

**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT**, made this 24th day of November, 2008, by and between **BLACKROCK CROSSING LLC**, their heirs, successors, or assigns (“Developer”), and **BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA**, a political subdivision of the State of Florida (the “County”).

**WITNESSETH:**

**WHEREAS**, Developer owns approximately three and one half (3 ½ ) acres which are described in the Exhibit A attached hereto (The “Property”) to be known at this time as “Eagles Crossing”; and

**WHEREAS**, The Property is proposed for a total of 34,000 sq. ft. non-residential building(s); and equal to 67 p.m. peak trips; and

**WHEREAS**, The proposed Development at build-out has the potential to yield a 34,000 square foot non-residential building(s), and the maximum building height for the zoning district in which the proposed Project is located is forty (40) feet, and the proposed building intensities are seventy (70) percent; and

**WHEREAS**, Developer has purchased the development rights of IRENE BOWS, MABLE KIMBLE, MARY CURTIS, and MARIE E. CLARK, pursuant to the Development Agreement passed and adopted by the Nassau County Board of County Commissioners on December 12, 2005, and recorded in Official Record Book 1382, Page 1378-1390, and Nassau County, Florida; and

**WHEREAS**, the County determined pursuant to the 2005 Agreement, that a specific dollar amount should be utilized for each trip for which the Developer lacked concurrency; and

**WHEREAS**, the Developer has requested the negotiations commence regarding the additional capital improvements required under the terms of the Agreement; and

**WHEREAS**, the County has determined that additional intersection improvements are required; and

**WHEREAS**, the Developer is desirous of entering into a Developer's Agreement for this project; and

**WHEREAS**, as a result of negotiations with County representatives, the Developer voluntarily agrees to the terms of this Agreement.

**Public Facility Schedule**

The following public facilities will serve the development proposed for the Property through the term of this Development Agreement.

- 1) Potable Water and Sanitary Sewer - JEA will provide adequate water and wastewater service to Eagles Crossing.
- 2) Solid Waste – The County acknowledges its solid waste obligation and will provide solid waste disposal capacity through the development of the property.
- 3) Drainage – Developer shall provide drainage in accordance with the St. Johns River Water Management District and the County regulations.
- 4) Park – In accordance with Section 2.04 of the Land Development Code, as amended, recreational level of service does not apply to Commercial developments.

**WHEREAS**, Developer seeks concurrency approval for the Proposed Development consisting of a total of 34,000 sq. ft. commercial building, subject to the conditions precedent as set forth in Paragraph 2 herein; 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 are; 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 developer 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 assurance that they may proceed in accordance with existing laws and policies, subject to the conditions of such Development Agreement; and

**WHEREAS**, the "Act" authorizes agreements for up to twenty (20) years which can be considered for an extension upon a showing of cause at a public hearing; and

**WHEREAS**, such Development Agreements strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there inadequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the cost of development.

**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 facts.
2. **Purpose, Conditions Precedent to Development.**

The purpose of this Agreement is 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): The payment of \$201,000.00 was made January 8, 2006.

The ultimate design will include an extension to the existing lane on A1A from east of their project to west of Blackrock Rd. The extension lane is approximately in the location of the future location of the outside lane as shown on the construction plans for widening of A1A. The ultimate design will include intersection improvements at Blackrock Rd. for right and left lanes. The ultimate design will require the signal mast arms to be located according to the proposed design by FDOT for the widening of A1A.

As part of the revision of the development agreement, the project's shell Certificate of Occupancy will be issued after the construction of the right through lane on A1A and prior to intersection improvements and signalization of Blackrock Rd. and SR 200/A1A. The additional improvements shall commence, when the Developer applies for interior completion permits or occupancy of 60% (20,400 sf) at this shopping center and, shall be completed within twelve months of the construction commencement date.

The development lacks sixty-seven (67) trips. The \$201,000 amount was based upon a previous Engineering Services Director's study approved by the Board and is no longer applicable.

3. **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) Jurisdictional wetlands on the Property will be protected in accordance with the requirements of the St. John's River Water Management District.

b) Developer shall obtain all permits necessary to develop the Property and shall comply with all the rules, regulation, laws and other requirements governing development of the Property.

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

4. **County Obligation.**

a) By executing this Development Agreement, the County hereby issues to Developer, its heirs, successors or assigns, authority to take action to proceed with the construction of a total of 34,000 sq. ft. commercial building(s) contingent upon meeting the Conditions.

This Agreement is made and granted pursuant to Florida Statutes, Sections 163.3220-163.3243, and effective through the fifth (5<sup>th</sup>) 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 Developer from any obligation to pay impact fees imposed by the County.

b) Except as provided therein, 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.

c) In keeping with the original intent of the original Development Agreement, the \$201,000 paid to and received by Nassau County will be utilized to help pay for the intersection improvements at Blackrock Rd. and A1A /SR200. In addition, these funds will be used to pay for the portion of the signalization improvements associated with the construction of the mast arms at the ultimate location .The County has funds available and agrees to pay for the Blackrock Road widening (except at the intersection of A1A),

also the cost associated with signalization and mast arm design and installation cost difference, in order to install the longer mast arms to meet the FDOT future widening plans. Funds must be used by January 11, 2011. It is acknowledged that the Developer has paid impact fees associated with this project

5. **Extension of an 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. 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 these development regulations as applied to this development under the State of Florida or United States Constitutions.

6. **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, condition terms or restrictions as may be applicable.

7. **Agreement Consistent with Comprehensive Plan and Florida Statutes 163.3180.**

The County hereby acknowledges and agrees the (i) the development contemplated by the 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.**

a) Developer 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
- Final Development Plans and Construction Plans for Phase as applicable
- Nassau County Certificates of Concurrency for water, Sewer and Drainage

b) The County may apply subsequently adopted regulations and policies to the Proposed Development only upon meeting the requirement of Sections 163.3233, Florida Statutes.

c) Beginning one (1) year after the Effective Date of this Agreement as defined in Paragraph 15, herein, Developer 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, 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 cost related to providing notice and advertising this Agreement under Section 163.3225, Florida Statutes, and 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.

9. **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.

10. **Applicable Law; Jurisdiction of Venue.**

This Development Agreement, and the rights and obligations of the County and Developer 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 the 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.

11. **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.

12. **Exhibits.**

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



13. **Captions or Paragraph Headings.**

Captions or paragraph heading 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, not the intent of any provision hereof.

14. **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.

15. **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 January 11, 2011.

16. **Amendment.**

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

17. **Duration of Permits.**

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

18. **Further Assurances.**

Each of the parties hereto agrees to do, execute, acknowledge and deliver or cause to be done, execute 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.

19. **Notice.**

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

For the County: Douglas Seaman, P.E.  
Director of Engineering Services  
Nassau County, Florida  
96161 Nassau Place  
Yulee, Florida 32097

For the Developer: David Ergisi, President  
Dots and Company Inc.  
320 N 1<sup>st</sup> Street Suite 604  
Jacksonville Beach, Florida 32250

20. **Benefits to County.**

The County hereby acknowledges and agrees that this Agreement substantially benefits the County in carrying out its Comprehensive Plans objectives and its Capital Improvements 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 utilizing the planned commercial development, but all the citizens of Nassau County.

**[Signatures on following page]**

BLACK ROCK CROSSING, LLC

Brenda K. Linnville  
Witness:

Peggy B. Snyder  
Witness

By: David M. Ergis  
Print Name: David M. Ergis  
Title: Managing Partner

STATE OF FLORIDA  
COUNTY OF NASSAU

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of November, 2008, by \_\_\_\_\_, as \_\_\_\_\_ of BLACKROCK CROSSING, LLC., who is personally known to me or having produced personally known as \_\_\_\_\_ identification and having taken an oath.

Peggy B. Snyder  
Notary Public



PEGGY B. SNYDER  
Notary Public, State of Florida  
My Comm. Expires Nov. 8, 2011  
Commission No. DD 733137

BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA

Barry Holloway  
BARRY HOLLOWAY  
Its: Chairman

ATTEST AS TO CHAIRMAN'S  
SIGNATURE:

John A. Crawford

JOHN A. CRAWFORD  
Its: Ex-Officio Clerk

*ERK 12/12/08*

Approved as to form by the  
Nassau County Attorney

David A. Hallman  
DAVID A. HALLMAN