

INSTR # 200324821
OR BK 01152 PGS 1783-1796
RECORDED 07/11/2003 02:17:43 PM
M. OXLEY JR
CLERK OF CIRCUIT COURT
NASSAU COUNTY, FLORIDA
RECORDING FEES 64.50

NASSAU
County

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, made this 23rd day of July, 2003,

by and between Johnny L. Dudley, Daniel Dudley and Gary Dudley, 2804 St. Johns Bluff Road, Jacksonville, Florida 32246, their heirs, successors, or assigns ("Owners"), and **NASSAU COUNTY**, a political subdivision of the State of Florida (the "County").

Rec 64.50

WITNESSETH:

WHEREAS, the Property described on Exhibit A attached hereto is located at a strategic and rapidly growing node at the intersection of SR 200 and Chester Road which is compatible with the County's Comprehensive Planning Policies 1.06.03 and 1.02 to promote compact growth with urban development. areas by establishing mixed-use nodal development at this location and to promote compatibility with surrounding land uses;

Public Facility Schedule

The following public facilities will serve the development proposed for the Property through the 7 years of the Development Agreement to 2009.

- (1) Transportation - this Development Agreement meets the requirements of Section 163.3180(2), F.S. regarding the provision of roads. A traffic analysis was conducted to determine that all impacted road segments will continue to operate within the level of service standard set forth in the Nassau County Comprehensive Plan.
- (2) Potable Water/Sanitary Sewer—The project is within the Jacksonville Electric Authority (JEA) service area for potable water and sanitary sewer service. JEA has provided confirmation that water and sewer service sufficient to serve the site is available.
- (3) Solid Waste - The County owns and operates the County's landfill. It will have sufficient space to accommodate the solid waste generated by the development of the Property through buildout of Phase II.
- (4) Drainage - The Owners, their successors and assigns, shall provide drainage in accordance with the St. Johns River Water Management District and the County regulations, consistent with the phasing schedule as set forth in this Development Agreement.

WHEREAS, Owners have obtained a Final Certificate of Concurrency dated October 24, 2000 for the project known as Nassau Commerce Center pursuant to Nassau County Ordinance No. 99-06;

WHEREAS, the Concurrency approval provides for concurrency for 10,629 average daily trips in two phases;

WHEREAS, the Owner desires to obtain a revision in the terms of the Concurrency Certificate;

WHEREAS, the County has determined that the Owner has made substantial progress in planning the site by obtaining a conditional use exception to develop a portion of the Property, filing a preliminary site plan, and working with the County to design the internal and external transportation system which will serve the Property;

WHEREAS, the County has determined that a revision to the terms and conditions of the Concurrency Certificate will not create additional impacts;

WHEREAS, the County acknowledges Proposed and Future Development meet the goals and policies of the Nassau County Comprehensive Plan and Future Land Use Map as amended by the concurrent amendment with this Development Agreement;

WHEREAS, the County deems it to be in the public interest to recognize the benefits of the Proposed Development;

WHEREAS, the Florida Local Government Development Agreement Act, Sections 163.3220 - 163.3243, Florida Statutes (the "Act"), authorizes local governments to enter into development agreements with developers to encourage a stronger commitment to comprehensive and capital facilities planning, to ensure the provision of adequate public facilities for development, to encourage the efficient use of resources, to reduce the economic cost of development and to provide certainty to developers in the approval of development and

assurances that they may proceed in accordance with existing laws and policies, subject to the conditions of such development agreements;

WHEREAS, the "Act" authorizes agreements for up to ten years and considered for an extension upon a showing of cause at a public hearing;

WHEREAS, the County's ordinances permit execution of such Development Agreement;

WHEREAS, such Development Agreement strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the costs of development;

WHEREAS, the construction of the Proposed Development will be of significant economic benefit to the citizens of the County by providing new jobs in the industrial and commercial areas and will substantially augment the ad valorem tax base of the County, enhancing the quality of life.

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

1. The foregoing statements are true and correct and incorporated herein by reference as Findings of Fact.

2. Purpose, Conditions Precedent to Development. The purpose of this Development Agreement is as follows:

To revise the Phasing as set forth in the Concurrency Certificate as follows: The development of the Property shall occur on or before the following phasing dates:

Phase I 2003 -2005 Light Industrial/Business Park consisting of 200,000 square feet of Light Industrial/Warehousing development or equivalent development with a combination of Light Industrial/Warehousing development and Commercial development not to exceed 2897 trips.

Phase II—2006 –2007 Light Industrial/Business Park consisting of 500,000 square feet of Light Industrial/Warehousing development or equivalent development with a combination of Light Industrial/Warehousing development and Commercial not to exceed 5373 trips

Phase III—2008 –2009 Light Industrial/Business Park consisting of 150,000 square feet of Light Industrial/Warehousing development or equivalent development with a combination of Light Industrial/Warehousing development and Commercial not to exceed 2359 trips

The total cumulative trips for all three phases shall not exceed 10,629 average daily trips. In the event that the trips scheduled to be used in each phase are not used, i.e. a complete final site plan is not submitted prior to the end of a phase, such unused trips in that phase may be recaptured by the county for reallocation to other property. Any phase may be advanced without the necessity for amending this Agreement.

3. Owner Obligations and Consideration. Owner hereby covenants and agrees to the following commitments:

a. No later than 180 days from the effective date of this Agreement, Owner shall file a zoning exception for a conditional use on Phases I A, B, C and Phase III to allow commercial development on 84.2 acres (not to exceed 50% of the property) in the location on the

Property as set forth in Exhibit B and shall commence construction on the Property no later than September 1, 2004.

b. No later than twelve (12) months from the effective date of this Agreement, Owner shall file a final site plan for the Property included in Phase I A, B, and C as depicted on the attached Exhibit B. The roadway system shall be designed to provide innerconnectivity within the entire parcel and one access point on Chester Road will be designed to line up with Springer Road.

c. Owner shall obtain all permits necessary to develop the Property and shall comply with all rules, regulations, laws, and other requirements governing development of the Property pursuant to the terms of this Agreement.

d. Owner shall provide County annual reports of development progress pursuant to the phasing schedule set forth herein.

4. County Obligations.

a. By executing this Development Agreement, the County hereby issues to Owner, its heirs, successors or assigns, an extension to the Concurrency certificate as set forth herein together with the authority to proceed with the development on the Property pursuant to the phasing schedule as set forth above contingent upon the Owner meeting the Conditions as set forth herein.

b. Except as provided herein, the County shall not impose any further conditions upon the use of capacity or vested rights issued hereunder unless any such conditions are determined by the Board of County Commissioners of the County to be essential to protect the health, safety and welfare of the citizens of the County.

c. The parties acknowledge that the Property is included in an Area Wide Development of Regional Impact. The Master Plan for the Area Wide Development of Regional Impact depicts the use of the Property as Commercial. In the event that the approved Master Plan for the Area Wide Development of Regional Impact reflects the use of the Property as Commercial, the Property in its entirety may be used for commercial/retail development in addition to any use permitted within the Area Wide DRI on the Property without the necessity for further zoning action including but not limited to conditional use approval, or a comprehensive plan amendment.

d. This Agreement is made and granted pursuant to Nassau County Ordinance No. 99-OS, as it may be amended from time to time, and Florida Statutes Section 163.3220-163.3243 and is effective through the December 31, 2009 or within any applicable extension to this Agreement issued or agreed to by the County. Provided, however, this Agreement should not be construed to and does not exempt Owner from any obligation to pay for impact fees imposed by the County.

5. Extension of Agreement; Subsequent Changes to Concurrency Ordinance. The duration of this Agreement may be extended by the County after conducting a public hearing in the manner specified in Section 163.3225, Florida Statutes, as it may be amended from time to time. If the County modifies its land development regulations or any other regulation subsequent to the execution of this Agreement, no such modification shall be applied in a manner that operates to prevent development of the Property as would be permitted by this Agreement hereunder in its entirety under the County's land use regulations in effect as of the date of the execution of this Agreement. Further, nothing in this section shall be deemed to constitute a waiver of the applicant's right to contest application of any building code, zoning ordinance or

other land development regulations as applied to this development under the State of Florida or United State Constitutions.

6. Necessity to Obtain Permits. Owner hereby acknowledges their obligation to obtain all necessary local development permits which may be needed for development of the property. The failure of this Agreement to address any particular permit, condition, term, or restriction applicable to the development of the property shall not relieve the Owner or any successor or assign of the necessity of complying with federal, state, and local permitting requirements, conditions, terms, or restrictions as may be applicable. No provision contained herein shall exempt the Owner from complying with Nassau County Code of Ordinances, including but not limited to Roadway and Drainage Standards.

7. Agreement Consistent with Comprehensive Plan and Florida Statutes 163.3180. The County hereby acknowledges and agrees that (i) the development contemplated by this Development Agreement is consistent with the County's Comprehensive Plan and Land Development Regulations, and (ii) that the County's Comprehensive Plan is in compliance with the State of Florida Comprehensive Plan.

8. Remedies and Monitoring. In order meet to the Conditions Precedent, Owner agrees beginning on the twelve month anniversary of the effective date of this Agreement, and annually thereafter, to monitor the number of external p.m. peak hour trips generated by development of the Property and to project the number of trips to be generated over the next twelve month period. If either the Owner or County fail to carry out any of its covenants or obligations contained herein, either party shall be entitled to all remedies available at law or in equity, including the remedies of specific performance and all forms of injunctive relief.

a. Owner will secure the following permits ("the Permits"), if needed including but not limited to:

St. John's River Water Management District – Environmental Resource Permit
Nassau County - Building Permit
Nassau County - Site work Permit
FDOT - Connection Permit
FDOT - Drainage Permit Final Development Plans, Final Plats, and Construction
Plans for Phases as applicable
Nassau County Certificate of Concurrency for Water, Sewer and Drainage, and Solid
Waste
Nassau County Right of Way Permits

b. The County may apply subsequently adopted regulations and policies to the Proposed Development only upon meeting the requirements of Section 163.3233 Florida Statutes (2002).

c. Beginning one year after the Effective Date of this Agreement as defined in Paragraph 16 herein, the Owner shall provide to the County a written and accurate status report acceptable to the County, which shall include all information necessary for the County to conduct its periodic review in compliance with the requirements of Section 163.3235, Florida Statutes and applicable rules. Said report shall include, but not be limited to, a description of the development activity during the preceding year and data sufficient to establish compliance with the terms and conditions of this Agreement. This report may contain the monitoring information set forth herein above.

9. Recording. Owner will pay all costs related to providing notice and advertising this Agreement under Section 163.3225, Florida Statutes, and the cost of recording this Agreement.

a. Within fourteen (14) days after the County executes this Development Agreement, the County shall record it with the Clerk of the Circuit Court. Within fourteen (14) days after this Development Agreement is recorded, the County shall submit a copy of it to the Florida Department of Community Affairs by certified mail, return receipt requested.

10. Binding Effect. The burdens of this Development Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement.

11. Applicable Law; Jurisdiction of Venue. This Development Agreement, and the rights and obligations of the County and the Owner hereunder, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. This Agreement may be enforced as provided in Section 163.3243, Florida Statutes. Venue for any -litigation pertaining to the subject matter hereof shall be exclusively in Nassau County, Florida. If any provision of this Development Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Development Agreement shall be valid and enforceable to the fullest extent permitted by law. The fact that this Development Agreement does not detail all laws, rules, regulations, permits, conditions, terms and restriction that must be satisfied to complete the development contemplated by this Agreement shall not relieve the Owner or its successor in interest of the obligation to comply with the law governing such permit requirements, conditions, terms and restrictions.

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

13. Exhibits. All exhibits attached hereto contain additional terms of this Development Agreement and are incorporated herein by reference.

14. Captions or Paragraph Headings. Captions and paragraph headings contained in this Development Agreement are for convenience and reference only, and in no way define,

describe, extend or limit the scope of intent of this Development Agreement, nor the intent of any provision hereof.

15. Counterparts. This Development Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Development Agreement.

16. Effective Date; Duration of Agreement. This Agreement shall become effective after it has been recorded in the public records of Nassau County and thirty (30) days after it is received by the Florida Department of Community Affairs (the "Effective Date"). This Development Agreement shall remain in effect until the earlier of the following dates: (i) the date on which the construction is complete on the Exhibit A Property or (ii) the fifth anniversary of the Effective Date, unless otherwise extended or terminated as provided for herein or in the Act. This Development Agreement may be terminated by mutual consent of the parties. The maximum period of this Agreement shall be seven (7) years unless extended pursuant to Paragraph 5 as set forth above.

17. Amendment. This Development Agreement may be amended by mutual consent of the parties so long as the amendment meets the requirements of the Act.

18. Duration of Permits. Developer acknowledges that this Agreement does not extend the duration of any other permits or approvals.

19. Further Assurances. Each of the parties hereto agrees to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Development Agreement and give effect thereto. Without in any manner limiting the specific rights and obligations set forth in this Development Agreement, the parties hereby declare their intention to cooperate with each other in effecting the terms of this Development

Agreement, and to coordinate the performance of their respective obligations under the terms of this Development Agreement.

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


For the County:	The Management Team P. O. Box 1010 Fernandina Beach, Florida 32034
-----------------	--

For the Owner:	Susan C. McDonald, Attorney at Law Rogers, Towers, Bailey, Jones & Gay 1301 Riverplace Boulevard, Suite 1500 Jacksonville, FL 32207
----------------	--

21. Benefits to County. The County hereby acknowledges and agrees that this Agreement substantially benefits the County in carrying out its comprehensive plan objectives and its capital improvement planning program to provide certainty in planning and scheduling traffic improvements to serve not only the residents of these developments and those County residents utilizing the planned commercial development, but all the citizens of Nassau County.

Passed and Duly Adopted by the Board of County Commissioners of Nassau County,
Florida, this 23rd day of June, 2003.

Attest: County Clerk



J. M. "Chip" Oxley, Jr.
Its: Ex-Officio Clerk

Board of County Commissioners
Nassau County, Florida

By: 

VICKIE SAMUS
Chairman

Approved as to form by the
Nassau County Attorney.



MICHAEL S. MULLIN

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

Witness
Name: Kimber Andrea
Kasper Grady
Name: Kimber Andrea
Kasper Grady
Date: 7/9/03

Name: Johnny L. Dudley
Date: 7/9/03

Witness
Name: Kimber Andrea
Kasper Grady
Name: Kimber Andrea
Kasper Grady
Date: 7/9/03

Name: Daniel Dudley
Date: 7/9/03

Witness
Name: Kimber Andrea
Kasper Grady
Name: Kimber Andrea
Kasper Grady
Date: 7-9-03

Name: Gary Dudley
Date: 7-9-03

LEGAL DESCRIPTION:

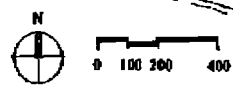
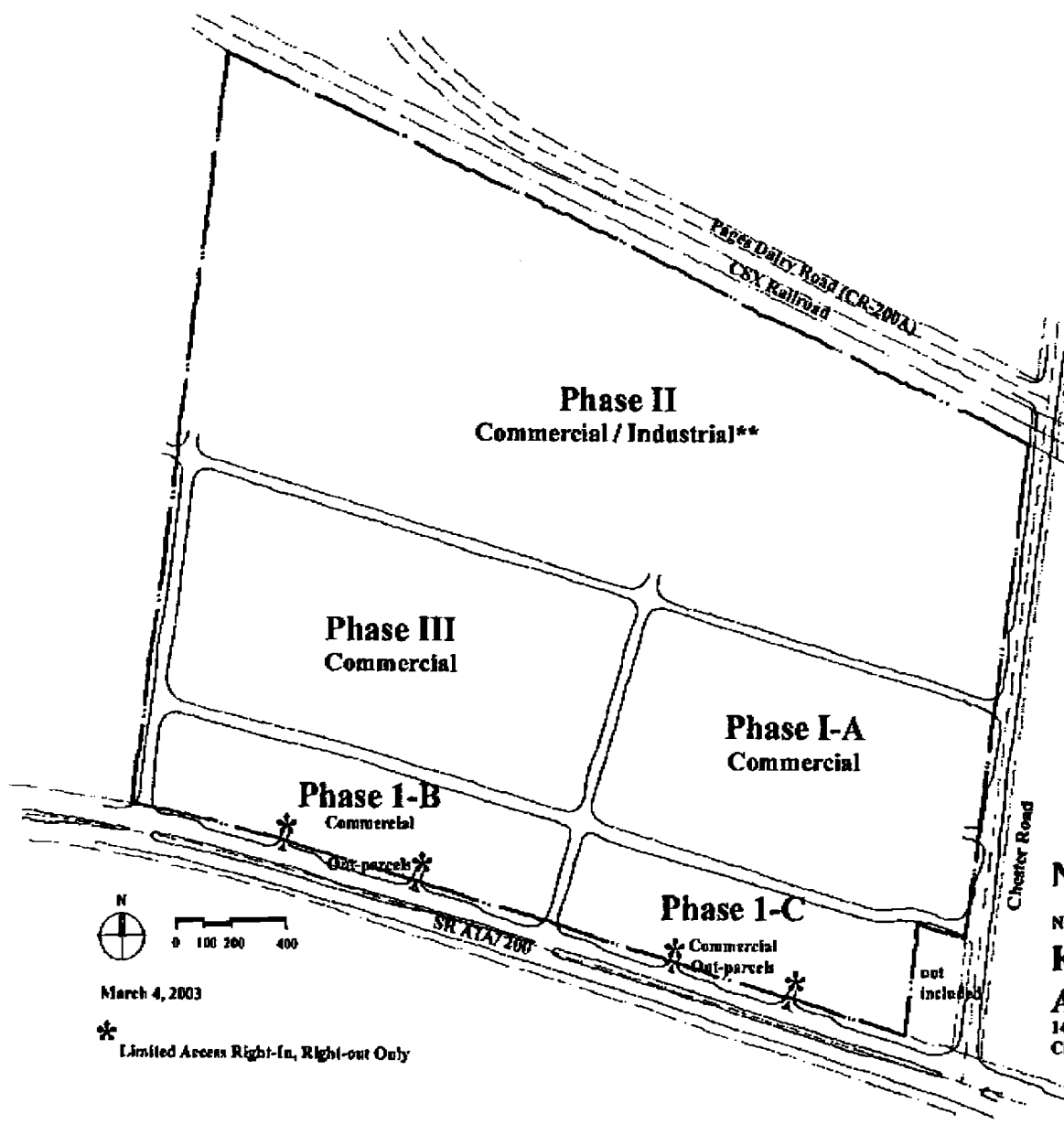
ALL THAT CERTAIN TRACT OR PARCEL OF LAND BEING A PORTION OF GOVERNMENT LOT 1, SECTION 1, THE JOHN LOWE MILL GRANT IN SECTION 37, ALL IN TOWNSHIP 2 NORTH, RANGE 27 EAST, A PORTION OF SECTION 36 AND THE JOHN LOWE MILL GRANT IN SECTION 51, ALL IN TOWNSHIP 3 NORTH, RANGE 27 EAST, A PORTION OF SECTION 25, TOWNSHIP 2 NORTH AND A PORTION OF GOVERNMENT LOT 5, SECTION 37, TOWNSHIP 3 NORTH, ALL IN RANGE 28 EAST, MASSAU COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, FOR A POINT OF REFERENCE COMMENCE AT A RAILROAD SPIKE FOUND AT THE CENTERLINE OF RIGHT-OF-WAY INTERSECTION OF STATE ROAD NO. 200/A1A (A 184-FOOT RIGHT-OF-WAY BY DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAPS OF SECTION NO. 7460-2150 AND 7460-175) AND RUN NORTH 07°-51'-58" EAST ALONG THE CENTERLINE OF SAID STATE ROAD 200-A, A DISTANCE OF 93.25 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF STATE ROAD NO. 200/A1A; RUN THENCE NORTH 72°-46'-59" WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 228.33 FEET TO A 1/2 INCH IRON PIPE SET AT THE SOUTHWEST CORNER OF LANDS NOW OR FORMERLY OF CURTIS W. LIGHTSEY ACCORDING TO DEED RECORDED IN BOOK 371, PAGE 708 OF THE PUBLIC RECORDS OF SAID COUNTY FOR THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED CONTINUE NORTH 72°-46'-59" WEST ALONG LAST MENTIONED NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 2243.38 FEET TO A 5/8 INCH REBAR FOUND (WITH D.O.T. CAP) AT A POINT OF CURVATURE; RUN THENCE IN A WESTERLY DIRECTION ALONG THE ARC OF A CURVE, SAID CURVE BEING CONCAVE TO THE SOUTH AND HAVING A RADIUS OF 5790.17 FEET, A CHORD DISTANCE OF 664.22 FEET TO A 1/2 INCH IRON PIPE (SET), THE BEARING OF THE AFOREMENTIONED CHORD BEING NORTH 76°-04'-16" WEST; RUN THENCE NORTH 07°-51'-24" EAST, A DISTANCE OF 2717.91 FEET TO A 1/2 INCH IRON PIPE SET ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE SEABOARD COASTLINE RAILROAD (A 120-FOOT RIGHT-OF-WAY AS NOW ESTABLISHED); RUN THENCE SOUTH 65°-45'-53" EAST ALONG LAST MENTIONED SOUTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 3213.56 FEET TO A CONCRETE MONUMENT FOUND (PLS. 2445) ON THE WESTERLY RIGHT-OF-WAY LINE OF AFOREMENTIONED STATE ROAD NO. 200-A; RUN THENCE SOUTH 07°-51'-58" WEST ALONG LAST MENTIONED WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 1778.12 FEET TO A CONCRETE MONUMENT FOUND (PLS 1193) AT THE NORTHEAST CORNER OF THE AFOREMENTIONED LANDS OF CURTIS W. LIGHTSEY; RUN THENCE NORTH 72°-48'-37" WEST ALONG THE NORTHERLY LINE OF LAST MENTIONED LANDS, A DISTANCE OF 177.64 FEET TO A CONCRETE MONUMENT FOUND (NO IDENTIFICATION) AT THE NORTHWEST CORNER THEREOF; RUN THENCE SOUTH 07°-51'-58" WEST ALONG THE WESTERLY LINE OF LAST MENTIONED LANDS, A DISTANCE OF 390.51 FEET TO THE POINT OF BEGINNING.

INSTR # 200324821
OR BK 01152 PG 1796

KIMCO DEVELOPERS

MAR. 13 2003 13:28 63032229204



March 4, 2003

* Limited Access Right-in, Right-out Only

Site Contents

Phase 1-A	+/-27.1 Acres
Phase 1-B	+/-13.7 Acres
Phase 1-C	+/-11.5 Acres
Phase II	+/-83.5 Acres
Phase III	+/-32.6 Acres
Total	+/-168.4 Acres

** If Multi-Family Use is approved in the area wide DRI, then the developer reserves the right to put Multi-Family in this Phase

Nassau Commerce Center
Nassau County, Florida
Kimco Realty - Developer
ADW Architects, pa
1401 W. Morehead St. Ste #100
Charlotte, NC 28208 (704) 379-1919

Exhibit "B"