

1 **S.R. 100 PROPERTY**

2 **DEVELOPMENT OF REGIONAL IMPACT DEVELOPMENT ORDER**

3 **THIS DEVELOPMENT ORDER** effective this ^{15th}
4 day of Sept., 2006 by and between **JX**
5 **PROPERTIES, LLC**, a Florida limited liability
6 company (the "Developer"), whose address is
7 14000 Rockland Road, Libertyville, Illinois
8 60048, its successors or assignees and the
9 **City of Palm Coast**, a municipal corporation
10 organized and existing under the laws of the
11 State of Florida (the "City"), whose address
12 is 2 Commerce Boulevard, Palm Coast, Florida
13 32164.

14 **WHEREAS**, the Developer, who is the owner of the property
15 which is the subject of this Development Order, filed an
16 Application For Development Approval ("ADA") dated April,
17 2005, as amended by ADA First Sufficiency Response dated
18 August, 2005, and ADA Second Sufficiency Response dated
19 November, 2005, for the S.R. 100 PROPERTY Development of
20 Regional Impact ("S.R. 100 PROPERTY DRI" or "Project")
21 located on certain real property as more specifically
22 described in **Exhibit "A"** hereto (the "DRI Property"); and

23 **WHEREAS**, whenever an action or approval of the City or
24 City Manager is referred to herein, except for actions
25 specifically relating to actions of the City Council, the
action shall be taken by the City Manager, or designee, as
deemed appropriate by the City Manager; and

WHEREAS, whenever an action, right or eligibility of the
Developer is referenced, the action may be taken by, or the

1 right or eligibility may belong, to the Developer or its
2 assigns/designee but all conditions, covenants, and
3 agreements set forth in this Development Order are the
4 obligation of the Developer and/or its assigns inasmuch as
5 the covenants, terms and conditions of this Developer Order
6 run with the DRI Property; and

7 **WHEREAS**, the S.R. 100 PROPERTY DRI is a proposed mixed-
8 use development to be developed on approximately 505 acres
9 located in the City bound by State Road 100, Old Kings Road
10 and Graham Swamp; and

11 **WHEREAS**, the ADA was reviewed by the Northeast Florida
12 Regional Council ("NEFRC") as required by Section 380.06,
13 *Florida Statutes*, and the NEFRC recommended that the ADA be
14 approved, with conditions; and

15 **WHEREAS**, the Developer hereby affirms that it provided
16 complete copies of the ADA, as amended by ADA First
17 Sufficiency Response and ADA Second Sufficiency Response to
18 the Florida Department Of Community Affairs ("DCA"), NEFRC
19 and the City; and

20 **WHEREAS**, pursuant to Section 380.06, *Florida Statutes*,
21 the City Council of the City ("City Council") heard at public
22 hearings convened on ^{20th of} June, 2006 and on , 2006, the ADA
23 for the S.R. 100 PROPERTY DRI and afforded the public and all
24 affected parties an opportunity to be heard and to present
25 evidence; and

1 **WHEREAS**, after such public hearing and in consideration
2 of the recommendations made and submitted to the City
3 Council, the City Council has made certain findings and
4 determinations, as more specifically set forth hereinafter;
5 and

6 **WHEREAS**, based upon findings of fact and conclusions of
7 law the City finds that the S.R. 100 PROPERTY DRI a) does
8 not unreasonably interfere with the achievement of the
9 objectives of the adopted state land development plan
10 applicable to the area; b) is consistent with the State
11 Comprehensive Plan; c) is consistent with City of Palm Coast
12 land development regulations and the City of Palm Coast
13 Comprehensive Plan; and d) will be consistent with the NEFRC.
14 recommendation for the S.R. 100 Property DRI (February 2,
15 2006); and

16 **WHEREAS**, all covenants and conditions set forth herein
17 are agreed to by the Developer and represent covenants which
18 touch and concern the subject DRI Property and run with the
19 land and are thereby binding upon the transferees, successors
20 and assigns of the Developer.

21 **NOW, THEREFORE, BE IT HEREBY ORDERED AND RESOLVED** by the
22 City Council, that based upon the following Findings of Fact
23 and Conclusions of Law, and the consent and agreement of the
24 Developer, and subject to the following terms and conditions,
25 the City Council hereby approves this Development Order,
pursuant to the provisions of Section 380.06, *Florida*

1 Statutes, and other applicable State laws, and the codes and
2 ordinances of the City:

3
4 **PART I**

5 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

6 1. The above Recitals/Whereas clauses are hereby taken
7 as true, adopted and incorporated into this Development Order
8 and made a material part thereof.

9 2. The DRI Property is not within an area designated as
10 an Area of Critical State Concern pursuant to the provisions
11 of Section 380.05, *Florida Statutes*.

12 3. The S.R. 100 PROPERTY DRI is consistent with the
13 State's Comprehensive Plan as set forth at Chapter 187,
14 *Florida Statutes*, and Rule 9J-5, *Florida Administrative Code*.

15 4. The S.R. 100 PROPERTY DRI is consistent with the
16 Strategic Regional Policy Plan adopted by the NEFRC.

17 5. The S.R. 100 PROPERTY DRI is consistent with the
18 City's Comprehensive Plan.

19 6. The S.R. 100 PROPERTY DRI is consistent with the
20 Assessment Report and Recommendations of the NEFRC issued on
21 February 2, 2006 pursuant to Section 380.06, *Florida*
22 *Statutes*.

23 7. The public hearing to consider this Development
24 Order was properly noticed and held by the City Council
25 pursuant to Section 380.06, *Florida Statutes*.

1 8. The Developer's authorized agent is Michael
2 Chiumento III whose principal place of business is Chiumento
3 and Associates, P.A., 4 Old Kings Road, Suite B, Palm Coast,
4 Florida 32137, and whose telephone number is (386) 445-8900.

5 9. Development of the S.R. 100 PROPERTY DRI pursuant to
6 the ADA was determined to be consistent with the achievement
7 of the objectives of the adopted State Comprehensive Plan, as
8 codified at Chapter 187, *Florida Statutes*, and will not
9 unreasonably interfere with the achievement of those
10 objectives.

11
12 **PART II**

13 **GENERAL CONDITIONS**

14 1. **ADA.** The S.R. 100 PROPERTY DRI shall be developed
15 in accordance with the development plan, information, and
16 commitments contained in the following: (i) ADA dated April,
17 2005; (ii) the First ADA Sufficiency Response dated August,
18 2005; (iii) the Second ADA Sufficiency Response dated
19 November, 2005 and (iv) S.R. 100 PROPERTY Master Plan,
20 attached as **Exhibit "B"** hereto (the "Master Development
21 Plan"), all of which are incorporated herein by reference
22 except to the extent of any conflict with the terms,
23 conditions, restrictions, and limitations of this Development
24 Order.

25 2. **Notice of this Development Order.** Notice of this
Development Order and any subsequent amendment hereto shall

1 be recorded by the Developer in accordance with the
 2 provisions of Sections 28.222 and 380.06(15)(f), *Florida*
 3 *Statutes*, with the Clerk of the Circuit Court of Flagler
 4 County, Florida. Any subsequent owner shall be subject to
 5 the provisions contained in this Development Order. Any
 6 contract or agreement for sale by the Developer of all or any
 7 portion of the S.R. 100 PROPERTY DRI shall contain a legend
 8 substantially in the following form clearly printed or
 9 stamped thereon.

10 THE PROPERTY DESCRIBED HEREIN IS PART OF THE
 11 S.R. 100 PROPERTY DEVELOPMENT OF REGIONAL
 12 IMPACT AND IS SUBJECT TO A DEVELOPMENT ORDER,
 13 NOTICE OF WHICH IS RECORDED IN THE PUBLIC
 14 RECORDS OF FLAGLER COUNTY, FLORIDA, WHICH
 15 IMPOSES CONDITIONS, RESTRICTIONS, AND
 16 LIMITATIONS UPON THE USE AND DEVELOPMENT OF
 17 THE SUBJECT PROPERTY WHICH ARE BINDING UPON
 18 EACH SUCCESSOR AND ASSIGN OF JX PROPERTIES,
 19 LLC. A COPY OF THE DEVELOPMENT ORDER MAY BE
 20 REVIEWED AT THE COMMUNITY DEVELOPMENT
 21 DEPARTMENT, CITY OF PALM COAST OR AT THE
 22 OFFICES OF THE DEPARTMENT OF COMMUNITY
 23 AFFAIRS, STATE OF FLORIDA, TALLAHASSEE,
 24 FLORIDA.

25 3. **Land Use Totals.** The S.R. 100 PROPERTY DRI may be
 developed up to, but not to exceed, the following:

<u>Land Use</u>	<u>Gross Bldg./Units or Area</u>	<u>Acreage *</u>
Residential	2411 DU	191.46
Commercial	80,000 SF	14.31
	150 Hotel Rooms	
Institutional (Parks/Fire Station/and school)	Permissible FAR	102.05

1 Common Area ** -- 171.60
 2 (Open space/Preservation)

3 Keys: DU = Dwelling Unit; SF = Square Feet

4 Permissible FAR = Per City's Comprehensive Plan

5 * The S.R. 100 PROPERTY DRI is planned as an integrated
 6 mixed-use development. Consequently, acreage is
 7 approximate for each land use category.

8 ** Common Area includes all open space, areas for
 9 preservation and greenbelt areas that shall be
 10 available for the common use and enjoyment of all S.R.
 11 100 PROPERTY DRI property owners and visitors.

12 4. **Phasing, Buildout, and Expiration.** The S.R. 100
 13 PROPERTY DRI infrastructure and plats shall be developed and
 14 recorded in 2 phases as shown in the following schedule:

15

16 **TABLE 1: PROJECT PHASING PROJECTIONS**

17 Phasing Summary	18 Phase 1 2006-2010	19 Phase 2 2008-2015
20 RESIDENTIAL		
21 Single-Family	583 DUs	190 DUs
22 Multi-Family	82 DUs	1,556 DUs
23 Total	665 DUs	1,746 DUs
24 COMMERCIAL	14.31 acres	
25 General Retail	50,000 square feet	
General Office	30,000 square feet	
Hotel	150 Rooms	

During Phase 1, the Developer shall construct or cause to be
 constructed, at a minimum, the major infrastructure
 consisting of the following:

1 (a) Construction of the Spine Road as a 2-lane urban
2 section from State Road 100 to approximately 500 feet north
3 of the traffic circle, and thereafter, a 4-lane urban section
4 to Old Kings Road. The rights-of-way for the spine road only
5 shall be 104 feet in width.

6 (b) Construction of the master drainage system for
7 the DRI Property.

8 (c) Installation of a master water distribution
9 system, a master sewage collection system, a master effluent
10 transmission system, a master underground electric
11 distribution system and conduit, a master reuse system, and a
12 master underground fiber optic system within all road rights-
13 of-way or adjacent multi-use easements.

14 (d) Installation of landscaping along roads, around
15 parking lots, entrances, common areas and in other public
16 areas.

17 (e) Construction of the multi-purpose trail, with a
18 connection to the existing Flagler County Rails to Trails
19 property to the City Park, Tract "P". All internal streets
20 and drainage systems shall be constructed and utility
21 services shall be extended by the Developer as approved by
22 the City.

23 Each phase shall be commenced during the period identified in
24 Table 1. Project Phasing projections shall be binding,
25 unless extended in writing by the City Manager, or unless the
Developer elects to accelerate the beginning date of the

1 subsequent phase, provided that all mitigation requirements
2 for the particular phase are met. The end date of a phase
3 shall not be affected by an acceleration of the beginning
4 date.

5 Unused development rights from Phase I shall carry
6 over into Phase II until buildout. Development shall
7 commence no later than January 1, 2008. As a result, the
8 S.R. 100 PROPERTY DRI expiration date of this Development
9 Order are both established as of December 31, 2026.

10 5. **Effective Date.** This Development Order shall take
11 effect upon transmittal to the DCA in accordance with Rule
12 9J-2.025(5) *Florida Administrative Code*, and Subsection
13 380.07(2), *Florida Statutes*.

14 6. **Monitoring Official.** The City Manager shall be the
15 local official responsible for monitoring the S.R. 100
16 PROPERTY DRI for compliance by the Developer with this
17 Development Order.

18 7. **Downzoning Protection.** The S.R. 100 PROPERTY DRI, as
19 approved in this Development Order, shall not be subject to
20 downzoning or reduction of land uses before December 31,
21 2026, unless the Developer consents to such change, or the
22 City demonstrates that substantial changes in the conditions
23 underlying the approval of this Development Order have
24 occurred or that this Development Order was based on
25 substantially inaccurate information provided by the

1 Developer or that the changes are essential to the public
2 health, safety or welfare.

3 8. **Election Regarding Environmental Rules.** Pursuant to
4 Section 380.06(5)(c), *Florida Statutes*, the Developer has
5 elected to be bound by the rules adopted pursuant to
6 Chapters 373 and 403, *Florida Statutes*, in effect as of the
7 date of this Development Order, including, but not limited
8 to, the provisions of Section 373.414(13), *Florida Statutes*.
9 Such rules shall be applicable to all applications for
10 permits pursuant to those chapters which are necessary for
11 and consistent with the development authorized in this
12 Development Order, except that a later adopted rule shall be
13 applicable to an application if:

14 (a) the later adopted rule is determined by the
15 adopting agency to be essential to the public health, safety
16 and welfare, or

17 (b) the later adopted rule is being adopted
18 pursuant to Section 403.061(27), *Florida Statutes*; or

19 (c) the later adopted rule is being adopted
20 pursuant to a subsequently enacted statutorily mandated
21 program; or

22 (d) the later adopted rule is mandated in order for
23 the State to maintain delegation of a Federal program; or

24 (e) the later adopted rule is required by State or
25 Federal law.

1 Further, to qualify for the benefits of this
2 provision, the application must be filed within five (5)
3 years from the issuance of this Development Order and the
4 permit shall not be effective for more than eight (8) years
5 from the effective date of this Development Order. Nothing
6 in this Section shall be construed to alter or change any
7 permitting agency's authority to approve permits or to
8 determine applicable criteria for longer periods of time.

9 **9. Level of Service Standards.** The S.R. 100 PROPERTY
10 DRI shall be required to meet all level of service standards
11 in the City's Comprehensive Plan and all requirements of the
12 City's concurrency management system as specifically
13 discussed herein. However, pursuant to Section 163.380(12),
14 *Florida Statutes*, the Developer has satisfied the
15 transportation concurrency requirements by meeting the
16 transportation conditions contained in this Development Order
17 and is therefore vested.

18 **10. Biennial Reporting.** A biennial monitoring report for
19 the S.R. 100 Property DRI shall be prepared by the Developer
20 or its successors or assignees and shall be submitted to
21 NEFRC, DCA and the City no later than March 1, 2007 and then
22 biennially thereafter until buildout (individually a
23 "Monitoring Report" and collectively the "Monitoring
24 Reports"). The Monitoring Reports shall be submitted
25 consistent with the reporting requirements adopted in Section

1 380.06(18), *Florida Statutes*, or as amended from time to
2 time. Each Monitoring Report shall include the following:

3 (a) A description of any changes made in the plan
4 of development, phasing, or in representations contained in
5 the ADA since the effective date of this Order, and any
6 actions taken by the City to address those changes. Copies
7 of any approvals taken to address changes, including copies
8 of any revised master plans not previously submitted, shall
9 be attached to each Monitoring Report.

10 (b) A summary comparison of development activity
11 proposed or conducted since the previous Monitoring Report
12 and activity projected for the period until submittal of the
13 next Monitoring Report. The summary shall include the
14 following: a description of site improvements, number of
15 residential lots platted, gross floor area of non-residential
16 uses constructed by land use type, location, and phase, with
17 appropriate maps. A tabulation of the amount of acreage
18 developed in the reporting period shall be provided by land
19 use categories shown on the Master Plan.

20 (c) An identification of the name(s) of the
21 purchaser(s) of any undeveloped tract(s) of the DRI Property,
22 including the location(s) and size of the tract(s) purchased,
23 and the amount of development rights allocated to the
24 purchaser(s), with map(s) which show the parcel(s) or sub-
25 parcel(s) acquired.

1 (d) A cumulative summary of all development that
2 has taken place within the S.R. 100 Property DRI by the land
3 use categories shown on the Master Plan, including gross
4 floor areas constructed by land use type and location,
5 together with a cumulative summary of location, size
6 (acreage), development rights purchased (land use type and
7 square footage or units), and the name of the purchaser of
8 all parcels purchased within the S.R. 100 Property DRI.

9 (e) To the extent known to the Developer, a
10 description of any lands purchased or optioned within one
11 mile of the boundaries of the S.R. 100 Property DRI by a
12 person who has acquired a fee simple or lesser interest in
13 the S.R. 100 Property DRI subsequent to the effective date of
14 this Development Order (but excluding persons who have only
15 acquired a leasehold interest in lands or improvements within
16 the S.R. 100 Property DRI), identifying such land, its size,
17 and its intended use on a site plan and map (to the extent
18 feasible).

19 (f) A listing of any substantial local, State, and
20 Federal permits, which were obtained, applied for, or denied,
21 during this reporting period, specifying the agency, type of
22 permit, permit number, permit expiration date, parcel,
23 location, and activity for each permit.

24 (g) A description of any moratorium or consent
25 order imposed by a regulatory agency on development within
the S.R. 100 Property DRI, specifying the type of moratorium

1 or consent order, duration, cause, and remedy as well as
2 additional information regarding any "out of compliance"
3 status issued by the applicable regulatory authority.

4 (h) An analysis, including a letter from the City,
5 demonstrating that there will be sufficient capacity of
6 potable water, wastewater, and solid waste facilities serving
7 the S.R. 100 Property DRI for the anticipated development for
8 the ensuing reporting period.

9 (i) An assessment of the Developer's or its
10 successor's and local government's compliance with conditions
11 and commitments contained in this Development Order.

12 (j) A description of any change to the previously
13 reported stormwater plans and design criteria or planting
14 monitoring, mitigation and maintenance programs.

15 (k) A description of any known incremental
16 applications for development approval or requests for a
17 substantial deviation that were filed in the reporting period
18 or to be filed during the next reporting period.

19 (l) A description of any change in local
20 governmental jurisdiction for any portion of the S.R. 100
21 Property DRI since the effective date of this Development
22 Order.

23 (m) Total acres of wetland impacts, location map,
24 and copies of monitoring reports completed during the
25

1 previous reporting period on wetland mitigation areas as
2 required by the permitting agencies.

3 (n) Traffic reports which shall also be submitted
4 to the Florida Department of Transportation ("FDOT") District
5 Urban Office in Orlando, as well as to the City, the NEFRC,
6 and the DCA. The first traffic report shall be due
7 concurrently with the first Monitoring Report and then
8 biennially thereafter with each subsequent Monitoring Report
9 until project buildout, unless otherwise specified by the
10 NEFRC. The following information shall be included:

11 (i) A description of current development by
12 land use, type, location, number of residential units and the
13 amount of square footage of non-residential, along with the
14 proposed construction schedule for the ensuing 24 month
15 period, and appropriate maps.

16 (ii) Traffic counts, turning movements, and
17 levels of service actual for the past 24 months and projected
18 for the ensuing 24 months, including traffic estimates for
19 the following roads, including intersections and
20 interchanges. The Developer shall distinguish between
21 project-related traffic and total traffic volumes:

- 22 • SR 100 from SR A1A to Belle Terre Parkway
- 23 • Old Kings Road from Palm Coast Parkway to SR
24 100

1 (iii) A table showing the buildings which have
2 been issued a certificate of occupancy within the reporting
3 period and the trip generation for daily and peak hour
4 traffic according to the use based on the latest available
5 version of the Institute of Transportation Engineers ("ITE")
6 manual. This table shall provide a sum of the total daily
7 and peak hour trips generated for all development within the
8 reporting period. A separate table shall include the same
9 information for all development which has been issued a
10 certificate of occupancy in the S.R. 100 Property DRI in
11 previous reporting periods, thus providing a cumulative total
12 for daily and peak hour trip generation for the entire S.R.
13 100 Property DRI (the "ITE Trip Generation Rates").

14 (iv) A description of any new and/or improved
15 roadways, traffic control devices or other transportation
16 facility improvements to be constructed or provided by the
17 Developer or a governmental entity to accommodate the total
18 existing and anticipated traffic demands.

19 (o) A determination of whether or not air quality
20 monitoring is warranted pursuant to the Florida Department of
21 Environmental Protection ("FDEP") Guidelines for Indirect
22 Sources.

23 (p) A statement certifying that the NEFRC, the DCA,
24 the City, and all affected agencies have been sent copies of
25 the Monitoring Report in conformance with Subsections

1 380.06(15) and (18), *Florida Statutes*. The Developer shall
2 ensure that appropriate agencies receive a copy of each
3 monitoring report.

4 11. **Application for Proposed Changes.** The Developer shall
5 submit simultaneously to the City, the NEFRC, and the DCA,
6 any applications for proposed changes to the S.R. 100
7 PROPERTY DRI and shall comply with the provisions of Section
8 380.06(19), *Florida Statutes*, concerning non-substantial
9 deviations.

10 12. **Limitations of Approval.** The approvals provided in
11 this Development Order shall not be construed to obviate the
12 duty of the Developer to comply with all other applicable
13 local, State or Federal permitting procedures which are not
14 addressed in this Development Order.

15 13. **Notices.** Any and all notices required or allowed to
16 be given in accordance with this Development Order shall be
17 mailed or delivered as follows:

18 **To the Developer:** JX PROPERTIES, LLC
19 14000 Rockland Road
20 Libertyville, IL 60048
21 Telephone: 847-680-9897

22 **With copies to:** **Michael D. Chiumento III, Esquire**
23 Chiumento & Associates, P.A.
24 4B Old Kings Road North
25 Palm Coast, FL 32137

1 Telephone: (386) 445-8900; and
2 James T. Pearce Real Estate
3 12297 Hidden Hills Drive
4 Jacksonville, FL 32225
5 904-425-3576

6 **To the City:**

City of Palm Coast
7 2 Commerce Boulevard
8 Palm Coast, FL 32164
9 Attn: City Manager
10 Telephone: (386) 986-3702

11 **With a Copy to:**

Stenstrom, McIntosh, Colbert, Whigham,
12 **Reischmann & Partlow**
13 1001 Heathrow Park Lane Suite 4001
14 Lake Mary, FL 32746
15 P.O. Box 4848
16 Sanford, FL 32772-4848
17 Attn: Palm Coast City Attorney
18 Telephone: (407) 322-2171

19 14. **Severability.** In the event any stipulation, or any
20 portion of any section of this Development Order shall be
21 declared invalid, illegal, or unconstitutional by a court of
22 competent jurisdiction, such adjudication shall in no manner
23 affect the approval granted herein, and other stipulations,
24 or the other provisions of the affected stipulation, which
25 shall remain in full force and effect as if the stipulation

1 or portion or section thereof so declared invalid, illegal,
2 or unconstitutional, were not originally a part hereof;
3 provided, however, that if the result of the severance of the
4 stipulation or portion or section results in harm to the
5 public health, safety or welfare; results in a public harm;
6 or substantially negates a public benefit or imposes a public
7 burden; then the provisions of this Development Order shall
8 be deemed not severable and this Development Order shall be
9 reformulated and reconstituted by the City to address said
10 matters.

11 **15. Rendition of Development Order to DCA.** Within 20
12 days of the approval and execution of this Development Order,
13 the City shall render a copy of this Development Order, with
14 all attachments certified as complete and accurate by
15 certified mail, return receipt requested, to the DCA, the
16 "Bureau of Local Planning", the NEFRC, and the Developer.

17 **16. Other General Conditions.**

18 (a) Notwithstanding any provision contained in this
19 Development Order to the contrary, the City shall have no
20 financial responsibility to contribute to or participate in
21 the funding, design, engineering, permitting, and/or
22 construction of improvements to State roads, County roads, or
23 City streets, all as defined at Section 334.03, *Florida*
24 *Statutes*, constructed or to be constructed within the DRI
25 Property unless otherwise agreed to by the City.

1 (b) Development of the DRI Property based upon this
2 Development Order shall comply with all applicable Federal,
3 State and local laws, codes, ordinances, rules and
4 regulations which are hereby incorporated herein by this
5 reference.

6 (c) The Developer acknowledges that the
7 requirements and conditions of this Development Order as set
8 forth herein result from the impacts of development of the
9 DRI Property on public facilities and systems, are reasonably
10 attributable to the development of the DRI Property, are
11 based upon comparable requirements and commitments that the
12 City or other agencies of government would reasonably expect
13 to require a developer to expend or provide, and are
14 consistent with sound and generally accepted land use
15 planning and development practices and principles.

16 (d) This Development Order, its terms and
17 conditions and all of the promises, commitments, obligations,
18 covenants, liabilities, and responsibilities of the Developer
19 touch and concern the DRI Property and shall continue to run
20 with, follow and burden the DRI Property. To this end, the
21 promises, commitments, obligations, covenants, liabilities,
22 and responsibilities provided for herein shall inure to the
23 benefit of the City and shall operate as a perpetual burden
24 and servitude upon the DRI Property unless released by the
25 City by means of an appropriate recordable instrument

1 approved and executed by the City. The promises,
2 commitments, obligations, covenants, liabilities, and
3 responsibilities provided for herein shall be binding upon
4 the Developer and the Developer's heirs, transferees, assigns
5 and successors in interest (specifically including, but not
6 by way of limitation, building permit applicants and any
7 person or entity developing any part of the DRI Property) and
8 shall inure to the benefit of the City and its assigns and
9 successors in interest as to all parts and each part of the
10 DRI Property.

11 In addition to the foregoing general conditions, the
12 following specific conditions are included in this
13 Development Order to mitigate identified regional impacts.

14
15 **PART III**

16 **SPECIFIC CONDITIONS TO THIS DEVELOPMENT ORDER**

17 **1. Vegetation and Wildlife.**

18 (a) Should it be determined that listed species
19 (includes but limited to endangered, threatened, or species
20 of special concern) reside on or otherwise be significantly
21 dependent upon the DRI Property, the Developer shall cease
22 all development activities which might negatively affect that
23 individual species or population.

24 (b) The DRI Property shall be developed in full
25 compliance with all applicable laws, rules and regulations.

1 The Developer shall provide proper protection to the
2 satisfaction of all agencies with jurisdiction over the
3 matter.

4 (c) Within one (1) calendar year from the Effective
5 Date of this Development Order, or as soon thereafter as
6 Florida Fish and Wildlife Conservation Commission (FFWCC)
7 will allow, the Developer shall make an unencumbered
8 contribution in the sum of \$87,003.00 to the FFWCC Land
9 Acquisition Trust Fund. This off-site mitigation could
10 result in the issuance of an necessary permits for the
11 purchase of habitat at an off-site location within the
12 jurisdictional boundaries of the NEFRC . No construction
13 shall commence within any gopher tortoise habitat within the
14 S.R. 100 Property DRI until the Developer has successfully
15 completed this mitigation. The Developer shall be otherwise
16 responsible for all permit requirements of the FFWCC.

17 **2. Wetlands.**

18 (a) The S.R. 100 Property DRI consists of 505 acres.
19 The S.R. 100 Property DRI will preserve approximately
20 243_acres of land which are comprised of wetlands(171.6
21 acres), lakes (37.69 acres), and open space (33.87 acres).
22 Those lands shall be ultimately dedicated to the public, to a
23 grantee and by means of an instrument of conveyance
24 acceptable to the City. However, up to 10 acres of State and
25 Federal wetland impacts may occur within the S.R. 100 DRI

1 Property, with incidental impacts to additional drainage
2 ditches and man-made ponds, provided that the necessary
3 permits are obtained from the St. Johns River Water
4 Management District (SJRWMD) and the U.S. Army Corps of
5 Engineers (ACOE). Mitigation for these proposed wetland
6 impacts shall be consistent with State and Federal
7 requirements. Wetlands mitigation shall include wetland and
8 upland preservation and may include wetland restoration,
9 enhancement, creation and upland buffer enhancement as part
10 of the mitigation plan under the SJRWMD and ACOE Permits. No
11 development activities, as defined in Section 380.04, Florida
12 Statutes, except for activities permitted by the appropriate
13 environmental permitting agencies, shall be allowed in any
14 other wetland areas within the S.R. 100 DRI Property unless
15 (i) otherwise authorized by the City where the City
16 determines that a revised site plan with more wetland impacts
17 results in improved neighborhood connectivity, improved
18 traffic patterns (either onsite or offsite), more efficient
19 infrastructure development, or otherwise promotes the goals
20 and objectives of the City's Comprehensive Plan, and (ii)
21 such additional impacts are approved by wetland regulatory
22 agencies through their wetland impact permitting process.

23 (b) Upland buffers adjacent to wetlands shall be
24 established on the S.R. 100 DRI Property that are consistent
25

1 with the City's Land Development Code. At a minimum, the
2 buffers shall include the following:

3 (i) A 25 feet wide upland buffer around all
4 protected or enhanced wetlands and swamp shall remain in its
5 natural state.

6 (ii) To reduce erosion, all swales and drainage
7 ways constructed by the Developer shall be vegetated or
8 sodded. The berm and outside slopes for stormwater ponds
9 shall be sodded except that, at a minimum, 50% of the total
10 number of all wet detention ponds shall have littoral zone
11 plantings equal in area to 30% of the surface area of the
12 pond. The remaining slopes where sod is to be used must be
13 sodded if slopes are steeper than 4:1 (horizontal/vertical).
14 Only those areas needed for development may be cleared. All
15 cleared development areas shall be seeded and mulched
16 immediately. All areas which are covered with vegetation or
17 sod or which are seeded and mulched or hydroseeded shall be
18 maintained after construction.

19 (iii) Sedimentation of wetlands shall be
20 prevented through adherence to the erosion and sediment
21 control plan submitted as part of the stormwater permit as
22 approved by the City.

23 (iv) Wildfire mitigation management practices
24 shall be routinely implemented on all vacant property within
25 the DRI Property, specifically in the vegetation areas shown

1 as scrub and brushland, pine flatwoods, coniferous
2 plantations and forest regeneration areas. Mitigation shall
3 include, but is not limited to, mechanical mowing or
4 chopping, tree thinning and animal grazing. The Developer
5 shall implement these practices on normal cycle for this work
6 which is approximately three (3) to five (5) years.

7 (c) The S.R. 100 DRI Property includes State and
8 Federal jurisdictional wetlands which may be used for
9 mitigation. The Developer shall ultimately place
10 conservation easements over the wetlands as required by law
11 with the City determining to who the easements shall be
12 granted. Use of any wetlands or upland buffers for
13 preservation/mitigation, or their dedication/conveyance for
14 conservation purposes, shall not result in a reduction of
15 density permitted for the S.R. 100 DRI Property in terms of
16 City approvals. Permissible minor wetland impacts include,
17 but are not limited to, exempted activities listed in the
18 City's Land Development Code. Impacts to these wetland areas
19 shall be deemed approved with the approval of this Agreement
20 in order to implement the S.R. 100 DRI Property as depicted
21 by **Exhibit "C"**. Mitigation for these minor wetland and
22 buffer impacts shall be subject to approval by the SJRWMD
23 and/or the United States ACOE, as applicable.

24 (d) The Developer shall perform field verification
25 of wetland boundaries associated with areas designated by the

1 Future Land Use Map (FLUM) designation as Conservation which
2 shall be provided to the City in an electronic format
3 acceptable to the City. After field verification, the
4 delineated FLUM designation of Conservation shall ultimately
5 be placed in conservation easements to ensure that the
6 wetland will be protected in perpetuity pursuant to Federal,
7 State and City laws, rules and regulations.

8 (e) The Developer shall, within 5 days of receipt of
9 the permit, provide to the City a copy of all Federal and
10 State environmental permits prior to construction activities
11 being undertaken. The Developer or its assigns shall be
12 required to comply with all terms and conditions of all such
13 permits. No wetland impacts are permitted without the
14 Developer first acquiring all necessary State and Federal
15 permits and approvals by the City.

16 (f) In connection with permit applications for the
17 stormwater management system for the S.R. 100 Property DRI,
18 the Developer shall ensure maintenance of hydro periods
19 within preserved wetlands, unless otherwise permitted by the
20 SJRWMD.

21 **3. Floodplains.**

22 (a) All structures shall have a finished floor
23 elevation a minimum of one foot above the centerline of the
24 adjacent roadway. The City Manager may waive the foregoing
25 requirements provided a site grading plan is submitted

1 demonstrating sufficient treatment storage is provided and
2 adequate conveyance will prevent flooding of structures during
3 the 100-year event. All roadways shall be constructed a
4 minimum of one foot above the FEMA 100-year floodplain base
5 flood elevation. The 10-year frequency storm shall be used to
6 calculate the design hydraulic gradient line for local
7 roadways. The maximum hydraulic gradient line for roadways
8 shall be no higher than 6-inches below the edge of pavement.

9 (b) All roads constructed within the S.R. 100
10 Property DRI shall be designed in accordance with criteria of
11 the FDOT or approved plans by the City, whichever is
12 applicable.

13 (c) The development of S.R. 100 Property DRI shall
14 be subject to the City's flood damage protection regulations
15 in effect at the time of the development.

16 **4. Water Supply.**

17 (a) A distribution system for reuse (non-potable
18 water) shall be installed concurrent with development of the
19 S.R. 100 PROPERTY DRI (residential and non-residential). The
20 non-potable distribution system shall be developed parallel to
21 the potable system for all land uses for utilization when
22 reuse water is available. Depending on design requirements
23 and location within the DRI Property, the non-potable
24 distribution system may include or consist of direct pumping
25 from ponds and lakes, as the means for providing non-potable

1 water for irrigation; provided, however, such approvals may be
2 granted at the discretion of the City.

3 (b) Water conservation strategies, including
4 Xeriscape landscape techniques and low flow plumbing fixtures,
5 shall be incorporated into the construction, operation, and
6 maintenance phases of the S.R. 100 PROPERTY DRI, and shall be
7 included in the covenants and deed restrictions. The
8 conservation strategies shall include, at a minimum, the
9 following conditions:

10 (i) Within common areas, commercial areas and
11 multi-family residential complexes, 50% of planted vegetation,
12 by aerial extent, shall consist of native, drought-tolerant or
13 Xeriscape vegetation in all landscaped areas. Landscaped
14 areas are defined as any pervious area that will be altered
15 due to development. Wetlands, wetland buffers, vegetative
16 buffers between land uses, stormwater systems and required
17 preservation areas are not landscaped areas. Native or
18 drought-tolerant plants include those in the SJRWMD's
19 *Waterwise Florida Landscapes*, the Florida Native Plant
20 Society's list of native landscape plants for Flagler County,
21 *A Gardner's Guide to Florida's Native Plants* (Osorio 2001), or
22 comparable guidelines prepared by the Florida Department of
23 Agriculture and Consumer Services, the SJRWMD, Florida Fish
24 and Wildlife Conservation Commission, or the FDEP.

25

1 (ii) The Developer shall include information on
2 Xeriscape and/or native vegetation and/or drought-tolerant
3 vegetation (SJRWMD Xeriscape Plant Guide), water conservation
4 guides and Institute of Food and Agricultural Sciences's
5 Xeriscape plant guides and Institute of Food and Agricultural
6 Sciences Cooperative Extension Services' "Florida Yards and
7 Neighborhoods" materials in design guidelines.

8 (iii) Fertilizer used within the Project shall
9 contain at least 70% organic or slow release ingredients, with
10 the exception of limited special purpose fertilizer
11 applications as appropriate.

12 (iv) A comprehensive water conservation plan
13 shall be developed and implemented which addresses at a
14 minimum:

- 15 • Specific percentage of water
16 wise/native vegetation required throughout the DRI Property.
 - 17 • Limits on turf areas.
 - 18 • Use of water-saving fixtures.
 - 19 • Sub-metering multi-family units.
 - 20 • Use of non-potable water for outside
21 irrigation.
 - 22 • Use of rain-sensing sprinklers.
 - 23 • Distribution of water conservation
24 literature to residents and tenants.
- 25

1 (v) The Developer shall ensure compliance with
2 conditions (c)(i) through (c)(iv) of this Development Order;
3 provided, however, that such obligations may be assigned to
4 other parties by the Developer with the consent of the City.
5 The Developer shall implement a customer and employee water
6 conservation education program as specified in Section
7 12.2.5.1(e) of the SJRWMD Consumptive Use Permitting
8 Applicant's Handbook.

9 (vi) At least one nonresidential demonstration
10 site and one model home in each phase of the S.R. 100 Property
11 DRI shall be landscaped and maintained in accordance with the
12 landscape principles described above.

13 **5. Groundwater Protection.**

14 (a) Use of Floridan Aquifer, intermediate (confined
15 surficial), and surficial aquifer wells are prohibited on the
16 DRI Property, unless approved by the City. This prohibition,
17 as with all other provisions of this Development Order, shall
18 act as a deed restriction to the DRI Property.

19 (b) Any abandoned wells discovered prior to or
20 during development shall be properly plugged and abandoned in
21 accordance with SJRWMD's rules.

22 (c) The following best management practices shall
23 apply to geotechnical borings:

24 (i) All borings deeper than 20 feet shall be
25 cement grouted to the surface to prevent downward migration of

1 surface and subsurface contaminants along the borehole to the
2 shallow intermediate or Floridan Aquifer.

3 (ii) All borings less than 20 feet deep shall be
4 backfilled to the surface to prevent the creation of a sump.
5 Where the boring is advanced through asphalt or concrete it
6 shall be patched at the surface with a similar impervious
7 material.

8 (iii) If contamination is detected in any
9 geotechnical boring, the contaminated soil shall not be used
10 as replacement material and the horizontal and vertical extent
11 of the contamination shall be assessed and reported to the
12 City and the appropriate regulatory authority.

13 (d) Any discharge of a regulated substance at
14 regulatory reporting thresholds shall be reported immediately
15 by the Developer and the facility owner, operator, and other
16 responsible party to the City. Such notification shall in no
17 way alleviate the owner, operator, or responsible party from
18 other City, State, and Federal reporting obligations as
19 required by law. All facilities with discharges of any
20 quantity of a regulated substance shall be remediated so that
21 contamination of soil, surface water, or groundwater is
22 brought into compliance with State, local, and Federal
23 standards. Clean-up activities shall begin concurrent with or
24 immediately following emergency response activities. This
25

1 prohibition shall act as a deed restriction within the DRI
2 Property.

3 (e) Whenever it is determined by the City or
4 authorized regulatory agency that a discharge of regulated
5 substances is resulting in imminent threat of contamination of
6 groundwater or danger to life or property from the
7 contamination of groundwater, the Developer shall require
8 immediate corrective action as required by the City. The
9 Developer hereby grants to the City the right of entry into
10 the DRI Property and the right to conduct and implement
11 clean-up activities necessary to protect the public health,
12 safety and welfare and to pass on the cost of clean up
13 activities to the responsible party. Initiation of any
14 required clean-up activities as directed by the City shall be
15 commenced within 24 hours of direction being received from the
16 City and shall be completed within the time specified by the
17 City or other regulatory authority. If immediate corrective
18 measures are not taken and there is immediate threat to the
19 City's potable water resources, danger or hardship to the
20 public, the City may enter upon lands, take corrective
21 actions, and place a lien on the real property of such
22 person(s) to recover the costs of the corrective measures.
23 This provision, as with all other provisions of this
24 Development Order, shall act as a deed restriction within the
25 DRI Property.

1 **6. Wastewater Management.**

2 (a) Developments within the DRI Property shall occur
3 concurrent with the provision of adequate central sewer
4 service meeting the adopted level of service of the City's
5 Comprehensive Plan.

6 (b) Onsite Wastewater Treatment Systems (septic systems)
7 are prohibited. Temporary above-ground tanks may be used to
8 provide sewage service to construction and marketing trailers
9 until central sewer lines are installed, as approved by the
10 City and appropriate public health officials.

11 **7. Stormwater Management.**

12 (a) A stormwater pollution prevention construction
13 operating plan ("SWPPP") shall be attached to and incorporated
14 into the construction and permit documents for all projects
15 constructed within the DRI Property that require a general or
16 individual SJRWMD permit. The SWPPP shall be implemented upon
17 initiation of construction activities. Appropriate maintenance
18 personnel shall be required to attend the Florida Stormwater,
19 Erosion and Sedimentation Control Training and Certification
20 Course for Contractors and Inspectors.

21 (b) A Surface Water Quality Monitoring Plan ("SWQ
22 Monitoring Plan") shall be developed by the Developer for
23 review and approval of FDEP. The SWQ Monitoring Plan shall
24 include water quality monitoring stations, all of which shall
25 be subject to approval by FDEP. There shall be 2 baseline-

1 sampling events (1 wet and 1 dry) completed prior to
2 initiation of development activities on the DRI Property.
3 When approved, the SWQ Monitoring Plan shall be automatically
4 incorporated into this Development Order, but shall also be
5 recorded by the Developer in the Official Records of Flagler
6 County. Sampling results required by the SWQ Monitoring Plan
7 shall be submitted to the FDEP and the City. If surface water
8 sampling results are not in compliance with State and Federal
9 water quality standards, the Developer shall initiate
10 immediate corrective action in accordance with State and
11 Federal requirements.

12 (c) The Developer shall adhere to the "ITT
13 Comprehensive Drainage Plan", as implemented by the City ,
14 which is based upon the pre and post flow to handle the one
15 hundred (100) year storm event. All surface water and
16 stormwater detention systems shall be subject to approval by
17 the SJRWMD, the FDEP, the ACOE, and any other regulatory
18 agencies and meeting the requirements of the City's Land
19 Development Code shall be provided. The Developer shall
20 coordinate with the City and the SJRWMD regarding the existing
21 drainage systems and easements by facilitating and accomplishing
22 restoration activities on the property as required by the City
23 on any ditches or portions of the Palm Coast Community-Wide
24 Drainage System.

25

1 8. **Transportation.**

2 (a) Notwithstanding the phasing schedule that is set
 3 forth in Section 4, under Part II above, for the purpose of
 4 phasing and transportation recommendations, S.R. 100 PROPERTY
 5 DRI is divided into two phases based upon ITE trip generation
 6 estimates for approved construction, as shown on the following
 7 schedule:

8

	Estimated Development	PM ITE Peak Trips	CUMULATIVE PM Peak Trips	DAILY ITE TRIPS	CUMULATIVE DAILY ITE TRIPS
Phase 1	2010	1,066	1,066	11,888	11,888
Phase 2	2015	874	1,940	8,974	20,862

15

16 (b) The Developer shall be responsible for the
 17 design, all required permits, and construction to bring the
 18 alignment of Town Center Boulevard to meet the site access
 19 at Old Kings Road; henceforth, creating a four-way
 20 intersection at the S.R. 100 Property's access to Old Kings
 21 Road, attached as **Exhibit "D"**. In the event that a pedestrian
 22 bridge is required by the State, the construction of said
 23 bridge shall not be an obligation of the Developer but shall
 24 not however in any way affect its obligation per City
 25 Ordinance 2005-10 Old Kings Road Special Assessment District.

1 (c) Consistent with the City's Comprehensive Plan, no
2 more than 50 residential units shall be granted a certificate
3 of occupancy until two access points are in place to either
4 collector or arterial roadways from the S.R. 100 Property in a
5 design configuration acceptable to the City.

6 (d) The Developer shall convey all rights-of-way and
7 associated easements and facilities necessary to construct the
8 internal roadway network and shall be responsible for
9 constructing the internal roadway network. The conveyance of
10 rights-of-way and associated easements and facilities shall be
11 to the City and in a form acceptable to the City.

12 (e) The Developer shall be responsible for the
13 construction of all access improvements to the SR 100 DRI
14 Property, including turn lanes and traffic signals (as
15 required by the FDOT or the City. Moreover, the Developer
16 shall convey additional and necessary rights-of-way, including
17 but not limited to, the rights-of-way of the alignment of Town
18 Center Boulevard to Old Kings Road to the City.

19 (f) Conditioned upon satisfying the transportation
20 conditions discussed below, the Developer shall be vested for
21 traffic concurrency until expiration (2026). The Developer
22 shall fund, design and cause to be constructed the following
23 off-site improvements in order to mitigate the impacts
24 associated with the S.R. 100 Property DRI:

25 (i) (Six Lane Improvement to the S.R. 100):

1 The Developer shall fund, design and cause to be constructed
2 the six lanes of S.R. 100 between I-95 and Old Kings Highway
3 The eastern termini of the six lane improvement will include a
4 1,500 feet. taper in the eastbound direction through the
5 intersection. The improvement design will be subject to the
6 review and approval of the FDOT. The western termini of the
7 six lane improvement will be based on the following two
8 scenarios:

9 (a) (S.R. 100 widened to six lanes west of
10 Interstate 95 Westbound Ramps):

11 The six lane construction should be extended through the
12 interchange to align with the six lane section west of the
13 Interstate 95 westbound ramps. The traffic signal at the
14 intersection at Old Kings Road and S.R. 100 will be modified
15 to accommodate the widening of S.R. 100.

16 (b) (S.R. 100 not widened to six lanes
17 west of Interstate 95 Westbound Ramps)

18 The six lane construction should be extended to and terminate
19 at the Interstate 95 eastbound ramps. Currently the FDOT has
20 design plans to widen the section of between the Interstate 95
21 Eastbound and Westbound ramps as part of the Interstate
22 95/S.R. 100 interchange improvements.

23 (ii) (S.R. 100 and Old Kings Highway
24 Intersection):

1 The Developer shall fund, design and cause to be constructed
2 the signal improvement required to incorporate the improvement
3 required in Condition (i). The signal improvement shall
4 include the modification of the signal as well as the signal
5 timing. The design of the signal modification will be subject
6 to the review and approval of the FDOT.

7 The Developer shall guarantee the improvements
8 outlined in Conditions (i) and (ii) above through surety,
9 bond, escrow or provide binding letter of credit on a form and
10 written by an institution acceptable to the City. The
11 guarantee shall be in place prior to the first application for
12 preliminary plat.

13 The Developer shall receive City transportation impact
14 fee credits for the improvements identified in this section
15 (1) equal to its cost of said improvement less its
16 proportionate share as set forth in **Exhibit "E"** and (2) a
17 mutually acceptable Impact Fee Credit Agreement between the
18 Developer and the City resulting from an application filed by
19 the Developer in accordance with the controlling provisions of
20 law.

21 No building permits for Phase II of the S.R. 100
22 Property shall be issued until the six laning obligation
23 defined in this section are under construction or included in
24 the first three years of FDOT Five Year Work Program.
25

1 In the event the obligations to (1) align Town Center Blvd
2 and the Spine Road as described herein or (2) the improvements
3 to SR 100 as described herein are not completed pursuant to
4 this Development Order, the Development Order shall become
5 null and void as evidenced by an instrument approved by the
6 City and duly recorded in the Official Records of Flagler
7 County unless otherwise mutually agreed to in writing by the
8 parties.

9 **9. Air Quality.**

10 The following dust control measures shall be undertaken
11 and enforced by the Developer during all construction
12 activities throughout build-out of the S.R. 100 PROPERTY DRI:

13 (a) Contractors shall moisten soil or use resinous
14 adhesives on barren areas, which shall include at a minimum,
15 all roads, parking lots or material stockpiles;

16 (b) Contractors shall use mulch, liquid resinous
17 adhesives with hydro-seeding or sod on all landscaped areas;

18 (c) Contractors shall remove soil and other dust-
19 generating material deposited on paved streets by vehicular
20 traffic, earth-moving equipment or soil erosion; and

21 (d) Contractors shall be subject to all City codes
22 and ordinances concerning open burning. Without limiting its
23 rights to enforce this Development Order through any lawful
24 remedy, it is recognized by the Developer that injunctive
25

1 relief is appropriate in order to stop unpermitted open
2 burning.

3 **10. Hurricane Evacuation.**

4 (a) The Developer shall provide all purchasers of
5 property within the DRI Property with information regarding
6 the vulnerability of property owners to the impacts of
7 hurricanes. This information shall take the form of
8 educational materials designed to increase evacuation
9 participation.

10 (b) It is prohibited to develop residential units
11 within the Category 1 or 2 Storm surge inundation zone, based
12 on the final survey and referenced with the storm surge levels
13 indicated in the 1998 Northeast Florida Hurricane Storm Surge
14 Atlas Series.

15 **11. Affordable Housing.**

16 The S.R. 100 Property DRI satisfies all Affordable
17 Housing requirements.

18 **12. Fire Protection.**

19 (a) A fire station site shall be donated by the
20 Developer to the City without cost which site shall consist
21 of at least one and four-tenths (1.4) acres of uplands, as
22 depicted in Tract F, which shall have its needs for
23 stormwater management facilities off-site accommodated by the
24 Developer.

1 (b) Prior to the construction of any single or
2 multifamily unit exceeding 3 stories in height, one of the
3 following scenarios shall occur:

4 (i) Within a 3-mile service delivery area of the
5 S.R. 100 Property, the operation of an aerial apparatus shall
6 be available on a 24-hour, 7 days a week basis; or

7 (ii) Prior to the construction of any structure
8 exceeding thirty five (35) feet in height, the Developer shall
9 contribute fifty percent (50%) of the cost of a fire equipment
10 capable of reaching to the height of the structure to be
11 constructed.

12 (c) The Developer shall be eligible for fire impact
13 fee credits as provided for in accordance to City regulations
14 and or ordinance in effect at the time the credit is requested
15 or otherwise agreed to by the City.

16 **13. Parks.**

17 (a) Within 90 days after the recording of the first
18 plat, the Developer shall convey, at no cost to the City, in a
19 form acceptable to the City Tracts M, N,O,P totaling 56.68
20 acres and Tracts S and T totaling 33.87 acres as described by
21 **Exhibit "B"** which collectively contains approximately ninety
22 (90.55) acres (collectively "Public Lands"). The Public Lands
23 shall be used by the City for public purposes, which include,
24 but not limited to, an active and passive parks . Per the
25

1 City Comprehensive Plan, the levels of service (LOS) for Park
2 facilities are satisfied by providing the following:

3 (i) Active Parks (56.48 acres): (1) Lake Island Park
4 (1.94); (2) Parking area for Lake Island Park (0.45); (3)
5 Central Neighborhood Park (16.40); and Lake (37.69)

6 (ii) Passive Parks: 33.87 acres

7 (iii) Consists of upland acres which shall have its needs
8 for stormwater management facilities off-site accommodated by
9 the Developer.

10 The Developer may apply for and be granted City Park
11 Impact Fee credits in accordance with the controlling
12 provisions of applicable law.

13 (b) The Developer shall construct and dedicate to the
14 City, at no cost to the City, a multi-purpose trail 8 feet in
15 width, as defined herein, connecting the existing Flagler
16 County Rails to Trails Property, and the City Park to S. R.
17 100 as described in Exhibit "B". The sidewalk system shall
18 be identified in future plats and/or site plans submitted to
19 the City.

20 In order to promote alternative forms of
21 transportation, the Developer shall provide a comprehensive
22 system of bicycle paths and pedestrian walkways throughout the
23 project. All residential development shall be connected to
24 employment and shopping areas via this path system in a manner
25 approved by the City.

1 14. **Education.**

2 The Developer shall convey, at no cost, to the
3 Flagler County School District, in a form acceptable to the
4 School District, from Tract "E", an Educational Site
5 identified as Tract I (10.3 acres) which is subject to the
6 School District's approval and which shall consist of not
7 less than 10.3 acres in upland acreage, for the purpose of
8 providing an educational facility for grades K-8.

9 (a) The school site shall, at a minimum, meet the
10 following site development standards:

11 (i) Consist of upland acreage, of a regular shape
12 and fully suited to development; and

13 (ii) Be located on the Spine Road; and

14 (iii) Have its need for stormwater management
15 facilities accommodated off-site by the Developer; and

16 (iv) Be free of wetlands, floodplain, or any
17 other restrictions to development; and

18 (v) Shall have water, sewer, and electricity
19 available adjacent to the site; and

20 (vi) Be located a sufficient distance from the
21 fire station site to ensure that the sirens and emergency
22 response traffic are not in conflict with safe and quiet use
23 of the educational facility.

24 (b) Acceptance of the school site by the School
25 District shall be contingent upon the following conditions:

1 (i) Agreement by the City for School District
2 use of adjacent park lands for school physical education and
3 recreation needs; and

4 (ii) The final school site selected for the
5 School District shall be presented for School Board action at
6 a duly noticed meeting of the School Board prior to adoption
7 of the first plat or site plan by the City; and

8 (iii) The school site shall be conveyed to the
9 School District without cost and shall be free and clear of
10 liens or encumbrances. The Developer shall convey title to
11 the School District concurrent with approval of the first
12 final site plan or plat of this property.

13 (c) Pursuant to Section 360.06(16), the Developer
14 shall be entitled to School Impact Fee Credits equal to the
15 Fair Market Value of the school site.

16 (d) School concurrency shall apply to the future
17 development as may be adopted by the City of Palm Coast
18 pursuant to Senate Bill 360.

19
20 **15. Historical and Archaeological Sites.**

21 The Developer shall immediately notify the Division
22 of Historical Resources ("DHR") and the City in the event any
23 other regionally significant historical and archaeological
24 resources are discovered in the course of development. No
25 disruption of the findings shall be permitted until the

1 investigation is complete and DHR has rendered a
2 recommendation, which shall be binding to the Developer. With
3 respect to the Masonic Cemetery located adjacent to the
4 Project site, this SR 100 Property DRI shall maintain a buffer
5 of fifty (50) feet.

6 **16. Land Uses and Development.**

7 Development within the S.R. 100 PROPERTY DRI shall be
8 permitted in accordance with the terms and conditions adopted
9 by the City's Land Development Code (2006).

10 **17. Historic and Specimen Trees**

11 Historic trees (greater than 35 inches in diameter)
12 and specimen trees (between 24 inches and 35 inches in
13 diameter) shall be afforded maximum protection from
14 developmental impacts and be considered in the early design
15 and platting phases of the project to maximize their
16 protection. Additionally, work being performed within the
17 dripline of these trees (which can be considered a radius
18 distance of 1 foot for every 1 inch of tree diameter) shall be
19 approved by the City and may include requirements for boring,
20 tunneling, root pruning or other measures to protect the root
21 zones of these trees.

22 **18. Provision of Workforce Housing Units**

23 The Developer and City agree and acknowledge that the City
24 has a need for housing facilities for moderately income
25 households ("Workforce Housing"). The parties further agree

1 that such need for Workforce Housing is not currently defined
 2 by the City but, rather is intended to be defined subsequent to
 3 the effective date of this Development Order. In absence of
 4 such City guidelines, ordinances or policies concerning
 5 Workforce Housing, the parties agree that the Developer shall
 6 provide no less than seventy five (75) Workforce Housing Units
 7 subject to any and all City guidelines, ordinance or policies
 8 which may be adopted subsequent to the effective date of this
 9 Development Order unless otherwise described herein. In the
 10 event that the City does not adopt any guidelines, ordinances
 11 or policies concerning Workforce Housing, the parties shall
 12 mediate a mutually acceptable agreement during the DRC process.
 13 The Developer, at its sole discretion, may determine the
 14 location of Workforce Housing units within the Development.
 15 However, in no case, shall the Workforce Housing units be
 16 provided for in less than two (2) Tracts unless otherwise
 17 mutually agreed to by the parties.

18
 19 **WHEREFORE**, the parties hereto have caused these presents
 20 to be signed all as of the date and year first above written.

21
 22
 23 **ATTEST:**

CITY OF PALM COAST

24 Clare M. Hoeni
 25 Clare Hoeni
 City Clerk

James V. Canfield
 James V. Canfield, Mayor

DEVELOPER'S COVENANT AND AGREEMENT

COMES NOW, the undersigned, and covenant and agree to the foregoing.

WITNESS my hand and official seal this ___ day of _____, 2006.

WITNESSES:

JX PROPERTIES, LLC,
a Florida corporation

Maura Skupnik

[Signature]

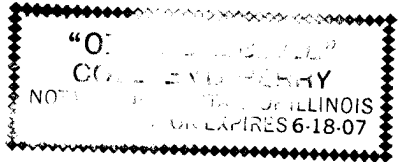
Frank Blazeovich
Its Manager

[Signature]

STATE OF ~~FLORIDA~~)
Illinois
COUNTY OF ~~FLAGLER~~)
Lake

The foregoing instrument was acknowledged before me this 21 day of Aug, 2006, by **Frank Blazeovich**, the Manager, for and on behalf of the **JX PROPERTIES, LLC**; being a Florida limited liability company, who is personally known to me and who did not take an oath.

WITNESS my hand and official seal this 21 day of Aug, 2006.



(Seal)

Colleen B Perry
Signature of Notary Public

Colleen B Perry
Printed Name

DEVELOPER'S COVENANT AND AGREEMENT

COMES NOW, the undersigned, and covenant and agree to the foregoing.

WITNESS my hand and official seal this 21 day of Aug, 2006.

WITNESSES:

JX PROPERTIES, LLC,
a Florida corporation

Marvin Stimpel

Fred Leiner

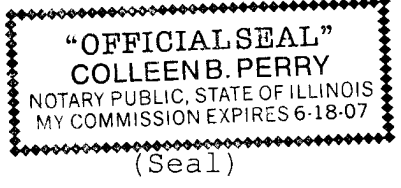
Fred Leiner
Its Manager

[Signature]

STATE OF ~~FLORIDA~~)
Illinois
COUNTY OF ~~FLAGLER~~)
Lake

The foregoing instrument was acknowledged before me this 21 day of Aug, 2006, by **Fred Leiner**, the Manager, for and on behalf of the **JX PROPERTIES, LLC**; being a Florida limited liability company, who is personally known to me and who did not take an oath.

WITNESS my hand and official seal this 21 day of Aug, 2006.



Colleen B Perry
Signature of Notary Public

Colleen B Perry
Printed Name

LIST OF EXHIBITS

- “A” - DRI Property
- “B” - SR 100 Property Master Development Plan
- “C” - Wetland Areas
- “D” - Intersection Alignment Plan
- “E” - Proportionate Share Distribution

Unofficial Document

THIS DOCUMENT PREPARED BY
AND SHOULD BE RETURNED TO:

Craig A. Minegar, Esquire
Winderweedle, Haines, Ward
& Woodman, P.A.
Post Office Box 880
Winter Park, Florida 32790

Inst No:2004000039 Date:01/02/2004
Doc Stamp-Deed : 49000.00
GAIL WADSWORTH, FLAGLER Co. Time:10:07
Book: 1027 Page: 212 Total Pgs: 5

Parcel ID Nos. 39-12-31-0000-01010-0050
04-12-31-0000-04030-0000
40-12-31-0000-01010-0010

SPECIAL WARRANTY DEED

THIS INDENTURE, made effective the 29th day of December, 2003, between WISNE LAND, LLC, a Florida limited liability company, whose address is 390 North Orange Avenue, Suite 1500, Orlando, Florida 32801 ("Grantor"), and JX PROPERTIES, L.L.C., a Florida limited liability company, whose mailing address is 14000 Rockland Road Libertyville, Illinois 60048 ("Grantee"):

WITNESSETH:

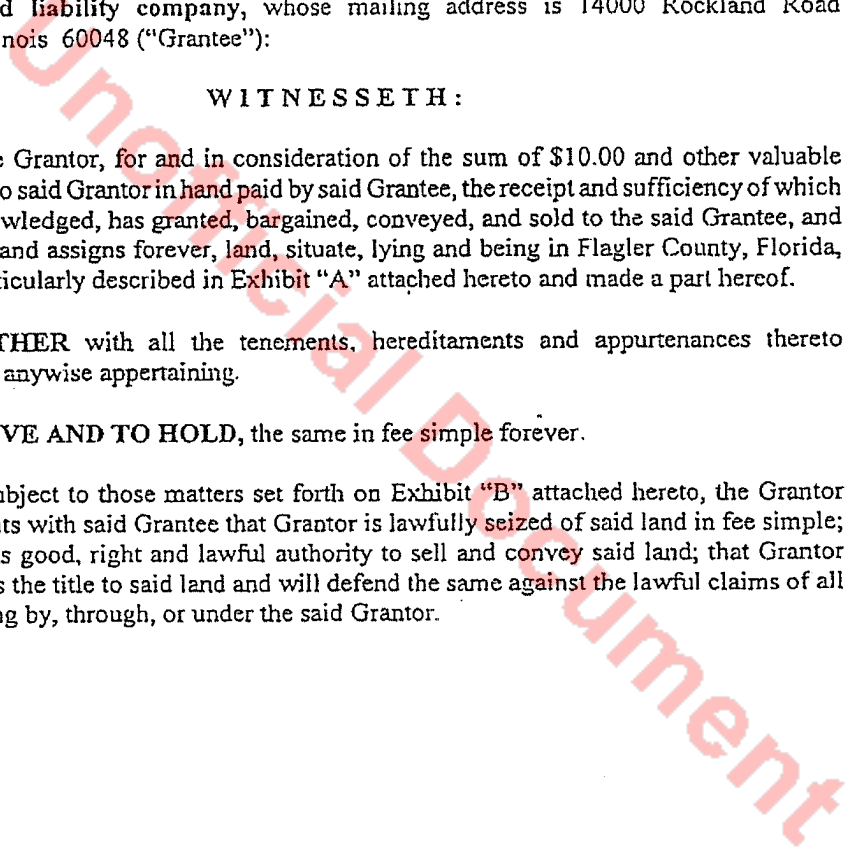
That the Grantor, for and in consideration of the sum of \$10.00 and other valuable considerations to said Grantor in hand paid by said Grantee, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, conveyed, and sold to the said Grantee, and Grantee's heirs and assigns forever, land, situate, lying and being in Flagler County, Florida, being more particularly described in Exhibit "A" attached hereto and made a part hereof.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND subject to those matters set forth on Exhibit "B" attached hereto, the Grantor hereby covenants with said Grantee that Grantor is lawfully seized of said land in fee simple; that Grantor has good, right and lawful authority to sell and convey said land; that Grantor hereby warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through, or under the said Grantor.

Exhibit "A" sheet 1 of 4



BOOK: 1027 PAGE: 0213

IN WITNESS WHEREOF, Grantor has hereunto set its hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of:

WISNE LAND, LLC, a Florida limited liability company

By: Alan L. Wisne
Alan L. Wisne, Manager

Sally Puffe
Print Name: Sally Puffe

Kerry Gordon
Print Name: KERRY GORDON

STATE OF FLORIDA

COUNTY OF Baywood

The foregoing instrument was sworn to, subscribed and acknowledged before me this 26th day of December, 2003, by ALAN L. WISNE, the Manager of WISNE LAND, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or who has produced FL Drivers License as identification.

Sally Marie Puffe
Notary Public, State of Florida
My Commission Expires: 7-2-04
My Commission No.: 0093801

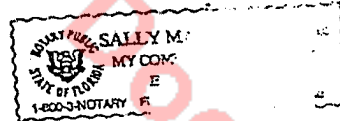


Exhibit "A" sheet 2 of 4

EXHIBIT "A"

BEING A PART OF SECTIONS 4, PART OF FR'S PELLIECER GRANT (SECTION 39) AND A PART OF McDON'ELY BLACK GRANT (SECTION 40), TOWNSHIP 12 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS A POINT OF REFERENCE COMMENCE AT THE EASTERLY RIGHT-OF-WAY LINE OF OLD KINGS ROAD A (100 FOOT MONUMENT RIGHT-OF-WAY) AND THE NORTH RIGHT- OF-WAY LINE OF STATE ROAD 100 A (200 FOOT RIGHT-OF-WAY); THENCE N 87°48'45" E ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID STATE ROAD 100 FOR A DISTANCE OF 79.60 FEET; THENCE LEAVING SAID NORTH RIGHT-OF-WAY LINE N 02°11'15" W FOR A DISTANCE OF 24.00 FEET; THENCE N 87°48'45" E PARALLEL WITH THE SAID NORTH RIGHT-OF-WAY LINE OF STATE ROAD 100 A DISTANCE OF 869.71 FEET TO THE POINT OF BEGINNING OF THIS DESCRIBED PARCEL; THENCE THE FOLLOWING COURSE AND DISTANCE ALONG THE APPROXIMATE UPLAND SIDE OF A WETLAND: THENCE N 23°46'37" W A DISTANCE OF 309.76 FEET; THENCE N 87°50'18" E A DISTANCE OF 81.42 FEET; THENCE N 02°01'18" E A DISTANCE OF 152.26 FEET; THENCE N 49°35'38" E A DISTANCE OF 163.44 FEET; THENCE N 57°25'13" E A DISTANCE OF 139.56 FEET; THENCE N 35°51'53" E A DISTANCE OF 80.63 FEET; THENCE N 37°28'27" W A DISTANCE OF 189.56 FEET; THENCE S 71°24'28" W A DISTANCE OF 65.32 FEET; THENCE N 23°55'22" W A DISTANCE OF 191.00 FEET; THENCE N 32°00'32" W A DISTANCE OF 162.42 FEET; THENCE N 40°33'42" W A DISTANCE OF 162.61 FEET; THENCE S 61°16'18" W A DISTANCE OF 160.60 FEET; THENCE S 47°56'03" W A DISTANCE OF 136.98 FEET; THENCE S 82°39'53" W A DISTANCE OF 240.90 FEET; THENCE N 26°35'32" W A DISTANCE OF 224.76 FEET; THENCE N 65°34'07" W A DISTANCE OF 157.70 FEET; THENCE N 18°34'47" W A DISTANCE OF 91.65 FEET; THENCE N 30°06'23" E A DISTANCE OF 95.79 FEET; THENCE N 06°54'53" E A DISTANCE OF 83.87 FEET; THENCE N 79°48'42" W A DISTANCE OF 77.16 FEET; THENCE S 30°41'18" W A DISTANCE OF 128.85 FEET; THENCE N 41°09'52" W A DISTANCE OF 114.68 FEET; THENCE N 81°43'42" W A DISTANCE OF 111.79 FEET; THENCE S 33°16'58" W A DISTANCE OF 136.88 FEET; THENCE S 52°56'28" W A DISTANCE OF 140.60 FEET; THENCE N 84°49'42" W A DISTANCE OF 99.96 FEET; THENCE S 88°03'03" W A DISTANCE OF 86.69 FEET; THENCE N 38°47'49" W A DISTANCE OF 81.75 FEET TO THE CENTER LINE OF A 80 FOOT WIDE DRAINAGE CANAL; THENCE CONTINUE ALONG THE SAID UPLAND LINE N 27°25'56" W A DISTANCE OF 133.41 FEET; THENCE N 04°07'27" E A DISTANCE OF 81.48 FEET; THENCE N 50°42'03" W A DISTANCE OF 157.13 FEET; THENCE N 01°39'23" W A DISTANCE OF 98.02 FEET; THENCE N 32°50'53" W A DISTANCE OF 129.71 FEET; THENCE N 02°23'08" W A DISTANCE OF 103.99 FEET; THENCE N 33°50'27" E A DISTANCE OF 103.26 FEET; THENCE N 18°43'17" E A DISTANCE OF 160.81 FEET; THENCE N 08°59'48" W A DISTANCE OF 171.58 FEET; THENCE N 18°32'08" E A DISTANCE OF 140.89 FEET; THENCE N 14°10'27" E A DISTANCE OF 67.04 FEET; THENCE N 23°02'47" E A DISTANCE OF 126.55 FEET; THENCE N 04°37'18" W A DISTANCE OF 175.86 FEET; THENCE N 09°55'07" E A DISTANCE OF 86.88 FEET; THENCE N 28°22'13" W A DISTANCE OF 124.61 FEET; THENCE N 00°05'23" W A DISTANCE OF 132.20 FEET; THENCE N 43°09'03" W A DISTANCE OF 75.27 FEET; THENCE N 26°41'18" W A DISTANCE OF 160.08 FEET; THENCE N 83°43'28" W A DISTANCE OF 87.39 FEET; THENCE N 21°56'06" W A DISTANCE OF 135.18 FEET; THENCE N 51°59'56" W A DISTANCE OF 182.12 FEET; THENCE N 25°41'41" E A DISTANCE OF 150.53 FEET; THENCE N 33°14'47" W A DISTANCE OF 42.82 FEET TO THE CENTER LINE OF AN 80 FOOT WIDE DRAINAGE CANAL; THENCE N 80°19'59" W LEAVING SAID UPLAND TO WETLANDS A DISTANCE OF 414.03 FEET; THENCE N 24°04'58" W A DISTANCE OF 3025.22 FEET; THENCE N 38°41'25" W A DISTANCE OF 281.36 FEET; THENCE N 30°11'46" W A DISTANCE OF 425.92 FEET; THENCE N 11°45'58" W ALONG THE MONUMENTED EAST RIGHT-OF-WAY LINE OF OLD KINGS ROAD FOR A DISTANCE OF 199.95 FEET TO A POINT ON THE SOUTH LINE OF LEHIGH ROAD; THENCE N 89°15'49" E ALONG THE SOUTH LINE OF LEHIGH ROAD A DISTANCE OF 2153.65 FEET TO A POINT OF CURVE CONCAVE SOUTHWEST, SAID CURVE HAVING A RADIUS OF 450.00 FEET, A CENTRAL ANGLE OF 86°20'19", A CHORD BEARING OF S 47°34'01" E, A CHORD DISTANCE OF 615.74 FEET; THENCE ALONG SAID

BOOK 1027 PAGE: 0214

Exhibit "A" sheet 3 of 4

BOOK: 1027 PAGE: 0215

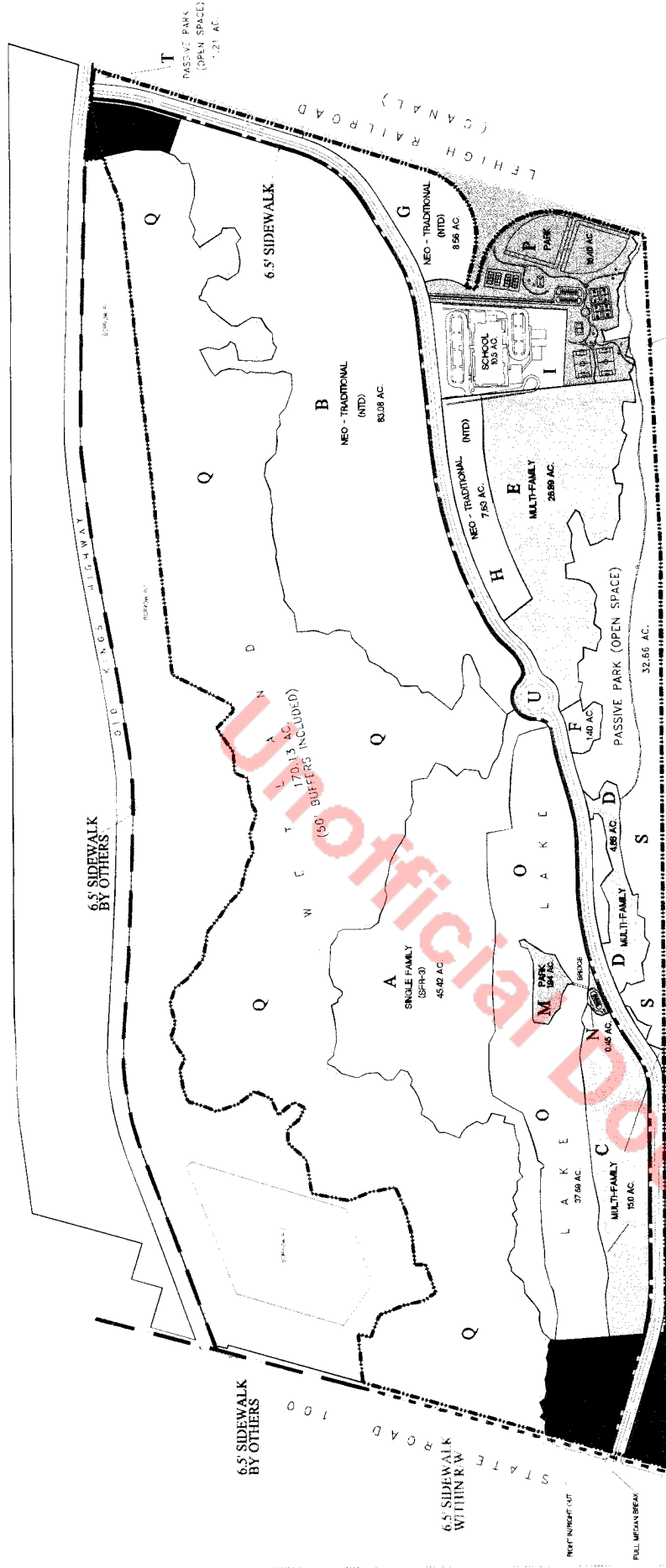
CURVE AN ARC DISTANCE OF 678.10 FEET TO THE TANGENT THEREOF; THENCE S 04°23'52" E A DISTANCE OF 221.47 FEET; THENCE N 85°36'08" E FOR A DISTANCE OF 60.00 FEET; THENCE N 04°23'52" W A DISTANCE OF 160.04 FEET TO A CURVE CONCAVE TO THE SOUTHEAST, SAID CURVE HAVING A RADIUS OF 450.00 FEET, A CENTRAL ANGLE OF 93°39'41", A CHORD BEARING OF N 42°25'58" E, A CHORD DISTANCE OF 656.40 FEET; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 735.61 FEET TO A POINT ON THE SOUTH LINE OF SAID LEHIGH ROAD; THENCE N 89°15'49" E, A DISTANCE OF 457.56 FEET; THENCE LEAVING THE SOUTH LINE OF SAID LEHIGH ROAD S 20°54'58" E FOR A DISTANCE OF 2024.75 FEET; THENCE S 18°25'23" E FOR A DISTANCE OF 5894.57 FEET TO A POINT THAT IS 24.00 FEET NORTH OF THE NORTH RIGHT-OF-WAY LINE OF STATE ROAD 100 AS PREVIOUSLY STATED; THENCE S 87°48'45" W ALONG A LINE THAT IS PARALLEL WITH THE NORTH RIGHT-OF-WAY LINE OF STATE ROAD 100 FOR A DISTANCE OF 1959.16 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT MASONIC CEMETERY WITH EASEMENT AS SET FORTH IN DEED BOOK 30, PAGE 201 AND DEED BOOK 32, PAGE 15, AND AS SET FORTH IN THE COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED IN OFFICIAL RECORDS BOOK 551, PAGE 574, RE-RECORDED IN OFFICIAL RECORDS BOOK 554, PAGE 1271, ALL IN THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA.

Unofficial Document

Exhibit "A" sheet 4 of 4

INTERSTATE 95



Master Development Plan

LEGEND

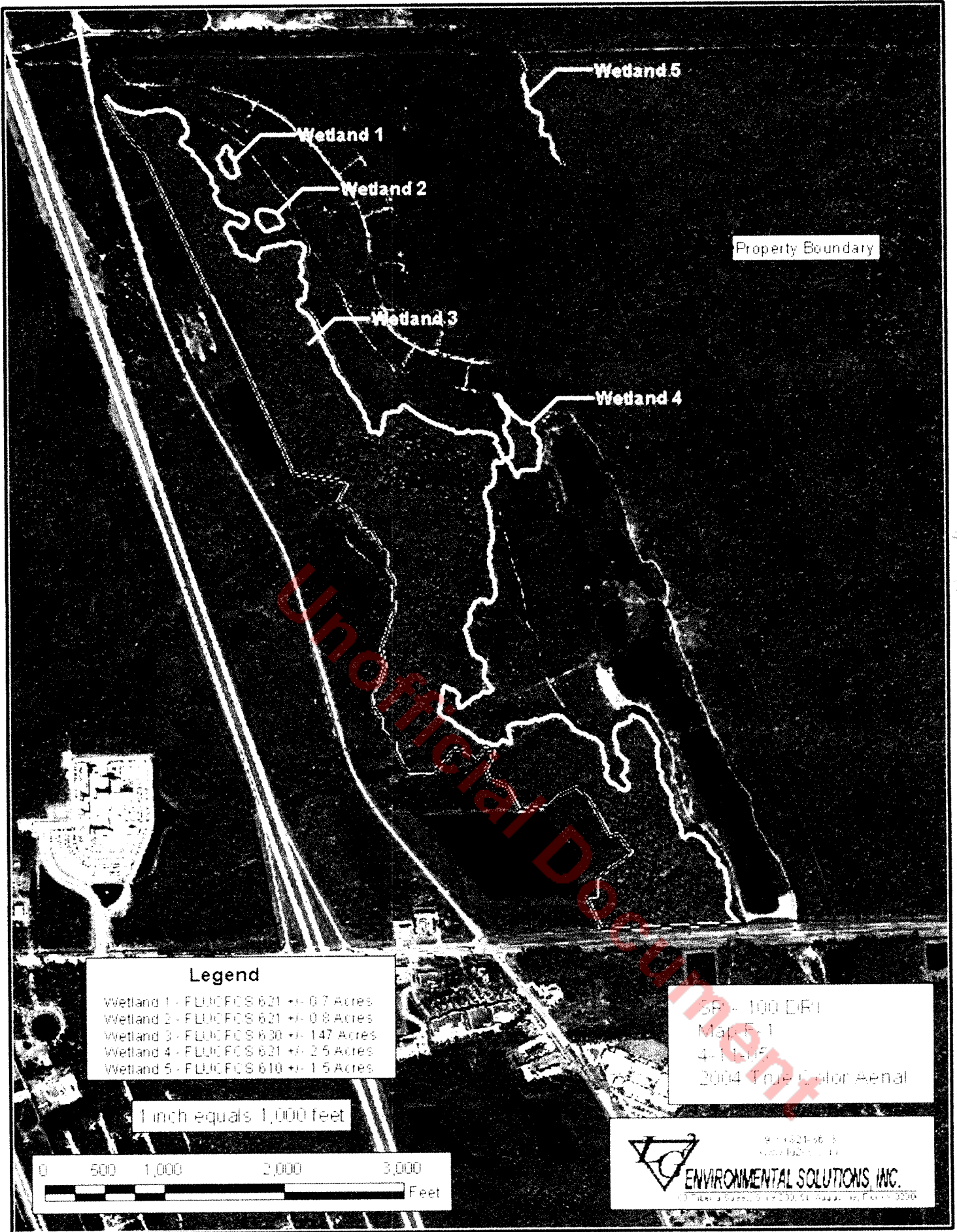
- 45.42 AC SINGLE FAMILY
- 83.08 AC NEO-TRADITIONAL
- 150 AC MULTIFAMILY
- 1.40 AC COMMERCIAL
- 28.99 AC ACTIVE PARKS
- 32.66 AC PASSIVE PARKS (OPEN SPACE)
- 170.13 AC SCHOOL/RECREATION
- 7.21 AC WETLAND
- 7.47 AC LAKE
- 57.88 AC

- PROPERTY BOUNDARY LINE
- 6.5' SIDEWALK WITHIN R/W
- 8' MULTI-PATH WITHIN R/W
- PAVEMENT TRAIL
- 6.5' SIDEWALK BY OTHERS

TRACT	USE	ACREAGE	DENSITY	ESTIMATED UNITS
A	SPR-3 SINGLE-FAMILY	45.42	2.00	91
B	NEO-TRADITIONAL (NTD)	83.08	2.40	200
C	MULTIFAMILY (MF-2)	150	12.00	1,800
D	MULTIFAMILY (MF-2)	48.8	18.00	878
E	MULTIFAMILY (MF-2)	28.99	24.32	703
F	COMMERCIAL (COM-2)	1.40	7.00	10
G	NEO-TRADITIONAL (NTD)	8.58	10.22	88
H	NEO-TRADITIONAL (NTD)	7.53	7.00	53
I	SCHOOL	20.0	-	-
J	PARK	10.0	-	-
K	GENERAL COMMERCIAL (COM-2)	2.73	-	-
L	GENERAL COMMERCIAL (COM-2)	1.40	-	-
M	PARK WITH ON-SITE PARKING	10.0	-	-
N	LAKE	0.46	-	-
O	LAKE	57.88	-	-
P	WETLANDS	7.21	-	-
Q	WETLANDS (OPEN SPACE)	1.77	-	-
R	PASSIVE PARK (OPEN SPACE)	1.21	-	-
T	PASSIVE PARK (OPEN SPACE)	23.8	-	-
U	COLLECTOR ROAD AND ROTARY	59.1	-	-
TOTAL				281

EXHIBIT "B"
DATE: APRIL 12, 2006

Exhibit "B"



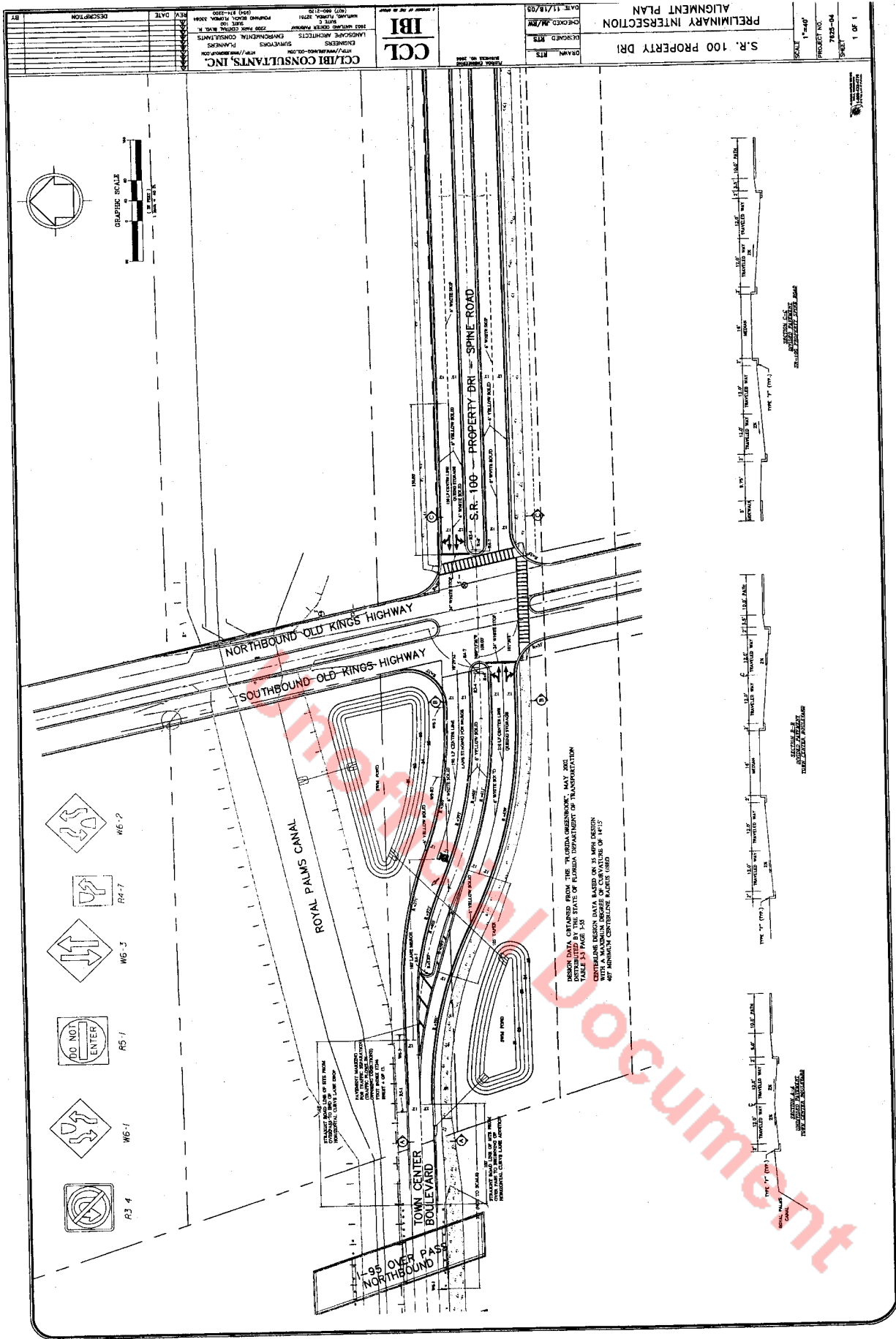


Exhibit "D" sheet 1 of 2

SR 100 Property DRI

Traffic Mitigation Proportionate Share Distribution

Phase I Roadway Segment	Length (mile)	Improvement	Project Traffic (trips)	Maximum Service Volume		Construction Cost	Engineering Cost	Total Cost	Proportionate Share %
				Existing	Future				
SR 100 from Old Kings Road to I-95 Overpass	0.21	4LD to 6LD	337	1,730	3,070	\$450,000	\$50,000	\$500,000	25.1%

Unofficial Document

Exhibit "E"