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RET: BRENDA - ADMIN

CS-07-00

INSTR # 200727269, OR Book 1520 Page 336, Pages 19, Recorded 08 20 2007 at 03 00 PM John A Crawford, Nassau County Clerk of Circuit Court Rec Fee \$163.00 #1

REC 143.00

DEVELOPMENT AGREEMENT

WHEREAS, Developer, **AMELIA ISLAND STORAGE, LLC**, seeks concurrency approval for the Proposed Bailey Road Self-Storage Development consisting of a 91,800 square foot mini-storage facility and a 12,500 square foot commercial/retail facility, subject to the conditions precedent as set forth in Paragraph 2 herein; and

WHEREAS, the maximum building height is forty (40) feet, and the proposed building intensities are seventy percent (70%), and the proposed population density is zero (0) dwelling units per acre; and

WHEREAS, the County deems it to be in the public interest to provide concurrency based upon the negotiations that result in a benefit for transportation deficiencies within the development impact area; and

WHEREAS, the Florida Local Government Development Agreement Act, Section 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; and

WHEREAS, the "Act" authorizes agreements for up to ten (10) years which can be considered for an extension upon a showing of cause at a public hearing; and

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, Florida law now requires concurrence of the Florida Department of Transportation in agreements such as this one where there will be impacts to state highway system elements which are included in the State's Strategic Intermodal System, and

WHEREAS, there will be no construction or direct connection to SR 200/A1A; and

WHEREAS, the Developer's engineers have provided a signed and sealed certification that the impact on SR 200/A1A is minimal; and

WHEREAS, the Developer will construct improvements to Bailey Road, a County road, and the County will be responsible for approving the work.

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) **Public Facility Schedule**

The following public facilities will serve the development proposed for the Property though the ten (10) years of the Development Agreement to 2016.

(a) Potable Water and Sanitary Sewer - The City of Fernandina Beach will provide adequate water and wastewater services to the proposed Bailey Road Self Storage.

(b) 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 2019.

(c) Drainage - Developer shall provide drainage in accordance with the St. Johns River Water Management District and the County regulations.

(d) Education - There will be no education impact.

(e) Parks - There will be no parks impact.

(f) Health Systems and Facilities - There will be no health systems and facilities impact.

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

To authorize any owner of the Property to construct any portion or all of the Proposed Development at any time during the term of this Agreement subject to the following conditions ("Conditions Precedent"):

a) The construction of certain improvements to Bailey Road, as more specifically set forth in Exhibit "A", attached hereto, in lieu of a cash payment of \$56,893.03 which said improvements shall be constructed prior to or concurrent with the construction of any vertical improvements to Owner's property as contemplated herein. This dollar amount is based

on both the Proportionate Fair Share formula, found in the State of Florida, Department of Transportation's, Model Ordinance for Proportionate Fair Share Mitigation of Development Impacts on Transportation Corridors, Final Edition, February 14, 2006, and the formula found in Nassau County Ordinance No. 2001-36, Section 4 which is:

Developer's Share (A) = B/C x D, where the Developer's share (A) shall equal those PM peak hour trips from the development that have triggered a deficiency in a roadway segment per the County's Concurrency Management System (B), divided by the increase in peak hour capacity created by the proposed improvement to be constructed on the impacted road segment (C), multiplied by the total cost of the proposed road improvements (D). The project will generate a total of nineteen (19) peak hour trips, which will cause this road segment to continue to operate below the adopted level of service standard as set forth in Nassau County's Comprehensive Plan. By constructing a widening and overlay on Bailey Road from Isle de Mai Subdivision to A1A (SR 200), and thus converting the same from a local street to a collector road, it is reasonably anticipated and calculated that such improvements will transfer 19 trips from A1A to Bailey Road, thus providing immediate relief for the current failing segment. The total cost of this construction, calculated in present dollars is estimated to be ninety thousand and no/100 dollars (\$90,000.00).

4) The County plans to amend its Five-Year Schedule of Capital Improvements to include the portion of Bailey Road referenced in Paragraph 3.

5) **Engineer's Certification** - the Developer's Engineer, McCranie and Associates, Inc., has provided an impact statement to Nassau County, attached hereto as Exhibit "C".

6) **Developer Obligations and Consideration.**

Developer hereby covenants and agrees to the following commitments, which are necessary to properly provide for impacts caused by the above referenced development:

a) Any wetlands system as mapped on the Future Land Use Map and as validated by the St. Johns River Water Management District shall be protected by establishing a buffer pursuant to the Land Development Regulations in effect at the time the plat is recorded. Other jurisdictional wetlands on the Property will be protected in accordance with the requirements of the St. Johns River Water Management District.

b) Developer 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.

c) Developer shall be subject to all County Ordinances and regulations.

7) **County Obligations.**

By executing this Development Agreement, the County hereby issues to **AMELIA ISLAND STORAGE, LLC**, its heirs, successors or assigns, authority to take action and proceed with the construction of the aforesaid 91,800 square foot mini-storage facility and a 12,500 square foot commercial/retail facility, contingent upon meeting the Conditions.

This Agreement is made and granted pursuant to Florida Statutes, Sections 163.3220-163.3243, and is effective through the tenth (10th) annual anniversary of the effective date of this agreement, or within any applicable extension of this Agreement issued or agreed to by the County. Provided however, this Agreement should not be construed to and does not exempt the Developer from any obligation to pay impact fees imposed by the County.

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 County.

8) **Extension of Agreement: Subsequent Changes to Concurrency Ordinance.**

The County may extend the duration of this Agreement 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 States Constitutions.

9) **Necessity to Obtain Permits.**

Developer 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 Developer, or any successors or assigns, of the necessity of complying with Federal, State, and local-permitting requirements, conditions, terms or restrictions as may be applicable.

10) **Agreement Consistent with Comprehensive Plan and Florida Statutes 163.3180.**

The County hereby acknowledges and agrees that (i) the development contemplated by the Development Agreement is consistent with the County's Comprehensive Plan, in particular Policy 1.02.03, Policy 1.02.05, Policy 1.06.03 and Policy 2.03.03, and Land Development Regulations and (ii) that the County's Comprehensive Plan is in compliance with the State of Florida's Comprehensive Plan.

11) **Remedies and Monitoring.**

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

- St. Johns River Water Management District - Environmental Resource Permit
- Nassau County - Building Permit
- Nassau County - Site Work Permit
- Final Development Plans, Final Plat and Construction Plans for Phases as applicable

- Nassau County Certificate of Concurrency for water, sewer, drainage, parks, Solid Waste and Health Systems and Facilities.

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.

c) Beginning one (1) year after the Effective Date of this Agreement as defined in Paragraph 15, herein, Developer shall independently 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 in Section 8 herein above.

d) Developer 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.

e) Within fourteen (14) days after the County executes this Development Agreement, the County shall record it with the Clerk of Circuit Court.

12) **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.

13) **Applicable Law: Jurisdiction and Venue.**

This Development Agreement, and the rights and obligations of the County and Developers 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 Developer or its successors in interest of the obligation to comply with the law governing such permit requirements, conditions, terms and restrictions.

14) **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.

15) **Exhibits.**

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

16) **Captions or Paragraph Headings.**

Captions or 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.

17) **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.

18) **Effective Date; Duration of Agreement.**

This Agreement shall become effective after it has been recorded in the public records of Nassau County, Florida 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 B Property; or
- (ii) The tenth (10th) 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 ten (10) years unless extended pursuant to Paragraph 5 as set forth above.

19) **Amendment.**

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

20) **Duration of Permits.**

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

21) **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 intentions 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.

22) **Notices.**

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

For the County: *Douglas Seaman*
Director of Engineering Services
for Nassau County, Florida
96161 Nassau Place
Yulee, Florida 32097

For Developer: AMELIA ISLAND STORAGE, LLC
c/o McWhirter Realty
4045 Orchard Road
Building 400
Smyrna, GA 30080

23) **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 Improvements Program to provide certainty in planning and scheduling traffic improvements to serve not only the residents of this development but all the citizens of Nassau County.

24) **Public Facility Schedule**

The following public facilities will serve the development proposed for the Property through the ten (10) years of the Development Agreement to 2016.

- (1) Potable Water and Sanitary Sewer – The City of Fernandina Beach will provide adequate water and wastewater services to Bailey Road Self-Storage.
- (2) 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 2019.

- (3) Drainage - Developer shall provide drainage in accordance with the St. Johns River Water Management District and the County regulations.
- (4) Education - Not applicable as this is a commercial facility.
- (5) Parks - Not applicable as this is a commercial facility.
- (6) Health Systems and Facilities - Not applicable as this is a commercial facility.

Legal Description of Property

The legal description of the property is attached hereto as Exhibit "B".

FLORIDA DEPARTMENT OF TRANSPORTATION

CONCURRENCE PURSUANT TO FLORIDA STATUTE

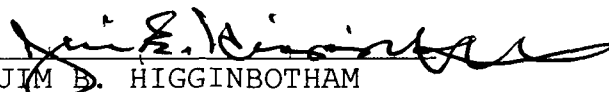
SECTION 163.3180(16)(e)

In accordance with Section 163.3180(16)(e), and after review of data and analysis supplied by Nassau County, Florida, which demonstrates that although this development does generate traffic impacts to the Strategic Intermodal System ("System"), specifically, US Highway AIA, the proposed improvements result in a net decrease in traffic impacts to the System, the Florida Department of Transportation does


hereby concur in the proposed mitigation strategy.


Passed and Duly adopted by the Board of County Commissioners of Nassau County, Florida this 23rd day of July, 2007.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA



JIM B. HIGGINBOTHAM
Its: Chairman

Attest as to Chairman's
Signature:

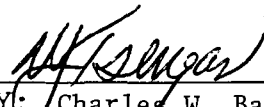

JOHN A. CRAWFORD
Its: Ex-Officio Clerk

REVIEWED BY GENE KNAGA
DEPUTY COMPTROLLER
 DATE 8/13/07
80907

Approved as to form by the
Nassau County Attorney:

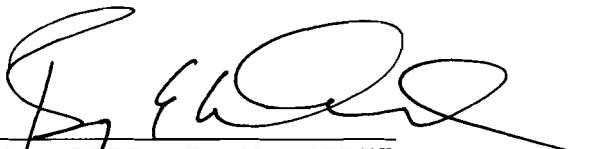

DAVID A. HALLMAN

CONCURRENCE OF
THE FLORIDA DEPARTMENT OF
TRANSPORTATION


BY: Charles W. Baldwin, P.E.
Its: District 2 Secretary
Date: _____

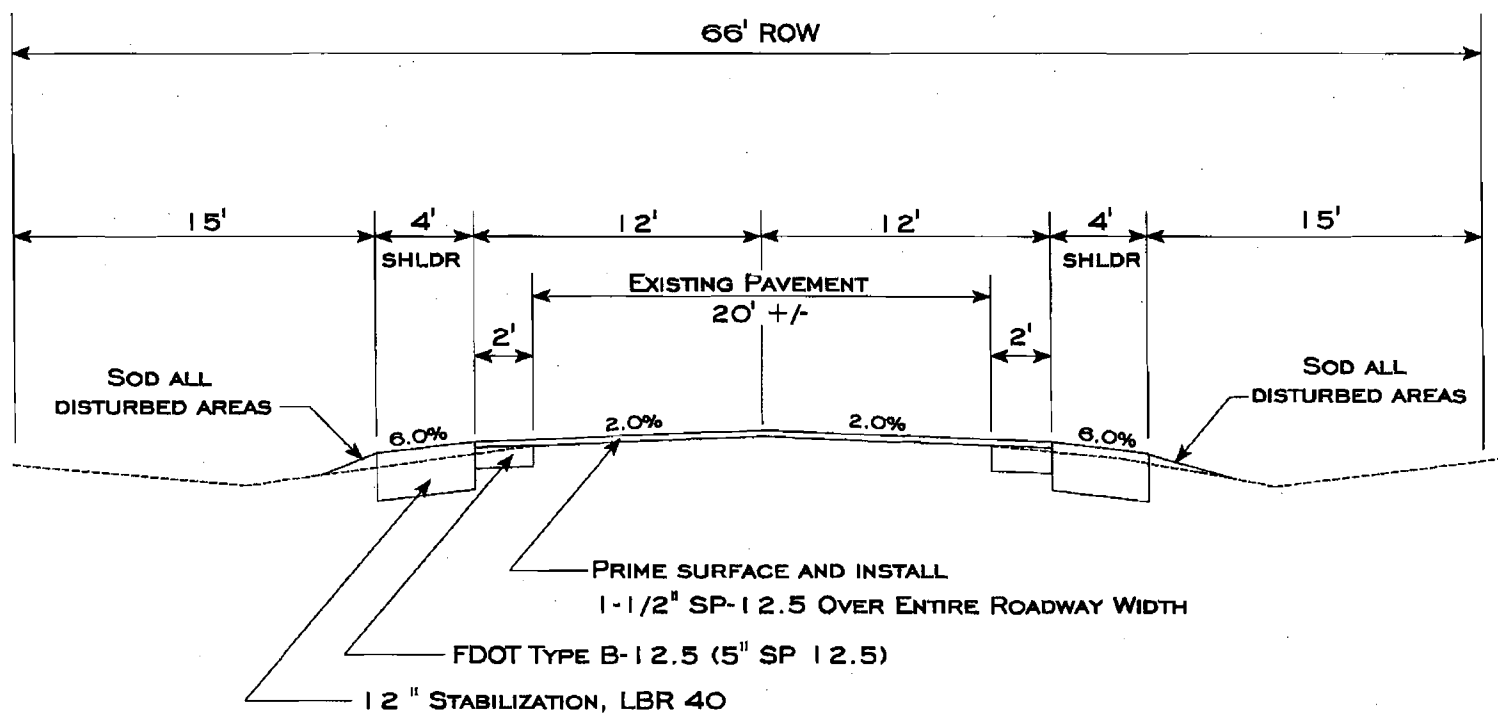
IN WITNESS WHEREOF, Developer has executed this Agreement in counterparts, each of which shall be deemed an original, the day and year first above written.

Amelia Island Storage, LLC



BY: BARRY E. McWHIRTER
Its: Manager

JAX\1131294_1



WIDEN AND RESURFACE BAILEY ROAD
FROM N.END OF OCEAN BREEZE WIDENING
TO S. END OF BAILEY ROAD SELF STORAGE WIDENING.
(1810 L.F.)

NOTES:

END OVERLAY WITH 5' BUTT JOINT.

SOD ALL DISTURBED AREAS (BERMUDA).

BAILEY ROAD TYPICAL SECTION

Estimate of Probable Costs - Bailey Road

02/09/02

Description: Widen existing 10' lanes to 12', Level & Resurface Existing Pavement.

| Pay Item | Description | Total Quantity | Unit | Avg. Unit Price | Total Amount |
|--------------------|--|----------------|------|-----------------|--------------------|
| 101-1 | MOBILIZATION | 1 | LS | | \$5,000.00 |
| 102-1 | MAINTENANCE OF TRAFFIC | 1 | LS | | \$5,000.00 |
| 120-1 | EXCAVATION - REGULAR | 1200 | CY | \$5.00 | \$6,000.00 |
| 327-70-1 | ASPHALT LEVELING (MISC. ASPHALT -AVG. 1/2")(50LBS/SY) | 100.00 | TN | \$150.00 | \$15,000.00 |
| 334-1-23 | SP 12.5 (1-1/2)(150LB/SY)(INCLUDE PRIME & TACK COAT) | 362.00 | TN | \$104.00 | \$37,648.00 |
| 285-7-05 | BASE GRP 5 - (SP 12.5 - 5" THICK) (1' WIDTH EACH SIDE) | 402.22 | SY | \$20.00 | \$8,044.40 |
| 180-72 | STABILIZATION TYPE B (4' SHOULDER) | 1608.89 | SY | \$3.50 | \$5,631.12 |
| 575-1 | SODDING(E. Side Only -utility work W. side) | 804.44 | SY | \$2.50 | \$2,011.10 |
| 706-3 | RETRO-REFLECTIVE PAVEMENT MARKERS | 50.00 | EA | \$5.00 | \$250.00 |
| 711-41 | TRAFFIC STRIPE SKIP (THERMO)(YEL) | 810.00 | LF | \$2.00 | \$1,620.00 |
| 711-21 | TRAF STRIPE SOLID (THERMO)(WH)(6") | 1620.00 | LF | \$4.00 | \$6,480.00 |
| SUB-TOTAL | | | | | |
| GRAND TOTAL | | | | | \$92,684.62 |

EXHIBIT "B"

ALL OF THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND LYING AND BEING IN THE COUNTY OF NASSAU AND THE STATE OF FLORIDA KNOWN AND DESCRIBED AS FOLLOWS:

A PORTION OF LOT 95, "OCEAN BREEZE FARMS," ACCORDING TO PLAT RECORDED IN PLAT BOOK 2, PAGE 19 OF THE PUBLIC RECORDS OF NASSAU COUNTY, FLORIDA.

SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHWEST CORNER OF LOT 95 AFORESAID; AND RUN NORTH 01° 00' 00" EAST ALONG THE WEST LINE OF SAID LOT, A DISTANCE OF 10.0 FEET TO WHERE SAID LINE INTERSECTS THE NORTH RIGHT OF WAY LINE OF CASHEN ROAD (A 40.0 FOOT RIGHT OF WAY); THENCE SOUTH 88° 55' 49" EAST ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 144.67 FEET; THENCE NORTH 01° 16' 58" EAST, A DISTANCE OF 116.04 FEET TO THE POINT OF BEGINNING.

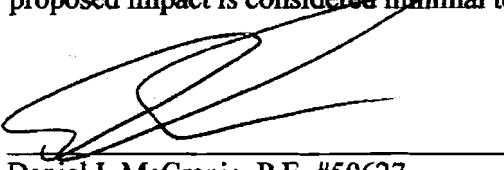
FROM THE POINT OF BEGINNING THUS DESCRIBED CONTINUE NORTH 01° 16' 58" EAST, A DISTANCE OF 268.56 FEET; THENCE SOUTH 80° 16' 20" WEST, A DISTANCE OF 38.73 FEET; THENCE NORTH 00° 54' 09" EAST, A DISTANCE OF 200.32 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD NO. 200 AND / OR A-1-A (A 90.0 FOOT RIGHT OF WAY); THENCE NORTH 80° 29' 36" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 314.14 FEET TO THE BEGINNING OF A TRANSITIONAL RIGHT OF WAY; THENCE SOUTH 43° 00' 53" EAST ALONG SAID TRANSITIONAL RIGHT OF WAY, A DISTANCE OF 7.08 FEET TO WHERE SAID RIGHT OF WAY INTERSECTS THE WESTERLY RIGHT OF WAY LINE OF BAILEY ROAD (A 66.0 FOOT RIGHT OF WAY); THENCE SOUTH 01° 00' 00" WEST ALONG THE WESTERLY RIGHT OF WAY LINE OF BAILEY ROAD, A DISTANCE OF 513.82 FEET; THENCE NORTH 89° 00' 35" WEST, A DISTANCE OF 276.72 FEET TO THE POINT OF BEGINNING.

THE FOREGONE DESCRIBED LANDS SUBJECT TO AN EASEMENT FOR INGRESS AND EGRESS, PER INSTRUMENT RECORDED IN OFFICIAL RECORDS BOOK 909 AT PAGES 1675 THROUGH 1680 OF THE PUBLIC RECORDS OF NASSAU COUNTY, FLORIDA.

Exhibit C

Impact Statement

After a review of the traffic impact of the proposed development and based upon both local understanding of the traffic patterns and upon engineering judgment, it is anticipated that the connection of the adjacent Waves site to Bailey Road, along with the improvements of Bailey road, as anticipated by this agreement, will offset the 19 PM peak hour trips created by this development onto SR200/A1A. It is further stated that the proposed impact is considered minimal to SR200/A1A.



Daniel I. McCranie, P.E. #50627

6-15-07