

PASCO COUNTY, FLORIDA
INTEROFFICE MEMORANDUM

TO: Honorable Chairman and
Members of the Board of
County Commissioners

DATE: 5/19/15 FILE: PDD15-1035

THRU: Don L. Rosenthal, M.B.A
Assistant County Administrator

SUBJECT: Development Agreement -
Extension of Welbilt Boulevard
through the Mitchell 54 West
MPUD

FROM: Richard Gehring
Planning and Development
Administrator

DRC: 5/19/15, 1:30 p.m., NPR
Recommendation: Approval

STAFF: Justyna Buszewski
Planner II

REFERENCES: Land Development Code,
Section 522,
MPUD Petition No. 7116
CPAL10-1(08)Western Hub
Comm. Dist. 3

PROJECT DESCRIPTION:

Proposed is a Development Agreement between Pasco County and KEMR Properties, LLC for the extension of Welbilt Boulevard through the Mitchell 54 West MPUD. The Development Agreement includes the following:

- Defines the “Welbilt Extension” as being the extension of Welbilt Boulevard from its present northern terminus adjacent to the Project, through the Project to Mitchell Ranch Road
- Requires that the developer construct the Welbilt Extension when (a) the first “big-box” in the NW portion of the project is opened or (b) at the time of the first plat for residential development in the “single-family residential area” shown on the MPUD Master Plan that has a connection to Welbilt
- Gives the developer mobility fee credits for “creditable expenditures” made towards the construction of the Welbilt Extension
- Requires that the developer, as part of the “creditable expenditures” for the Welbilt Extension, install a signal at the intersection of Mitchell Ranch Road and State Road 54 if a signal warrant study has been approved by FDOT prior to developer beginning construction of the Welbilt Extension. If the warranty study has not been approved by that time, it requires the developer to contribute \$450,000 (the estimated cost of the signal) towards the installation of the signal by the County at a

later date. If the County cannot get the signal warranty study approved within a certain number of years, the County has to refund the contribution to the developer.

- Provides for typical insurance, bonding, construction supervision, bidding and engineering requirements per the County's typical development agreements
- Will be recorded by the County within 14 days after its execution by the County and the developer
- Bike/Ped MF Credits (and no other MF Credits) for the construction of an eight foot (8') sidewalk along a portion of SR 54, expansion of existing five foot (5') sidewalk to an eight foot (8") sidewalk that lies adjacent to SR 54, and the construction of a five foot (5') sidewalk adjacent to Mitchell Ranch Road as shown on Exhibit "D" of the DA.

DEVELOPMENT REVIEW COMMITTEE ACTION

On April 23, 2015, the Development Review Committee (DRC) unanimously recommended approval of the proposed Development Agreement - Extension of Welbilt Boulevard through the Mitchell 54 West MPUD.

ALTERNATIVES AND ANALYSIS

1. Approve the Development Agreement
2. Deny the Development Agreement
3. Recommend another course of action

RECOMMENDATION

The Planning and Development Department recommends that the BCC approve Alternative No. 1.

ATTACHMENTS:

1. Development Agreement with Exhibits

**DEVELOPMENT AGREEMENT BETWEEN PASCO COUNTY AND KEMR
PROPERTIES, LLC FOR THE EXTENSION OF WELBILT BOULEVARD THROUGH
THE MITCHELL 54 WEST MPUD**

THIS DEVELOPMENT AGREEMENT (this "DEVELOPMENT AGREEMENT or "DA") is made and entered into by and between PASCO County, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter called "**County**", and KEMR PROPERTIES, LLC, a Florida limited liability company, hereinafter called "**Developer**".

W I T N E S S E I H:

WHEREAS, the County is authorized by the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (F.S.), to enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction; and

WHEREAS, on May 19, 2015, the County adopted a resolution approving a Master Planned Unit Development with conditions ("**MPUD**") on a parcel of real property in Pasco County, Florida, legally described on **Exhibit "A"** attached hereto and incorporated herein by reference, hereinafter called the "**Project**"; and

WHEREAS, the MPUD requires that Developer design, permit, dedicate right-of-way and construct improvements for the extension of Welbilt Boulevard from its present northern terminus adjacent to the Project, through the Project to Mitchell Ranch Road, all as further depicted on **Exhibit "B"** (as may be modified during design as described in Section 5 hereof), and may, if certain conditions are met as set forth in Section 4(a)(1) of this DA, including the design, permitting and construction of a signal at the intersection of Mitchell Ranch Road and State Road 54 (collectively, the "**Welbilt Improvements**"); and

WHEREAS, the County and Developer desire to enter into this DA to provide for the design, right-of-way dedication and construction of the Welbilt Improvements; and

WHEREAS, subject to the provisions of Section 10(v) hereof, the entities that own the real property described on **Exhibit "A"** are joining in the execution of this Development Agreement for the limited purposes of consenting to its terms and conditions and to ensure a legally-binding Development Agreement under the Florida Local Government Development Agreement Act, but otherwise the same have not accepted any obligations of "Developer" under this Development Agreement and in no way agree to undertake any development activity pursuant to the terms hereof; and

WHEREAS, the Board of County Commissioners, after public notice and hearing in accordance with applicable law, has approved this Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and provisions herein contained and other good and valuable consideration, receipt, and sufficiency of which is hereby acknowledged, the County

and Developer hereby agree as follows:

1. WHEREAS CLAUSES

The WHEREAS clauses set forth above are incorporated herein by reference and made a part of this DA.

2. PURPOSE

It is the purpose and intent of this DA to further set forth terms and conditions for Developer to design, permit, dedicate right-of-way and construct the Welbilt Improvements and to set forth the parties respective obligations regarding same. All terms and conditions of this DA shall be interpreted in a manner consistent with, and in furtherance of, the purpose as set forth herein.

3. GENERAL REQUIREMENTS

a. Legal Description: The land subject to this DA is identified in **Exhibit "A"**. The holders of legal title to the real property described on **Exhibit "A"** and their respective addresses are as set forth on **Exhibit "C"**. Pursuant to Section 163.3239, F.S., the burdens of this DA shall be binding upon and the benefits of the DA shall inure to all such legal and equitable owners and their successors in interest.

b. Duration and Effective Date: This DA shall be for the duration of twenty (20) years, subject to any conditions precedent or termination provisions herein or mutual agreement, from the effective date of this DA. The effective date of this DA shall be the date of approval of this DA by the County.

c. Development Uses of Land: The Project is currently zoned MPUD Master Planned Unit Development District.

d. Public Facilities: Adequate transportation facilities are available for the Project (exclusive of the Welbilt Improvements and the intersection of Little Road and State Road 54, which is addressed herein) through existing facilities and other transportation facilities being provided by Developer, as required by the Pasco County Land Development Code (LDC), the Comprehensive Plan and the MPUD. The County is in the process of considering alternatives to provide additional capacity at the intersection of Little Road and State Road 54 through its Long Range Transportation Plan. Adequate potable water and wastewater services for the Project are available through the Florida Governmental Utility Authority ("FGUA"). Adequate disposal services for the Project are available through existing licensed collectors and the County's Solid Waste Disposal and Resource Recovery System subject to applicable provisions of the Code of Ordinances and the Comprehensive Plan. All drainage improvements necessary to serve the Project will be provided by Developer in accordance with the terms and conditions of the MPUD Master Planned Unit Development and satisfaction of all applicable County, State, and Federal regulations.

e. Reservations or Dedications for Public Purpose: All reservations and dedications for public purposes (right[s]-of-way) shall be provided in accordance with the MPUD Master Planned Unit Development Conditions of Approval and the Land Development Code (the “LDC”).

f. Local Development Permits Needed: Prior to the construction of the Welbilt Improvements, Developer shall obtain any necessary development approvals in accordance with the LDC. This provision does not exempt Developer from obtaining all other permits required by agencies with jurisdiction over the Project.

g. Findings: The County has found that the Project, as permitted and proposed, is consistent with the portions of the Comprehensive Plan applicable to the Project development approvals obtained as of the date of this DA, subject to the conditions of the MPUD and this DA.

h. Requirements Necessary for the Public Health, Safety, and Welfare: The conditions, terms, restrictions, and other requirements determined to be necessary by the County for the public health, safety, or welfare of its citizens have been identified and included within the MPUD and/or this DA. In addition, Developer shall be subject to the MPUD conditions of approval and the other applicable provisions of the LDC, Code of Ordinances, and Comprehensive Plan necessary for the public health, safety, and welfare.

i. Compliance with Legal Requirements and Permitting: The failure of this DA to address a particular permit, condition, term, or restriction shall not relieve Developer of the necessity of complying with the laws governing the said permitting requirement, condition, term, or restriction.

j. Zoning and Comprehensive Plan Issues: The current Comprehensive Plan Future Land Use Map classification for the Project is PD (Planned Development). The Project is consistent with the applicable provisions of the Western Hub PD future land use classification, Comprehensive Plan Subarea Policy FLU 7.1.27, and other Goals, Objectives, and Policies of the Comprehensive Plan. The zoning classification for the Project is MPUD Master Planned Unit Development.

4. FINANCE AND CONSTRUCTION OF ROADWAY IMPROVEMENTS

a. Welbilt Improvements

(1) Developer shall design, permit, dedicate right-of-way (to the extent required by Section 5i) for, and construct (or post a performance guaranty acceptable to the County) the Welbilt Improvements as set forth herein and depicted on Exhibit “B” in the timeframe required by the MPUD, specifically, prior to or concurrent with (i) the issuance of a certificate of occupancy by the County for the first large scale commercial-retail building (Big Box) in the “Mixed Use” area in the northwest portion of the Project as depicted on the MPUD Master Plan or (ii) the first plat for residential development in the “Single Family Residential” area along Welbilt Boulevard with a roadway connection to Welbilt Boulevard as depicted on the MPUD Master Plan. The Welbilt Improvements shall include all shoulders, striping, signalization, medians,

sidewalks, stormwater-drainage facilities, floodplain mitigation, wetland mitigation, guardrails, and other roadway appurtenances, all as determined by the County and permitting agencies to be necessary during the design and permitting of the Welbilt Improvements (collectively, the "**Roadway Appurtenances**"), together with any additional construction items further detailed in Section 7(c) hereof. The Welbilt Improvements shall specifically include a roundabout at the intersection of Braydon Drive and Welbilt Boulevard, a roundabout at either Project Access "I" or "J" and a pedestrian crossing near the intersection of Braydon Drive and Welbilt Boulevard, all as further depicted on **Exhibit "B"**. Notwithstanding any other provision of this DA to the contrary, if the Florida Department of Transportation ("**FDOT**") has approved a signal warrant study for the installation of a traffic signal at the intersection of Mitchell Ranch Road and State Road 54 (the "**Signal**") prior to Developer's commencement of construction of the Welbilt Improvements depicted on **Exhibit "B"**, then the Welbilt Improvements shall specifically include the installation of the Signal and the Creditable Expenditures (as hereinafter defined) shall specifically include the actual, reasonable amounts spent designing, permitting and constructing the Signal, and the cost of conducting the signal warranty study if conducted by Developer. If FDOT has NOT approved a signal warrant study for the installation of the Signal prior to Developer's commencement of construction of the Welbilt Improvements depicted on **Exhibit "B"**, then: (a) the Welbilt Improvements shall specifically NOT include the installation of the Signal; (b) the Creditable Expenditures shall specifically NOT include the for the actual, reasonable amounts spent designing, permitting and constructing the Signal; (c) Developer shall make a cash contribution to the County of \$450,000.00 within twelve (12) months after the County accepts the completed Welbilt Improvements (the "**Signal Contribution**"), which represents the estimated cost to construct the Signal and which the County shall treat as a mobility fee creditable contribution for the Road Share (excluding Interstate) (which such category specifically excludes the Interstate/SIS Share, Transit Share and Bike/Ped Share portions of the mobility fees) of mobility fees such that the County shall, immediately upon clearance of the funds representing the Signal Contribution, issue Developer mobility fee credits for the Road Share (excluding Interstate) (which such category specifically excludes the Interstate/SIS Share, Transit Share and Bike/Ped Share portions of the mobility fees) of mobility fees in the Mitchell 54 West MF Credit Account (as hereinafter defined) in the amount of the Signal Contribution; provided, however, that if FDOT approves of the signal warrant study for the installation of the Signal after Developer's commencement of construction of the Welbilt Improvements but before the expiration of such twelve (12) month period, Developer will make the Signal Contribution to the County within sixty (60) days of the County's written request to Developer; (d) the County shall use good faith efforts to obtain FDOT's approval of a signal warrant study for the installation of the Signal as soon as reasonably possible and to construct and install the Signal as soon as reasonably possible thereafter; and (e) if FDOT has not approved a signal warrant study for the installation of the Signal within three (3) years after (i) the issuance of a certificate

of occupancy by the County for the first large scale commercial-retail building (Big Box) in the "Mixed Use" area in the northwest portion of the Project as depicted on the MPUD Master Plan or (ii) the first plat for residential development in the "Single Family Residential" area along Welbilt Boulevard with a roadway connection to Welbilt Boulevard as depicted on the MPUD Master Plan, the County shall, forthwith without need for demand by Developer, refund to Developer in cash an amount equal to the Signal Contribution, less any MF Credits (as hereinafter defined) used by Developer from the Signal Contribution (for purposes of this DA, it shall be assumed that, to the extent Developer has MF Credits available from Creditable Expenditures other than the Signal Contribution, Developer will be deemed to have not used any MF Credits from the Signal Contribution), and upon issuance of such refund, any MF Credits arising from the Signal Contribution shall be automatically extinguished.

(2) The Welbilt Improvements shall be completed by the deadlines set forth in the preceding paragraph.

(3) For the purposes of this DA, completion of construction of the Welbilt Improvements shall be defined as when the applicable improvement is accepted by the County for maintenance and open to the traveling public, and any required Defect Guarantee has been delivered to the County.

(4) Developer shall receive reimbursements in the form of mobility fee ("**MF**") credits as set forth in Section No. 7 of this DA for one-hundred (100%) percent of the actual, reasonable, eligible amount spent by Developer for the Welbilt Improvements. Mobility Fee eligible expenditures must be segregated from site related expenditures within the invoicing/schedule of values provided the improvements are designed and/or constructed simultaneously. The procedures for such credits are set forth in Section 7. below.

(5) The Welbilt Improvements shall also include, and Developer shall be granted Bike/Ped MF Credits (and no other MF Credits) for all actual, reasonable costs incurred by Developer in the construction and installation of: (a) of an eight foot (8') sidewalk along SR 54 through the portion of the Project that lies between Project Access Point "C" and Little Road as shown on Exhibit "D" attached hereto; (b) the difference between an eight foot (8') sidewalk and a five foot (5') sidewalk through the portion of the Project that lies adjacent to SR 54 but west of Project Access Point "C" as shown on Exhibit "D"; and (c) a five foot (5') sidewalk through the portion of the Project that lies adjacent to Mitchell Ranch Road as shown on Exhibit "D". Developer may construct the foregoing sidewalk improvements in phases (but no later than the deadline for construction of the Welbilt Improvements) and the same shall be issued Bike/Ped MF Credits upon acceptance by the County.

5. WELBILT IMPROVEMENTS DESIGN, PERMITTING, AND RIGHT-OF-WAY

ACQUISITION

a. Design, Permitting, Right-of-Way Acquisition, and Construction Requirements:

Developer shall design, permit, provide right-of-way, and construct the Welbilt Improvements in accordance with the terms of this DA. All design, permitting, and construction for the Welbilt Improvements shall be in accordance with the standards promulgated by the County and shall include, but not be limited to, cross sections, drainage, and plan/profile sheets. The final alignment and design of the Welbilt Improvements shall be determined through the construction plans to be approved by the County hereunder and the same shall automatically supersede the depiction of the Welbilt Improvements set forth on **Exhibit "B"** without any further approvals of the Pasco County Board of County Commissioners. Plan/profile sheets and cross section drawings shall indicate the location(s) of drainage inlets and roadway facilities. Except as otherwise provided in this DA, any Welbilt Improvement-related wetland and floodplain impacts and compensation shall be included in the design and indicated on the plans.

b. Roadway Drainage Facilities:

Roadway drainage facilities, either on-site or off-site, if not commingled or combined with drainage facilities for the Project or any other facilities or developments along the route of the Welbilt Improvements shall be owned, operated, and maintained by the County subsequent to the expiration of the three (3) years for improvements in the County's right-of-way Defect Guarantee period as set forth herein. Developer may, however, request of the County that Developer, Community Development District (CDD), or other legal entity as may be approved by the County, be allowed to maintain these facilities for the County roadways. If such request is granted, Developer or CDD, as applicable, shall provide appropriate easements to the County so that the County has the ability to maintain the facilities in the event Developer or CDD, as applicable, defaults on its obligations to maintain the facilities. If the Welbilt Improvements drainage facilities are commingled or combined with drainage facilities of the Project or any other facilities or developments along the route of the Roadway Improvements, all such drainage facilities shall remain owned by the underlying land owner, including Developer where applicable, and operation and maintenance of the same shall be the responsibility of the respective underlying land owner (CDD or other similar legal entity as may be approved by the County). The underlying landowner (CDD or other similar legal entity as may be approved by the County) shall be responsible for the design, permitting, and construction of all such commingled or combined drainage facilities, unless otherwise approved by the County. Appropriate easements to the County, as applicable, shall be provided on all lands owned by Developer and shall be obtained from all other underlying land owners, by condemnation if necessary, of land containing drainage facilities serving the Welbilt Improvements, including those facilities that are commingled or combined, so the

County has the ability to maintain the facilities associated with the Welbilt Improvements in the event Developer or other respective underlying land owners default on its (their) obligation to maintain the facilities.

c. Wetland and Floodplain Mitigation: In the event that the permitted wetland and/or floodplain mitigation area(s) for the impacts associated strictly with the Welbilt Improvements are permitted and constructed separately and distinctly from impacts associated with the Project or any other facilities or developments, the County, as applicable, will accept ownership and maintenance responsibilities subsequent to successful completion of the maintenance and monitoring period and acceptance by the governing agency(ies). If the permitted wetland and floodplain mitigation areas related to the Welbilt Improvements are commingled/combined with wetland and floodplain mitigation areas of the Project or any other facilities or developments, all the wetland and floodplain mitigation areas shall be permitted, owned, operated, and maintained by the underlying land owner, including Developer or CDD, where applicable. Appropriate easements shall be provided to the County, as applicable, for the wetland and floodplain mitigation areas associated with the Welbilt Improvements which are owned by Developer and shall be obtained, by condemnation if necessary, from all other underlying landowners of land containing such mitigation areas serving the Welbilt Improvements, including those areas that are commingled or combined, so the County has the ability to maintain the facilities in the event Developer or other underlying land owner defaults on its (their) obligations to maintain the facilities.

d. County Review and Approval of Design: Developer shall complete and submit thirty (30) and one hundred (100) percent design plans for the Welbilt Improvements to the County for review and approval unless the County agrees in writing to or has adopted an alternative submittal schedule. Developer shall obtain approval of the one hundred (100) percent design and right-of-way plans for the Welbilt Improvements from the County prior to commencement of any bidding of the Welbilt Improvements. Any reviews and approvals by the County shall be completed by the County within thirty (30) days of submission by Developer of complete and correct documents to the County. The County shall make a completeness review and notify Developer within five (5) business days of receipt of the submission by Developer if not complete and correct. All plans for the Welbilt Improvements, once accepted and approved for construction by the County, shall become the property of the County.

e. Permitting Requirements: Developer and/or its contractor shall obtain any and all required permits for the work it is to perform from the County, and any and all applicable local and State regulatory agencies, including the Southwest Florida Water Management District.

f. County Cooperation: The County shall, upon Developer's request, cooperate with Developer in processing permit applications, and Developer agrees to use its best efforts to expeditiously secure all permits that are necessary for the design and construction of the Welbilt Improvements.

g. County Review: Developer agrees and recognizes that the County shall not be held liable or responsible for any claims which may result from any actions or omissions of Developer or engineers/contractors selected by Developer, in which the County participated, either through review or concurrence of their actions. In reviewing, approving, and/or rejecting any submissions or acts of Developer or engineers/contractors selected by Developer, the County in no way assumes or shares any of the responsibility or liability of Developer or its consultants, contractors, or registered professionals (architects and/or engineers) under this DA. All work covered under this DA shall be performed in accordance with good engineering practice, and all established design criteria and procedures shall be followed. The County will review the submittals, although detailed checking will not necessarily be done. Developer or engineers/contractors selected by Developer remain solely responsible for the work and are not relieved of responsibility by review comments.

h. Utilities Relocation: Developer shall coordinate the relocation of any utilities infrastructure in conflict with the Welbilt Improvements, including County utilities. Relocation of any utilities infrastructure which is in conflict with the Welbilt Improvements, including County utilities, shall be completed and paid for by the owner of the utilities infrastructure to the extent required by Sections 337.403-337.404, F.S. County shall be ultimately responsible for ensuring that any County utilities are relocated in a timely manner at the sole cost of the County Utilities Department. The County agrees, upon request of Developer, to cooperate with Developer in requiring the relocation of any such utilities infrastructure to the extent allowed by Sections 337.403-337.404, F.S., in a timely manner.

i. Right-of-Way Acquisition:

(1) Developer shall be responsible for dedicating any right-of-way needed for the construction of the Welbilt Improvements, including the Roadway Appurtenances (except where the County has agreed to acquire the right-of-way or has already acquired the necessary right-of-way), which may include, but not be limited to, lanes of travel, shoulders, striping, signalization, signage, medians, on-site stormwater drainage facilities, off-site stormwater drainage facilities, floodplain mitigation, wetland mitigation, guardrails, handrails, sidewalks, and any other necessary appurtenances. The County agrees to use its best efforts to cooperate with the FDOT (if required because the conditions for the installation of the Signal by Developer are met as set forth in Section 4(a)(1) hereof), FGUA and Tampa Bay Water and provide necessary assistance regarding right-of-way for the Welbilt Improvements, if necessary. Developer shall be responsible for selecting and retaining all consultants for acquisition of right-of-way, if any, for the Welbilt Improvements which may include, but not be limited to, competent and qualified attorneys, engineers, surveyors, title companies, appraisers, land planners, certified public accountants, business damages experts, contractors, horticulturists, and any other consultants considered necessary by the mutually agreeable attorney, discussed below.

(2) While it is not anticipated that right-of-way will be required for the Welbilt Improvements beyond what is to be dedicated by Developer or the Project's landowners pursuant to the MPUD, if necessary (if the conditions for the installation of the Signal by Developer are met as set forth in Section 4(a)(1) hereof and additional right-of-way is need for the same), efforts will be made by the County and Developer to have the FDOT enter into a Joint Participation Agreement, Letter of Understanding, or otherwise provide a means for the County to act as a condemning authority with regard to any additional right-of-way required for the Welbilt Improvements. In such a case, Developer shall have the authority to attempt to privately acquire necessary right-of-way or to participate to the extent permitted by the FDOT and the County (if necessary) in regard to the actions required prior to condemnation. Any written offers shall require the County's written consent. To the extent the County has condemning authority, County staff involvement for any Welbilt Improvement eminent domain proceeding shall be limited to preparation of an engineering memorandum in support of a Resolution of Necessity with the timely support and cooperation of the above consultants and professionals and providing necessary representatives and witnesses in conjunction with any eminent domain proceedings. After receipt of a request by Developer for the Resolution of Necessity, the County's preparation and consideration of the Resolution of Necessity shall not be unreasonably withheld or delayed. Developer, not later than the time when sixty (60) percent design plans are submitted, shall identify all real estate parcels required for the Welbilt Improvements (if any in addition to the right-of-way being dedicated pursuant to the MPUD) and identify the appropriate interests in real estate for right-of-way acquisition and furnish the same to the County. The County, not later than thirty (30) days after its receipt of the submittal, shall either approve or disapprove the submittal. If the County disapproves the submittal, it shall provide comments to Developer explaining the reasons for the disapproval. Right-of-way maps shall be prepared in accordance with the requirements of the County's and State of Florida's Minimum Technical Standards. Upon County approval of the submittal, Developer shall select an attorney acceptable to the County to represent the County in the acquisition of right-of-way (if necessary). Thereafter, Developer, in conjunction with the mutually agreeable attorney, shall proceed to acquire for the County, and in the County's name, the right-of-way pursuant to applicable law. The County, its elected officials, employees, and representatives shall not be liable under any circumstances to Developer, its employees, contractors, material suppliers, agents, representatives, or customers for any delay occasioned by the inability to obtain the right-of-way. Developer shall submit quarterly project status reports that document the actions and progress of right-of-way acquisitions to the County Engineer or designee.

6. INTERSECTION IMPROVEMENTS BIDDING AND CONSTRUCTION

a. Competitive Selection of Contractors: Developer shall competitively bid the Welbilt Improvements following the "Guidelines for Developer Pipeline Projects in Pasco County," as amended,

unless otherwise approved by the County Administrator or designee. The contract(s) for the Welbilt Improvements shall be separate from Developer's contract(s) for construction of infrastructure for the Project.

b. Welbilt Improvements Construction: Developer shall proceed and complete the construction of the Welbilt Improvements in accordance with the final alignment, design, specification, and construction plans as approved by the County, and other applicable Federal, State, and regional regulatory agencies.

c. Tender of Improvement Area: Upon the issuance of the Notice to Proceed by Developer to its contractor the area covered by Notice to Proceed shall be deemed to be tendered to Developer's contractor and such entity shall be in the custody and control of the project areas. Developer's contractor shall be responsible for providing a safe work zone for the public.

d. County Observation: The County's personnel and authorized representatives reserve the right to inspect, observe, and materials test any and all work associated with the Welbilt Improvements and shall at all times have access to the work being performed pursuant to this DA for the County's observation. However, should the County observe any deficiencies inconsistent with the plans or construction not in accordance with the specifications, the County shall notify Developer and its representative in writing, and Developer shall, at its cost, correct the deficiencies, as necessary. Nothing herein shall require the County to observe or inspect the work on the Welbilt Improvements. Developer shall be solely responsible for ensuring that the Welbilt Improvements are constructed in accordance with the plans, specifications, and required standards. Observations by the County that do not discover that construction is not in accordance with the approved plans, specifications, and required standards shall not be deemed a waiver of Developer's requirements herein.

e. Right-of-Way: Prior to the County's acceptance of the Welbilt Improvements, Developer shall meet the applicable requirements of the County and cause any and all rights-of-way under their ownership/control, including rights-of-way for drainage facilities and wetland and floodplain mitigation, as appropriate, to be conveyed to the County. All conveyances shall include access easements, be in a form acceptable to the Real Estate Division and be free and clear of all liens and encumbrances which restrict its use for road purposes, including exemption from all covenants and deed restrictions.

f. Construction Requirements: During the construction phases of the Welbilt Improvements, Developer shall:

(1) Provide its own on-site inspection and observation by a professional engineer registered in the State of Florida for the purpose of observing and inspecting all construction to ensure it is built according to the plans and specifications (CEI). Such professional engineer shall be approved by the County.

(2) Obtain all necessary Right-of-Way Use Permits from the County.

(3) Be responsible for supervising and inspecting the construction of the Welbilt Improvements and shall be responsible for ensuring the accuracy of all reference points, grade lines, right-of-way lines, and field measurements associated with such construction.

(4) Be responsible for full and complete performance of all construction activities required pursuant to this DA. Developer's contractor shall be responsible for the care and protection of any materials provided or work performed for the Welbilt Improvements until the improvements are completed and accepted by the County, which acceptance shall not be unreasonably withheld.

(5) Require testing by an independent laboratory, acceptable to the County in accordance with Pasco County Engineering Services Department's testing specifications for construction of roads, stormwater drainage, and utilities as applicable. Any failed tests shall be reported to the County Engineer immediately, and all test reports shall be provided on a quarterly basis to the County Engineer.

(6) Provide a certification from a professional engineer registered in the State of Florida which shall certify that all designs, permits, and construction activities for the Welbilt Improvements are in substantial conformance with the standards established by the County. The said certification shall conform to the standards in the industry and be in a form acceptable to the County.

(7) Provide to the County copies of all design drawings, as-built drawings, and permits received for the Welbilt Improvements, as applicable, and such information shall become the property of the County upon submission. All plans submitted to the County shall include electronic files compatible with *AutoCAD*.

7. MOBILITY FEES, CREDITS AND REIMBURSEMENTS

a. The Project shall be assessed mobility fees in accordance with the County's adopted mobility fee regulations as amended and this DA.

b. Upon the effective date of this DA, County agrees to budget, in a MF account, the Road Share (excluding Interstate) (which such category specifically excludes the Interstate/SIS Share) and Bike/Ped Share portions of the mobility fees paid to the County from within the Project ("**Mitchell 54 West MF Paid Account**"). The Mitchell 54 West MF Paid Account shall not include the County's administrative fee collected at the time of payment of mobility fees, or the Interstate/SIS Share or the Transit Share the mobility fees paid to the County from within the Project. Developer shall not be eligible for any interest on the Mitchell 54 West MF Paid Account.

c. The process for Developer to receive mobility fee credits against the Road Share (excluding interstate) and Bike/Ped Share (but specifically not the administrative fee that is charged by the County upon collection of mobility fees, the Interstate/SIS Share or the Transit Share) the portions of the

mobility fees (“**MF Credits**”) for the actual, reasonable amounts spent for the Welbilt Improvements is as follows and includes the following: actual, reasonable, and eligible amounts spent by Developer for the Welbilt Improvements shall include design, permitting and construction costs (including, without limitation, the cost of mass grading, any subsurface/soil stabilization work, floodplain mitigation, stormwater ponds, wetland mitigation, whether on-site or off-site), bonding and insurance costs, testing and CEI expenses and services (shall be submitted on an hourly rate basis) (all such costs and expenses, the “**Creditable Expenditures**”). Unless otherwise approved by the County Administrator or her designee, Creditable Expenditures shall not exceed the following:

- (1) Bonding – 1.5% of total construction contract price
- (2) Insurance - 1% of total construction contract price
- (3) Testing - 3% of total construction contract price
- (4) CEI – 12 % of total construction contract price
- (5) Design & Permitting - 12% of total construction contract price

d. Upon commencing design of the Welbilt Improvements, Developer shall be eligible to apply for and receive MF Credits for Creditable Expenditures. Requests for MF Credits may be submitted to the County at a frequency no greater than monthly and in accordance with the guidance outlined in the County’s “Developer Pipeline Project Provisions” document, unless otherwise provided for herein. The County shall establish a credit in an account entitled the “**Mitchell 54 West MF Credit Account**” for all undisputed Creditable Expenditures within sixty (60) days of submittal. Any disputed amounts not approved prior to the end of the sixty (60) day period will be carried over to the next submittal for credit or denial. Should any amount be denied for credit, Developer may appeal such decision in a manner consistent with the adopted mobility fee regulations. All such requests and invoices shall be submitted to the County within ninety (90) days of final acceptance by the County as applicable, or for amounts under dispute, no later than ninety (90) days after the conclusion of the dispute, unless extended by the County Administrator or designee. The County agrees to place the Welbilt Improvements in the CIP for the appropriate fiscal year(s) and to keep the Welbilt Improvements in the CIP to the extent necessary to allow for the MF Credits provided for herein.

e. Simultaneously with the first two requests for credit issuance, Developer may apply to exchange MF Credits to be established in the Mitchell 54 West MF Credit Account for cash reimbursements from the Mitchell 54 West MF Paid Account. Thereafter, requests to exchange MF Credits in the Mitchell 54 West MF Credit Account for cash reimbursements from the Mitchell 54 West MF Paid Account may be submitted to the County at a frequency of no greater than quarterly. All such exchange requests shall include documentation identifying the amount of the Road Share (excluding interstate) and Bike/Ped Share mobility fees Developer believes have been collected by the County since Developer’s last exchange request

and identifying the corresponding lots, parcels and/or addresses. To the extent that funds exist in the Mitchell 54 West MF Paid Account, County shall make the cash reimbursement payment to Developer within sixty (60) days of submittal. The cash reimbursement payment to Developer shall be subject to all other requirements of the Prompt Payment Act. All cash reimbursements from the Mitchell 54 West MF Paid Account shall result in a corresponding decrease in the Mitchell 54 West MF Credit Account.

f. Developer may sell and assign MF Credits against the Road Share (excluding interstate) and Bike/Ped Share portions of the mobility fees from the Mitchell 54 West MF Credit Account to end users within the Project (and end users outside of the Project to the extent allowed by the LDC or County Code of Ordinances) and execute credit letters to be presented to the County. End users may not use credits for the bicycle/pedestrian, transit and administrative portions of the mobility fee. It is anticipated that, to the maximum extent possible, MF Credit letters will be submitted to the County whenever Developer has County approved MF Credits to cover the mobility fees that are due.

g. Notwithstanding the foregoing, Developer shall not be eligible for mobility fee credits for:

(1) Any internal roadway improvements or right-of-way dedications required by the MPUD Conditions of Approval and/or the LDC.

h. The County reserves the right to pay out annually, the cash value of any unused, accrued, MF Credits to Developer and such cash value shall be removed from any credit balance.

8. PERFORMANCE , PAYMENT AND DEFECT GUARANTEES

a. Performance and Payment Guarantees: Prior to commencing construction of the Welbilt Improvements, Developer shall require that Developer's contractor post in favor of the County and Developer and provide the County, for its approval, performance and payment guarantee(s) acceptable to the County and Developer to guarantee payment of the contractors obligations as required by law and to guarantee contractor's performance of its contractual obligations. The performance and payment guarantee(s) shall be with a bank, surety, or other financial institution acceptable to the County and Developer, which is authorized to do business in the State of Florida, and which has an "A" policyholders rating and a financial rating of at least Class VII in accordance with the most current Best's Key Rating Guide. The performance and payment guarantee(s) shall be in the amount of 100% of the Construction Contract amount. Upon final acceptance of the Welbilt Improvements by the County, and if the performance guarantee does not cover the defect guarantee, the County Administrator or designee shall within forty-five (45) days present an agenda item to the Board of County Commissioners to release the performance guarantee and accept the defect guarantee required below.

b. Defect Guarantees: Upon completion of the Welbilt Improvements and final acceptance by the County, Developer's contractor shall guarantee to the County that all equipment furnished and work performed is free of defects in workmanship or materials for a period of three (3) years for improvements in the County's right-of-way after final acceptance, and, that if any part of the construction should fail within this period, it shall be repaired, replaced, and/or restored to satisfactory condition and/or operation at no cost to the County or Developer. The performance guarantee for the Welbilt Improvements may cover this guarantee, if it remains in place for a period of three (3) years for improvements in the County's right-of-way in an amount equal to fifteen percent 15% of the applicable construction contract amount or Developer's contractor may post a separate defect guarantee acceptable to the County and Developer. Developer's contractor is required to advise Developer and the County of the warranty option it has selected prior to the parties' final acceptance of the Welbilt Improvements. Developer shall be responsible for requesting, in writing, a final inspection from the County's Engineering Inspections Division not before ninety (90) days prior to the termination of the three (3) year defect guarantee period. Upon receipt of the request for final inspection, the Engineering Inspections Division shall notify Developer within ten (10) days of such request, providing a list of defects in workmanship or materials to be remedied by Developer or its contractor before the expiration of the three (3) year defect guarantee period. Upon the remedy of any defects in materials or workmanship, or in the case of no defects, but in any case no sooner than the expiration of the three (3) year defect guarantee period, the County Administrator or designee within forty-five (45) days shall present an agenda item to the Board of County Commissioners to release the defect guarantee. Developer

agrees that its Contractor shall provide any defect guarantee required by the County for the Welbilt Improvements.

9. INDEMNIFICATION AND INSURANCE

a. Indemnification: Developer shall indemnify and hold harmless the County and its employees and agents from and against all liabilities, claims, suits, demands, damages, losses, and expenses, including, but not limited to, attorneys' fees arising out of or resulting from the performance of the Welbilt Improvements, provided that any such liability, claim, suit, demand, damage, loss or any expense: (a) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the Welbilt Improvements itself), including the loss of use resulting therefrom; and (b) is caused in whole or in part by an act or omission of Developer or anyone directly or indirectly employed by Developer, or anyone for whose acts any of them may be liable.

Developer shall indemnify and hold harmless the County and anyone directly or indirectly employed by the County from and against all claims, suits, demands, damages, losses, and expenses including, but not limited to, attorney's fees, arising out of any infringement of patent rights, copyrights, trademarks, trade dress, or other intellectual property rights held by others in connection with the performance of the Welbilt Improvements, and shall defend all such claims in connection with any alleged infringement of such rights.

b. Insurance - Developer's contractor(s):

Prior to the execution of the construction agreement for the Welbilt Improvements between Developer and its contractor, the contractor shall provide Developer a certificate of insurance and a true and exact copy of all insurance policies, including additional insured endorsements. Said insurance coverage, and contracts for insurance other than Worker's Compensation and Employer's Liability Policy, shall name the following as additional insureds:

Developer
Glenn C. Geiger
General Counsel
Kitson & Partners
4500 PGA Blvd.
Palm Beach Gardens, FL 33418

County
Pasco County, Florida
Pasco County Government Center
Attn: County Administrator
8731 Citizens Drive, Suite 310
New Port Richey, FL 34654
Fax: (727) 847-8084

General Conditions For All Required Policies:

All insurance shall be provided by responsible companies authorized to transact business in the State of Florida which have an "A" policyholder's rating and a financial rating of at least Class VIII in accordance with the most current Best's Key Rating Guide.

Developer's contractor(s) will provide evidence of insurance coverage as follows:

To Developer:

One (1) true and exact copies of all required insurance policies, including additional insured endorsements, and

One (1) original, executed Certificate of Insurance on the form provided by the County.

To the County:

One (1) true and exact copies of all required insurance policies, including additional insured endorsements, and

Four (4) original, executed Certificate of Insurance on the accord form provided by the County

The Certificate should set forth the original signatures of the authorized representative of the insurance company(ies) identified. The Certificate should also reference the Agreement between Developer and its contractor for the Welbilt Improvements.

All policies shall require the insurer to deliver to Developer and the County thirty (30) days written notice prior to any cancellation, intent not to renew or reduction in coverage and ten (10) days written notice of any nonpayment of premium. Such notice shall be delivered by U.S. Mail to the above addresses.

The insurance required herein shall be primary to any insurance or self-insurance program of Developer or the County which is applicable to the work provided.

The County shall have the right to review and approve the provided insurance coverage prior to the execution of the construction agreement or issuance of the Notice to Proceed, whichever is earlier.

Insurance Certificates and Policies provided by Developer's contractor will provide evidence of insurance coverage in amounts as follows:

The insurance carrier is required to waive its rights of subrogation against Developer and the County as

well as their agents and employees.

Employer's Liability:	\$1,000,000 per accident
Commercial General Liability:	\$2,000,000 general aggregate
Product & Complete Operations:	\$2,000,000 general aggregate
Bodily Injury (including death):	\$1,000,000 per person \$2,000,000 per occurrence
Personal Injury & Advertising Injury:	\$500,000 per occurrence
Property Damage:	\$1,000,000 per occurrence
Fire Damage:	\$500,000 per any (1) fire
Hired & Non-Owned Autos or Automobile - Owned Bodily /Personal Injury Property Damage:	\$1,000,000 combined single limit
Excess/Umbrella Liability:	\$3,000,000 per occurrence \$3,000,000 general aggregate

c. Insurance - Developer's Engineer

Prior to the execution of the agreement for the Welbilt Improvements between Developer and its engineer, the engineer shall provide Developer and County evidence of insurance coverage as follows:

Professional Errors and Omissions Liability: \$1,000,000 per occurrence

Omissions Liability:

Occurrence from professional liability insurance is preferred, however, in the event the engineer is only able to secure claims made professional liability insurance, the engineer shall be obligated in the agreement between Developer and the engineer to maintain insurance in effect with no less limits of liability nor any more restrictive terms and/or conditions for a period of five (5) years from the date of said agreement.

10. GENERAL PROVISIONS

a. Independent Capacity: Developer and any consultants, contractors, or agents are and shall be, in the performance of all work, services, and activities under this DA, independent contractors and not employees, agents, or servants of the County or joint ventures with the County. Developer does not have the power or authority to bind the County in any promise, agreement, or representation other than specifically provided for in this DA. The County shall not be liable to any person, firm, or corporation who contracts with or provides goods or services to Developer in connection with the Welbilt Improvements or for

debts or claims accruing to such parties against Developer. There is no contractual relationship expressed or implied between the County and any other person, firm, or corporation supplying any work, labor, services, goods, or materials to Developer as a result of the Welbilt Improvements.

b. Termination: The County may terminate this DA upon Developer's failure to comply with the terms and conditions of this DA. The County shall provide Developer with a written Notice of Termination, stating the County's intent to terminate and describing those terms and conditions with which Developer has failed to comply. If Developer has not remedied the failure or initiated good faith efforts to remedy the failure within thirty (30) days after receiving the Notice of Termination, or thereafter is not proceeding with due diligence to remedy the failure, the County may terminate this DA immediately without further notice, and Developer shall not thereafter be entitled to any impact fee credits, reimbursement, or compensation as provided herein. This paragraph is not intended to replace any other legal or equitable remedies available to County under Florida law, but it is in addition thereto. This DA shall automatically terminate upon the full and timely payment of all MF Credits and funds in the Mitchell 54 West Paid Account to Developer or its designees in accordance herewith, and thereafter, the County agrees to promptly process a formal termination of this DA and to cause the same to be recorded in the Public Records of Pasco County, Florida. Except as set forth in the immediately preceding sentence, this DA can only be terminated by the County after a public hearing with the Local Planning Agency and the Board of County Commissioners.

c. Contracts: All construction contracts entered into by Developer for the Welbilt Improvements shall be made in accordance with all applicable laws, rules, and regulations; shall be specified by written contract or agreement; and shall be subject to each paragraph set forth in this DA. Developer shall monitor all contracts on a regular basis to ensure contract compliance. Results of monitoring efforts shall be summarized in written reports submitted to the County and supported with documented evidence of follow-up actions taken to correct areas of noncompliance. Developer shall cause the applicable portions of this DA to be included and made a part of any contract for the Welbilt Improvements.

d. Law Compliance: Developer and the County will comply with all applicable Federal, State, and local laws, rules, regulations, and guidelines related to performance under this DA. In particular, Developer verifies and affirms that it is in compliance with the 8 USC, Section 1324, prohibiting the employment either directly or by contract, subcontract, or exchange of unauthorized aliens in the United States. The County will consider the employment of unauthorized aliens by Developer or by any contractor or vendor of Developer during the term of the DA a violation of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this DA by the County.

e. Certification: Developer shall provide certification to the County, under the seal and signature of a registered, professional engineer that the Welbilt Improvements have been constructed in accordance with the standards promulgated by the County; the contract documents; and this DA.

f. Notice: Whenever one (1) party gives notice to the other party concerning any of the provisions of this DA, including notice of termination, such notice shall be given by certified mail, return-receipt requested. The said notice shall be deemed given when it is deposited in the U.S. Mail with sufficient postage prepaid (notwithstanding that the return-receipt is not subsequently received). Notices shall be addressed as follows: KEMR Properties, LLC, a Florida limited liability company, c/o Kitson & Partners, Senior Vice President - Asset Management, 4500 PGA Boulevard, Suite 400, Palm Beach Gardens, Florida 33418, with a copy to Clarke G. Hobby, Esq., 109 N. Brush St., Suite 250, Tampa, FL 33602, with a copy to the landowner entities set forth on Exhibit "C", with a copy to Pasco County, c/o Assistant County Administrator (Development Services), West Pasco Government Center, 8731 Citizens Drive, Suite 320, New Port Richey, FL 34654, with a copy to David A. Goldstein, Chief Assistant County Attorney, West Pasco Government Center, 8731 Citizens Drive, Suite 340, New Port Richey, FL 34654. These addresses may be changed by giving notice as provided for in this paragraph.

g. Entire Agreement: This DA embodies and constitutes the entire understanding and agreement between the parties with respect to the transactions contemplated herein, and this DA supersedes all prior and contemporaneous agreements, understandings, representations, communications, and statements, either oral or written; provided, however, that nothing shall relieve Developer of any development approval requirements or conditions previously imposed or authorized to be imposed under the County's LDC or Comprehensive Plan for future permits required by Developer. All exhibits attached hereto are incorporated herein by reference.

h. Modification and Amendment: Neither this DA, nor any portion hereof, may be waived, modified, amended, discharged, nor terminated, except as authorized by law pursuant to an instrument in writing, signed by the party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought and then only to the extent set forth in such instrument.

i. Waiver: The failure of any party to this DA to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this DA shall not be construed as a waiver of the violation or breach or of any future violation, breach, or wrongful conduct.

j. Contract Execution: This DA may be executed in several counterparts, each constituting a duplicate original, but all such counterparts shall constitute one (1) and the same agreement.

k. Gender: Whenever the contract hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and the neuter and vice versa.

l. Headings: All article and descriptive headings of paragraphs in this DA are inserted for convenience only and shall not affect the construction or interpretation hereof.

m. Severability: Each provision of this DA and the related MPUD conditions of approval are material to the Board of County Commissioners approval of this DA. Accordingly, the provisions are not severable. In the event any section, sentence, clause, or provision of this DA or the related MPUD conditions of approval are declared illegal or invalid by a body with jurisdiction to make such determination, the remainder of this DA and the related MPUD conditions of approval shall be suspended until such time the Board of County Commissioners modifies the DA or the related MPUD conditions of approval to address the illegal or invalid provision; provided however, such determination shall not affect the validity of entitlements that have received preliminary plan, preliminary site plan, plat, construction plan, Building Permit, or CO approval as of the date the determination is made. Developer-requested amendments to this DA and the related MPUD conditions of approval shall not be considered challenges to this DA or the related MPUD conditions of approval and decisions by the Board of County Commissioners regarding any Developer-requested amendments, or the like, shall not have the effect of suspending this DA or the related MPUD conditions of approval under any circumstances. Notwithstanding the foregoing, if a third party challenges any section, subsection, sentence, clause, or provision of the DA or the related MPUD conditions of approval and the challenged portion of the DA or the related MPUD conditions of approval are subsequently declared illegal or invalid, this DA or the related MPUD conditions of approval shall not be suspended, and shall remain in full force and effect except for that portion declared illegal or invalid. If any section, subsection, sentence, clause, or provision of this resolution is declared illegal or invalid as the result of a third party challenge, Developer shall cooperate with the County to amend this DA or the MPUD conditions of approval to address the portion which has been declared invalid or illegal.

n. Construction: The parties hereby agree that each has played an equal part in the negotiation and drafting of this DA and, in the event any ambiguity should be realized in the construction or interpretation of this DA, the result of such ambiguity shall be equally assumed and realized by each of the parties to this DA.

o. Cancellation: This DA may be canceled by mutual consent of the parties to the DA.

p. Third Party Beneficiaries: Nothing in this DA shall be construed to benefit any person or entity not a party to this DA.

q. Strict Compliance with Laws: Developer agrees that acts to be performed by it in connection with this DA shall be performed in strict conformity with all applicable Federal, State, and local laws, rules, regulations, standards, and guidelines

r. Nondiscrimination: Developer will not discriminate against any employee employed in the performance of this DA or against any applicant for employment because of race, creed, color, handicap, national origin, or sex. Developer shall insert a similar provision in all contracts for the Welbilt Improvements.

s. Signatories Authority: By the execution hereof, the parties covenant that the provisions of this DA have been duly approved and signatories hereto are duly authorized to execute this DA.

t. Right-of-Way Use Permit: Developer shall obtain Right-of-Way Use Permit(s) from the County as required.

u. Controlling Law: This DA shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any litigation arising from this DA shall be in Pasco County, Florida.

v. Successors and Assigns: The terms of this DA shall run with the land and be binding upon Developer and owners and their successors and assigns. Developer and owners may assign this DA and all its rights and obligations hereunder to any person, firm, corporation, or other entity, with the consent of the parties to this DA, which consent should not be unreasonably withheld or delayed, and any such assignee shall be entitled to all the rights and powers of such participation hereunder. Upon any such assignment, such assignee shall succeed to all the rights and obligations of the assignor hereto, and shall, for purposes of specific rights and/or obligations assigned, or otherwise, all purposes hereof, be substituted for such participant.

w. Force Majeure: In the event Developer's or County's performance of this DA is prevented or interrupted by consequent act of God, or of the public enemy, or national emergency, or a governmental restriction upon the use or availability of labor or materials, or civil insurrection, riot, racial or civil rights disorders or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, sinkholes, earthquake, or other casualty, disaster, or catastrophe, or judgment, or a restraining order or injunction of any court, Developer or County shall not be liable for such nonperformance, and the time of performance shall be extended for the number of days that the force majeure event prevents or interrupts Developer's or County's performance of this DA as reasonably determined by the other party. This paragraph shall not apply to force majeure events caused by Developer or under Developer's control, or caused by the County or under the County's control, as applicable. In the event that performance by Developer or County of the commitments set forth in this DA shall be interrupted or delayed in connection with acquisition of necessary governmental permits or approvals for the construction of the Welbilt Improvements and which interruption or delay is caused through no fault of the party with a delayed performance, then the party with a delayed performance shall submit documentation to the other party regarding such event for review and concurrence. If such documentation shows that such event(s) have taken

place, then the party with a delayed performance shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof, provided, however, in no event shall any such extension exceed three (3) months. Any requested extensions beyond such three (3) month period may only be accomplished by an amendment to this DA.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this DA on the dates set forth below.

(SEAL)

ATTEST:

THE COUNTY:

BOARD OF COUNTY COMMISSIONERS
OF PASCO COUNTY, FLORIDA

PAULA S. O'NEIL, Ph.D., CLERK
AND COMPTROLLER

TED SCHRADER, CHAIRMAN

Date: _____

[EXECUTION PAGES OF DEVELOPER TO FOLLOW]

WITNESSES:

DEVELOPER:

KEMR PROPERTIES, LLC, a Delaware limited liability company

By: _____
Thomas J. Danahy, Vice President

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2015, by Thomas J. Danahy, as Vice President of KEMR PROPERTIES, LLC, a Delaware limited liability company, who [] is personally known to me or [] has produced a driver's license as identification.

NOTARY

LIMITED JOINDER OF LANDOWNER ENTITIES

Subject to the provisions of Section 10(v) hereof, the undersigned land-owning entities hereby join in the execution of the foregoing Development Agreement for the limited purposes of consenting to its terms and conditions and to ensure a legally-binding Development Agreement under the Florida Local Government Development Agreement Act, but otherwise the same have not accepted any obligations of "Developer" under the Development Agreement and in no way agree to undertake any development activity.

WITNESSES:

David Dewey Mitchell

Rebecca Leigh Mitchell

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2015, by David Dewey Mitchell, who [] is personally known to me or [] has produced a driver's license as identification.

Notary Public

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2015, by Rebecca Leigh Mitchell, who [] is personally known to me or [] has produced a driver's license as identification.

Notary Public

[SIGNATURE PAGE TO FOLLOW]

WITNESSES:

MITCHELL RANCH PARTNERSHIP, LTD., a
Florida limited partnership

By: MITCHELL RANCH MANAGEMENT, INC., its
General Partner

By: _____
D. Dewey Mitchell, President

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2015, by D. Dewey Mitchell, as President of Mitchell Ranch Management, Inc., the General Partner of Mitchell Ranch Partnership, Ltd., a Florida limited partnership, on behalf of the limited partnership. He [] is personally known to me or [] has produced a driver's license as identification.

Notary Public

[SIGNATURE PAGE TO FOLLOW]

WITNESSES:

BREAZEALE LTD., a Florida limited partnership

By: _____
D. Dewey Mitchell, as Trustee of the Samantha Boyer Irrevocable Trust Agreement dated December 20, 1989, its General Partner

By: _____
D. Dewey Mitchell, as Trustee of the Mary Pfaffko Irrevocable Trust Agreement dated December 20, 1989, its General Partner

By: _____
D. Dewey Mitchell, as Trustee of the Arthur James Dean Pfaffko Irrevocable Trust Agreement dated December 20, 1989, its General Partner

By: _____
D. Dewey Mitchell, as Trustee of the Derek James Mitchell Irrevocable Trust Agreement dated December 20, 1989, its General Partner

By: _____
D. Dewey Mitchell, as Trustee of Carly Jean Mitchell Irrevocable Trust Agreement dated December 20, 1989, its General Partner

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2015, by D. Dewey Mitchell, as Trustee of the Samantha Boyer Irrevocable Trust Agreement dated December 20, 1989, its General Partner. He [] is personally known to me or [] has produced a driver's license as identification.

Notary Public

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2015, by D. Dewey Mitchell, as Trustee of the Mary Pfaffko Irrevocable Trust Agreement dated December 20, 1989, its General Partner. He [] is personally known to me or [] has produced a driver's license as identification.

Notary Public

[ACKNOWLEDGEMENT PAGE TO FOLLOW]

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2015, by D. Dewey Mitchell, as Trustee of the Arthur James Dean Pfaffko Irrevocable Trust Agreement dated December 20, 1989, its General Partner. He [] is personally known to me or [] has produced a driver's license as identification.

Notary Public

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2015, by D. Dewey Mitchell, as Trustee of the Derek James Mitchell Irrevocable Trust Agreement dated December 20, 1989, its General Partner. He [] is personally known to me or [] has produced a driver's license as identification.

Notary Public

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2015, by D. Dewey Mitchell, as Trustee of the Carly Jean Mitchell Irrevocable Trust Agreement dated December 20, 1989, its General Partner. He [] is personally known to me or [] has produced a driver's license as identification.

Notary Public

[SIGNATURE PAGE TO FOLLOW]

WITNESSES:

JAMES W. MITCHELL, SR. NON-EXEMPT FAMILY TRUST F/B/O D. DEWEY MITCHELL

By: _____
D. Dewey Mitchell as Co-Trustee of the James W. Mitchell, Sr. Non-Exempt Family Trust f/b/o D. Dewey Mitchell

By: _____
Thomas D. Masterson as Co-Trustee of the James W. Mitchell, Sr. Non-Exempt Family Trust f/b/o D. Dewey Mitchell

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2015, by D. Dewey Mitchell, as Co-Trustee of the James W. Mitchell, Sr. Non-Exempt Family Trust f/b/o D. Dewey Mitchell. He [] is personally known to me or [] has produced a driver's license as identification.

Notary Public

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2015, by Thomas D. Masterson, as Co-Trustee of the James W. Mitchell, Sr. Non-Exempt Family Trust f/b/o D. Dewey Mitchell. He [] is personally known to me or [] has produced a driver's license as identification.

Notary Public

[SIGNATURE PAGE TO FOLLOW]

WITNESSES:

JAMES W. MITCHELL, SR. NON-EXEMPT FAMILY TRUST F/B/O MARY MITCHELL

By: _____
Mary Mitchell as Trustee of the James W. Mitchell, Sr. Non-Exempt Family Trust f/b/o Mary Mitchell

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2015, by Mary Mitchell, as Trustee of the James W. Mitchell, Sr. Non-Exempt Family Trust f/b/o Mary Mitchell. She [] is personally known to me or [] has produced a driver's license as identification.

Notary Public

[SIGNATURE PAGE TO FOLLOW]

WITNESSES:

MRPBI LAND CO., LLC, a Florida limited liability company

By: _____
D. Dewey Mitchell, Manager

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me this ____ day of _____, 2015, by D. Dewey Mitchell, as Manager of MRPBI LAND CO., LLC, a Florida limited liability company. He [] is personally known to me or [] has produced a driver's license as identification.

Notary Public

EXHIBITS

- Exhibit "A"** - Legal Description
- Exhibit "B"** - Depiction of Welbilt Improvements
- Exhibit "C"** - Holders of Legal Title to the Real Property Described on **Exhibit "A"**
- Exhibit "D"** - Sidewalk Improvements along SR 54 and Mitchell Ranch Road

EXHIBIT "A"

Legal description

LEGAL DESCRIPTION:

MITCHELL RANCH - MPUD 1

A parcel of land being a portion of Sections 23 and 26, Township 26 South, Range 16 East, Pasco County, Florida, being more particularly described as follows:

COMMENCE at the Southeast corner of the Northeast 1/4 of Section 26, Township 26 South, Range 16 East, Pasco County, Florida; thence N89°31'39"W, along the South line of said Northeast 1/4 of Section 26 (being the basis of bearings for this legal description), for 260.17 feet to the point of intersection with the Westerly Right-of-Way line of Little Road, according to Official Records Book 1469, page 1422 of the Public Records of Pasco County, Florida; thence leaving said South line of the Northeast 1/4 of Section 26, N00°34'52"E, along said Westerly Right-of-Way line of Little Road, for 0.71 feet; thence N00°39'53"E, continuing along said Westerly Right-of-Way line of Little Road, for 119.91 feet to the Northeast corner of that certain property as described in Official Records Book 3102, page 1213 of the Public Records of Pasco County, Florida, same being the POINT OF BEGINNING; thence the following eight (8) courses along the Northerly line of said certain property as described in Official Records Book 3102, page 1213; (1) thence leaving said Westerly Right-of-Way line of Little Road, S78°06'26"W, for 26.54 feet; (2) thence S63°27'58"W, for 121.46 feet; (3) thence S70°17'12"W, for 76.89 feet; (4) thence S65°26'03"W, for 78.57 feet to the point of intersection with said South line of the Northeast 1/4 of Section 26; (5) thence N89°31'39"W, along said South line of the Northeast 1/4 of Section 26, for 305.14 feet to the point of intersection with a non-tangent curve, concave Northeasterly; (6) thence leaving said South line of the Northeast 1/4 of Section 26, Northwesterly along the arc of said curve, from a radial bearing of S00°28'07"W, having a radius of 300.00 feet, a central angle of 90°03'58", an arc length of 471.58 feet, and a chord bearing N44°29'54"W for 424.51 feet to the point of intersection with a non-tangent line; (7) thence N00°32'09"E, for 531.05 feet; (8) thence N89°27'18"W, for 1,503.45 feet to the point of intersection with the West line of said Northeast 1/4 of Section 26, same being the Northwest corner of said certain property as described in Official Records Book 3102, page 1213; thence S00°31'56"W, along said West line of the Northeast 1/4 of Section 26, same being the West line of said certain property as described in Official Records Book 3102, page 1213, for 311.43 feet to the Northeast corner of that certain property as described in Official Records Book 5070, page 101 of the Public Records of Pasco County, Florida; thence leaving said West line of the Northeast 1/4 of Section 26, N89°34'07"W, along the North line of said certain property as described in Official Records Book 5070, page 101, for 1,606.52 feet to the point of intersection with the Easterly Right-of-Way line of Welbilt Boulevard, according to Official Records Book 5418, page 1791 of the Public Records of Pasco County, Florida, same being the Northwest corner of said certain property as described in Official Records Book 5070, page 101, same also being the point of intersection with a non-tangent curve, concave Westerly; thence the following four (4) courses along said Easterly Right-of-Way line of Welbilt Boulevard and the Easterly line of that certain property as described in Official Records Book 3176, page 970 of the Public Records of Pasco County, Florida, respectively; (1) thence Northerly along the arc of said curve,

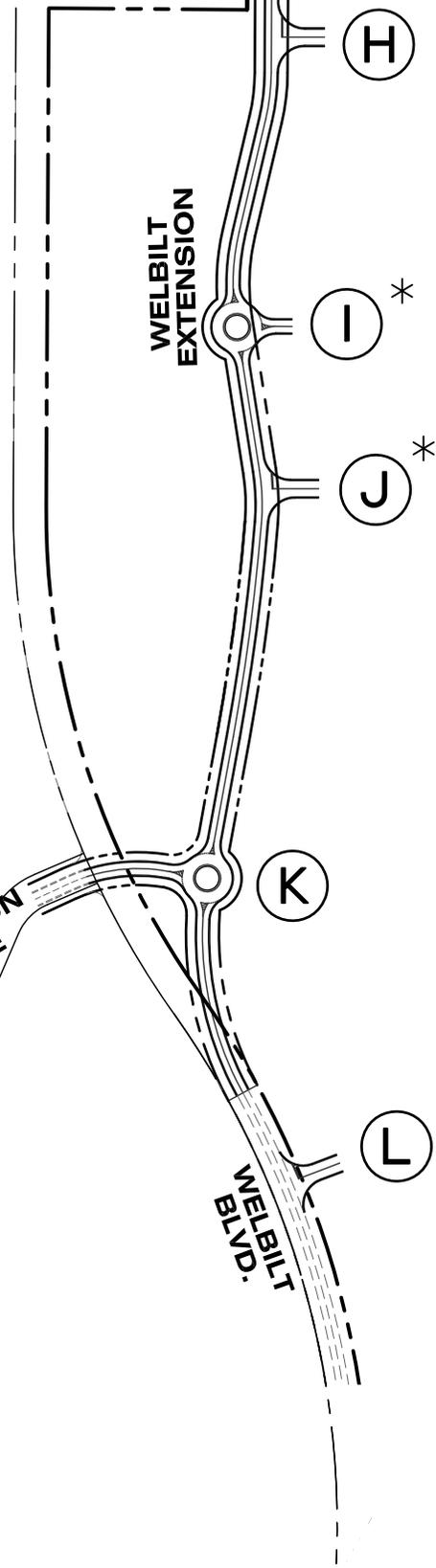
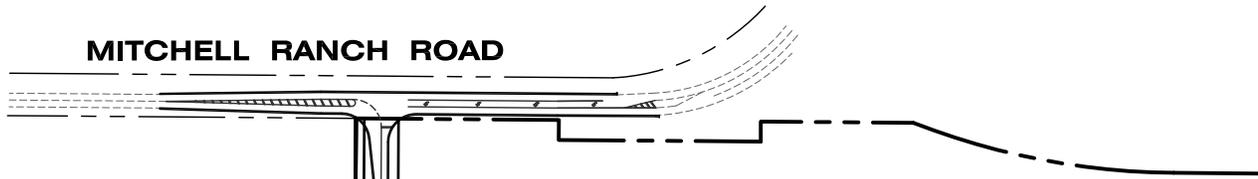
from a radial bearing of S80°53'01"E, having a radius of 1,675.00 feet, a central angle of 44°25'55", an arc length of 1,298.94 feet, and a chord bearing N13°05'59"W for 1,266.63 feet to the point of tangent; (2) thence N35°18'57"W, for 1.44 feet to the point of curvature of a curve concave Easterly; (3) thence Northerly along the arc of said curve, having a radius of 1,530.00 feet, a central angle of 35°37'16", an arc length of 951.21 feet, and a chord bearing N17°30'19"W for 935.96 feet to the point of tangent; (4) thence N00°18'19"E, for 909.22 feet to the Southwest corner of that certain property as described in Official Records Book 1712, page 1843 of the Public Records of Pasco County, Florida; thence leaving said Easterly line of that certain property as described in Official Records Book 3176, page 970, S89°32'50"E, along the South line of said certain property as described in Official Records Book 1712, page 1843, for 361.59 feet to the Southeast corner of said certain property as described in Official Records Book 1712, page 1843; thence N00°17'44"E, along the East line of said certain property as described in Official Records Book 1712, page 1843, for 361.67 feet to the point of intersection with the Southerly line of Mitchell Ranch Road, according to Official Records Book 1281, page 1225 of the Public Records of Pasco County, Florida, same being the Northeast corner of said certain property as described in Official Records Book 1712, page 1843; thence S89°32'48"E, along said Southerly line of Mitchell Ranch Road, according to Official Records Book 1281, page 1225, for 354.67 feet to the point of intersection with the Southerly Right-of-Way line of Mitchell Ranch Road, according to Official Records Book 3518, page 1394 of the Public Records of Pasco County, Florida; thence the following three (3) courses along said Southerly Right-of-Way line of Mitchell Ranch Road, according to Official Records Book 3518, page 1394; (1) thence S00°27'22"W, for 34.95 feet; (2) thence S89°32'38"E, for 352.93 feet; (3) thence N00°14'00"E, for 34.97 feet to the point of intersection with said Southerly line of Mitchell Ranch Road, according to Official Records Book 1281, page 1225; thence S89°32'48"E, along said Southerly line of Mitchell Ranch Road, according to Official Records Book 1281, page 1225, for 266.52 feet to the point of intersection with the Southerly Right-of-Way line of State Road 54, according to Official Records Book 4042, page 1444 of the Public Records of Pasco County, Florida, same being the point of intersection with a non-tangent curve, concave Northerly; thence Easterly along said Southerly Right-of-Way line of State Road 54, according to Official Records Book 4042, page 1444, along the arc of said curve, from a radial bearing of S21°20'12"W, having a radius of 1,278.23 feet, a central angle of 20°53'00", an arc length of 465.89 feet, and a chord bearing S79°06'18"E for 463.32 feet to the point of tangent; thence S89°32'48"E, along the Southerly Right-of-Way line of State Road 54, according to said Official Records Book 4042, page 1444 and Official Records Book 2058, page 1993, Official Records Book 2059, page 1, Official Records Book 2058, page 1999, Official Records Book 4216, page 1356 and Official Records Book 2059, page 4, all of the Public Records of Pasco County, Florida, respectively, for 2,422.30 feet; thence S00°24'41"E, along said Southerly Right-of-Way line of State Road 54, according to said Official Records Book 4216, page 1356, for 7.95 feet; thence N89°06'19"E, continuing along said Southerly Right-of-Way line of State Road 54, according to said Official Records Book 4216, page 1356, for 337.91 feet to the point of intersection with said Southerly Right-of-Way line of State Road 54, according to Official Records Book 2059, page 4; thence S89°32'48"E, along said Southerly Right-of-Way line of State Road 54, according to Official Records

Book 2059, page 4, for 133.18 feet to the point of intersection with said Southerly Right-of-Way line of State Road 54, according to Official Records Book 4216, page 1356; thence S42°36'48"E, along said Southerly Right-of-Way line of State Road 54, according to Official Records Book 4216, page 1356, for 76.59 feet to the point of intersection with the Westerly Right-of-Way line of Little Road, according to Official Records Book 1799, page 1788 of the Public Records of Pasco County, Florida; thence leaving said Southerly Right-of-Way line of State Road 54, according to Official Records Book 4216, page 1356, S00°00'51"E, along said Westerly Right-of-Way line of Little Road, according to Official Records Book 1799, page 1788, for 60.16 feet; thence N89°59'09"E, continuing along said Westerly Right-of-Way line of Little Road, according to Official Records Book 1799, page 1788, for 15.00 feet to the point of intersection with the Westerly Right-of-Way line of Little Road, according to Official Records Book 1469, page 1422 of the Public Records of Pasco County, Florida; thence the following six (6) courses along said Westerly Right-of-Way line of Little Road, according to Official Records Book 1469, page 1422; (1) thence S00°00'51"E, for 150.56 feet to the point of curvature of a curve concave Westerly; (2) thence Southerly along the arc of said curve, having a radius of 1,100.00 feet, a central angle of 09°00'00", an arc length of 172.79 feet, and a chord bearing S04°29'09"W for 172.61 feet to the point of tangent; (3) thence S08°59'09"W, for 192.55 feet to the point of intersection with a curve, concave Westerly; (4) thence Southerly along the arc of said curve, having a radius of 900.00 feet, a central angle of 12°59'19", an arc length of 204.03 feet, and a chord bearing S15°28'48"W for 203.59 feet to the point of reverse curvature of a curve concave Easterly; (5) thence Southerly along the arc of said curve, having a radius of 990.00 feet, a central angle of 21°18'36", an arc length of 368.21 feet, and a chord bearing S11°19'10"W for 366.09 feet to the point of tangent; (6) thence S00°39'53"W, for 2,525.94 feet to the POINT OF BEGINNING.

Containing 14,508,328 square feet or 333.065 acres, more or less.

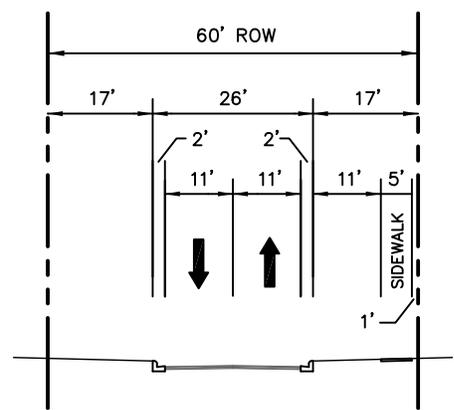
EXHIBIT "B"

Depiction of Welbilt Improvements



NOTE:

- * 1. A MINI ROUNDABOUT WILL BE CONSTRUCTED AT ACCESS I OR J. THE DETERMINATION OF THE LOCATION SHALL BE THE SOLE DISCRETION OF THE DEVELOPER.



**TYPICAL SECTION
WELBILT BLVD. EXTENSION**

60' RIGHT-OF-WAY
NO ON-STREET PARKING
SLOW
DESIGN SPEED: 20-25MPH

**EXHIBIT B
WELBILT
IMPROVEMENTS**

EXHIBIT "C"

Holders of Legal Title to the Real Property Described on Exhibit "A" and Their Addresses

David Dewey Mitchell
8324 S.R. 54
New Port Richey, FL 34655

Rebecca Leigh Mitchell
8324 S.R. 54
New Port Richey, FL 34655

Mitchell Ranch Partnership, Ltd.
8600 S.R. 54
New Port Richey, FL 34655

Breazeale, Ltd.
8600 S.R. 54
New Port Richey, FL 34655

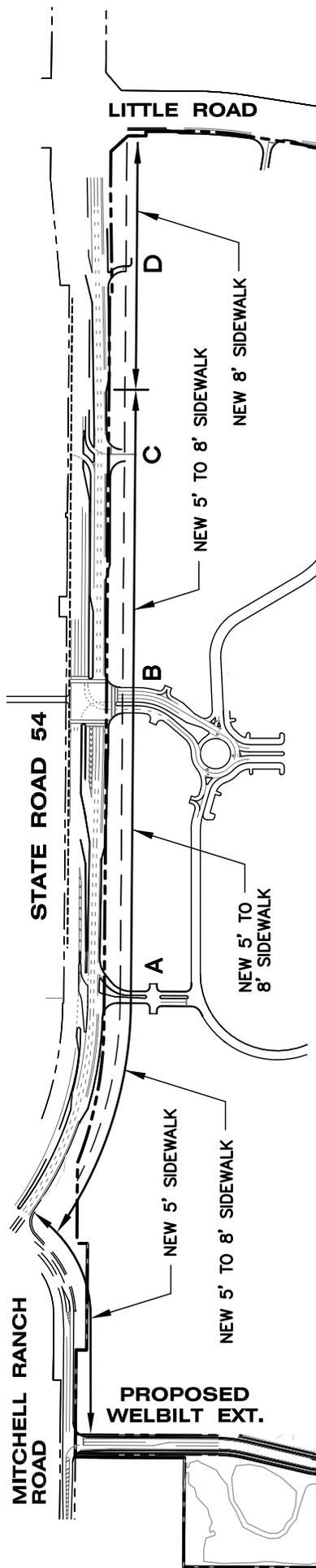
James W. Mitchell, Sr. Non-Exempt Family
Trust f/b/o D. Dewey Mitchell
8324 S.R. 54
New Port Richey, FL 34655

James W. Mitchell, Sr. Non-Exempt Family
Trust f/b/o Mary Mitchell
8324 S.R. 54
New Port Richey, FL 34655

MRPBI Land Co., LLC
8324 S.R. 54
New Port Richey, FL 34655

Exhibit "D"

Depiction of Sidewalk Improvements along SR 54 and Mitchell Ranch Road



**EXHIBIT D
SIDEWALK
IMPROVEMENTS**