hereby consent and agree as follows:

**4.1. Vesting Concurrence.** The City agrees that upon entering this Agreement KRPC satisfies all remaining transportation concurrency requirements as described in the City's LDR and the City's Comprehensive Plan for the Owners' Projects.

**4.2 Satisfaction of F.S. 163.3180.** Pursuant to and in accordance with Florida Statute 163.3180, upon adoption of this Agreement and payment of the Proportionate Share, the City shall deem Owner as having satisfied all transportation concurrency-related requirements for the Owner Project.

**4.3 Reimbursement of BGE Costs.** The City shall reimburse KRPC the costs associated with the completion of the BGE Extension as follows:

a. the City shall pay KRPC 100% of cost of the BGE Right of Way, identified in Paragraph 3.1, within ten (10) days of receipt either dedicated by plat or by of the deed conveying fee simple ownership of the BGE Right of Way to the City; and

b. the City shall reimburse KRPC 80.94% for the BGE Improvements, as depicted on the RPUD in Exhibit "B", construction costs, including the amounts identified on the Opinion of Probable Cost in Exhibit "D" within ten (10) days after KRPC's monthly submittal of written request detailing costs associated with completed BGE Improvements. .

**5. Miscellaneous Provisions.**

**5.1.** This Agreement shall be construed, and the rights and obligations of the parties hereunder shall be determined, in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusive in Polk County, Florida, unless prohibited by law.

**5.2.** 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 the Agreement including all mortgagees to the parties to this Agreement.

**5.3** All amendments to this Agreement, including any such amendments extending the term of the Agreement, shall be ineffective unless reduced to writing and executed by the City, and KRPC.

**5.4** This Agreement constitutes the entire agreement between the parties hereto as to the subject matter contained herein and supersedes any and all prior understandings, if any. There are no other oral or written promises, conditions, representations, understandings or terms of any kind as conditions or inducements to the execution hereof, and none have been relied upon by either party. Any subsequent conditions, representations, warranties, or agreements shall not be valid and binding upon the parties unless they are in writing signed by both parties and executed in the same manner as this Agreement.

**5.5** In the event any term or provision of this Agreement shall be held invalid by a Court of competent jurisdiction, such invalid term or provision should not affect the validity of any other term or provision hereof. All terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Agreement; provided, however, if any term or provision of this Agreement is held to be invalid due to the scope or extent thereof, then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

**5.6** The City and KRPC agree that all parties have played an equal and a reciprocal part in drafting this Agreement. Therefore, no provision of this Agreement shall be construed by a Court or judicial authority against any party hereto.

**5.7** In any dispute arising under this Agreement, each party shall bear its own attorneys' fees and costs.

**5.8** Notices required to be given by this Agreement shall be in writing sent by certified United States mail, return receipt requested, addressed to the persons and places specified for giving notice below, or at such other place or person specified for giving notice as designated by written notice in the manner provided above:

CITY: City of Haines City  
620 E. Main St.  
Haines City, FL 33844  
Attention: CITY MANAGER

With a copy to: Fred Reilly, City Attorney  
620 E. Main St.  
Haines City, Florida 33884

DEVELOPER: KRPC East Johnson, LLC  
121 Garfield Ave.  
Winter Park, FL 32789  
Attn: McKinzie D. Terrill  
Steve Rosser  
Allan Keen

With a copy to: John B. (Bart) Allen, Esq.  
Peterson & Myers, P.A.  
P.O. Box 24628  
Lakeland, FL 33802

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**5.9.** The warranties, representations, covenants, and obligations of the parties hereto shall be binding upon the parties and their respective successors in interest.

**5.10** Within 14 days after the City approved and execute this Agreement, the City shall record the Agreement in the public records of Polk County. The City shall pay the costs of

recording this Agreement as well as any amendment, cancellation, modification, extension, or revocation thereto.

**5.11** This Agreement shall automatically terminate and expire upon the full performance by all parties hereto of each and every one of their respective obligations arising under the terms of this Agreement.

**5.12** This Agreement shall become effective upon its execution by all parties (the “Effective Date”).

**5.13 Assignment to CDD.** By execution of this Amendment and without further approval, the Parties specifically authorize KRPC to assign its rights and obligations under this Agreement to only the Cypress Park Estates Community Development District (the “CDD”), which has been established by the City of Haines by Ordinance No. 19-1964 on November 7, 2019 for the funding and construction of infrastructure, including but not limited to the infrastructure contemplated in the Agreement. Within ten (10) business days of assignment to the CDD, KRPC shall provide written notice, including a copy of the assignment, to the all Parties, which notice shall be delivered in accordance with Paragraph 5.8 of the Agreement.

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

**Signatures on the Following Pages**

CITY COMMISSIONERS OF THE CITY OF HAINES CITY

By: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form and Correctness

\_\_\_\_\_  
City Attorney

**Signature Blocks Continue on Next Page**

**EXHIBIT "A"**

**THE PROPERTY**

**KRPC Property:**

**The West 1/2 of Southwest 1/4 of Southwest 1/4, Less and Except right of way for State Road S-580 on the South side thereof, in Section 24, Township 27 South, Range 27 East, Polk County, Florida.**

**AND**

**Parcel 1: East 1/2 of the Northeast 1/4 of the Southeast 1/4 of Section 23, Township 27 South, Range 27 East, Less and Except roadways of record and/or in use, being in Polk County, Florida.**

**Parcel 2: The East 1/4 of the SE 1/4 of the SE 1/4, Less State Road S-580, in Section 23, Township 27 South, Range 27 East, Polk County, Florida.**

**Parcel 3: The West 1/2 of the East 1/2 of the SE 1/4 of SE 1/4, Less State Road S-580, in Section 23, Township 27 South, Range 27 East, Polk County, Florida.**

**Parcel 4: The Northwest 1/4 of the Southeast 1/4 lying South of Baker Dairy Road, and the West 1/2 of the Northeast 1/4 of the Southeast 1/4 lying South of Baker Dairy Road, in Section 23, Township 27 South, Range 27 East, Polk County, Florida.**

**Parcel 5: The West 1/2 of the NW 1/4 of the SW 1/4 of Section 24, Township 27 South, Range 27 East, Polk County, Florida.**

**Parcel 6: East 1/2 of the Southwest 1/4 of the Southwest 1/4 of Section 24, Township 27 South, Range 27 East, Less right of way for State Road S-580, being in Polk County, Florida.**



**EXHIBIT "B"**

**Cypress Park Estates RPUD (Approved)**

**EXHIBIT "C"**

**BICE GROVE ROAD EXTENSION RIGHT OF WAY**

**EXHIBIT "D"**

**OPINION OF PROBABLE COST FOR BICE GROVE ROAD EXT. &  
PROPORTIONATE SHARE CALCULATION**

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