

Exhibit E**Exhibit E****Conditions of Development and Deviations****CONDITIONS:**1. Master Concept Plan / Development Parameters

Development must be consistent with the Master Concept Plan (MCP) for the Kingston Property, dated ~~February 27, 2024~~ **February 24, 2026**, attached as **Exhibit "C"** to the Agreement, and the conditions below.

a. Development must comply with the Lee County Land Development Code (LDC) in existence as of June 22, 2022 [the effective date of this Agreement]. In light of the conceptual nature of the MCP and the expected duration of the development, deviations from the LDC or other changes to the Conditions of Development, Schedule of Uses or Property Development Regulations that do not increase the height, density or intensity of the development and otherwise meet the criteria of LDC Section 34-380 may be approved administratively by the Zoning Director without a public hearing. The conditions and auxiliary documentation control should there be a conflict between the Conditions, the LDC, and/or the approved MCP.

b. The project is approved for:

1. Residential dwelling units including Assisted Living Facilities and Continuing Care Facilities not to exceed 10,000 units as outlined in the schedule of uses;
2. Amenities, internal to the Project, for use by its residents (no limitation in square footage)
3. 700,000 square feet of commercial floor area, depicted on the MCP, limited to:
 - i. 150,000 square feet located on Pods 14 and 15. Any unused square footage can be reallocated to other commercial Pods described in 3(ii) and or 3(iii);
 - ii. 50,000 square feet can be located on Pods 4A, 6, 16, and 17. Any unused square footage can be reallocated to other commercial Pods described in 3(iii);
 - iii. 500,000 square feet can be located on Pods 11B, 12, 19A and 19B. Any unused square footage can be reallocated to other commercial Pods described in 3(ii);
4. Public facilities; and
5. 240 hotel or other transient lodging units.

c. The Land Use Summary table on the MCP reflects a minimum of ~~3,295~~ **3,764.8** acres of created, restored, and/or enhanced areas that will be dedicated in a combination of Conservation Easements and Flowway easements and provides a minimum of 50% of the Project's gross land area less tracts to be dedicated to the County. These areas are located and identified on the MCP.

Construction phasing of the development will be subject to the following conditions:

- i. Restoration and dedication of conservation and flowway areas shall occur as development orders are issued as depicted on **Exhibit "G"**.
- ii. Development Pods are not required to be developed sequentially according to the numbers depicted on the Development Summary table on the MCP.

- iii. Phasing of the restoration as depicted on the MCP may be adjusted at time of Development Order submittals provided minimum restoration acreages are maintained to support the project:
 - a. For residential, a minimum restoration acreage based on the GREATER of the following options:
 - i. The cumulative development pod area (including previous phases) OR
 - ii. The number of residential dwelling units in the development pod using the following analysis whereas the Project required restoration equals ~~3,295~~ **3,764.8** acres divided by the total Project density of 10,000 residential units times the number of units, both previously approved and proposed.
 - b. For commercial or amenity pods, the required acres of restoration shall be equal to the acreage of the pod being developed.
- iv. A cumulative development update statement and summary table must be provided with each development order application and shown on the engineered plans containing the following information:
 - Cumulative residential dwelling units and intensity of non-residential uses;
 - Cumulative development pods (in acres);
 - Cumulative open space (in acres); and
 - Cumulative conservation and flowway areas (in acres).
- v. Restoration areas must be completed within ten (10) years of commencement of restoration of each phase, regardless of the progress of development tied to each phase. If any phased restoration construction is not complete within ten (10) years from that phase restoration start date, work may not commence in future phases until such time as that incomplete restoration phase construction is completed.

2. Uses and Site Development Regulations

- a. The Schedule of Uses is set forth in **Exhibit “D”** to the Agreement.
- b. The Property Development Regulations are set forth in **Exhibit “F”** to the Agreement

3. Wildlife Crossings

Any wildlife crossings required for the project will be determined by the USFWS and FDEP prior to issuance of the first development order creating residential lots. Any animal crossings required by the USFWS or FDEP will be reviewed and permitted in accordance with the approved locations at time of local development order on a phase-by-phase basis and shall be consistent with the Human/Wildlife Coexistence Plan **Exhibit “J”**.

4. Protected Species Management and Human-Wildlife Coexistence Plan

The Protected Species Surveys **Exhibit “I”** must be updated every five (5) years and Human-/Wildlife Coexistence Plan **Exhibit “J”** must be updated by the Developer, if needed for the presence of new listed species, for approval by the County prior to or concurrent with the first development order application creating residential lots. The Plan and development order plans must address the following:

- Trails: The location of proposed passive trails within the restoration areas must include designated trailheads with signs with information on possible wildlife encounters and appropriate actions when encountering wildlife.
- Signs: Development order plans that include surface water management lakes or conservation areas must depict the location and typical signs for prohibiting the feeding of alligators around the lake and preservation signs that state no dumping. Distance between signs should be approximately 300ft.
- Wildlife Fencing: Must meet recommendations and requirements of the Florida Fish and Wildlife Conservation Commission (FWC) and US Fish and Wildlife Service (FWS); and
- The Development Order plans must be updated to reflect FWC and FWS requirements if permits are issued after approval of the first development order creating residential lots.
- Vegetation Removal permit applications must include a map depicting the work limit area and a species survey for the work limit area. The developer must submit a management plan for protected species within the work limit area identifying protection measures, monitoring, and/or relocation consistent with State and Federal requirements.
- Development Order plans for vertical development that includes commercial and amenity uses and areas must demonstrate use of bear resistant dumpsters and below ground grease traps.

5. Open Space

The total open space acreage shall not be less than 61% of the project's total land area less tracts to be dedicated to the County. The minimum required open space must be achieved at buildout in substantial compliance with the approved MCP. Compliance with the Project's open space addresses the open space requirements of Section 34-414 and 10-415.

6. Platting Restoration Areas

At time of platting, on a phase-by-phase basis, the Developer will plat restoration areas consisting of wetland conservation and flowways into separate tracts and dedicate those tracts to a maintenance entity, which must be either a home owners association ("HOA"), a community development district ("CDD"), an Independent Special District ("ISD"), or a governmental entity acceptable to the County that will accept responsibility for the perpetual maintenance of the restoration conservation and flowway areas in compliance with these conditions. The HOA, CDD, or ISD must be created prior to Certificate of Compliance for the first development order.

7. Conservation and Flowway Easements

The conservation and flowway easements will be dedicated to a maintenance entity that provides third party enforcement rights to the County or other public agency acceptable to the County. The easements will be dedicated in general accordance with the phasing plan attached as Exhibit "G" to the Agreement and will be reflected on the phased recorded plats approved by the County for the subject property. Restoration areas located within a Conservation Easement consisting of existing or mitigated wetlands can include exotic vegetation removal and native planting. Restoration areas located within a Flowway Easement can include vegetation removal, grading, lakes, drainage ways, wet and dry detention, surface water treatment, and water storage, water bodies and on/off site wildlife mitigation. The Easements will permit passive trails, kiosks, and pavilions. The combined acreages within the

Conservation Easements and Flowway easements shall satisfy the minimum required restoration acreage for the Project.

8. Indigenous Management Plans

The Indigenous Preservation, Restoration, and Management Plan **Exhibit “L”** must be updated by the Developer for approval by the County prior to or concurrent with the first development order application. The Indigenous Preservation, Restoration, and Management Plan must include the following language:

- At the time of purchase, third-party deed holders must be placed on notice through covenants and deed restrictions that project conservation and flowway areas may be managed with prescribed burns.
- Prior to commencing prescribed burn activity, the HOA, CDD, or ISD must notify residents of the prescribed burn activities and provide general prescribed burn management educational materials.

9. Agricultural Uses:

Existing agricultural areas, as shown on **Exhibit “M”** are allowed to continue on the property and convert to alternative agricultural uses subject to the following:

- a. Areas of agricultural uses and field areas in existence and/or authorized by the SFWMD at the time of this Agreement, including all associated irrigation and fertilization, must be discontinued prior to issuance of a vegetation removal permit for the land area subject to the vegetation removal permit. Development orders required for onsite infrastructure construction or a Development Order for onsite infrastructure construction that does not create residential or commercial vertical construction will not require discontinuance of the agricultural use.
- b. Prior to issuance of a local development order for vertical development, the developer must submit written proof, subject to approval by the County Attorney’s Office, of the following:
 - 1) Termination of bona fide agricultural uses on the land area subject to the order development application/approval for vertical construction. Proof must include a sworn affidavit from the person or entity holding title to the land area that provides:
 - a) the date agricultural uses are proposed to cease or will cease after harvesting;
 - b) the legal description of the land area subject to development order approval;
 - c) an affirmative statement that the owner acknowledges and agrees that at agricultural uses are prohibited on the land area and that the owner covenants with the County that they will not allow agricultural uses on the land area until it is rezoned to permit agricultural uses; and
 - d) that the affidavit constitutes a covenant between the owner and the County binding on the owner, their assignees and successors in interest.

The affidavit must be recorded in the public records of the County at the owner’s expense.

2) Proof of termination of the agricultural tax exemption on the land area subject to the development order. Proof of termination must include a copy of the owner's request to terminate the tax exemption provided to the Property Appraiser.

10. Native Vegetation

Development order landscape plans must reflect 100% native vegetation for required landscaping within common elements. These planting requirements and a native plant list must be incorporated into the project's covenants and deed restrictions.

11. Transportation

- a. Notwithstanding the LDC, internal project roadways must be substantially similar to the cross sections as depicted on the MCP.
- b. Roadway turn lane necessity and length at project/pod entrances will be determined at time of local development order review.
- c. Signalization:

The cost of signalization including design and construction of the Spine Road intersections with Corkscrew Road, SR 82, and/or a Development Pod shall be borne by the Developer or assigns. Installation of any signalization shall be the earlier of (x) at the Developers discretion; or (y) when found necessary as such intersection meets the Manual on Uniform Traffic Control Devices (MUTCD) traffic signal warrants.

12. Vehicular/Pedestrian Impacts

- a. Local Development Order. This approval does not address site-related mitigation of vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.
- b. Impact Fees and Proportionate Share Payments. The development must mitigate the traffic impacts of the project and pay a proportionate share of the needed roadway improvements which payment shall be \$2,000.00 per residential dwelling unit.
- c. Shared Use Path. The developer must provide off-road shared use bike paths/sidewalks in front of each residential lot and along at least one side of every internal project roadway in substantial compliance with the cross sections depicted on the MCP (Exhibit "C").

13. Entrance Gates and Gatehouses

Entrance gates and gatehouses are permitted at development entrances within each development Pod and temporarily on the spine road from Corkscrew Road to State Road 82.

14. Surface Water Monitoring

The Enhanced Lake Management Plan **Exhibit "N"** must be updated by the Developer if needed at the time of Development Order application creating residential lots that include monitoring components of surface water quality as follows:

- a. Quality of storm water (surface water) leaving the site at permitted outfalls must be monitored twice during the wet season and once during the dry season if there is water being discharged in the dry season. No discharge means no sample. Constituents sampled will consist of those outlined in Exhibit "N". Reposing must consist of an Electronic Data Deliverable (EDD) in a format approved by the Lee County Department of Natural Resources and submitted biannually.
- b. The Developer or HOA/CDD/ISD must annually report the findings of the Surface Water Quality Monitoring Program within the Enhanced Lake Management Plan to:
 - i. assess water quality data and trend analysis;
 - ii. identify potential issues, and if necessary;
 - iii. recommend corrective actions to be consistent with existing State water quality standards.
- c. The Developer or HOA/CDD/ISD may amend water quality monitoring and reposing after written request, review, and approval by the Department of Natural Resources.
- d. If any development order proposes to discharge into the County's MS4, the Developer will coordinate with Lee County Department of Natural Resources through the development order process to ensure available capacity.

15. Irrigation Wells

Single-Family Irrigation and Domestic Wells are prohibited. Development Order plans must demonstrate irrigation will be provided via a central irrigation system using onsite lakes, reclaimed water (if available), and/or as necessary, existing permitted wells (or replacement wells). The Property Owner Association documents, including Declarations of Covenants, must prohibit the installation of single-family use wells for potable or irrigation water. Landscape irrigation must comply with the Water Conservation Ordinance #17-04, as amended. This does not apply to wells being used for agricultural purposes prior to termination. All agricultural wells will be formally plugged and abandoned by the Developer as agricultural operations cease in conjunction with an approved Development Order.

16. Water and Sewer

All new development must connect to central water and sewer; no new septic systems or potable water wells will be permitted. Existing well and septic systems used for Property caretaker, construction and/or agricultural project manager will be properly abandoned upon the later of termination of agricultural operations or central water and sewer direct availability as determined by the Developer. The development may connect to reclaimed water if available and if the Project has been designed for its use.

17. Maintenance

The Developer and/or the HOA/CDD/ISD must submit a biennial drainage report signed by a licensed Professional Engineer in the State of Florida certifying that the drainage capacities of the flowways or buffer lakes at the completion of the project are consistent with the original design. If the report finds that flowways or buffer lakes require maintenance, then the Developer or HOA/CDD/ISD must submit a remedial plan for review and approval to address measures to conduct maintenance (i.e. re-grading the flowways or berms). Providing the County with a copy of the HOA/CDD/ISD Engineer's Report will satisfy this requirement with the additional requirements above.

18. Hydrological Restoration Plan

a. Flowway Re-establishment. The Developer will re-establish historic surface water flows through the Property consistent with Exhibit "O", within the designated conservation and flowway areas on the MCP. The Developer is responsible for providing stormwater flow through the project site until the property and permits are transferred to a third-party maintenance entity, as required by the South Florida Water Management District Applicant's Handbook for transfer of the permit(s).

b. Hydrological Restoration Plan. The Hydrological Restoration Plan, as conceptually described and depicted in the Hydrological Restoration Narrative **Exhibit "O"** and phased as depicted in **Exhibit "G"** must incorporate the requirements of Policy 33.2.4.2c of the Lee Plan and be submitted by the Developer with the first Development Order application. The Hydrological Restoration Plan must be based on an integrated surface and groundwater model to demonstrate protection of Lee County's natural resources and must include backfill and restoration of manmade ditches on the property if necessary. The Developer must phase backfill work to coincide with project development and not impede flow from agricultural operations. A key feature of the Hydrological Restoration Plan is the re-establishment of the flowways encompassed within the conservation and flowway areas on the MCP, to restore historic flowways and improve regional drainage patterns consistent with Condition 1(c).

The Hydrological Restoration Plan submitted at time of the first Development Order application must include detailed calculations and analyses for proposed flowways and other drainage improvements to estimate hydrologic benefits while ensuring no adverse impacts to adjacent properties.

The calculations/analyses must analyze post-development phases including peak stages, flows, and inundation (durations and frequency) for design storms (25 yr. - 3 day and 100 yr. -3 day) and compare hydrologic conditions for wet and dry seasons.

c. Timing. The Developer must implement the Hydrological Restoration Plan approved by the County coincident with construction of the storm water management system for each phase of development.

19. Landscape Berm

A decorative landscape berm or buffer may be installed along the frontage of Corkscrew Road, State Road 82, and the spine road at the discretion of the Developer. The berm shall be permitted a maximum height of 6 feet as measured from the crown of the higher adjacent pavement. At the Developers discretion a decorative wall or fence may also be installed on top of any landscape berm or buffer along Corkscrew Road, State Road 82, or the spine road provided the wall or fence does not impede drainage or movements of small and large mammals.

20. Development Permits.

Issuance of a county development permit does not establish a right to obtain permits from state or federal agencies. Further, it does not establish liability on the part of the county if the Developer: (a) does not obtain requisite approvals or fulfill obligations imposed by state or federal agencies or (b) undertakes actions that result in a violation of state or federal law.

21. Security and Public Safety Fences

The Developer may install fences or walls to maintain security, public safety, and preservation

of conservation and flowway areas, so long as it does not impede pathways identified within the Hydrological Restoration Plan Narrative (Exhibit "O") and the Human Wildlife Coexistence Management Plan (Exhibit "J") or as deemed necessary by onsite conditions.

22. County Land Swap

Prior to the approval of the first Development Order creating residential lots the Developer will deed to the County 19A and the County will deed to the Developer the County property described in **Exhibit "B"** less Pod 18. This Agreement shall create uses on Pods 18 19A and 19B as depicted on the MCP and described herein.

23. Letters of Availability

Letters of availability will be provided for the law enforcement, Fire, EMS, and Schools concurrent with each development order application.

24. Excess Spoil Removal

Excavated material may be moved around the Project site without requiring an off-site excess spoil removal plan per LDC 10-329(b) and (c). The movement of excess spoil material within the Exhibit "A" and "B" property is permitted regardless of ownership and will not be deemed the removal of excess spoil material off-site and there will not be a limitation on the amount of excess spoil material plan per LDC 10-329 that can be moved within the Exhibit "A" and "B" property.

25. Offsite Flows

The Development Order must demonstrate an off-site hydraulic connection to help alleviate flooding of the Wildcat Run properties to the east. The hydraulic connection relative to the individual Pods of 4A, 4B, 5, 7, 8A, and 8B must be included, constructed, installed and certified with each individual construction of Pods 4A, 4B, 5, 7, 8A, and 8B. The hydraulic connection(s) must be sized to accommodate up to an allowable 25 yr.-3 day storm event discharge rate of 25 CSM for those properties determined to flow to the connection by field reconnaissance and existing topographical maps.

26. Lake Depth (See Deviation 2)

35' maximum lake excavation depth is only within the residential development pods and subject to compliance with an enhanced deep lake management plan for water quality and groundwater monitoring and all requirements of LDC 10-329(d)(3) (except LDC Section 10-329(d)(3)a.2. requirements regarding native shade trees).

27. Deep Lake Plantings (See Deviation 3)

All lakes with a depth of more than 12 feet measured at control elevation must provide an additional 20% littoral plantings in addition to required littoral plantings in lieu of deep lake trees.

28. Wetlands

No wetlands may be impacted within the commercial pods of the Project.

DEVIATIONS

Street Design and Construction Standards

Deviation 1 grants relief from LDC Section 10-296(e)(3), which requires roadway segments in Lee Plan future non-urban areas to be designed to non-urban design standards, to allow the internal roadways to be designed to the suburban roadway standards of LDC Section 10-296(e)(2).

Maximum Lake Depth

Deviation 2 grants relief from LDC Section 10-329(d) (3)a, which requires lakes to be limited to a 20X depth to allow for a maximum lake excavation depth not to exceed 352 or one foot above the confining layer whichever is less. This deviation is subject to **Condition 26**.

Deep Lake Shade Trees

Deviation 3 grants relief from LDC Section 10-329(d)(3)a.2, which requires native shade trees calculated at one tree per 100 feet of lake shoreline measured at control elevation to be installed for all lakes over 122 in depth, to allow for an additional 20% of littoral plantings from what is required in lieu of native shade trees. This deviation is subject to **Condition 27**.

General Tree Plantings

Deviation 4 grants relief from LDC Section 10-416(a) which requires general tree plantings. The general tree requirement for the Project are met through the use of existing onsite indigenous vegetation and flowway restoration plants. The flowway plants will not be subject to required minimum plant heights per LDC 10-420(c) and (d). Landscaping for parking areas and vehicle use areas must still be provided as required in the LDC.

Ingress/Egress

Deviation 5 grants relief from LDC Section 10-291(3), which requires that residential development of more than five acres and commercial development of more than ten acres provide more than one means of ingress and egress, to allow one ingress/egress per initial construction of a residential or commercial Pod with the remaining access point(s) installed prior to completion of the residential or commercial Pod. The development of any Pod that connects to the spine road shall require the spine road to connect to either Corkscrew Road or State Route 82.

Buffering Adjacent Property

Deviation 6 grants relief from LDC Section 10-416(d)(1), which requires a landscape buffer along the entire perimeter of the proposed development whenever the proposed development abuts a different use, to allow the proposed preservation and restoration areas consistent with Exhibit "L" to act as the buffer. This deviation does not apply to development Pods abutting SR 82 which must comply with landscape buffer requirements provided in LDC Section 10-416(d)(1) or Section 10-424, as applicable.

Water Main Installation

Deviation 7 seeks relief from LDC Section 10-384(c)(1), which requires water mains for one- and two-story residential buildings be constructed in an external loop no greater than 1,500 feet, to allow 3,700 feet provided required fire flows are met.

Access Separation

Deviation 8 seeks relief from LDC 10-285, which requires an access separation of 660 feet along principal arterials in Future Non-Urban areas to allow a connection separation distance of 460', as depicted on the MCP.

Water Tank Setback

Deviation 9 seeks relief from LDC 10-351(d)(2) which requires 100' setback from an aboveground water tank to the property line, to allow for a 60' setback.

Light Spillage

Deviation 10 seeks relief from LDC 34-625, which requires less than 0.5 footcandle of illuminance measured at the property line for pod entries, to allow for up to 1.5 footcandles 75' from the property line where necessary to maintain safer roadway or intersection lighting levels, so long as the spillage isn't onto a residential lot.